

# U.S. Customs Service

## *General Notices*

### COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 1-2002)

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

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of December 2001. The last notice was published in the CUSTOMS BULLETIN on December 19, 2001.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: January 16, 2002.

JOANNE ROMAN STUMP  
*Chief,*  
*Intellectual Property Rights Branch.*

The lists of recordations follow:

REC. NUMBER	EFF. DT.	EXP. DT.	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RE.
COP0100165	20011211	20211211	MAX STEEL	MATTEL, INC.	N
COP0100166	20011211	20211211	MAX STEEL PATROL	MATTEL, INC.	N
COP0100167	20011211	20211211	MAX STEEL MOUNTAIN ATTACK	MATTEL, INC.	N
COP0100168	20011211	20211211	MAX STEEL NIGHT COMBAT	MATTEL, INC.	N
COP0100169	20011211	20211211	MAX STEEL SUPER AGENT/SECRET FORCE	MATTEL, INC.	N
COP0100170	20011211	20211211	MAX STEEL SURF ATTACK	MATTEL, INC.	N
COP0100171	20011211	20211211	PSYCHO	MATTEL, INC.	N
COP0100172	20011217	20211217	THE LORD OF THE RINGS, THE FELLOWSHIP OF THE RING	NEW LINE PRODUCTIONS, INC.	N
COP0100173	20011219	20211219	RIDGE RACER 64	NINTENDO OF AMERICA INC.	N
COP0100174	20011219	20211219	THE LEGEND OF ZELDA: MAJORA'S MASK	NINTENDO OF AMERICA INC.	N
COP0100175	20011219	20211219	BANJO-TOOIE	NINTENDO OF AMERICA INC.	N
COP0100176	20011220	20201220	BVLGARI - JEWELLERY COLLECTION 2000	BULGARI S.P.A.	N
SUBTOTAL RECORDATION TYPE 12					
TMK0100585	20011203	20100617	SUPER MARIO LAND	NINTENDO OF AMERICA INC.	N
TMK0100586	20011204	20100522	ERC	CALLAWAY GOLF COMPANY	N
TMK0100587	20011204	20100725	STUSSY	STUSSY, INC.	N
TMK0100588	20011205	20101010	STUSSY	STUSSY, INC.	N
TMK0100589	20011205	20100801	STUSSY	STUSSY, INC.	N
TMK0100590	20011205	20100725	STUSSY	STUSSY, INC.	N
TMK0100591	20011205	20100725	STUSSY	STUSSY, INC.	N
TMK0100592	20011218	20100612	CONFIGURATION OF A CRAWFISH FISHING LURE	EBSCO INDUSTRIES, INC.	N
TMK0100593	20011218	20100822	LOUIS VUITTON PARIS	LOUIS VUITTON MALLETTIER	N
TMK0100594	20011218	20110116	DESIGN ONLY	SEIRIN-AMERICA, INC.	N
TMK0100595	20011218	20061015	SEIRIN	U.S. ASIA FOOD CORPORATION	N
TMK0100596	20011218	20101010	GOLDEN MOUNTAIN	U.S. ASIA FOOD CORPORATION	N
TMK0100597	20011218	20101010	GOLDEN MOUNTAIN	U.S. ASIA FOOD CORPORATION	N
TMK0100598	20011218	20100125	EMO	KUPO INDUSTRIAL CORP.	N
TMK0100599	20011218	20101121	LEMAS	CHINESE NATIVE PRODUCTS, LTD.	N
TMK0100600	20011218	20100729	BEE & FLOWER	MOONLIGHT ILLUMINATION CO.	N
TMK0100601	20011218	20090223	KUPO	KUPO INDUSTRIAL CORP.	N
TMK0100602	20011218	20101116	LEMAS	KUPO INDUSTRIAL CORP.	N
TMK0100603	20011219	20051129	MASDAQ (PLUS DESIGN)	MASDAQ MALLETTIER, INC.	N
TMK0100604	20011219	20090311	EDDIE BAUER	EDDIE BAUER, INC.	N
TMK0100605	20011219	20061011	SANTA MARGHERITA	S. MARGHERITA S.P.A.	N
TMK0100606	20011219	20061011	SANTA MARGHERITA	S. MARGHERITA S.P.A.	N
TMK0100607	20011219	20090912	PINOT GRIGIO DELL ALTO ADIGE SANTA MARGHERITA	S. MARGHERITA S.P.A.	N
TMK0100608	20011219	20090518	LEGO	KIRKBI AG	N
TMK0100609	20011219	20091005	THE ORIGINAL MUCK BOOT COMPANY USA	JAMES K. DONOHUE	N
TMK0100610	20011219	20091005	MUCK	JAMES K. DONOHUE	N
TMK0100611	20011220	20090209	DESIGN	INV TECHNOLOGIES S.A.	N
TMK0100612	20011221	20060107	STYLIZED CHILD DESIGN	SAVE THE CHILDREN FEDERATION	N
TMK0100613	20011221	20060128	SAVE THE CHILDREN	SAVE THE CHILDREN FEDERATION	N
TMK0100614	20011221	20091130	RADIA	RADIA MEDICAL IMAGING INC.	N
TMK0100615	20011221	20110814	ENERGIZER E2	EVEREADY BATTERY COMPANY INC.	N
TMK0100616	20011221	20110829	ENERGIZER E2 DESIGN	EVEREADY BATTERY COMPANY INC.	N
TMK0100617	20011221	20030504	ENERGIZER BUNNY	EVEREADY BATTERY COMPANY INC.	N
TMK0100618	20011221	20070107	ENERGIZER BUNNY DESIGN	EVEREADY BATTERY COMPANY INC.	N
TMK0100619	20011221	20051229	EVEREADY	EVEREADY BATTERY COMPANY INC.	N

U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN DECEMBER 2001

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0100620	20011221	20051226	EVEREADY	EVEREADY BATTERY COMPANY INC.	N
TMK0100621	20011221	20110925	E2	EVEREADY BATTERY COMPANY INC.	N
TMK0100622	20011221	20110918	E2 AND DESIGN	EVEREADY BATTERY COMPANY INC.	N
TMK0100623	20011221	20111023	ENERGIZER	EVEREADY BATTERY COMPANY INC.	N

SUBTOTAL RECORDATION TYPE 38

TOTAL RECORDATIONS ADDED THIS MONTH 50

REVOCATION OF CUSTOMS BROKER LICENSE

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

ACTION: Customs broker license revocation.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations [19 CFR 111.45(a)], the following Customs broker license is revoked by operation of law.

<i>Name</i>	<i>License</i>	<i>Port</i>
Unimex Brokerage, Inc. . . . .	12585	El Paso

Dated: December 20, 2001.

BONNI G. TISCHLER,  
*Assistant Commissioner,  
Office of Field Operations.*

[Published in the Federal Register, January 24, 2002 (67 FR 3531)]

RETRACTION OF REVOCATION AND  
NOTICE OF CANCELLATION

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

ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses. The license listed below was not revoked; it was cancelled due to death of the license holder.

<i>Name</i>	<i>License</i>	<i>Port Name</i>
Isidore Cohen . . . . .	01668	New York

Dated: December 17, 2001.

BONNI G. TISCHLER,  
*Assistant Commissioner,  
Office of Field Operations.*

[Published in the Federal Register, January 24, 2002 (67 FR 3531)]

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, January 23, 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.

DOUGLAS M. BROWNING,  
*Acting Assistant Commissioner,  
Office of Regulations and Rulings.*

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PROPOSED REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO TARIFF CLASSIFICATION OF  
BIMETALLIC WATCHES AND WATCH BRACELETS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of bimetallic watches and watch bracelets.

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 revoking a ruling letter pertaining to the tariff classification of bimetallic watches and watch bracelets under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs also is revoking 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 March 8, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 927-1638.

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 pertaining to the tariff classification of bimetallic watches and watch bracelets. Although in this notice Customs is specifically referring to one ruling, NY H83472, 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 one 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 H83472, dated August 8, 2001, various models of “Santos de Cartier” bimetallic (stainless steel and 18-carat gold) watches and watch bracelets were misclassified. Watch models W20030C4, W20037R3, W20011C4, W20031C4 and W20012C4 were classified in

subheading 9102.11.65, HTSUS, which provides for wrist watches, electrically operated, with mechanical display only, having no jewels or only one jewel in the movement: with strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated. Watch model W20036R3 was classified in subheading 9102.21.30, HTSUS, which provides for wrist watches, with automatic winding, having over one jewel but not over 17 jewels in the movement, with strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated. All six models of watch bracelets imported separately were classified in subheading 9113.20.40, HTSUS, which provides for watch bracelets of base metal valued over \$5 per dozen.

The proper classification of this merchandise is based on the definition of the expression "metal clad with precious metal." Note 7 of Chapter 71 defines the expression for the entire tariff schedule as including base metal inlaid with precious metal except where the context otherwise requires. Note 2 of Chapter 91 specifically excepts watch cases of base metal inlaid with precious metal from being classified in the heading for watch cases of precious metal, but is silent with respect to watch bracelets. Thus, the definition set forth in Chapter 71 controls watch bracelets of base metal inlaid with precious metal classifiable in Chapter 91. As the instant watch bracelets consist of base metal inlaid with precious metal, they are treated as "metal clad with precious metal" for tariff purposes. Accordingly, the models W20030C4, W20037R3, W20011C4, W20031C4 and W20012C4 are classifiable in subheading 9102.11.95, HTSUS; model W20036R3 is classifiable in subheading 9102.21.50, HTSUS; and the watch bracelets imported separately are classifiable in subheading 9113.10.00, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY H83472, dated August 8, 2001 (Attachment A), to reflect the proper classification of the subject merchandise and any other ruling not specifically identified, classifying the same or substantially similar merchandise, pursuant to the analysis set forth in HQ 965207 (Attachment B). 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: January 15, 2002.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,*New York, NY, August 8, 2001.*

CLA-2-91:RR:NC:MM:114 H83472

Category: Classification

Tariff Nos. 9102.21.30, 9102.11.65, and 9113.20.40

MR. PAUL HEGLAND  
MR. VINCENT BOWEN  
WHITE & CASE  
601 Thirteenth Street, N.W.  
Suite 600 South  
Washington, DC 2005-3807

Re: The tariff classification of watch bands from Switzerland.

DEAR MR. HEGLAND AND MR. BOWEN:

In your letter dated July 10, 2001, on behalf of Cartier, Inc., you requested a tariff classification ruling.

The watchbands for the Santos de Cartier watch models W20030C4, W20031C4, W20036R3, W20037R3, W20011C4, and W20012C4 are made of stainless steel and 18 carat gold. They are referred to as bimetallic bracelets and contain 26 links composed of stainless steel with 52 gold screws or 24 links composed of stainless steel with 48 gold screws. The watches have base metal cases. In general, the watches and watch bracelets will be imported together with the bracelet affixed to the watch. Occasionally, the bracelets will be imported separately as replacements for damaged bracelets. The Santos de Cartier watch is designed to evoke an aircraft fuselage by the use of the screws on the bezel and on the bracelet. The Santos de Cartier line includes various types of watches and watch bracelets. This ruling concerns only the watches listed above with watchcases of stainless steel and watch bracelets of stainless steel and gold as described.

To determine the classification of the watchbands it is necessary to classify the watches. The Santos de Cartier model W20036R3 has an automatic winding mechanical movement with 17 jewels and is classified under 9102.21, Harmonized Tariff Schedules of the United States. Models W20030C4, W20037R3, W20011C4 watches have battery operated quartz movements with seven jewels. Models W20031C4, and the W20012C4 have battery operated quartz movements with four jewels. The five watches with quartz movements are classified under 9102.11, Harmonized Tariff Schedules of the United States.

The bimetallic bracelets are a composite goods consisting of two materials, stainless steel and gold. The bracelets are described by more than one subheading, so they cannot be classified according to GRI 1. Because the watchbands contain both stainless steel and gold, GRI 3 applies. Under GRI 3 (b), goods are to be classified as if they consist of the material that gives them their essential character. We believe that the stainless steel portion of the watch bracelet imparts the essential character to the bracelet.

The applicable subheading for the Santos de Cartier model W20036R3 watches imported with bimetallic watchbands will be 9102.21.30, Harmonized Tariff Schedule of the United States (HTS), which provides for wrist watches, with automatic winding, having over one jewel but not over 17 jewels in the movement, with strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated. The rate of duty will be \$1.75 each plus 4.8 percent on the case plus 11.2 percent on the strap, band or bracelet.

The applicable subheading for the Santos de Cartier model W20030C4, W20037R3, W20011C4, W20031C4 and W2Q.012C4 watches imported with bimetallic watchbands will be 9102.11.65, Harmonized Tariff Schedule of the United States (HTS), which provides for wrist watches, electrically operated, with mechanical display only, with strap, band or bracelet of textile material or base metal, whether or not gold- or silver-plated. The rate of duty will be 76 cents each plus 8.5 percent on the case plus 14 percent on the strap, band or bracelet plus 5.3 percent on the battery.

The applicable subheading for the Santos de Cartier model W20036R3, W20030C4, W20037R3, W20011C4, W20031C4 and W20012C4 watchbands imported separately will be 9113.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for watch straps, watch bands and watch bracelets, of base metal, whether or not gold- or silver-plated: straps, bands and bracelets: valued over \$5 per dozen. The rate of duty will be 11.2 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 Barbara Kiefer at 212-637-7058.

ROBERT B. SWIERUPSKI,

*Director,*

*National Commodity Specialist Division.*

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[ATTACHMENT B]

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

CLA-2 RR: CR: GC 965207 DBS

Category: Classification

Tariff Nos. 9102.11.95, 9102.21.50, and 9113.10.00

MR. PAUL HEGLAND  
WHITE & CASE, LLP  
601 Thirteenth Street, NW  
Suite 600 South  
Washington, DC 20005-3807

Re: NY H83472 revoked; bimetallic watches and watch bracelets.

DEAR MR. HEGLAND:

This is in response to your letter dated August 20, 2001 requesting reconsideration of NY Ruling Letter H83472, issued to you on August 8, 2001, on behalf of Cartier, Inc., which classified various bimetallic watches under the Harmonized Tariff Schedule of the United States (HTSUS) as having watch bracelets of base metal in subheadings 9102.21.30, HTSUS and 9102.11.65, HTSUS, and classified watch bracelets imported separately in subheading 9113.20.40, HTSUS, which provides for watch bracelets of base metal. We have reconsidered the classification of these articles and now believe NY H83472 is incorrect.

*Facts:*

The watchbands for the Santos de Cartier watch models W20030C4, W20031C4, W20036R3, W20037R3, W20011C4 and W20012C4 are composed of stainless steel and inlaid with 18-carat gold. They are referred to as bimetallic bracelets and contain 26 links composed of stainless steel with 52 gold "screws" or 24 links composed of stainless steel with 48 gold "screws." Written explanations and schematic drawings submitted by Cartier, Inc. show that the screws are actually screw-shaped inserts with unthreaded shanks that are press-fitted into predrilled holes. There is a round protrusion referred to as a shoulder (the opposite of a groove) in the middle of the shank of the screw-shaped insert. The shoulder cannot be seen without 10 power or greater magnification. The shoulder rubs against the stainless steel wall and gives slightly as it is pressed downward into position in the shank hole. The gold insert is friction fit by machine press into the stainless steel link and cannot be removed without destroying the link.

The watches have base metal cases with 18-carat gold (circular or square) bezels, each featuring eight stainless steel screws. In general, the watches and watch bracelets will be imported together with the bracelet affixed to the watch. Occasionally, the bracelets will be imported separately as replacements for damaged bracelets. The Santos de Cartier watch is designed to evoke an aircraft fuselage by the use of the screw on the bezel and on the bracelet. The Santos de Cartier line includes various types of watches of stainless steel and watch bracelets of stainless steel and gold as described.

Model W20036R3 has an automatic winding mechanical movement with 17 jewels. Models W20030C4, W20037R3, W20011C4 watches have battery operated quartz movements with seven jewels. Models W20031C3 and W20012C4 have battery operated quartz movements with four jewels.

In NY H83472, the Director, National Commodity Specialist Division, classified watch models W20030C4, W20037R3, W20011C4, W20031C4 and W20012C4 in subheading 9102.11.65, HTSUS, which provides for wrist watches, electrically operated, with mechanical display only, other; with strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated. Watch model W20036R3 was classified in subheading 9102.21.30, HTSUS, which provides, in pertinent part, for wrist watches, with automatic winding, having over one jewel but not over 17 jewels in the movement, with strap, band or bracelet of base metal, whether or not gold- or silver-plated. All six models of watch bracelets imported separately were classified in subheading 9113.20.40, HTSUS, which provides, in pertinent part, for watch bracelets of base metal, whether or not gold- or silver-plated, valued over \$5 per dozen.

*Issue:*

Whether the bimetallic watches and watch bracelets are classifiable as of base metal or of precious metal or metal clad with precious metal for tariff classification purposes.

*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.

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:

9102	Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility:
9102.11	With mechanical display only: Other:
9102.11.65	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated: Other
*	* * * * *
9102.11.95	Other: Other
*	* * * * *
9102.21	Other wrist watches whether or not incorporating a stop-watch facility: With automatic winding: Having over one jewel but not over 17 jewels in the movement:
9102.21.30	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated
*	* * * * *
9102.21.50	Other
*	* * * * *
9113	Watch straps, watch bands and watch bracelets, and parts thereof:
9113.10.00	Of precious metal or of metal clad with precious metal
*	* * * * *
9113.20	Of base metal, whether or not gold- or silver-plated: Straps, bands and bracelets:
9113.20.40	Valued over \$5 per dozen

Note 2 of Chapter 91 instructs that watches with cases not wholly of precious metal or metal clad with precious metal are to be classified in heading 9102, HTSUS. Note 7 of Chapter 71 defines the expression “metal clad with precious metal” for the entire tariff schedule. According to Note 7, “metal clad with precious metal” means material made with a base of metal upon one or more surfaces of which there is affixed by soldering, brazing \* \* \* or similar mechanical means a covering of precious metal. Except where the context otherwise requires, the expression also covers base metal inlaid with precious metal.” However, Note 2 of Chapter 91 specifically excepts cases that are “metal clad with precious metal” by means of being a base metal inlaid with precious metal. They are to be classified in heading 9102, HTSUS. The cases of the watches at issue are metal with gold bevels. They are not wholly of precious metal, nor are the cases metal clad with precious metal within the meaning of Note 2. Accordingly, they are watches of heading 9102, HTSUS.

Note 2 of the Additional U.S. Notes to Chapter 91 states that watch bracelets entered with wrist watches and of a kind normally sold therewith are classified with the watch in 9102, and other watch bracelets shall be classified in 9113. Thus, the watch bracelets imported separately are classified under heading 9113, HTSUS.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides that, “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 [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires.”

The importer claims that watch bracelets are composite goods that are to be classified according to GRI 3(b). The importer argues that the essential character of the bracelet is precious metal. In NY H83472, Customs agreed that the composite good analysis applied, but classified the merchandise as having bracelets of base metal. However, upon review of the headings and relevant section and chapter notes, it is clear that GRI 6 and GRI 3(b) are unnecessary, as the merchandise may be classified on the basis of GRI 1.

Note 7 of Chapter 71 specifically defines “metal clad with precious metal” for the entire tariff schedule and unless the context otherwise requires. Note 2 of Chapter 91 required the exclusion of base metal inlaid with precious metal from that definition with respect to watch cases. The tariff is silent as to watch bracelets in this context. Therefore, watch bracelets of base metal inlaid with precious metal would fall into the classification of metal clad with precious metal. Accordingly, we must determine if the gold “screws” in the watch bracelets are inlaid.

The HTSUS does not provide a definition of “inlaid.” However, the General ENs to Chapter 71 state, in pertinent part, the “[e]xcept where the context otherwise requires base metal articles inlaid with precious metal are also classified as articles of metal clad with precious metal (e.g. copper plates inlaid with silver strips for use in the electrical industry, and the so-called damaskeen work of steel inlaid with strips or threads of hammered gold). These two exemplars demonstrate the broad scope of “base metal inlaid with precious metal”, but does not define “inlaid” for each chapter of the HTSUS in which it appears.

Inlaid is defined as “any decorative technique used to create an ornamental design, pattern, or scene by inserting or setting into a shallow or depressed ground or surface a material of different color or type.” Encyclopædia Britannica (CD-ROM, Standard ed. 1999). Oxford English Dictionary (2d. ed. 1989) defines inlay as “to furnish or fit (a thing) with a substance of a different kind embedded in its surface; to diversify or ornament by such insertion of another material disposed in a decorative pattern or design.”

In addition, although watches are not jewelry, the *Jewelers’ Dictionary* 3<sup>rd</sup> edition, has a definition consistent with those above. It states that to inlay is, in pertinent part, “In jewelry, to embed a material in another substance so that the surfaces of each are level.” Moreover, in the past the courts have defined and analyzed the term “inlaid” in other contexts, but the discussion is also relevant here. One decision cited six lexicographers, all of whom similarly state that to inlay is to lay or insert one material into another. *See Keveney v. United States*, 1 Ct. Cust. 101; T.D. 31111 (1910). In *Hunter v. United States*, it was held that inlaid means “laid into a definite space, as a separate part of the material of the structure.” *See* 121 Fed. 207 (1903), *cited by United States v. Pacific Overseas Co.*, 42 C.C.P.A. 1 (1954).

Here, the unthreaded screws are press-fitted into holes drilled into the stainless steel link so that the screws are flush with the surface of the link. They are purely ornamental

gold inserts which are embedded into the stainless steel links. We believe that the "screws" are inlaid. Accordingly, the watches and watch bracelets are classified as being of base metal inlaid with precious metal. The watches with watch bracelets attached will be classified in subheading 9102.11.95, HTSUS. The watch bracelets imported separately will be classified in subheading 9113.10.00, HTSUS.

For the reasons above we conclude that NY H83472 was in error. Accordingly, the models W20030C4, W20037R3, W20011C4, W20031C4 and W20012C4 are classifiable in subheading 9102.11.95, HTSUS; model W20036R3 is classifiable in subheading 9102.21.50, HTSUS; and the watch bracelets imported separately are classifiable in subheading 9113.10.00, HTSUS.

*Holding:*

Bimetallic watch and watch bracelet models W20030C4, W20037R3, W20011C4, W20031C4 and W20012C4 are classifiable in subheading 9102.11.95, HTSUS, which provides for, "wrist watches \* \* \* other than those of heading 9101: wrist watches, electrically operated, whether or not incorporating a stop watch facility: with mechanical display only: other: other: other." Model W20036R3 is classifiable in subheading 9102.21.50, HTSUS, which provides for, "wrist watches \* \* \* other than those of heading 9101: wrist watches, electrically operated, whether or not incorporating a stop watch facility: with automatic winding: having over one jewel but not over 17 jewels in the movement: other." The watch bracelets imported separately are classifiable in subheading 9113.10.00, HTSUS, which provides for, "watch straps, watch bands and watch bracelets and parts thereof: of precious metal or of metal clad with precious metal."

*Effect on Other Rulings:*

NY H83472, dated August 8, 2001, is hereby revoked.

JOHN DURANT,  
 *Director,*  
 *Commercial Rulings Division.*

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REVOCATION OF RULING LETTERS AND TREATMENT  
 RELATING TO TARIFF CLASSIFICATION OF SILICO-  
 MANGANESE

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

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of silicomanganese.

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 two rulings relating to the tariff classification of silicomanganese, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocations was published on December 12, 2001, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: These revocations are effective for merchandise entered or withdrawn from warehouse for consumption on or after April 8, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

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), 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 based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on December 12, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 50, proposing to revoke *HQ* 089130, dated August 14, 1991, and *HQ* 958783, dated May 9, 1996, both of which classified merchandise described variously as ferromanganese silicon and granular silicomanganese in bulk as other ferroalloys, in subheading 7202.99.50, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

As stated in the proposed notice, these revocations will cover any rulings on this merchandise which may exist but have not been specifically identified. 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, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, 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 HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a

specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *HQ* 089130 and *HQ* 958783 to reflect the proper classification of ferromanganese silicon and silicomanganese in bulk in subheading 7202.30.00, HTSUS, as ferrosilicon manganese, pursuant to the analysis in *HQ* 965325 and *HQ* 965326, which are set forth as the Attachment A and Attachment B to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

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

Dated: January 16, 2002.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 16, 2002.*  
CLA-2 RR:CR:GC 965325 JAS  
Category: Classification  
Tariff No. 7202.30.00

EDWARD J. FARRELL  
WIGMAN, COHEN, LEITNER & MYERS, P.C.  
*900 17<sup>th</sup> St., N.W., Suite 1000*  
*Washington, DC 20006*

Re: *HQ* 958783 Revoked; Granular Silicomanganese.

DEAR MR. FARRELL:

In *HQ* 958783, which was issued to the Port Director of Customs, Baltimore, on May 9, 1996, in connection with Protest 1303-95-100066, filed on behalf of Pickands Mather Sales, Inc., granular silicomanganese was held to be classified in subheading 7202.99.50, Harmonized Tariff Schedule of the United States (HTSUS), as other ferroalloys.

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 *HQ* 958783 was published on December 12, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 50. No comments were received in response to that notice. As previously indicated, because *HQ* 958783 was a protest review decision, liquidation of the involved entries will be unaffected by this decision.

*Facts:*

The merchandise in *HQ* 958783, granular silicomanganese in bulk, was described as a ferroalloy containing between 28-32 percent silicon, between 58-63 percent manganese,

less than 10 percent iron, and minor amounts of carbon, phosphorous and sulfur, all by weight. It is used primarily as an alloying element in steel production.

The merchandise was entered under a provision in heading 7202, Harmonized Tariff Schedule of the United States (HTSUS), for ferrosilicon manganese. At liquidation, the product was determined to be a ferroalloy but not ferrosilicon manganese for tariff purposes. The entries were liquidated under a provision in HTS heading 7202 for other ferroalloys. You advanced several arguments in support of the entered classification: (1) the merchandise was within the term *ferrosilicon manganese*, defined under the HTSUS predecessor tariff code, the Tariff Schedules of the United States (TSUS), which is indicative of its intended classification under the HTSUS; (2) because of the product's chemical composition it is within the term *Ferroalloys*, as defined in Chapter 72, Note 1(c), HTSUS, and subheading 7202.30.00, HTSUS, a provision for ferrosilicon manganese, is an appropriate ternary subheading that describes the merchandise; (3) the term "ferrosilicon manganese" describes a product *eo nomine*, by name, and such provisions normally include all forms of the named article; and, finally (4) other countries subscribing to the Harmonized System designate the ferroalloy at issue having 16–20 percent silicon, by weight, as "standard" silicomanganese, and the same ferroalloy with 28–33 percent silicon, by weight, as "low carbon" silicomanganese; however, they classify *both* products in subheading 7202.30.

The HTSUS provisions under consideration are as follows:

<b>7202</b>	Ferroalloys:					
	Ferromanganese:					
*	*	*	*	*	*	*
	Ferrosilicon:					
*	*	*	*	*	*	*
<b>7202.30.00</b>	Ferrosilicon manganese					
	Other:					
<b>7202.99</b>	Other:					
<b>7202.99.50</b>	Other					

*Issue:*

Whether the merchandise under protest is ferrosilicon manganese for tariff purposes.

*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). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Where not defined in a legal note under the HTSUS or clearly described in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), tariff terms are construed in accordance with their common and commercial meanings which are presumed to be the same. While the merchandise at issue is clearly a ferroalloy for tariff purposes, the term "ferrosilicon manganese" is not defined in the legal text or in the ENs. Where a term is technical in nature, general lexicons may prove to be inconclusive in establishing its common meaning. In such cases, more specialized sources within the involved industry, to include testimony of persons with particular knowledge in the field, should be consulted. See *THK America v. United States*, 17 CIT 1169 (1993). At least two such sources independently confirm in affidavits that the term "ferrosilicon manganese" has no recognized commercial meaning, but is a general term that encompasses all alloys of iron, silicon and manganese that qualify as a ferroalloy under the HTSUS, and so includes both silicomanganese and ferromanganese silicon. The sources further indicate that in fact the latter two terms are used in practice and designate certain composition ranges for the alloy. Therefore, notwithstanding the fact that the silicomanganese at issue may not be strictly within American Society for Testing and Materials (ASTM) designation A-483 for the ferroalloy "silicomanganese," the referenced sources are equally probative of the common and commercial meaning of the term "ferrosilicon manganese."

As stated in T.D. 89–80, published in the Federal Register on August 23, 1989 (54 FR 35127), classification rulings from other Customs administrations on like merchandise are instructive only and are not binding on the United States. Nevertheless, such rulings are indicative of a classification we may wish to consider during our own rulings process.

Five Customs administrations have recently responded to our inquiry on this classification issue and confirmed that they classify the ferroalloy silicomanganese in subheading 7202.30. In their responses, these administrations confirm that the terms ferromanganese silicon and silicomanganese are within the scope of the 7202.30 subheading designation “ferrosilicon manganese.”

Upon consideration of all the available evidence, we conclude that the granular silicomanganese, the subject of *HQ* 958783, is within the common and commercial meaning of the term “ferrosilicon manganese” for tariff purposes.

*Holding:*

Under the authority of GRI 1, the merchandise designated silicomanganese is provided for in heading 7202. It is classifiable in subheading 7202.30.00, HTSUS.

*Effect on Other Rulings:*

*HQ* 958783, dated May 9, 1996, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN DURANT,  
 *Director,*  
 *Commercial Rulings Division.*

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
 *Washington, DC, January 16, 2002.*  
CLA-2 RR:CR:GC 965326 JAS  
Category: Classification  
Tariff No. 7202.30.00

SHIELDALLOY METALLURGICAL CORP  
 *12 West Blvd.*  
 *P.O. Box 768*  
 *Newfield, NJ 08344-0768*

Re: *HQ* 089130 Revoked; Ferromanganese Silicon.

GENTLEMEN:

In *HQ* 089130, which was issued to the District (now Port) Director of Customs, Ogdensburg, NY, on August 14, 1991, in connection with Protest 0712-91-000043, ferromanganese silicon was held to be classified in subheading 7202.99.50, Harmonized Tariff Schedule of the United States (HTSUS), as other ferroalloys.

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 *HQ* 089130 was published on December 12, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 50. No comments were received in response to that notice. As previously indicated, because *HQ* 089130 was a protest review decision, liquidation of the involved entries will be unaffected by this decision.

*Facts:*

The merchandise in *HQ* 089130 was identified as ferromanganese silicon, presumably in bulk. It was described as containing approximately 62 percent manganese, 31 percent silicon and 6 percent iron. The merchandise was not further described. However, this material is used largely as an additive to the melt in steelmaking. As such, physical properties of the material in solid form, such as mechanical strength, are not a relevant consideration. Only the chemical composition of the material is of significance.

The merchandise was entered under a provision in heading 7202, Harmonized Tariff Schedule of the United States (HTSUS), a provision for ferrosilicon manganese. At liquidation, the product was determined to be a ferroalloy but not ferrosilicon manganese for



tariff purposes. The entries were liquidated under a provision in HTS heading 7202 for other ferroalloys.

The HTSUS provisions under consideration are as follows:

<b>7202</b>	Ferroalloys:
	Ferromanganese:
*	* * * * *
	Ferrosilicon:
*	* * * * *
<b>7202.30.00</b>	Ferrosilicon manganese
	Other:
<b>7202.99</b>	Other:
<b>7202.99.50</b>	Other

*Issue:*

Whether the merchandise under protest is ferrosilicon manganese for tariff purposes.

*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). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Where not defined in a legal note under the HTSUS or clearly described in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), tariff terms are construed in accordance with their common and commercial meanings which are presumed to be the same. While the merchandise at issue is clearly a ferroalloy for tariff purposes, the term “ferrosilicon manganese” is not defined in the legal text or in the ENs. Where a term is technical in nature, general lexicons may prove to be inconclusive in establishing its common meaning. In such cases, more specialized sources within the involved industry, to include testimony of persons with particular knowledge in the field, should be consulted. *See THK America v. United States*, 17 CIT 1169 (1993). At least two such sources independently confirm in affidavits that the term “ferrosilicon manganese” has no recognized commercial meaning, but is a general term that encompasses all alloys of iron, silicon and manganese that qualify as a ferroalloy under the HTSUS, and so includes both silicomanganese and ferromanganese silicon. The sources further indicate that in fact the latter two terms are used in practice and designate certain composition ranges for the alloy. Therefore, notwithstanding the fact that the silicomanganese at issue may not be strictly within American Society for Testing and Materials (ASTM) designation A-483, for the ferroalloy “silicomanganese,” the referenced sources are equally probative of the common and commercial meaning of the term “ferrosilicon manganese.”

As stated in T.D. 89-80, published in the Federal Register on August 23, 1989 (54 FR 35127), classification rulings from other Customs administrations on like merchandise are instructive only and are not binding on the United States. Nevertheless, such rulings are indicative of a classification we may wish to consider during our own rulings process. Five Customs administrations have recently responded to our inquiry on this classification issue and confirmed that they classify the subject merchandise in subheading 7202.30. In their responses, these administrations confirm that the terms ferromanganese silicon and silicomanganese are within the scope of the 7202.30 subheading designation “ferrosilicon manganese.”

Upon consideration of all the available evidence, we conclude that ferromanganese silicon, the subject of HQ 089130, is within the common and commercial meaning of the term “ferrosilicon manganese” for tariff purposes.

*Holding:*

Under the authority of GRI 1, the merchandise designated ferromanganese silicon is provided for in heading 7202. It is classifiable in subheading 7202.30.00, HTSUS.

*Effect on Other Rulings:*

HQ 089130, dated August 14, 1991, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN DURANT,

*Director,*

*Commercial Rulings Division.*

MODIFICATION/REVOCATION OF RULING LETTERS AND  
TREATMENT RELATING TO TARIFF CLASSIFICATION OF  
RECORDED DATA ON AUTOMATIC DATA PROCESSING  
MACHINES

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

ACTION: Notice of modification/revocation of ruling letters and revocation of treatment relating to tariff classification of recorded data on automatic data processing machines.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling letter and modifying eight others pertaining to the tariff classification of data installed on the hard disk drive of automatic data processing machines under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions were published in the CUSTOMS BULLETIN on October 31, 2001. Three comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 8, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, (202) 927-1726.

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 Customs obligations, a notice was published on October 31, 2001, in Vol. 35, No. 44 of the CUSTOMS BULLETIN, proposing to revoke HQ 950675, dated January 7, 1992; HQ 956962, dated September 13, 1994; HQ 960259, dated November 12, 1997; HQ 958808, dated May 15, 1996; HQ 957981, dated July 9, 1997; HQ 959651, dated July 9, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; and NY E83923, dated July 26, 1999, which broke out and separately classified data that came pre-loaded on the hard-disk drive on an automatic data processing machine, pursuant to Note 6 to Chapter 85, HTSUS. Three comments were received. Certain comments and our responses follow. The remaining comments are addressed in the final rulings.

One commentator suggests that disks (CD or floppy) containing software, identical to the software already loaded on the hard disk drive, also be held to fall outside of the scope of Note 6 to chapter 85, HTSUS. As distinct articles of commerce, CDs and floppy disks are media of heading 8523 or 8524, HTS, which are imported with the apparatus for which they are intended. Even though they merely serve as back-up copies to programs that are already present on the hard disk drive, they fall within the scope of Note 6 to chapter 85, HTSUS.

Another commentator questions whether or not software that is hard-coded on a printed circuit board ("PCB") rather than on a hard disk drive, is covered by our new interpretation. Data on PCBs is not within the scope of these modifications/revocations. Also sought was a clarification as to the effect of our position on sets put up for retail sale. Sets will be discussed in subsequent rulings.

Another commentator cites a United States proposed clarification to Note 6 to chapter 85, HTS and the ENs. However, this proposal did not become law, and we are left with only the text as it appears in the January 1, 2002, HTS to consider.

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 this notice.

Note 6 to Chapter 85, HTSUS, states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

In the nine rulings, Customs, based on its interpretation of Note 6 to Chapter 85, HTSUS, determined that data that came pre-installed on the hard disk drive of an automatic data processing machine was required to be separately classified as recorded media. These nine rulings are as follows: HQ 950675 (January 7, 1992); HQ 956962 (September 13, 1994); HQ 960259 (November 12, 1997); HQ 958808 (May 15, 1996); HQ 957981 (July 9, 1997); HQ 959651 (July 9, 1997); NY A86557 (August 30, 1996); NY E86558 (September 14, 1999); NY E83923 (July 26, 1999).

It is now Customs position that in a proper interpretation of Note 6 to Chapter 85, HTSUS, data that comes pre-installed on the hard disk drive of an automatic data processing machine need not be separately classified as recorded media of heading 8523 or 8524, HTSUS, because the hard disk platters in a hard disk drive are not media of either heading 8523 or 8524, HTSUS. Thus the platters fall outside of the scope of Note 6 and are subsumed into the system, regardless of whether they are recorded or unrecorded.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking one ruling and modifying eight others and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth as Attachments A through I in HQ 965254; HQ 965255; HQ 965256; HQ 965271; HQ 965272; HQ 965273; HQ 965276; HQ 965277; and HQ 965279. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs revokes any treatment previously accorded by the Customs Service to substantially identical transactions.

Customs revocation/modification herein relates only to the extent that certain language in the nine rulings no longer reflects Customs view of Note 6 to Chapter 85, HTSUS. There is no change in the remaining classification determinations in the nine rulings.

Dated: January 23, 2002.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 23, 2002.*  
CLA-2 RR: CR: GC 965254 TPB  
Category: Classification  
Tariff No. 8524.90.40

MR. JOHN S. RODE  
RODE & QUALEY  
295 Madison Ave  
New York, NY 10017

Re: Recorded Data; Hard Drive; HQ 950675 Modified.

DEAR MR. RODE:

This is in reference to HQ 950675, issued to you on January 7, 1992, in response to your letter dated October 8, 1991, requesting classification of certain automatic data processing ("ADP") pre-recorded data under the Harmonized Tariff Schedule of the United States ("HTSUS"), on behalf of Biomedical Instrumentation, Inc. We have had an opportunity to review that ruling and now find it to no longer reflects our view as to the classification of recorded data. This ruling modifies HQ 950675 to the extent noted.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation), It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consistent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

According to your letter, Biomedical Instrumentation, Inc., manufactures the "EPLab System" which is capable of accomplishing all of the functions of the traditional form of electrocardiograph, i.e., measuring, displaying and recording the electrical currents which are generated in a patient's heart during an electrophysiological study.

The EPLab System utilizes proprietary data also known as "software" to analyze the recorded information and compile appropriate reports for display on the EPLab monitor, or for subsequent printing.

The data produced by Biomedical Instrumentation, Inc., will be imported either in floppy diskette form or downloaded on the hard disk drive.

*Issue:*

What is the classification of data (recorded media) in the form of floppy diskettes or when pre-loaded on a hard disk drive?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85, HTSUS, states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Media of heading 8523 or 8524 must be classified separately if it is presented with the apparatus for which it is intended. The media must also be classified separately if it is not presented with the apparatus for which it is intended.

Accordingly, the importation of floppy disks containing the EPLab System Application Program falls within Legal Note 6 to Chapter 85, regardless of whether or not they are shipped with the EPLab System (see HQ 955442, dated February 28, 1994, for a discussion on the classification of floppy disks).

We next examine the treatment of the application program for the EPLab System when recorded on the magnetic disk of the hard-disk drive unit that resides within the EPLab System.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include data that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 956962, dated September 13, 1994; HQ 960259, dated November 12, 1997; HQ 958808, dated May 15, 1996; HQ 957981, dated July 9, 1997; HQ 959651, dated July 9, 1997; NY B85213, dated April 23, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; NY D89220, dated March 17, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters that are integrated into the hard disk drive that is installed in the central processing unit are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September 22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under heading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes, CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus for which they are intended." Thus, hard disk platters, whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

HQ 950675 made no distinction between the data on the floppy disks and the data that resided on the hard disk drive that was installed within the data processing machine when Note 6 to Chapter 85 was applied. For the foregoing reasons, it is now Customs view that such pre-recorded data is outside of the scope of Note 6 to Chapter 85 and that it is subsumed into the system and should be classified with the data processing machine.

Although it has no bearing on Customs new view on the classification of this type of recorded media, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, Biomedical Instrumentation, Inc., proprietary data imported in the form of separate floppy disks is classified under subheading 8524.90.40, HTSUS, while any data entered on hard disk drives incorporated into the EPLab System will be classified with that system as determined by HQ 950675.

*Effect on other Rulings:*

HQ 950675 is modified to the extent described above, i.e., the language in HQ 950675 no longer reflects our view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
 U.S. CUSTOMS SERVICE,  
 Washington, DC, January 23, 2002.  
 CLA-2 RR: CR: GC 965255 TPB  
 Category: Classification  
 Tariff No. 9010.20.60

MR. TERRY WADOWSKI  
 LUMUC CORPORATION  
 2380 Mississauga Road  
 Mississauga, Ontario  
 L5H 2L1 Canada

Re: Photocards Kiosk; Note 6 to Chapter 85; HQ 956962 modified.

DEAR MR. WADOWSKI:

This is in regard to HQ 956962, issued to you on September 13, 1994, in response to your letter dated July 15, 1994, requesting classification of Photocards Kiosks under the Harmonized Tariff Schedule of the United States (HTSUS), on behalf of Basler Inc. We have had an opportunity to review that ruling and now find it to no longer reflects our view as to the classification of the recorded media. This ruling modifies HQ 956962 to the extent noted.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation). It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consis-



tent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

The merchandise at issue is a Photocards Kiosk, which is a machine that allows a customer to design a photographic business card. The Kiosk contains the following components: a Ricoh KR-10M SLR camera with the Ricoh 35-0 mm lens; high resolution computer monitor; a UMAX flat bed scanner; a computer (486DLC-33 with 250 Mb hard disk drive) with monitor and mini-keyboard; computer speakers; touch screen; video splitter/multiplier. The Kiosk operates Canadian developed and produced data, also known as "software." The data incorporates stereo sound, recorded voice, photographic quality images and an interactive touch screen to guide the user through the design process. Data is permanently fixed in the Kiosk's hard disk drive, and is designed to work only with the Photocards Kiosk.

*Issue:*

What is the classification of data on the Photocards Kiosk hard disk drive?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85 states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include data that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 960259, dated November 12, 1997; HQ 958808, dated May 15, 1996; HQ 957981, dated July 9, 1997; HQ 959651, dated July 9, 1997; NY B85213, dated April 23, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; NY D89220, dated March 17, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters, integrated into the hard disk drive and installed in the central processing unit, are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September 22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under subheading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus for which they are intended." Thus, hard disk platters, whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

HQ 956962 ruled that the proprietary recorded media on the Kiosk's hard disk drive had to be broken out and separately classified from the rest of the Kiosk because of Note 6 to Chapter 85, HTSUS. As explained above, it is now Customs view that data on a hard disk drive that is permanently affixed to an automatic data processing machine falls outside of the scope of the Note.

Although it has no bearing on Customs new view on the classification of this type of recorded media, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, data entered on hard disk drives incorporated into the Photocards Kiosk will be classified with that system under subheading 9010.20.60, HTSUS.

*Effect on other Rulings:*

HQ 956962 is modified to the extent described above, i.e., the language in HQ 956962 no longer reflects our view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 23, 2002.*  
CLA-2 RR: CR: GC 965256 TPB  
Category: Classification  
Tariff No. 9026.80.60 and 9032.89.60

MR. PAUL S. ANDERSON  
SONNEBERG & ANDERSON  
*200 South Wacker Drive  
Chicago, IL 60606*

Re: Gob Image Analyzing System; Recorded Media; Note 6 to Chapter 85; HQ 960259 Modified.

DEAR MR. ANDERSON:

This is in reference to HQ 960259, issued to you on November 12, 1997, in response to your letters dated February 19 and September 2, 1997, requesting classification of a Gob Image Analyzing System under the Harmonized Tariff Schedule of the United States ("HTSUS"), on behalf of GeDevelop, Inc. We have had an opportunity to review that ruling and now find it to no longer reflects our view as to the classification of the software. This ruling modifies HQ 960259 to the extent noted.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation). It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consis-

tent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

According to your letter, the merchandise consists of a Gob Image Analyzing System ("GIA System"), which is composed of a Gob Image Analyzer ("GIA") and a Gob Weight Controller ("GWC"). You claimed that the primary function of the GIA System is to monitor and control the flow of molten glass to ensure that the optimal amount of molten glass is poured into a mold, which will shape the end product.

A gob is a small amount of molten glass, which is allowed to fall from the hearth to the molding machine, which will shape the molten glass into a container. The GIA System measures the temperature, width and speed of the gob as it is falling. From this data, it calculates the gob's weight and shape. The GIA System will then compare the gob's weight, shape and temperature to the prescribed parameters. If a gob's weight falls outside prescribed parameters, the GIA System will alter the flow of the molten glass by adjusting the tube height. This will, in turn, affect the weight of subsequent gobs.

The GIA System consists of four main components: a camera consisting of sensors with a charge-coupled device ("CCD") array housed in an aluminum case; a computer dedicated for use in the GIA System which includes a central processing unit ("CPU"), software, system disk, disk drive, monitor and keyboard; a scale used to calibrate the GIA; and a gob-shape-change switch.

You requested that we determine the correct classification of the GIA System, and the classification of the GIA and GWC as if they were imported separately. You also asked whether the recorded media in the computer of the GIA and GIA System is separately classifiable under heading 8524, HTSUS.

This ruling will deal only with the issue of the recorded data, or "software". The classification of the GIA System and the GIA and GWC as if imported separately were determined in HQ 960259, and will remain unchanged by this ruling.

*Issue:*

What is the classification of recorded data on the hard disk drive of the GIA System and GIA?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85 states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include data that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 956962, dated September 13, 1994; HQ 958808, dated May

15, 1996; HQ 957981, dated July 9, 1997; HQ 959651, dated July 9, 1997; NY B85213, dated April 23, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters that are integrated into the hard disk drive that is installed in the central processing unit are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September 22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under heading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus from which they are intended." Thus, hard disk platters, whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

In applying its previous interpretation of Note 6 to Chapter 85, HTSUS, HQ 960259 held that any recorded data was media in the computer of the GIA or the GIA System and was to be separately classified under heading 8524, HTSUS. As explained above, this is no longer Customs view of the proper interpretation to the Note.

Although it has no bearing on Customs new view on the classification of this type of recorded media, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, recorded data entered on hard disk drives incorporated into the GIA System and GIA will be classified with those digital machines.

*Effect on other Rulings:*

HQ 960259 is modified to the extent described above, i.e., the language in HQ 960259 no longer reflects our view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,  
 U.S. CUSTOMS SERVICE,  
*Washington, DC, January 23, 2002.*  
 CLA-2 RR: CR: GC 965271 TPB  
 Category: Classification  
 Tariff No. 9031.40.80

PORT DIRECTOR  
 U.S. CUSTOMS SERVICE  
 10 Causeway Street  
 Room 603  
 Boston, MA 02222-1059

Re: Protest 0401-95-100749; Scanning Laser Vibrometers; Recorded Data; Chapter 85,  
 Note 6; HQ 958808 Modified.

DEAR PORT DIRECTOR:

This is in reference to HQ 958808, issued on May 15, 1996, regarding Protest 0401-95-100749, which concerned the classification of certain Polytech PI's Scanning Laser Vibrometers under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have had an opportunity to review that ruling and now find it to no longer reflect our view as to the classification of the recorded media. This ruling modifies HQ 958808 to the extent noted.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation), It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the

software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consistent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

According to information submitted by the Protestant, the PSV-100-US Scanning Laser Vibrometers are used for monitoring and measuring vibrations in a variety of articles, including but not limited to, machinery, automobiles, aerospace components and domestic appliances. The vibrometers measure the velocity and absolute displacement of a point on a vibrating structure in an entirely, non-contact manner.

The vibrometers consist of a data management subsystem, which consists of a high performance personal computer ("PC") with high resolution color monitor, the OFV-302-R laser-based sensor head and vibrometer controller, which also provides instrument control and data analysis capabilities. The PC is pre-loaded with proprietary data also referred to as "software."

*Issue:*

What is the classification of the recorded data on the hard disk drive of the Scanning Laser Vibrometers PC?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85, HTSUS, states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include data that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 956962, dated September 13, 1994; HQ 960259, dated November 12, 1997; HQ 957981, dated July 9, 1997; HQ 959651, dated July 9, 1997; NY B85213, dated April 23, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters that are integrated into the hard disk drive that is installed in the central processing unit are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September 22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under heading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this

treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes, CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus from which they are intended." Thus, hard disk platters, whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

HQ 958808 ruled that the proprietary software that came pre-loaded on to the vibrometers hard disk drive prior to its importation had to be broken out and separately classified because of Note 6 to Chapter 85, HTSUS. As explained above, it is now Customs view that recorded data on a hard disk drive that is permanently affixed to an automatic data processing machine falls outside of the scope of the Note.

Although it has no bearing on Customs new view on the classification of this type of recorded media, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, the vibrometers' recorded data entered on hard disk drives incorporated into the vibrometers will be classified with that PC. The PSV-100-US Scanning Laser Vibrometers will remain in subheading 9031.40.80, HTSUS, as per HQ 958808.

*Effect on other Rulings:*

HQ 958808 is modified to the extent described above, i.e., the language in HQ 958808 no longer reflects our view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)



[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, January 23, 2002.  
CLA-2 RR: CR: GC 965272 TPB  
Category: Classification  
Tariff No. 8443.59.50

MR. R. KEVIN WILLIAMS  
O'DONNELL, BYRNE & WILLIAMS  
20 North Wacker Drive  
Suite 3710  
Chicago, IL 60606

Re: Digital Color Printers; Pre-loaded Software; HQ 957981 Modified.

DEAR MR. WILLIAMS:

This is in reference to HQ 957981, issued to you on July 9, 1997, in response to your letter dated April 27, 1995, requesting classification of the Xeikon XP-1 digital color printers ("DCP-1") under the Harmonized Tariff Schedule of the United States ("HTSUS"), on behalf of AM Multigraphics. We have had an opportunity to review that ruling and now find it to no longer reflects our view as to the classification of the data, or "software." This ruling modifies HQ 957981 to the extent noted.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation). It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consis-

tent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

According to your letter, the DCP-1 is a 4-color digital printer specially designed for short-run, full color applications. Instead of requiring the costly intermediate steps, such as mechanical art, film and plate-making, commonly associated with color printing, the DCP-1 prints directly from digital data to paper. Images, text and line art can be created on any standard desktop publishing system that produces PostScript Level 2 output. The DCP-1 is an example of a new type of commercial product known in the industry as short-run printing with digital presses or "digital print-on-demand." Completed jobs are sent digitally to the DCP-1 where they are stored internally in memory for printing on the web-fed printing engine.

The digital system, which controls the operation of the DCP-1, consists of two control computers (the host and the print engine supervisor), and three functional subsystems (the host interface, the imaging control system and the instrumentation control system). Both computers are dedicated solely to operating the DCP-1 system and are incapable of accepting additional "software" other than that provided with the DCP-1.

*Issue:*

What is the classification of the recorded data on the hard disk drive of the Xeiikon DCP-1 control computers?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85, HTSUS, states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include data that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 956962, dated September 13, 1994; HQ 960259, dated November 12, 1997; HQ 959651, dated July 9, 1997; NY B85213, dated April 23, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters that are integrated into the hard disk drive that is installed in the central processing unit are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September

22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under heading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus from which they are intended." Thus, hard disk platters, whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

HQ 957981 ruled that any recorded media on the control computers prior to its importation had to be broken out and separately classified because of Note 6 to Chapter 85, HTSUS. Although it made no determination as to the classification of the "software" in the ruling, it instructed that the proper subheading classification of the recorded media under heading 8524, HTSUS, would be determined at the time of importation based upon what type of media the "software" is recorded on and whether or not it contains sound and images. That reference in HQ 957981 should be disregarded. As explained above, it is now Customs view that recorded media on a hard disk drive that is permanently affixed to an automatic data processing machine falls outside of the scope of the Note.

Although it has no bearing on Customs new view on the classification of this type of recorded media, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, the recorded data on hard disk drives incorporated into the control computers will be classified with that system. The XeiKon DCP-1 digital color printer will remain classified in subheading 8443.59.50, HTSUS, as per HQ 957981.

*Effect on other Rulings:*

HQ 957981 is modified to the extent described above, i.e., the language in HQ 957981 no longer reflects our view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,  
 U.S. CUSTOMS SERVICE,  
 Washington, DC, January 23, 2002.  
 CLA-2 RR: CR: GC 965273 TPB  
 Category: Classification  
 Tariff No. 8443.59.50

MR. CHARLES SPOTO  
 FRITZ COMPANIES, INC.  
 150-20 132<sup>nd</sup> Avenue  
 Jamaica, NY 11430

Re: Digital Color Printers; Recorded Data; HQ 959651 Modified.

DEAR MR. SPOTO:

This is in reference to HQ 959651, issued to you on July 9, 1997, in response to your letter dated January 18, 1996, requesting classification of the AGFA Chromapress digital color printing system ("Chorompress") under the Harmonized Tariff Schedule of the United States ("HTSUS"), on behalf of Bayer Corporation-AGFA Division. We have had an opportunity to review that ruling and now find it to no longer reflects our view as to the classification of the recorded data. This ruling modifies HQ 959651 to the extent noted.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation). It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consistent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

According to your letter, the Chromapress is a 4-color digital printer used in the graphic arts field for short-run, full color applications at high speeds. Instead of requiring the costly intermediate steps, such as mechanical art, film and plate-making, commonly associated with color printing, the Chromapress prints directly from digital data to paper. Images, text and line art can be created on any standard desktop publishing system that produces PostScript Level files. The Chromapress is an example of a new type of commercial product known in the industry as short-run printing with digital presses or "digital print-on-demand." Completed jobs are sent digitally to the Chromapress where they are stored internally in memory for printing on the web-fed printing engine.

The Chromapress consists of several subsystems: a Macintosh design workstation/server; a RIP multiprocessor; an engine controller; Chromapress print engine; a paper handling system; a cooling system and software (ChromaPost, ChromaWatch and ChromaWrite). The workstation/server allows the user through the ChromaPost software to create a job description file containing the OPI links, color management, printing parameters, binding method and other job information. The workstation/server also allows the user through the ChromaWatch and ChromaWrite software to access all press controls and track and manage jobs.

*Issue:*

What is the classification of the recorded media on the hard disk drive of the Xeikon DCP-1 control computers?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85, HTSUS, states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include data that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 956962, dated September 13, 1994; HQ 960259, dated November 12, 1997; NY B85213, dated April 23, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters that are integrated into the hard disk drive that is installed in the central processing unit are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September

22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under heading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus from which they are intended." Thus, hard disk platters, whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

In HQ 959651, Customs ruled that any recorded media on the control computers prior to its importation had to be broken out and separately classified because of Note 6 to Chapter 85, HTSUS. Although it made no determination as to the classification of the "software" in the ruling, it instructed that the proper subheading classification of the recorded media under heading 8524, HTSUS, would be determined at the time of importation based upon what type of media the "software" is recorded on and whether or not it contains sound and images. That reference in HQ 957981 should be disregarded. As explained above, it is now Customs view that recorded data on a hard disk drive that is permanently affixed to an automatic data processing machine falls outside of the scope of the Note. However, any software that comes on floppy disks, diskettes, CD-ROMs, or other media covered by Note 6 is still separately classifiable according to the terms of the Note.

Although it has no bearing on Customs new view on the classification of the above recorded data, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, the recorded data entered on hard disk drives incorporated into the control computers will be classified with that system. The AGFA Chroma-press digital color printing system will remain classified in subheading 8443.59.50, HTSUS, as per HQ 959651.

*Effect on other Rulings:*

HQ 959651 is modified to the extent described above, i.e., the language in HQ 959651 no longer reflects our view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 23, 2002.*

CLA-2 RR: CR: GC 965276 TPB  
Category: Classification  
Tariff No. 9031.49.80

MR. ERIK D. SMITHWEISS  
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP  
245 Park Avenue  
New York, NY 10167-0002

Re: Pre-loaded Data; NY A86557 Revoked.

DEAR MR. SMITHWEISS:

This is in reference to NY A86557, issued to you on August 30, 1996, in response to your letter dated August 9, 1996, requesting classification of certain automatic data processing ("ADP") data, also referred to as "software" under the Harmonized Tariff Schedule of the United States ("HTSUS"), on behalf of Basler Inc. We have had an opportunity to review that ruling and now find it to no longer reflects our view as to the recorded data that is permanently affixed to the hard drive. For the reasons stated below, this ruling revokes NY A86557.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation). It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consis-

tent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

According to your letter, the merchandise consists of an L4 "label inspection system" and accompanying proprietary software. The L4 label inspection system is used during the manufacture of compact disks ("CDs") to inspect the label affixed to the CD for errors or other defects. If an error is discovered, the L4 notifies a host computer, which either removes the CD with the defective label from the assembly line, or shuts down the assembly if a repetitive defect is found. The L4 has the following principal components: 1) control computer, 2) control panel, 3) signal converter, and 4) sensor unit.

The control panel has a hard disk which is pre-loaded with the manufacturer's proprietary data, or "software." The "software" is specifically designed for the L4 system. The control computer is a PC compatible computer operating in MS/DOS. Using the L4 "software," the computer controls the inspection process, evaluates data and exchanges data with the host machine.

*Issue:*

What is the classification of the recorded data on the hard disk drive?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85 states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include data that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 956962, dated September 13, 1994; HQ 960259, dated November 12, 1997; HQ 958808, dated May 15, 1996; HQ 957981, dated July 9, 1997; HQ 959651, dated July 9, 1997; NY E86558, dated September 14, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters that are integrated into the hard disk drive that is installed in the central processing unit are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September 22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under heading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this



treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus from which they are intended." Thus, hard disk platters, whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

In NY A86557, Customs held that data that comes pre-loaded on the hard disk drive of the computer was within the scope to Note 6 of Chapter 85 and had to be broken out and classified separately from the system. As explained above, it is now Customs view that such recorded data is subsumed into the system and is classified with the data processing machine.

In your letter, you indicated that you believed that the L4 system would be classified as an optical measuring of checking instrument under subheading 9031.49.80, HTSUS. It is not required that recorded media on the hard drive of this system be separately classified, as Customs no longer believes that Note 6 to Chapter 85 applies to this type of recorded media. Thus the software on the hard disk drive of the L4 system would be classified with that system.

Although it has no bearing on Customs new view on the classification of this type of recorded data, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, data, or "software" entered on hard disk drives incorporated into the L4 system will be classified with that system.

*Effect on other Rulings:*

NY A86557 is revoked. NY A86557 no longer reflects Customs' view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY  
 U.S. CUSTOMS SERVICE,  
*Washington, DC, January 23, 2002.*  
 CLA-2 RR: CR: GC 965277 TPB  
 Category: Classification  
 Tariff No. 8471.50.00

MR. PAUL VROMAN  
 AEI CUSTOMS BROKERAGE SERVICES  
 2555 20<sup>th</sup> Street  
 Port Huron, MI 48060

Re: Digital Signage Processor; Recorded Data; NY E86558 Modified.

DEAR MR. VROMAN:

This is in reference to NY E86558, issued to you on September 14, 1999, in response to your letter dated August 23, 1999, requesting classification of a digital signage processor under the Harmonized Tariff Schedule of the United States ("HTSUS"), on behalf of Fred Systems, Ltd. We have had an opportunity to review that ruling and now find it to no longer reflects our view as to the classification of the recorded data. This ruling modifies NY E86558 to the extent noted.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation), It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consistent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

According to your letter, the merchandise under consideration involves a digital signage processor ("DSP"). The function of the DSP is to drive a Foto Realistic Display Sign, which is a large format full-color electronic display screen.

NY E86558 states that the DSP consists of a Compaq personal computer ("PC") complete with mouse and keyboard, which is purchased in Canada. The PC contains Windows 95 or NT and a variety of programs. All unrelated applications and programs are removed from the hard drive except for Windows and Internet Explorer. Proprietary data, also referred to as "software," is then loaded into the PC. The "software" program is used to create and display video advertisements.

*Issue:*

What is the classification of the recorded data on the hard disk drive of the DSP?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85, HTSUS, states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include data that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 956962, dated September 13, 1994; HQ 960259, dated November 12, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters that are integrated into the hard disk drive that is installed in the central processing unit are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September 22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under heading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus for which they are intended." Thus, hard disk platters,

whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

NY E86558 ruled that any recorded data on the hard disk drive of the DSP, i.e. the operating system and proprietary software, would be separately classified by virtue of Note 6 to Chapter 85, HTSUS. As explained above, it is now Customs view that recorded data that comes pre-loaded on a hard disk drive that is permanently affixed to an automatic data processing machine falls outside of the scope of the Note.

Although it has no bearing on Customs new view on the classification of this type of recorded data, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, the recorded data on hard disk drives incorporated into the DSP will be classified with that system. The classification of the DSP will remain in the heading determined in NY E86558.

*Effect on other Rulings:*

NY E86558 is modified to the extent described above, i.e., the language in NY E86558 no longer reflects our view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
Washington, DC, January 23, 2002.  
CLA-2 RR: CR: GC 965279 TPB  
Category: Classification  
Tariff No. 8428.90.00, 8441.10.00, and 8524.39.4000

MS. MARILYN-JOY CERNY  
GLOBAL CUSTOMS & TRADE SPECIALISTS, INC.  
P.O. Box 102  
Brewster, NY 10509

Re: AUROSYS Material Handling System; Recorded Data; NY E83923 Modified.

DEAR MR. CERNY:

This is in reference to NY E83923, issued to you on July 26, 1999, in response to your letter dated June 24, 1999, requesting classification of the AUROSYS Automatic Material Handling System ("AUROSYS") under the Harmonized Tariff Schedule of the United States ("HTSUS"), on behalf of MAN Roland Inc. We have had an opportunity to review that ruling and now find it no longer reflects our view as to the classification of the recorded data. This ruling modifies NY E83923 to the extent noted.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification/revocation of recorded data on automatic data processing machines was published on October 31, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 44. Three comments were received on this proposal: two in favor and one opposed. See Final Modification/Revocation in the February 6, 2002 CUSTOMS BULLETIN, Vol. 36 No. 6, for discussion of comments not addressed below.

In the comment, that opposed the revocations/modifications, a commentator claims that Customs is overlooking some previous rulings classifying unrecorded magnetic disks. However, HQ 086624, dated May 4, 1990, HQ 085367, dated December 19, 1989 and HQ 088125, dated February 12, 1991, all dealt with separately imported hard disk platters which were yet to be installed into a hard disk drive. As such they remain classified in heading 8523, HTS, when entered separately.

The commentator claims that the essence of the article does not change merely because the media is incorporated as part of another article, that the hard disks are included as "media" in the ENs to headings 8523 (85.23(4)) and 8524 (85.24(8)); HTS, and that Note 6 to chapter 85, HTS, requires that media be classified under headings 8523 and 8524, HTS, when the media is imported with the apparatus for which it is intended.

However, as stated below, the disks at issue are permanently affixed inside of a hard disk drive, which in turn is mounted inside of an automatic data processing machine. Removal of the hard disk platters from the machine at this point would render them inoperable. For that reason, the disk platters are subsumed into the system, and are no longer within the scope of Note 6 to chapter 85, HTS. Further, imported merchandise is to be classified with reference to its condition as imported (see *United States v. Citroen*, 223 U.S. 407, 32 S.Ct. 256, 56 L.Ed. 486 (1911) and cases cited; *United States v. Lo Curto & Funk*, 17 CCPA 342, T.D. 43777 (1929); *United States v. Baker Perkins, Inc. et al.*, 46 CCPA 128, 131, C.A.D. 714 (1959); *The Carrington Co. et al., v. United States*, 61 CCPA 77, C.A.D. 1126, 496 F.2d 902 (1974); *Olympus Corp. of America v. United States*, 72 Cust. Ct. 176, C.D. 4538 (1974). In this case, the imported merchandise consists of ADP machines. ADP machines are provided for under heading 8471, HTS.

Also, the commentator claims that the proposed modifications/revocations would violate Decision 4.1 concerning the valuation of carrier media bearing software to data processing equipment. We disagree. Decision 4.1 was adopted in 1984 by the Committee on Customs Valuation of the General Agreement of Tariffs and Trade (now the World Trade Organization ("WTO") Committee on Customs Valuation). It sanctioned the practice under the WTO Valuation Agreement of valuing carrier media bearing data or instructions (software) for use in data processing equipment either inclusive or exclusive of the value of the software recorded on carrier media. As set forth in T.D. 85-124 (software decision), consistent with Decision 4.1, the U.S. values imported carrier media bearing software only on the cost or value of the carrier medium itself.

The proposed modifications/revocations are not contrary to the software decision. Consistent with its terms, Customs applies the software decision only to imported carrier media bearing software. Currently, the decision applies to recorded data installed on the hard disk of an ADP machine because the hard drive/software (i.e. carrier media bearing software) is separately classified from the ADP machine. As such, recorded data installed on the hard disk falls within the scope of the software decision. However, under the proposed modifications/revocations, T.D. 85-124 would not apply because recorded data installed on the hard disk of an ADP machine would no longer be classified separately from the ADP machine. Therefore, the imported product is the ADP machine, not the carrier medium bearing software, and outside the scope of the software decision.

*Facts:*

According to your letter, the AUROSYS is designed to provide efficient handling of paper rolls, as well as palletized newspaper inserts, printing plates and other materials for newspaper printing presses. It is composed of a number of semi-automatic or fully-automatic modules which are linked together in various configurations to provide a customized paper roll logistics system. In addition to the units shipped to the client, the AUROSYS will be imported with Windows NT software pre-loaded on a hard disk drive, as well as a back-up of the same software on CD-ROMs.

*Issue:*

What is the classification of software (recorded media) in the form of CD-ROMs or of recorded data when pre-loaded on the hard disk drive of the AUROSYS?

*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.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Note 6 to Chapter 85, HTSUS, states that:

Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended.

Recorded media of heading 8523 or 8524 must be classified separately if it is presented with the apparatus for which it is intended. The recorded media must also be classified separately if it is not presented with the apparatus for which it is intended.

Accordingly, the importation of CD-ROMs containing back-up data, or "software" falls within Legal Note 6 to Chapter 85, regardless of whether or not they are shipped with the AUROSYS. These CD-ROMs are properly classified under subheading 8524.39.4000, HTSUS, which provides for records, tapes and other recorded media for sound or other similarly recorded phenomena \* \* \*; disks for laser reading systems: other: for reproducing representations of instructions, data, sound and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded disks.

We next examine the treatment of the software on the AUROSYS when recorded on the hard-disk drive.

Previously, Customs has interpreted Note 6 to Chapter 85, HTSUS, to include software that comes pre-loaded on the hard disk drive of an ADP and required that it be broken out and separately classified (see HQ 956962, dated September 13, 1994; HQ 960259, dated November 12, 1997; HQ 958808, dated May 15, 1996; HQ 957981, dated July 9, 1997; HQ 959651, dated July 9, 1997; NY A86557, dated August 30, 1996; NY E86558, dated September 14, 1999; NY E83923, dated July 26, 1999). Because there was no substantive reasoning or analysis as to this classification, Customs apparently assumed that the hard disk platters that are integrated into the hard disk drive that is installed in the central processing unit are the applicable "media" under the provision and that the hard disk drive itself is the "apparatus for which they are intended."

Customs has established that hard disk platters that are incorporated into a hard disk drive of an ADP are not separately classified because they become part of the drive itself, which is specifically provided for under heading 8471 (see HQ 083588, dated September 22, 1989; NY 807998, dated March 17, 1995). In HQ 954361, dated November 2, 1993, Customs classified hard disk drive assemblies under heading 8471.93, HTSUS, and did not separately classify the unrecorded media contained within the assemblies. Compare this treatment with HQ 953168, dated March 31, 1993, in which Customs classified separately presented hard disks, or platters, under heading 8523, HTSUS.

Because the inclusion of platters into a hard disk drive is a permanent process, they become incorporated and subsumed by the disk drive under a new classification, unlike floppy disks, diskettes, CD-ROMs and other media which are clearly removable, separate and distinct from the "apparatus for which they are intended." Thus, hard disk platters, whether recorded or unrecorded, that are incorporated into hard disk drives are not media of either heading 8523 or 8524, HTSUS, and thus fall outside of the scope of Note 6 to Chapter 85, HTSUS.

NY E83923 held that software that came pre-loaded on the hard disk drive of the AUROSYS fell within the scope of Note 6 to Chapter 85. For the foregoing reasons, it is now Customs view that such recorded data is outside of the scope of the Note and that the "software" is subsumed into the system and should be classified with the data processing machine.

Although it has no bearing on Customs new view on the classification of this type of recorded data, Customs notes that on January 1, 2002, the language of Note 6 to Chapter 85 will be changed to read as follows:

6. Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.

Also changed will be the Explanatory Note to Chapter 85, General, (B) Parts. The following addition will be made to Part "(B)" on page 1443:

(B) MEDIA PRESENTED WITH APPARATUS FOR WHICH THEY ARE INTENDED (Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied: (1) If the media and the other articles make up a set put up for retail sale under General Interpretative Rule 3 (b), the set should be classified by application of that Rule; or (2) If the media and the other articles do not make up a set put up for retail sale under General Interpretative Rule 3 (b), then they should be classified separately in their own appropriate headings.

The present Part "(B)" will be re-lettered as Part "(C)".

*Holding:*

For the reasons stated above, software imported in the form of separate CD-ROMs is classified under subheading 8524.39.4000, HTSUS, while data entered on hard disk drives incorporated into the AUROSYS will be classified with that system as determined by NY E83923.

*Effect on other Rulings:*

NY E83923 is modified to the extent described above, i.e., the language in NY E83923 no longer reflects our view of Legal Note 6 to Chapter 85, HTSUS.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

REVOCATION & MODIFICATION OF CUSTOMS RULING  
LETTERS & TREATMENT RELATING TO TARIFF  
CLASSIFICATION OF WOMEN'S KNIT SWEATERCOATS

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

ACTION: Notice of revocation and modification of tariff classification ruling letters and treatment relating to the classification of women's knit sweatercoats.

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 certain ruling letters pertaining to the tariff classification of women's knit sweatercoats and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of December 12, 2001, Vol. 35, No. 50. Three comments were received in support of the change in tariff classification.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textiles Branch, (202) 927-1679.

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 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)), a notice was published in the CUSTOMS BULLETIN, Volume



35, Number 50, on December 12, 2001, proposing to revoke certain rulings pertaining to the classification of women's knit sweatercoats. Although in this notice Customs is specifically referring to forty rulings, New York Ruling Letters ("NY") and Port Decision Ruling Letters ("PD"), the notice also covered fifty-seven other effected rulings as well as any rulings on this merchandise, which may exist but have not been specifically identified. Upon review, four additional rulings were included in this final notice and are listed under "effected rulings."

As stated in the proposed notice, this revocation and modification will cover any ruling on this merchandise that may exist but has 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 (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 merchandise. 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 involving 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 this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In the aforementioned rulings, concerning the tariff classification of women's long knit sweatercoats, the products were erroneously classified as coats under heading 6102 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). However, due to the styling and use of the subject sweatercoats, it is Customs view that the garments are more properly classified in heading 6110, HTSUSA, as similar to sweaters, or as sweaters if consisting of a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed.

The items under review are described as sweatercoats which are longer in length than "traditional" sweaters yet do not provide as much protection from the weather as "traditional" coats of heading 6102. As a current fashion trend, the subject merchandise is worn for style and but for the long length, which varies in range from the knee to mid-thigh to the ankle, these garments would be considered to possess the characteristics of a sweater comparable to the merchandise in heading 6110, HTSUSA. The correct classification for the subject garments is under

heading 6110 of the HTSUSA as garments similar to a sweater or as a sweater if the stitch count requirements are fulfilled.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking the aforementioned 40 ruling letters, and the 57 other ruling letters identified as effected rulings in the HQ Ruling Letters attached to this document, and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Headquarter Rulings (HQ) 965182 (see "Attachment A" to this document); HQ 965183 (see "Attachment B" to this document); and HQ 965184 (see "Attachment C" to this document). 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: January 23, 2002.

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 22, 2002.*

CLA-2 RR:CR:TE 965182 mbg  
Category: Classification  
Tariff Nos. 6110.30.3055, 6110.20.2075,  
6110.90.1060, 6110.10.2080, and 6110.30.3020

MS. MELBA R. DAIRO  
FEDERATED MERCHANDISING GROUP  
*1440 Broadway  
New York, NY 10018*

Re: Classification of Women's Long "Sweatercoats"; Revocation of prior Customs rulings.

DEAR MS. DAIRO:

Pursuant to your classification requests, Customs has previously issued Port Decision ("PD") Letters and New York Ruling Letters ("NY") to your company regarding the tariff classification of various long women's knitted "sweatercoats". These products were originally classified as women's knitted coats under heading 6102 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Upon review, Customs has determined that the garments were erroneously classified. The correct classification for the garments should be under heading 6110, HTSUSA, based on classification as sweaters or garments similar to sweaters. Fourteen rulings are hereby revoked for the reasons set forth below.

Pursuant to section 625(c)(1), 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 Agree-

ment Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on December 12, 2001, in Vol. 35, No. 50 of the CUSTOMS BULLETIN, proposing to modify and/or revoke certain rulings and to revoke the treatment pertaining to the classification of women's knit sweatercoats. Three comments were received in response to this notice in support of the change in tariff classification.

*Facts:*

Sixteen samples were submitted to Customs for review in the fourteen rulings under review.

Sample 1, style 8234, is a woman's knit garment that is constructed from 90 percent acrylic, 5 percent wool, and 5 percent polyester. The garment extends from the shoulders to the knee area and features a rib knit pointed collar, long sleeves with turned back ribbed cuffs, and a full frontal opening with a five button ribbed placket. The garment also has two front ribbed patch pockets below the waist, a ribbed bottom, 2 belt loops and a self fabric tie closure at the waist. Style 8234 was originally the subject of NY G84255, dated December 6, 2000.

Sample 2, style 8081, is a woman's garment that is constructed from 75 percent silk and 25 percent nylon knit fabric. The garment extends from the shoulders to the knees and features a V-neckline, long tubular hemmed sleeves, a full frontal opening with eight button closures and a tubular hemmed bottom. Style 8081 was originally the subject of NY G87851, dated April 11, 2001.

Sample 3, style 18438, is a woman's knit garment of 100 percent cotton. The garment features a collar, long sleeves, belt closure and extends to the mid-calf in length. Style 18438 was originally the subject of PD H80428, dated May 22, 2001.

Sample 4, style 9702, is a woman's garment composed of 100 percent acrylic knit fabric constructed with nine or fewer stitches per two centimeters measured in the direction the stitches were formed. The garment features a full frontal opening with a six-button closure; a collar with loose fringe like pile; long sleeves; and a length which extends to below the calf. Style 9702 was originally the subject of PD H80421, dated May 29, 2001.

Sample 5, style 8078, is a woman's boiled wool garment. The garment features long sleeves, a shawl collar, a single front button closure and extends to the knee. Style 8078 was originally the subject of PD G89153, dated May 4, 2001.

Sample 6, style 9537, is a woman's garment constructed of 100 percent cotton 2 x 2 rib knitted fabric. The garment extends from the shoulders to the below mid-thigh and features a V-neckline, a full frontal opening with a six button closure, long sleeves, two large patch pockets below the waist, belt loops, a self fabric belt, and a straight edge bottom. Style 9537 was originally the subject of PD G89979, dated May 2, 2001.

Sample 7, style 9700, is a woman's long 100 percent acrylic knitted split front garment. It features a 1 x 1 rib collar, full frontal opening with loop and button front closure. The garment length measures 42 inches from the center back. There are 4 stitches per 2 centimeters in the horizontal direction and 5 stitches per 2 centimeters in the vertical direction. Style 9700 was originally the subject of PD G89235, dated April 30, 2001.

Sample 8, style 9700P, is a woman's long 100 percent acrylic knitted split front garment. It features a 1 x 1 rib collar, full frontal opening with loop and button front closure, long hemmed sleeves and a hemmed bottom. The garment length measures 36 inches from the center back. There are 4 stitches per 2 centimeter in the horizontal direction and 5 stitches per 2 centimeter in the vertical direction. Style 9700P was originally the subject of PD G89235, dated April 30, 2001.

Sample 9, style 9188, is a woman's knitted garment of 100 percent boiled wool. The garment extends from the shoulder to just below mid-thigh. It features a deep V-neckline, a full frontal opening with a single hook and eye closure at the center front of the garment, long hemmed sleeves and a straight hemmed bottom. Style 9188 was originally the subject of PD G89028, dated April 17, 2001.

Sample 10, style 9238, is a woman's garment of 100 percent cotton knit fabric. The garment extends from the shoulders to below the knee in length. It features a collar, long sleeves, a full frontal opening with a button closure, a tie belt of self fabric and self fabric belt loops. Style 9238 was originally the subject of PD G89042, dated April 10, 2001.

Sample 11, style 4028, is a woman's knitted garment composed of 90 percent acrylic and 10 percent polyester. The fabric measures less than nine stitches per two centimeters measured in the horizontal direction. The garment extends to the mid thigh and features a full frontal opening secured by six button closures. The garment also has a collar, long sleeves,

a straight bottom, and a self fabric tie belt secured to the garment by two belt loops. Style 4028 was originally the subject of PD G88353, dated April 3, 2001.

Sample 12, style 9238, is a woman's knitted garment of 100 percent cotton fabric. The garment extends from the shoulders to below the knee in length. It features a collar, long sleeves, a full frontal opening with a button closure, a tie belt of self fabric and self fabric belt loops. Style 9238 was originally the subject of PD G89042, dated April 10, 2001.

Sample 13, style 9397, is a woman's garment composed of 55 percent acrylic and 45 percent cotton. It features a collar, full frontal opening with 6 button closure, a self fabric belt with two side loops, long sleeves, a self start cuff and bottom, and two patch pockets below the waist. The garment length measures 33 inches from the center back. There are 5 stitches per 2 centimeters in the horizontal direction and 7 stitches per 2 centimeters in the vertical direction. Style 9397 was originally the subject of PD G89027, dated April 10, 2001.

Sample 14, style 9668, is a woman's knitted garment of 100 percent acrylic. The length of the garment extends from the shoulder to the knee. The garment features a full frontal opening secured by six button closures, a collar, long sleeves with stitched turned back cuffs, patch pockets below the waist, belt loops and a detached self-fabric tie belt. Style 9668 was originally the subject of PD G86955, dated February 22, 2001.

Sample 15, style 8282W, is a woman's garment constructed of 90 percent polyester and 10 percent spandex knit fabric. The garment is below the knee in length and has a full front opening secured by a single button closure. The garment also features long sleeves with hemmed cuffs; a V-neckline and a hemmed bottom. Style 8282W was originally the subject of PD F85294, dated April 17, 2000.

Sample 16, style 19410B, is a woman's garment which is finely knit of 77 percent rayon and 23 percent nylon. The garment reaches to below the mid-thigh, has no means of closure, and features long hemmed sleeves, a hemmed bottom and a self fabric belt at the waist. Style 19410B was originally the subject of PD H81162, dated June 5, 2001.

*Issue:*

Whether the subject knit garments are more properly classified as jackets or coats in heading 6102, HTSUS, or as sweaters or garments similar to sweaters in heading 6110, HTSUS?

*Law And Analysis:*

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the Harmonized System at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The issue in the instant case is whether the submitted samples are properly classifiable as women's sweaters or jackets or coats. There are two possible tariff classifications for the subject garments, heading 6102, HTSUS, which provides for, among other things, women's knit jackets and coats, and heading 6110, HTSUS, which provides for, among other things, women's knit sweaters and similar garments. Garments classified as sweaters or as similar to sweaters of heading 6110, HTSUS, may serve a dual purpose in that they may be worn either indoors or outdoors. The purpose of jackets or coats of heading 6102 on the other hand, is to provide the wearer protection against the elements over other outerwear, and thus they are worn principally outdoors. The determinative issue, therefore, is the manner in which these garments are primarily intended to be worn.

The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6102, HTSUSA, state:

[T]his heading covers \* \* \* [garments for women or girls'], characterised by the fact that they are *generally worn over all other clothing for protection against the weather.*

(emphasis added).

The EN to heading 6110, state:

This heading covers a category of knitted or crocheted articles, without distinction between male or female wear, *designed to cover the upper parts of the body* (jerseys, pullovers, cardigans, waistcoats and similar articles).

(emphasis added).

A strict application of the above ENs to the subject merchandise creates an obvious conflict. The long length of the garments would preclude classification within heading 6110 which specifically states that garments therein are designed for the upper body. Yet, the ENs for heading 6102 state that garments within the scope of that heading are designed to be worn for protection against the elements. The subject garments could not provide protection against the elements due to the lightweight yarns with which they were knit and the styling which is intended to satisfy a current fashion trend rather than provide extensive protection from the weather.

In a recent informed compliance publication, Customs provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be definitive but rather to provide a basic guideline for classification purposes. In the informed compliance publication, sweaters, coats and jackets are defined as:

**Sweaters** (6110, 6111)—are knit garments that cover the body *from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh)*. Sweaters may have a type of pocket treatment or *any type of collar treatment*, including a hood, or no collar, or any type of neckline. They may be pullover style or have a full partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9<sup>th</sup> and 10<sup>th</sup> digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where, due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered “sweater-like” cardigans of heading 6110.

*This term excludes garments that have a sherpa lining or a heavyweight fiberfill lining (including quilted lining), which are used to provide extra warmth to the wearer. Such garments, whether or not they have a sweater stitch-count, are classified in heading 6101 or 6102.* This term also excludes cardigans that are tailored. Such garments are classified in heading 6103 or 6104.

(Emphasis added.)

**Jackets**—See “Suite-type jackets” and “Anoraks, windbreakers and similar articles.”

**Suit-type jackets**—(6103, 6104, 6203, 6204)—are garments generally designed for wear over a lighter outer garment, on business or social occasions when some degree of formality is required. They are tailored, have a full frontal opening without a closure or with a closure other than a slide fastener (zipper), and have sleeves (of any length). They have three or more panels (excluding sleeves), of which two are at the front, sewn together lengthwise. They do not extend below the mid-thigh and are not for wear over another coat, jacket or blazer.

**Anoraks, windbreakers and similar articles**—(6101, 6102, 6113, 6201, 6202, 6210)—is a group of garments which includes:

Jackets, which are garments designed to be worn over another garment for protection against the elements. Jackets cover the upper body from the neck area to the waist area, but are generally less than mid thigh length. They normally have a full front opening, although some jackets may have only a partial front opening. Jackets usually have long sleeves. Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the garment, although children’s garments or garments made of heavier material might not need these tightening elements. *This term excludes knit garments that fail to qualify as jackets because they do not provide sufficient protection against the elements. Such garments, if they have full-front openings, may be considered cardigans of heading 6110 (other).*

\* \* \* \* \*

(Emphasis added.)

**Coats**—See “Overcoats, carcoats, capes, cloaks and similar garments”

**Overcoats, carcoats, capes, cloaks and similar garments** (6101, 6102, 6201, 6202)—is a group of outerwear garments which cover both the upper and lower parts of the body, and which are normally worn over other garments for warmth and protection from the weather. Overcoats and carcoats are thigh length or longer, with sleeves, with or without a means of closure, and with a full-front opening.

\* \* \* \* \*  
 See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS* 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

Furthermore, in circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, (“*Guidelines*”) is appropriate. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles.

Regarding the classification of sweaters, the *Guidelines* state that “garments commercially known as cardigans, sweaters, \* \* \* cover the upper body from the neck or shoulders to the waist or below (as far as the mid-thigh area.)” Then further state, “Sweaters \* \* \* may have a collar treatment of any type, including a hood, or no collar, and any type of neckline; they may be pullover style or have full or partial front or back opening; they may be sleeveless or have sleeves of any length and any type of pocket treatment.” See *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE13/88 at 20 (Nov. 23, 1988).

The *Guidelines* state that “three quarter length or longer garments [are] commonly known as coats[.] \* \* \* A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length.” See *Guidelines* at 5. However, within the “coat category”, distinctions are made in the *Guidelines* for raincoats, water resistant coats, and shirt-jackets.

The *Guidelines* state that garments possessing at least three of the cited jacket features will be classified as jackets if the result is not unreasonable:

*Shirt-jackets* have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist \* \* \*. The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard \* \* \*.
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.
- (10) Elasticized or rib knit cuffs.
- (11) Drawstring, elastic or rib knit waistband.

See *Guidelines* at 5–6.

Upon review of the subject merchandise and upon application of the *Guidelines*, it is the determination of this office that these women’s knit garments either do not possess the requisite number of *Guidelines* criteria to meet the standards of a jacket or the result would be unreasonable given the styling of the garment to resemble a long sweater.

The critical issue in this classification dispute hinges on the amount of consideration to be given to the length requirements established by the various textile resources cited above. It is the opinion of this office that the submitted samples are worn and used much

like a sweater and have similar characteristics of a “traditional” sweater despite the long length. These knit garments are worn in the same manner as a sweater to give additional warmth. The appearance does not indicate use as a jacket, or windbreaker, to be worn outdoors on a day on which it is too cold and windy to wear a sweater or cardigan.

Furthermore, the fabric weight of these garments is not an absolute indicator of a garment’s status for classification purposes but fabric weight does provide some indication as to a garment’s suitability for different uses. Though it is feasible that the subject merchandise would be worn over a light weight shirt or layered for a stylish effect, it would not be worn over *all* other clothing for protection against the weather. In these samples, the knit fabric construction of the subject garments would not provide sufficient protection from the elements to the wearer when worn outside on cold days. In addition features such as a hood, faux fur collars or cuffs and long length, are not adequate proof that a garment is designed for use as a sweater or coat. In fact, today these features are commonly found on a variety of upper body garments as part of a new fashion trend for these products which the industry has termed “sweatercoats”. Customs would not consider the subject garments to be sweater like if the garments contained a lining or heavier material as typically associated with a coat.

Heading 6110, HTSUSA, specifically provides for “similar articles” which have a likeness to the articles which are specifically named in the heading. Customs notes that the subject garments are similar to sweaters and meet all of the above cited definitions for sweaters with the exception of the length. Furthermore, given that the terms of Heading 6110 specifically provides for garments similar to sweaters, the ENs to heading 6110, HTSUSA, cannot be interpreted in such a manner to narrow the scope of the actual tariff heading.

Classification of other garments with a longer length has previously been considered by Customs and these garments have been consistently classified as sweater-like garments of heading 6110, HTSUS. In HQ 951298, dated September 1, 1992; HQ 955084, dated March 23, 1994; HQ 954827, dated December 8, 1993; and HQ 955488, dated April 6, 1994, Customs considered garments which exceeded the length requirements stated in the EN, reaching to the mid thigh area or below, and classified the merchandise in heading 6110, HTSUS. In each of the above cited rulings Customs acknowledged that the garments had “sweater like characteristics” and provided warmth but not protection from the elements. Each of these garments also had a full frontal opening and button closure similar to a jacket or coat but were more akin to sweaters in “fabric, construction, styling and use” in the same manner as the merchandise at issue which is properly classified in heading 6110, HTSUS.

Furthermore, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int’l Trade 549, 552 (1985), *aff’d* 786 F.2d 1144 (CAFC, April 1, 1986), “the merchandise itself may be strong evidence of use”. However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Upon review of current Fall fashion retail catalogs, Customs notes that these sweatercoats are the current hot fashion item for Fall 2001. In several Fall retail catalogs, such as Victoria’s Secret®, J.Jill®, Lord & Taylor®, and Nordstrom®, these garments are being referred to as “sweatercoats” and are worn over either lightweight shirts or layered with other sweaters to create a warmer effect. The advertising for these garments indicates that the garments are to be worn in much the same way as a sweater. Moreover, Customs notes that these garments are being sold in the same departments as “traditional” sweaters in retail stores this Fall.

Accordingly, we find that the subject samples were erroneously classified in the original Customs rulings which were issued to your company. As such, the subject samples are properly classified as sweaters or as similar to sweaters in heading 6110, HTSUS, as appropriate.

*Holding:*

The following rulings issued to your company are hereby revoked:

NY G84255, dated December 6, 2000  
 NY G87851, dated April 11, 2001  
 PD H80428, dated May 22, 2001  
 PD H80421, dated May 25, 2001  
 PD G89153, dated May 4, 2001  
 PD G89979, dated May 2, 2001  
 PD G89235, dated April 30, 2001  
 PD G89028, dated April 17, 2001  
 PD G89042, dated April 10, 2001  
 PD G88353, dated April 3, 2001  
 PD G89027, dated April 10, 2001  
 PD G86955, dated February 22, 2001  
 PD F85294, dated April 17, 2000  
 PD H81162, dated June 5, 2001

Samples 1, 14, 15, and 16 are properly classified under subheading 6110.30.3055, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Other: Women's or girls'." The general column one rate of duty is 32.7 percent *ad valorem*. The applicable textile restraint category is 639.

Samples 3, 6, 10, and 12 are properly classified under subheading 6110.20.2075, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Other: Other: Women's or girls'." The general column one rate of duty is 17.8 percent *ad valorem*. The applicable textile restraint category is 339.

Samples 5 and 9 are properly classified under subheading 6110.10.2080, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other: Other: Women's or girls'." The general column one rate of duty is 16.3 percent *ad valorem*. The applicable textile restraint category is 438.

Samples 4, 7, 8, 11, and 13 are properly classified under subheading 6110.30.3020, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Sweaters: Women's." The general column one rate of duty is 32.7 percent *ad valorem*. The applicable textile restraint category 646.

Sample 2 is properly classified under subheading 6110.90.1060, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textiles materials: Containing 70 percent or more by weight of silk or silk waste: Other: Women's or girls'." The general column one rate of duty is 2.4 percent *ad valorem*. The applicable textile restraint category is 739.

The designated textile and apparel category may be subdivided into parts. If so, 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 that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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.

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



*Effect on Other Rulings:*

The following rulings which deal with similar merchandise are revoked or modified as follows and will also be effective 60 days from date of publication of this ruling:

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD H81739	6/18/01	Modification	AMC	61801; 61802	6110.30.1520; 6110.30.1560
PD H80051	5/4/01	Revocation	AMC	EH 073016	6110.30.1560
PD H80053	4/26/01	Revocation	AMC	54623	6110.10.2080
PD G88792	4/11/01	Modification	AMC	FM2224; FM2228; FM 2221	6110.10.2080; 6110.30.1520; 6110.10.2030
PD G88093	4/2/01	Revocation	AMC	5425	6110.10.2080
NY G80859	6/14/00	Revocation	Avon Products	PP204117	6110.30.3055
NY G87628	3/23/01	Modification	Grunfeld, Desiderio on behalf of Bernard Chaus	50419	6110.10.2080
PD H80504	5/22/01	Revocation	Fritz & Co. on behalf of B. Moss	576	6110.30.3055
PD G89151	4/19/01	Revocation	Total Port Clearance on behalf of Belford	4020	6110.10.2030
PD H80757	5/29/01	Modification	Grunfeld, Desiderio on behalf of By Design LLC	19047; 19008	6110.30.3055; 6110.30.3055
PD G89982	5/10/01	Revocation	C.F.L. Sportswear Trading, Inc.	0222258	6110.90.9042
PD G84780	12/27/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW2017	6110.10.2030
PD F86133	4/25/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW3411	6110.20.2020
PD H80691	6/4/01	Revocation	Dillard's Inc.	131S3095	6110.30.3020
PD G88184	3/29/01	Revocation	Donkenny Apparel	221679; 221680	6110.10.2080; 6110.10.2080
NY G89632	5/3/01	Revocation	Donna Karan	73310222VA	6110.10.2080
NY F89548	7/27/00	Revocation	Espirit de Corp	5435213	6110.10.2030
NY G88075	3/27/01	Revocation	Eddie Bauer, Inc.	010-2299/ 010-2300/ 010-2301	6110.10.2080
PD H81218	6/6/01	Modification	Eddie Bauer, Inc.	099-3729/ 009-3730/ 009-3731	6110.30.1560

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD H80425	5/25/01	Revocation	Prime Transport on behalf of E.M. Lawrence	134433	6110.90.9042
PD F84671	4/6/00	Revocation	Grunfeld Desiderio on behalf of 525 Made in America	0789	6110.20.2075
NY G80262	8/18/00	Revocation	The Gap on behalf of Banana Republic	814176	6110.90.9090
PD F83190	3/21/00	Revocation	The Gap on behalf of Banana Republic	814016	6110.10.2080
PD F85279	4/17/00	Revocation	The Gap, Inc	129906	6110.30.1520
NY G88190	4/9/01	Revocation	Great American Sweater Co.	1607J/30567	6110.30.3020
PD H80756	6/7/01	Modification	Hecny Brokers on behalf of Knits Cord	7260	6110.30.3055
PD H80024	5/10/01	Revocation	C-Air International on behalf of JDR Apparel	2301-2-14	6110.90.9042
PD G89178	4/25/01	Revocation	J.C. Penney Corporation	862-3334/ 234-3334/ 710-3334/ 981-3334	6110.30.3020
PD G88740	4/23/01	Revocation	Carmichael Brokers on behalf of John Paul Richard	M6107883; M1157109	6110.30.3055; 6110.30.3020
PD G87563	3/16/01	Revocation	The J. Jill Group	2361	6110.20.2075
PD G87576	3/12/01	Revocation	Mac & Jac	A 6169	6110.30.3055
NY G88949	4/16/01	Revocation	Grunfeld Desiderio on behalf of Mast Industries	3016B	6110.30.3055
NY G81395	9/26/00	Modification	Gemm Custom Brokers on behalf of Michael Simon	S10047	6110.30.3055
PD F84341	3/31/00	Revocation	Mark Group	BPK 9920	6110.30.1520

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD G89033	4/19/01	Revocation	Grunfeld, Desiderio on behalf of Mast Industries	96H1944	6110.30.1560
PD G85699	1/19/01	Revocation	Vandegrift Forwarding on behalf of Nautica Jeans	FSW 305	6110.10.2080
PD F85566	4/21/00	Revocation	MSAS Global on behalf of Newport News, Inc.	F00-61-015	6110.30.3055
NY G88749	5/12/01	Revocation	Sharretts, Paley on behalf of Polo Ralph Lauren	17165	6110.10.1020
PD G87734	4/11/01	Revocation	QVC, Inc.	A103107	6110.30.1560
NY G83575	11/8/00	Revocation	Spiegel Imports	16-6157s	6110.30.3055
PD G89715	5/7/01	Revocation	Spiegel Imports	38-5824s	6110.30.1560
NY G89021	4/26/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1141204	6110.30.1520
PD H80743	6/7/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1153510	6110.10.2080
PD H80488	5/8/01	Revocation	Target Corporation	T12847	6110.30.3055
PD G89468	5/2/01	Revocation	Wet Seal	WSS 7560; WSS 7547	6110.30.3020; 6110.30.3020
PD G89157	4/25/01	Revocation	Wet Seal	WS 7324D	6110.30.3055
PD G88797	4/12/01	Revocation	Wet Seal	WSS 7285	6110.30.3055
NY G89266	5/11/01	Modification	Barthco Trade Consultants	325D7738	6110.10.1020
PD F84548	3/27/00	Revocation	Barthco Trade Consultants	C1CT26478	6110.10.1020

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD D89160	3/2/99	Modification	Barthco Trade Consultants	M21610288	6110.10.1020
NY H80591	5/16/01	Modification	Danzas AEI Customs Brokerage Service	A030002; A030065	6110.30.1520; 6110.10.1020

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, January 22, 2002.

CLA-2 RR:CR:TE 965183 mbg  
Category: Classification  
Tariff Nos. 6110.10.2080, 6110.20.2075,  
6110.30.3055, 6110.30.1560,  
6110.30.1520; 6110.30.1360,  
6110.20.2020, 6110.30.3020, and 6110.90.9042

MR. JOHN IMBROGULIO  
MS. ANGELA MASCO  
NORDSTORM, INC.  
CUSTOMS COMPLIANCE DEPARTMENT  
1617 Sixth Ave., Suite 1000  
Seattle, WA 98101-1742

Re: Classification of long women's "sweatercoats"; Revocation and modification of prior Customs rulings.

DEAR MR. IMBROGULIO AND MS. MASCO:

Pursuant to your classification requests, Customs has previously issued Port Decision ("PD") Letters and New York Ruling Letters ("NY") to your company regarding the tariff classification of various long women's knitted "sweatercoats". These products were originally classified as women's knitted coats under heading 6102 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Upon review, Customs has determined that the garments were erroneously classified. The correct classification for the garments should be under heading 6110, HTSUSA, based on classification as sweaters or garments similar to sweaters. Eleven rulings are hereby revoked and four rulings are modified for the reasons set forth below.

Pursuant to section 625(c)(1), 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), a notice was published on December 12, 2001, in Vol. 35, No. 50 of the CUSTOMS BULLETIN, proposing to modify and/or revoke certain rulings and to revoke the treatment pertaining to the classification of women's knit sweatercoats. Three comments were received in response to this notice in support of the change in tariff classification.

*Facts:*

Eighteen samples were submitted to Customs for review in the sixteen rulings under review.

Sample 1, style 27773, is a woman's garment constructed from 70 percent acrylic and 30 percent wool. The garment extends from the shoulders to below the knees. It features a V-neckline, long sleeves, and a full frontal opening with no means of closure. Style 27773 was originally the subject of NY G87180, dated March 9, 2001.

Sample 2, style 14276, is a woman's garment constructed from knitted fabric consisting of 62 percent acrylic, 18 percent polyester, 10 percent wool, 8 percent nylon and 2 percent spandex. The garment extends from the shoulders to the knee in length and features a fold down collar; long sleeves with ribbed cuffs, a full frontal opening with a zipper closure; and a ribbed bottom. Style 14276 was originally the subject of NY G86423, dated February 6, 2001.

Sample 3, style 11405, is a woman's knit garment constructed from 85 percent acrylic and 15 percent mohair. It features a hood, long sleeves with hemmed ends, a full frontal opening with two hook and loop closures, two pockets in the waist area and a hemmed bottom. The garment extends from the head and shoulders to below the mid-thigh in length. Style 11405 was originally the subject of NY G89855, dated April 26, 2001.

Sample 4, style 11755, is a woman's knit garment constructed of 100 percent cotton. The garment extends from the shoulder to the knee in length and features a crew neckline; long sleeves with rib knit cuffs; a full frontal opening with one button closure; and a rib knit bottom. Style 11755 was originally the subject of NY G82426, dated October 13, 2000.

Sample 5, style 18552, is a woman's garment constructed from 94 percent rayon and 6 percent nylon knit fabric. The garment extends from the shoulders to the knees in length and features a V-neckline, long sleeves, a full frontal opening with a three button closure, two belt loops, and a self fabric tie belt. Style 18552 was originally the subject of NY G85312, dated January 8, 2001.

Sample 6, style 52132F, is a woman's knit garment constructed from 70 percent acrylic and 30 percent wool knit fabric. The garment has a full frontal opening with a three button closure and extends below the mid thigh in length. Other features of the garment include long sleeves, a collar, slits at the side and a self fabric tie belt. Style 52132F was originally the subject of PD G89362, dated April 6, 2001.

Sample 7, style 11408M, is a woman's knit garment constructed of 100 percent cotton fabric. The fabric is constructed with less than nine stitches per two centimeters measured in the horizontal direction. The garment extends to the knee of the wearer and features long sleeves with hemmed cuffs, a hood, a full frontal opening with five button closures, a self fabric belt, and a straight bottom. Style 11408M was originally the subject of PD G86918, dated February 15, 2001.

Sample 8, style 3BW52901, is a woman's knit garment of 100 percent wool. The fabric measures more than nine stitches per two centimeters counted in the horizontal direction. The garment features a full frontal opening secured by three button closures. The coat has long sleeves, a notched collar, and two front pockets located below the waist. The rear of the garment features an eight inch slit at the bottom and a straight hemmed bottom. Style 3BW52901 was originally the subject of PD G87392, dated March 28, 2001.

Sample 9, style 11408, is a woman's knit garment of 100 percent cotton. It features a six button full frontal opening, a self fabric belt, long sleeves, and a hood. The garment extends to the knee in length and measures 7 stitches per centimeter horizontally and 6 stitches per centimeter vertically. Style 11408 was originally the subject of PD G87881, dated March 7, 2001.

Sample 10, style 11319, is a woman's knit garment constructed of 58 percent cotton and 48 percent acrylic. The garment features a five button full frontal opening, long sleeves, and a V-neckline. It extends past the mid-thigh and measures 4 stitches per cm horizontally and 6 stitches per centimeter vertically. Style 11319 was originally the subject of PD G87881, dated March 7, 2001.

Sample 11, style 15088, is a woman's knit garment constructed of 50 percent mohair and 50 percent acrylic. The garment extends from the shoulders to below the mid-thigh in length. The garment features a V-neckline, long sleeves, and a full frontal opening with three button closures. Style 15088 was originally the subject of NY G80138, dated August 24, 2000.

Sample 12, style 17999, is a woman's knit garment constructed of 52 percent cotton and 48 percent acrylic. The garment has a 1 x 1 rib knit and extends from the shoulders to below the mid-thigh in length. Other features are a V-neckline, long sleeves, a full frontal

opening with three buttons, and two front patch pockets in the waist area. Style 17999 was originally the subject of NY G80136, dated August 18, 2000.

Sample 13, style 15074, is a woman's knit garment constructed of 55 percent ramie, 20 percent acrylic, 15 percent wool, and 10 percent nylon. It has a 1 x 1 rib knit and extends from the shoulders to below the mid-thigh in length. The garment features a notched lapel collar, long sleeves, and a full frontal opening with five button closures. Style 15074 was originally the subject of NY G80136, dated August 18, 2000.

Sample 14, style 15087, is a woman's knit garment constructed of 50 percent mohair, 30 percent nylon, and 20 percent acrylic. The garment extends from the shoulders to the knee in length and features a V-neckline, long sleeves with fringed cuffs, and a full frontal opening with three hook and eye closures, belt loops, a self fabric belt at the waist, and a fringed bottom. Style 15087 was originally the subject of NY G80130, dated August 7, 2001.

Sample 15, style 11282, is a woman's knit garment constructed of 55 percent ramie, 20 percent acrylic, 15 percent wool, and 10 percent nylon fabric. The garment features a funnel neck; a full frontal opening with zipper closure; two pockets at the waist; long sleeves; and extends from the shoulders to the knee in length. Style 11282 was originally the subject of PD G80137, dated August 3, 2000.

Sample 16, style 14226, is a woman's knit garment constructed from 37 percent wool, 37 percent acrylic, and 26 percent nylon fabric. The garment extends from the shoulder to below the mid-thigh in length and features a V-neckline, long sleeves, and a full frontal opening with a five button closure. The neckline, sleeves, placket and bottom of the garment are finished with a ribbed fabric. Style 14226 was originally the subject of NY F86148, dated May 5, 2000.

Sample 17, style 11030, is a woman's knit garment of 100 percent cotton. The garment extends from the neck to the knees in length and is constructed of 13 stitches per 2 centimeters measured in the horizontal direction. Other features of the garment are a hood without tightening, a full frontal opening with 10 button closures, two pockets below the waist, eight inch side vents, long sleeves and a straight bottom. Style 11030 was originally the subject of PD F82775, dated March 7, 2000.

*Issue:*

Whether the subject knit garments are more properly classified as jackets or coats in heading 6102, HTSUS, or as sweaters or garments similar to sweaters in heading 6110, HTSUS?

*Law and Analysis:*

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the Harmonized System at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The issue in the instant case is whether the submitted samples are properly classifiable as women's sweaters or jackets or coats. There are two possible tariff classifications for the subject garments, heading 6102, HTSUS, which provides for, among other things, women's knit jackets and coats, and heading 6110, HTSUS, which provides for, among other things, women's knit sweaters and similar garments. Garments classified as sweaters or similar to sweaters of heading 6110, HTSUS, may serve a dual purpose in that they may be worn either indoors or outdoors. The purpose of jackets or coats of heading 6102 on the other hand, is to provide the wearer protection against the elements over other outerwear, and thus they are worn principally outdoors. The determinative issue, therefore, is the manner in which these garments are primarily worn.

The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6102, HTSUSA, state:

[T]his heading covers \* \* \* [garments for women or girls'], characterised by the fact that they are *generally worn over all other clothing for protection against the weather.*

(emphasis added).

The EN to heading 6110, state:

This heading covers a category of knitted or crocheted articles, without distinction between male or female wear, *designed to cover the upper parts of the body* (jerseys, pullovers, cardigans, waistcoats and similar articles).

(emphasis added).

A strict application of the above ENs to the subject merchandise creates an obvious conflict. The long length of the garments would preclude classification within heading 6110 which specifically states that garments therein are designed for the upper body. Yet, the ENs for heading 6102 state that garments within the scope of that heading are designed to be worn for protection against the elements. The subject garments could not provide protection against the elements due to the lightweight yarns with which they were knit and the styling which is intended to satisfy a current fashion trend rather than provide extensive protection from the weather.

In a recent informed compliance publication, Customs provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be definitive but rather to provide a basic guideline for classification purposes. In the informed compliance publication, sweaters, coats and jackets are defined as:

**Sweaters** (6110, 6111)—are knit garments that cover the body *from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh)*. Sweaters may have a type of pocket treatment or *any type of collar treatment*, including a hood, or no collar, or any type of neckline. They may be pullover style or have a full partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9<sup>th</sup> and 10<sup>th</sup> digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where, due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered “sweater-like” cardigans of heading 6110.

*This term excludes garments that have a sherpa lining or a heavyweight fiberfill lining (including quilted lining), which are used to provide extra warmth to the wearer. Such garments, whether or not they have a sweater stitch-count, are classified in heading 6101 or 6102. This term also excludes cardigans that are tailored. Such garments are classified in heading 6103 or 6104.*

(Emphasis added.)

**Jackets**—See “Suite-type jackets” and “Anoraks, windbreakers and similar articles.”

**Suit-type jackets**—(6103, 6104, 6203, 6204)—are garments generally designed for wear over a lighter outer garment, on business or social occasions when some degree of formality is required. They are tailored, have a full frontal opening without a closure or with a closure other than a slide fastener (zipper), and have sleeves (of any length). They have three or more panels (excluding sleeves), of which two are at the front, sewn together lengthwise. They do not extend below the mid-thigh and are not for wear over another coat, jacket or blazer.

**Anoraks, windbreakers and similar articles**—(6101, 6102, 6113, 6201, 6202, 6210)—is a group of garments which includes:

Jackets, which are garments designed to be worn over another garment for protection against the elements. Jackets cover the upper body from the neck area to the waist area, but are generally less than mid thigh length. They normally have a full front opening, although some jackets may have only a partial front opening. Jackets usually have long sleeves. Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the garment, although children’s garments or garments made of heavier material might not need these tightening elements. *This term excludes knit garments that fail to qualify as jackets because they do not provide sufficient protection against the elements. Such garments, if they have full-front openings, may be considered cardigans of heading 6110 (other).*

\* \* \* \* \*

(Emphasis added.)

**Coats**—See “Overcoats, carcoats, capes, cloaks and similar garments”

**Overcoats, carcoats, capes, cloaks and similar garments** (6101, 6102, 6201, 6202)—is a group of outerwear garments which cover both the upper and lower parts of the body, and which are normally worn over other garments for warmth and protection from the weather. Overcoats and carcoats are thigh length or longer, with sleeves, with or without a means of closure, and with a full-front opening.

\* \* \* \* \*

See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS* 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

Furthermore, in circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, (“*Guidelines*”) is appropriate. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles.

Regarding the classification of sweaters, the *Guidelines* state that “garments commercially known as cardigans, sweaters, \* \* \* cover the upper body from the neck or shoulders to the waist or below (as far as the mid-thigh area.)” Then further state, “Sweaters \* \* \* may have a collar treatment of any type, including a hood, or no collar, and any type of neckline; they may be pullover style or have full or partial front or back opening; they may be sleeveless or have sleeves of any length and any type of pocket treatment.” See *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE13/88 at 20 (Nov. 23, 1988).

The *Guidelines* state that “three quarter length or longer garments [are] commonly known as coats[.] \* \* \* A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length.” See *Guidelines* at 5. However, within the “coat category”, distinctions are made in the *Guidelines* for raincoats, water resistant coats, and shirt-jackets.

The *Guidelines* state that garments possessing at least three of the cited jacket features will be classified as jackets if the result is not unreasonable:

*Shirt-jackets* have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist \* \* \*. The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard \* \* \*.
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.
- (10) Elasticized or rib knit cuffs.
- (11) Drawstring, elastic or rib knit waistband.

See *Guidelines* at 5–6.

Upon review of the subject merchandise and upon application of the *Guidelines*, it is the determination of this office that these women’s knit garments either do not possess the requisite number of *Guidelines* criteria to meet the standards of a jacket or the result would be unreasonable given the styling of the garment to resemble a long sweater.

The critical issue in this classification dispute hinges on the amount of consideration to be given to the length requirements established by the various textile resources cited



above. It is the opinion of this office that the submitted samples are worn and used much like a sweater and have similar characteristics of a “traditional” sweater despite the long length. These knit garments are worn in the same manner as a sweater to give additional warmth. The appearance does not indicate use as a jacket, or windbreaker, to be worn outdoors on a day on which it is too cold and windy to wear a sweater or cardigan.

Furthermore, the fabric weight of these garments is not an absolute indicator of a garment’s status for classification purposes but fabric weight does provide some indication as to a garment’s suitability for different uses. Though it is feasible that the subject merchandise would be worn over a light weight shirt or layered for a stylish effect, it would not be worn over *all* other clothing for protection against the weather. In these samples, the knit fabric construction of the subject garments would not provide sufficient protection from the elements to the wearer when worn outside on cold days. In addition features such as a hood, faux fur collar or cuffs, and long length are not adequate proof that a garment is designed for use as outerwear. In fact, today these features are commonly found on a variety of upper body garments as part of a new fashion trend for these products which the industry has termed “sweatercoats”. Customs would not consider the subject garments to be sweater like if the garments contained a lining or heavier material as typically associated with a coat.

Heading 6110, HTSUSA, specifically provides for “similar articles” which have a likeness to the articles which are specifically named in the heading. Customs notes that the subject garments are similar to sweaters and meet all of the above cited definitions for sweaters with the exception of the length. Furthermore, given that the terms of Heading 6110 specifically provides for garments similar to sweaters, the ENs to heading 6110, HTSUSA, cannot be interpreted in such a manner to narrow the scope of the actual tariff heading.

Classification of other garments with a longer length has previously been considered by Customs and these garments have been consistently classified as sweater-like garments of heading 6110, HTSUS. In HQ 951298, dated September 1, 1992; HQ 955084, dated March 23, 1994; HQ 954827, dated December 8, 1993; and HQ 955488, dated April 6, 1994, Customs considered garments which exceeded the length requirements stated in the EN, reaching to the mid thigh area or below, and classified the merchandise in heading 6110, HTSUS. In each of the above cited rulings Customs acknowledged that the garments had “sweater like characteristics” and provided warmth but not protection from the elements. Each of these garments also had a full frontal opening and button closure similar to a jacket or coat but were more akin to sweaters in “fabric, construction, styling and use” in the same manner as the merchandise at issue which is properly classified in heading 6110, HTSUS.

Furthermore, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int’l Trade 549, 552 (1985), *aff’d* 786 F.2d 1144 (CAFC, April 1, 1986), “the merchandise itself may be strong evidence of use”. However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Upon review of current Fall fashion retail catalogs, Customs notes that the these sweatercoats are the current hot fashion item for Fall 2001. In several Fall retail catalogs, such as Victoria’s Secret®, J.Jill®, Lord & Taylor®, and Nordstrom®, these garments are being referred to as “sweatercoats” and are worn over either lightweight shirts or layered with other sweaters to create a warmer effect. The advertising for these garments indicates that the garments are to be worn in much the same way as a sweater. Moreover, Customs notes that these garments are being sold in the same departments as “traditional” sweaters in retail stores this Fall.

Accordingly, we find that the subject merchandise was erroneously classified in the original Customs rulings which were issued to your company. As such, the subject merchandise is properly classified as sweaters or as similar to sweaters in heading 6110, HTSUS, as appropriate.

*Holding:*

The following rulings are hereby revoked:

NY G87180, dated March 9, 2001  
 NY G86423, dated February 6, 2001  
 NY G89855, dated April 26, 2001  
 NY G82426, dated October 13, 2000  
 NY G85312, dated January 8, 2001  
 PD G89362, dated April 6, 2001  
 PD G87881, dated March 7, 2001  
 NY G80138, dated August 24, 2000  
 NY G80136, dated August 18, 2000  
 NY F86148, dated May 5, 2000  
 NY G80130, dated August 7, 2000

The following rulings are hereby modified:

PD G80137, dated August 3, 2000  
 PD G87392, dated March 28, 2001  
 PD G86918, dated February 15, 2001  
 PD F82775, dated March 7, 2000

Samples 1 and 6 are properly classified under subheading 6110.30.1560, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Containing 23 percent or more by weight of wool or fine animal hair: Other: Women's or girls'." The general column one rate of duty is 17 percent *ad valorem*. The applicable textile restraint category is 438.

Sample 2 is properly classified under subheading 6110.30.3055, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Other: Women's or girls'." The general column one rate of duty is 32.7 percent *ad valorem*. The applicable textile restraint category is 639.

Samples 3 and 5 are properly classified under subheading 6110.30.3020 HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Other: Sweaters: Women's." The general column one rate of duty is 32.7 percent *ad valorem*. The applicable textile restraint category is 646.

Sample 13 and 15 are properly classified under subheading 6110.90.9042, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials: Other: Sweaters for women or girls: Other: Other." The general column one rate of duty is 6 percent *ad valorem*. The applicable textile restraint category is 845.

Samples 4, 7 and 10 are properly classified under subheading 6110.20.2020, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Other: Sweaters: Women's." The general column one rate of duty is 17.8 percent *ad valorem*. The applicable textile restraint category is 345.

Sample 11 and 14 are properly classified under subheading 6110.30.1560, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Containing 23 percent or more by weight of wool or fine animal hair: Other: Women's or girls'." The general column one rate of duty is 17 percent *ad valorem*. The applicable textile restraint category is 438.

Sample 16 is properly classified under subheading 6110.30.1520, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Containing 23 percent or more by weight of wool or fine animal hair: Sweaters: Women's or girls'." The general column one rate of duty is 17 percent *ad valorem*. The applicable textile restraint category is 446.

Samples 9, 12 and 17 are properly classified under subheading 6110.20.2075, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Other: Other: Women's or girls'." The general column one rate of duty is 17.8 percent *ad valorem*. The applicable textile restraint category is 339.

Sample 8 is properly classified under subheading 6110.10.2080, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other: Other: Women's or girls'." The general

column one rate of duty is 16.3 percent *ad valorem*. The applicable textile restraint category is 438.

The designated textile and apparel category may be subdivided into parts. If so, 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 that you check, close to time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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.

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

*Effect on Other Rulings:*

The following rulings which deal with similar merchandise are revoked or modified as follows and will also be effective 60 days from date of publication of this ruling:

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD H81739	6/18/01	Modification	AMC	61801; 61802	6110.30.1520; 6110.30.1560
PD H80051	5/4/01	Revocation	AMC	EH 073016	6110.30.1560
PD H80053	4/26/01	Revocation	AMC	54623	6110.10.2080
PD G88792	4/11/01	Modification	AMC	FM2224; FM2228; FM 2221	6110.10.2080; 6110.30.1520; 6110.10.2030
PD G88093	4/2/01	Revocation	AMC	5425	6110.10.2080
NY G80859	6/14/00	Revocation	Avon Products	PP204117	6110.30.3055
NY G87628	3/23/01	Modification	Grunfeld, Desiderio on behalf of Bernard Chaus	50419	6110.10.2080
PD H80504	5/22/01	Revocation	Fritz & Co. on behalf of B. Moss	576	6110.30.3055
PD G89151	4/19/01	Revocation	Total Port Clearance on behalf of Belford	4020	6110.10.2030
PD H80757	5/29/01	Modification	Grunfeld, Desiderio on behalf of By Design LLC	19047; 19008	6110.30.3055; 6110.30.3055
PD G89982	5/10/01	Revocation	C.F.L. Sportswear Trading, Inc.	0222258	6110.90.9042
PD G84780	12/27/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW2017	6110.10.2030
PD F86133	4/25/00	Revocation	C.F.L. Sportswear Trading, Inc.	SW3411	6110.20.2020
PD H80691	6/4/01	Revocation	Dillard's Inc.	131S3095	6110.30.3020

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD G88184	3/29/01	Revocation	Donkenny Apparel	221679; 221680	6110.10.2080; 6110.10.2080
NY G89632	5/3/01	Revocation	Donna Karan	73310222VA	6110.10.2080
NY F89548	7/27/00	Revocation	Espirit de Corp	5435213	6110.10.2030
NY G88075	3/27/01	Revocation	Eddie Bauer, Inc.	010-2299/ 010-2300/ 010-2301	6110.10.2080
PD H81218	6/6/01	Modification	Eddie Bauer, Inc.	099-3729/ 009-3730/ 009-3731	6110.30.1560
PD H80425	5/25/01	Revocation	Prime Transport on behalf of E.M. Lawrence	134433	6110.90.9042
PD F84671	4/6/00	Revocation	Grunfeld Desiderio on behalf of 525 Made in America	0789	6110.20.2075
NY G80262	8/18/00	Revocation	The Gap on behalf of Banana Republic	814176	6110.90.9090
PD F83190	3/21/00	Revocation	The Gap on behalf of Banana Republic	814016	6110.10.2080
PD F85279	4/17/00	Revocation	The Gap, Inc	129906	6110.30.1520
NY G88190	4/9/01	Revocation	Great American Sweater Co.	1607J/30567	6110.30.3020
PD H80756	6/7/01	Modification	Hecny Brokers on behalf of Knits Cord	7260	6110.30.3055
PD H80024	5/10/01	Revocation	C-Air International on behalf of JDR Apparel	2301-2-14	6110.90.9042
PD G89178	4/25/01	Revocation	J.C. Penney Corporation	862-3334/ 234-3334/ 710-3334/ 981-3334	6110.30.3020
PD G88740	4/23/01	Revocation	Carmichael Brokers on behalf of John Paul Richard	M6107883; M1157109	6110.30.3055; 6110.30.3020
PD G87563	3/16/01	Revocation	The J. Jill Group	2361	6110.20.2075
PD G87576	3/12/01	Revocation	Mac & Jac	A 6169	6110.30.3055

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
NY G88949	4/16/01	Revocation	Grunfeld Desiderio on behalf of Mast Industries	3016B	6110.30.3055
NY G81395	9/26/00	Modification	Gemm Custom Brokers on behalf of Michael Simon	S10047	6110.30.3055
PD F84341	3/31/00	Revocation	Mark Group	BPK 9920	6110.30.1520
PD G89033	4/19/01	Revocation	Grunfeld, Desiderio on behalf of Mast Industries	96H1944	6110.30.1560
PD G85699	1/19/01	Revocation	Vandegrift Forwarding on behalf of Nautica Jeans	FSW 305	6110.10.2080
PD F85566	4/21/00	Revocation	MSAS Global on behalf of Newport News, Inc.	F00-61-015	6110.30.3055
NY G88749	5/12/01	Revocation	Sharretts, Paley on behalf of Polo Ralph Lauren	17165	6110.10.1020
PD G87734	4/11/01	Revocation	QVC, Inc.	A103107	6110.30.1560
NY G83575	11/8/00	Revocation	Spiegel Imports	16-6157s	6110.30.3055
PD G89715	5/7/01	Revocation	Spiegel Imports	38-5824s	6110.30.1560
NY G89021	4/26/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1141204	6110.30.1520
PD H80743	6/7/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1153510	6110.10.2080
PD H80488	5/8/01	Revocation	Target Corporation	T12847	6110.30.3055
PD G89468	5/2/01	Revocation	Wet Seal	WSS 7560; WSS 7547	6110.30.3020; 6110.30.3020
PD G89157	4/25/01	Revocation	Wet Seal	WS 7324D	6110.30.3055
PD G88797	4/12/01	Revocation	Wet Seal	WSS 7285	6110.30.3055

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
NY G89266	5/11/01	Modification	Barthco Trade Consultants	325D7738	6110.10.1020
PD F84548	3/27/00	Revocation	Barthco Trade Consultants	C1CT26478	6110.10.1020
PD D89160	3/2/99	Modification	Barthco Trade Consultants	M21610288	6110.10.1020
NY H80591	5/16/01	Modification	Danzas AEI Customs Brokerage Service	A030002; A030065	6110.30.1520; 6110.10.1020

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 22, 2002.*  
CLA-2 RR:CR:TE 965184 mbg  
Category: Classification  
Tariff No. 6110.10.2080, 6110.20.2020,  
6110.30.1520, and 6110.10.2030

MR. DONALD S. SIMPSON  
MR. JAMES J. KELLY  
BARTHCO TRADE CONSULTANTS, INC.  
*7575 Holstein Avenue  
Philadelphia, PA 19153*

Re: Classification of a long women's "sweatercoat"; Revocation and modification of prior Customs rulings.

DEAR MR. SIMPSON AND MR. KELLY:

Pursuant to your classification requests, Customs has previously issued Port Decision ("PD") Letters and New York Ruling Letters ("NY") to your company, Barthco Trade Consultants, Inc. on behalf of Jones Apparel Group USA, regarding the tariff classification of various long women's knitted "sweatercoats". These products were originally classified as women's knitted coats under heading 6102 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). Upon review, Customs has determined that the garments were erroneously classified. The correct classification for the garments should be under heading 6110, HTSUSA, based on classification as sweaters or as garments similar to sweaters. Seven rulings are hereby revoked and three rulings are modified for the reasons set forth below.

Pursuant to section 625(c)(1), 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), a notice was published on December 12, 2001, in Vol. 35, No. 50 of the CUSTOMS BULLETIN, proposing to modify and/or revoke certain rulings and to revoke the treatment pertaining to the classification of women's knit sweatercoats. Three comments were received in response to this notice in support of the change in tariff classification.

*Facts:*

Thirteen samples were submitted to Customs for review in the ten rulings under review. You have stated that all of the submitted samples will be manufactured in Hong Kong except for style 13JBDF508 which will be manufactured in Thailand.

Sample 1, style 13JBDF508, is a women's garment constructed of 100 percent lambs wool. The garment extends from the shoulders to the knees in length and features a V-neckline; long tubular hemmed sleeves; a full frontal opening with a self fabric tie belt closure; two belt loops; and a tubular hemmed bottom. Style 13JBDF508 was originally the subject of NY G86050, dated January 26, 2001.

Sample 2, style 321690218, is a women's knit garment composed of 70 percent wool and 30 percent polyester. The garment extends below the knee in length and features a full frontal opening secured by six button closures. The garment has a shawl collar and long sleeves with turned back cuffs. The garment also has a straight bottom; two front pockets located below the waist; and a self fabric tie belt which is supported to the garment by two belt loops. Style 321690218 was originally the subject of PD H80571, dated May 21, 2001.

Sample 3, style 351163998, is a women's knit garment constructed of 100 percent merino wool fabric. The garment extends below the knee in length and features a full frontal opening without closures. The garment has a shawl collar and long sleeves with turned back cuffs. The garment also has a straight bottom and two front pockets located below the waist. Style 351163998 was originally the subject of PD H80571, dated May 21, 2001.

Sample 4, style 353B13358, is a women's garment constructed of 100 percent merino wool knitted fabric. The garment extends from the shoulders to the ankle in length and features a V-neckline; a full frontal opening with ten button closures; long sleeves; two large patch pockets below the waist; and a straight edge bottom. Style 353B13358 was originally the subject of PD H80420, dated May 10, 2001.

Sample 5, style 125e3408, is a women's knit garment constructed of 70 percent acrylic and 30 percent wool fabric. The garment has a full frontal opening with seven button closures and extends below the knee in length. Other features include long sleeves, two patch pockets and a hood. Style 125e3408 was originally the subject of PD G89023, dated April 19, 2001.

Sample 6, style 11TD14178, is a women's 100 percent cotton knit garment. The garment extends from the shoulders to below the mid-calf in length and features a hood, a full frontal opening with eight button closure and long sleeves with folded cuffs. Style 11TD14178 was originally the subject of PD G88233, dated March 22, 2001.

Sample 7, style 11TT24188, is a women's knitted garment of 100 percent lambswool. The garment extends to mid calf in length and features a hood, long sleeves and a belt. Style 11TT24188 was originally the subject of PD G86813, dated March 12, 2001.

Sample 8, style 153A52938, is a women's knit garment constructed from 100 percent merino boiled wool fabric. The surface of the fabric measures more than 9 stitches per 2 centimeters measured in the horizontal direction. The garment is knee length and features a shawl collar; long sleeves with fold over cuffs, a full frontal opening with no means of closure, patch pockets at the waist and a hemmed bottom. Style 153A52938 was originally the subject of PD G86712, dated February 14, 2001, and amended on February 28, 2001 by PD G86712.

Sample 9, style 119970695, is a women's knit garment constructed of 100 percent boiled wool fabric. The garment is ankle length and has a full frontal opening with a single hook closure. Other features include a shawl collar, long sleeves with roll up cuffs and two front pockets. Style 119970695 was originally the subject of PD G86510, dated February 8, 2001.

Sample 10, style C21500538, is a women's knit garment constructed from 100 percent wool fabric with less than 9 stitches per 2 centimeters measured in the horizontal direction. The garment features a mandarin collar, a full frontal opening with six button closures, two front patch pockets at the hip, long hemmed sleeves and a hemmed bottom. Style C21500538 was originally the subject of PD F83090, dated February 23, 2000.

Sample 11, style C1CN16228, is a women's knit garment constructed of 100 percent wool. The garment is hand knit with stripes and extends below the mid-thigh in length. The garment features long sleeves with a loose fitting rib ending and a shawl collar that extends to the rib hemmed bottom. Style C1CN16228 was originally the subject of PD F83556, dated April 6, 2000.

Sample 12, style 121220438, is a women's knit garment constructed of 100 percent merino wool. The garment extends from the shoulders to below the knees in length and fea-

tures a mandarin collar; long hemmed sleeves; a full frontal opening with seven button closures; two front inset vertical pockets below the waist; two belt loops; a self fabric tie belt; and a hemmed bottom. Style 121220438 was originally the subject of NY G85916, dated March 2, 2001.

Sample 13, style 121370278, is a women's knit garment constructed of 100 percent merino wool. The garment extends from the shoulders to below the knees in length and features a round neckline; long hemmed sleeves; a full frontal opening with seven snap closures; two belt loops; a fake suede tie belt; and a hemmed bottom. Style 121370278 was originally the subject of NY G85916, dated March 2, 2001.

*Issue:*

Whether the subject knit garments are more properly classified as jackets or coats in heading 6102, HTSUS, or as sweaters or garments similar to sweaters in heading 6110, HTSUS?

*Law and Analysis:*

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the Harmonized System at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The issue in the instant case is whether the submitted samples are properly classifiable as women's sweaters or jackets or coats. There are two possible tariff classifications for the subject garments, heading 6102, HTSUS, which provides for, among other things, women's knit jackets and coats, and heading 6110, HTSUS, which provides for, among other things, women's knit sweaters and similar garments. Garments classified as sweaters or as similar to sweaters of heading 6110, HTSUS, may serve a dual purpose in that they may be worn either indoors or outdoors. The purpose of jackets or coats of heading 6102 on the other hand, is to provide the wearer protection against the elements over other outerwear, and thus they are worn principally outdoors. The determinative issue, therefore, is the manner in which these garments are principally worn.

The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6102, HTSUSA, state:

[T]his heading covers \* \* \* [garments for women or girls'], characterised by the fact that they are *generally worn over all other clothing for protection against the weather*.

(emphasis added).

The EN to heading 6110, state:

This heading covers a category of knitted or crocheted articles, without distinction between male or female wear, *designed to cover the upper parts of the body* (jerseys, pullovers, cardigans, waistcoats and similar articles).

(emphasis added).

A strict application of the above ENs to the subject merchandise creates an obvious conflict. The long length of the garments would preclude classification within heading 6110 which specifically states that garments therein are designed for the upper body. Yet, the ENs for heading 6102 state that garments within the scope of that heading are designed to be worn for protection against the elements. The subject garments could not provide protection against the elements due to the lightweight yarns with which they were knit and the styling which is intended to satisfy a current fashion trend rather than provide extensive protection from the weather.

In a recent informed compliance publication, Customs provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be definitive but rather to provide a basic guideline for classification purposes. In the informed compliance publication, sweaters, coats and jackets are defined as:

**Sweaters** (6110, 6111)—are knit garments that cover the body *from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh)*. Sweaters may have a type of pocket treatment or *any type of collar treatment*,



including a hood, or no collar, or *any type of neckline*. They may be pullover style or have a full partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9<sup>th</sup> and 10<sup>th</sup> digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where, due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered “sweater-like” cardigans of heading 6110.

*This term excludes garments that have a sherpa lining or a heavyweight fiberfill lining (including quilted lining), which are used to provide extra warmth to the wearer. Such garments, whether or not they have a sweater stitch-count, are classified in heading 6101 or 6102. This term also excludes cardigans that are tailored. Such garments are classified in heading 6103 or 6104.*

(Emphasis added.)

**Jackets**—See “Suite-type jackets” and “Anoraks, windbreakers and similar articles.”

**Suit-type jackets**—(6103, 6104, 6203, 6204)—are garments generally designed for wear over a lighter outer garment, on business or social occasions when some degree of formality is required. They are tailored, have a full frontal opening without a closure or with a closure other than a slide fastener (zipper), and have sleeves (of any length). They have three or more panels (excluding sleeves), of which two are at the front, sewn together lengthwise. They do not extend below the mid-thigh and are not for wear over another coat, jacket or blazer.

**Anoraks, windbreakers and similar articles**—(6101, 6102, 6113, 6201, 6202, 6210)—is a group of garments which includes:

Jackets, which are garments designed to be worn over another garment for protection against the elements. Jackets cover the upper body from the neck area to the waist area, but are generally less than mid thigh length. They normally have a full front opening, although some jackets may have only a partial front opening. Jackets usually have long sleeves. Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the garment, although children’s garments or garments made of heavier material might not need these tightening elements. *This term excludes knit garments that fail to qualify as jackets because they do not provide sufficient protection against the elements. Such garments, if they have full-front openings, may be considered cardigans of heading 6110 (other).*

\* \* \* \* \*  
(Emphasis added.)

**Coats**—See “Overcoats, carcoats, capes, cloaks and similar garments”  
**Overcoats, carcoats, capes, cloaks and similar garments** (6101, 6102, 6201, 6202)—is a group of outerwear garments which cover both the upper and lower parts of the body, and which are normally worn over other garments for warmth and protection from the weather. Overcoats and carcoats are thigh length or longer, with sleeves, with or without a means of closure, and with a full-front opening.

\* \* \* \* \*  
See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS* 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

Furthermore, in circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, (“*Guidelines*”) is appropriate. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles.

Regarding the classification of sweaters, the *Guidelines* state that “garments commercially known as cardigans, sweaters, \* \* \* cover the upper body from the neck or shoulders to the waist or below (as far as the mid-thigh area.)” Then further state, “Sweaters \* \* \* may have a collar treatment of any type, including a hood, or no collar, and any type of neckline; they may be pullover style or have full or partial front or back opening; they may be sleeveless or have sleeves of any length and any type of pocket treatment.” *See Guide-*

*lines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE13/88 at 20 (Nov. 23, 1988).

The *Guidelines* state that “three quarter length or longer garments [are] commonly known as coats[.] \* \* \* A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length.” See *Guidelines* at 5. However, within the “coat category”, distinctions are made in the *Guidelines* for raincoats, water resistant coats, and shirt-jackets.

The *Guidelines* state that garments possessing at least three of the cited jacket features will be classified as *jackets* if the result is not unreasonable:

*Shirt-jackets* have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist \* \* \*. The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard \* \* \*.
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.
- (10) Elasticized or rib knit cuffs.
- (11) Drawstring, elastic or rib knit waistband.

See *Guidelines* at 5–6.

Upon review of the subject merchandise and upon application of the *Guidelines*, it is the determination of this office that these women’s knit garments either do not possess the requisite number of *Guidelines* criteria to meet the standards of a jacket or the result would be unreasonable given the styling of the garment to resemble a long sweater.

The critical issue in this classification dispute hinges on the amount of consideration to be given to the length requirements established by the various textile resources cited above. It is the opinion of this office that the submitted samples are worn and used much like a sweater and have similar characteristics of a “traditional” sweater despite the long length. These knit garments are worn in the same manner as a sweater to give additional warmth. The appearance does not indicate use as a jacket, or windbreaker, to be worn outdoors on a day on which it is too cold and windy to wear a sweater or cardigan.

Furthermore, the fabric weight of these garments is not an absolute indicator of a garment’s status for classification purposes but fabric weight does provide some indication as to a garment’s suitability for different uses. Though it is feasible that the subject merchandise would be worn over a light weight shirt or layered for a stylish effect, it would not be worn over *all* other clothing for protection against the weather. In these samples, the knit fabric construction of the subject garments would not provide sufficient protection from the elements to the wearer when worn outside on cold days. In addition features such as a hood, and long length, are not adequate proof that a garment is designed for use as a jacket or coat. In fact, today these features are commonly found on a variety of upper body garments as part of a new fashion trend for these products which the industry has termed “sweatercoats”. Customs would not consider the subject garments to be sweater like if the garments contained a lining or heavier material as typically associated with a coat.

Heading 6110, HTSUSA, specifically provides for “similar articles” which have a likeness to the articles which are specifically named in the heading. Customs notes that the subject garments are similar to sweaters and meets all of the above cited definitions for sweaters with the exception of the length. Furthermore, given that the terms of Heading 6110 specifically provides for garments similar to sweaters, the ENs to heading 6110,

HTSUSA, cannot be interpreted in such a manner to narrow the scope of the actual tariff heading.

Classification of other garments with a longer length has previously been considered by Customs and these garments have been consistently classified as sweater-like garments of heading 6110, HTSUS. In HQ 951298, dated September 1, 1992; HQ 955084, dated March 23, 1994; HQ 954827, dated December 8, 1993; and HQ 955488, dated April 6, 1994, Customs considered garments which exceeded the length requirements stated in the EN, reaching to the mid thigh area or below, and classified the merchandise in heading 6110, HTSUS. In each of the above cited rulings Customs acknowledged that the garments had “sweater like characteristics” and provided warmth but not protection from the elements. Each of these garments also had a full frontal opening and button closure similar to a jacket or coat but were more akin to sweaters in “fabric, construction, styling and use” in the same manner as the merchandise at issue which is properly classified in heading 6110, HTSUS.

Furthermore, in past rulings Customs has stated that the crucial factor in the classification of merchandise is the merchandise itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int’l Trade 549, 552 (1985), *aff’d* 786 F.2d 1144 (CAFC, April 1, 1986), “the merchandise itself may be strong evidence of use”. However, when presented with articles which are ambiguous in appearance, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. Upon review of current Fall fashion retail catalogs, Customs notes that these sweatercoats are the current hot fashion item for Fall 2001. In several Fall retail catalogs, such as Victoria’s Secret®, J.Jill®, Lord & Taylor®, and Nordstrom®, these garments are being referred to as “sweatercoats” and are worn over either lightweight shirts or layered with other sweaters to create a warmer effect. The advertising for these garments indicates that the garments are to be worn in much the same way as a sweater. Moreover, Customs notes that these garments are being sold in the same departments as “traditional” sweaters in retail stores this Fall.

Accordingly, we find that the subject samples were erroneously classified in the original Customs rulings which were issued to your company. As such, the subject samples are properly classified as sweaters or as similar to sweaters in heading 6110, HTSUS, as appropriate.

*Holding:*

The following rulings are hereby revoked:

NY G86050, dated January 26, 2001  
 PD H80571, dated May 21, 2001  
 PD H80420, dated May 10, 2001  
 PD G89023, dated April 19, 2001  
 PD G88233, dated March 22, 2001  
 PD G86813, dated March 12, 2001  
 PD G86510, dated February 8, 2001

The following rulings are hereby modified:

NY G85916, dated March 2, 2001  
 PD G86712, dated February 28, 2001  
 PD F83090, dated February 23, 2000  
 PD F83556, dated April 6, 2000

Samples 1, 3, 4, 7, 8, 9, 11, 12 and 13 are properly classified under subheading 6110.10.2080, HTSUSA, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other: Other: Women’s or girls’.” The general column one rate of duty is 16.3 percent *ad valorem*. The applicable textile restraint category is 438.

Samples 2 and 5 are properly classified under subheading 6110.30.1520, HTSUSA, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Containing 23 percent or more by weight of wool or fine animal hair: Sweaters: Women’s or girls’.” The general column one rate of duty is 17 percent *ad valorem*. The applicable textile restraint category is 446.

Sample 6, style 11TD14178, is properly classified under subheading 6110.20.2020, HTSUSA, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and

similar articles, knitted or crocheted: Of cotton: Other: Other: Sweaters: Women's." The general column one rate of duty is 17.8 percent *ad valorem*. The applicable textile restraint category is 345.

Sample 10, style C21500538, is properly classified under subheading 6110.10.2030, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other: Sweaters: Women's." The general column one rate of duty is 16.3 percent *ad valorem*. The applicable textile restraint category is 446.

The designated textile and apparel category may be subdivided into parts. If so, 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 that 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 available for inspection at your local Customs office.

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.

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

*Effect on Other Rulings:*

The following rulings which deal with similar merchandise are revoked or modified as follows and will also be effective 60 days from date of publication of this ruling:

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD H81739	6/18/01	Modification	AMC	61801; 61802	6110.30.1520; 6110.30.1560
PD H80051	5/4/01	Revocation	AMC	EH 073016	6110.30.1560
PD H80053	4/26/01	Revocation	AMC	54623	6110.10.2080
PD G88792	4/11/01	Modification	AMC	FM2224; FM2228; FM 2221	6110.10.2080; 6110.30.1520; 6110.10.2030
PD G88093	4/2/01	Revocation	AMC	5425	6110.10.2080
NY G80859	6/14/00	Revocation	Avon Products	PP204117	6110.30.3055
NY G87628	3/23/01	Modification	Grunfeld, Desiderio on behalf of Bernard Chaus	50419	6110.10.2080
PD H80504	5/22/01	Revocation	Fritz & Co. on behalf of B. Moss	576	6110.30.3055
PD G89151	4/19/01	Revocation	Total Port Clearance on behalf of Belford	4020	6110.10.2030
PD H80757	5/29/01	Modification	Grunfeld, Desiderio on behalf of By Design LLC	19047; 19008	6110.30.3055; 6110.30.3055
PD G89982	5/10/01	Revocation	C.F.L. Sportswear Trading, Inc.	0222258	6110.90.9042

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD G84780	12/27/00	Revocation	C.F.L. Sports-wear Trading, Inc.	SW2017	6110.10.2030
PD F86133	4/25/00	Revocation	C.F.L. Sports-wear Trading, Inc.	SW3411	6110.20.2020
PD H80691	6/4/01	Revocation	Dillard's Inc.	131S3095	6110.30.3020
PD G88184	3/29/01	Revocation	Donkenny Apparel	221679; 221680	6110.10.2080; 6110.10.2080
NY G89632	5/3/01	Revocation	Donna Karan	73310222VA	6110.10.2080
NY F89548	7/27/00	Revocation	Espirit de Corp	5435213	6110.10.2030
NY G88075	3/27/01	Revocation	Eddie Bauer, Inc.	010-2299/ 010-2300/ 010-2301	6110.10.2080
PD H81218	6/6/01	Modification	Eddie Bauer, Inc.	099-3729/ 009-3730/ 009-3731	6110.30.1560
PD H80425	5/25/01	Revocation	Prime Transport on behalf of E.M. Lawrence	134433	6110.90.9042
PD F84671	4/6/00	Revocation	Grunfeld Desiderio on behalf of 525 Made in America	0789	6110.20.2075
NY G80262	8/18/00	Revocation	The Gap on behalf of Banana Republic	814176	6110.90.9090
PD F83190	3/21/00	Revocation	The Gap on behalf of Banana Republic	814016	6110.10.2080
PD F85279	4/17/00	Revocation	The Gap, Inc	129906	6110.30.1520
NY G88190	4/9/01	Revocation	Great American Sweater Co.	1607J/30567	6110.30.3020
PD H80756	6/7/01	Modification	Hecny Brokers on behalf of Knits Cord	7260	6110.30.3055
PD H80024	5/10/01	Revocation	C-Air International on behalf of JDR Apparel	2301-2-14	6110.90.9042
PD G89178	4/25/01	Revocation	J.C. Penney Corporation	862-3334/ 234-3334/ 710-3334/ 981-3334	6110.30.3020

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD G88740	4/23/01	Revocation	Carmichael Brokers on behalf of John Paul Richard	M6107883; M1157109	6110.30.3055; 6110.30.3020
PD G87563	3/16/01	Revocation	The J. Jill Group	2361	6110.20.2075
PD G87576	3/12/01	Revocation	Mac & Jac	A 6169	6110.30.3055
NY G88949	4/16/01	Revocation	Grunfeld Desiderio on behalf of Mast Industries	3016B	6110.30.3055
NY G81395	9/26/00	Modification	Gemm Custom Brokers on behalf of Michael Simon	S10047	6110.30.3055
PD F84341	3/31/00	Revocation	Mark Group	BPK 9920	6110.30.1520
PD G89033	4/19/01	Revocation	Grunfeld, Desiderio on behalf of Mast Industries	96H1944	6110.30.1560
PD G85699	1/19/01	Revocation	Vandegrift Forwarding on behalf of Nautica Jeans	FSW 305	6110.10.2080
PD F85566	4/21/00	Revocation	MSAS Global on behalf of Newport News, Inc.	F00-61-015	6110.30.3055
NY G88749	5/12/01	Revocation	Sharretts, Paley on behalf of Polo Ralph Lauren	17165	6110.10.1020
PD G87734	4/11/01	Revocation	QVC, Inc.	A103107	6110.30.1560
NY G83575	11/8/00	Revocation	Spiegel Imports	16-6157s	6110.30.3055
PD G89715	5/7/01	Revocation	Spiegel Imports	38-5824s	6110.30.1560
NY G89021	4/26/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1141204	6110.30.1520
PD H80743	6/7/01	Revocation	Sullivan & Lynch on behalf of Susan Bristol	1153510	6110.10.2080

<i>Ruling Number</i>	<i>Issue Date</i>	<i>Type of Customs Action</i>	<i>To Whom Addressed</i>	<i>Style # of Garment(s)</i>	<i>Correct HTSUSA Classification</i>
PD H80488	5/8/01	Revocation	Target Corporation	T12847	6110.30.3055
PD G89468	5/2/01	Revocation	Wet Seal	WSS 7560; WSS 7547	6110.30.3020; 6110.30.3020
PD G89157	4/25/01	Revocation	Wet Seal	WS 7324D	6110.30.3055
PD G88797	4/12/01	Revocation	Wet Seal	WSS 7285	6110.30.3055
NY G89266	5/11/01	Modification	Barthco Trade Consultants	325D7738	6110.10.1020
PD F84548	3/27/00	Revocation	Barthco Trade Consultants	C1CT26478	6110.10.1020
PD D89160	3/2/99	Modification	Barthco Trade Consultants	M21610288	6110.10.1020
NY H80591	5/16/01	Modification	Danzas AEI Customs Brokerage Service	A030002; A030065	6110.30.1520; 6110.10.1020

JOHN ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

# U.S. Customs Service

## *Proposed Rulemaking*

19 CFR Parts 141 and 142

RIN 1515-AC91

### SINGLE ENTRY FOR SPLIT SHIPMENTS

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: Customs is reopening the period of time within which comments may be submitted in response to the proposed rule providing for a single entry for split shipments, which was published in the Federal Register (66 FR 57688) on November 16, 2001. Specifically, the proposed rule would amend the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which was split by the carrier, and which arrives in the United States separately. The proposed amendments would implement statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

DATES: Comments must be received on or before February 14, 2002.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3<sup>rd</sup> Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations Branch, (202-927-1605).

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

Section 1460 of Public Law 106-476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 1484 of the Tariff Act of 1930 (19 U.S.C. 1484), in pertinent part, by adding a new paragraph (j)(2) in order to provide for a single entry in the case of a shipment which is split at the initiative of the carrier and which arrives in the United States separately.

To implement section 1484(j)(2), by a document published in the Federal Register (66 57688) on November 16, 2001, Customs proposed to



amend the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which is divided by the carrier into different parts which arrive in the United States at different times, often days apart.

Comments on the proposed rulemaking were to have been received on or before January 15, 2002. Customs has, however, received a request from a Customs broker to extend this period, the broker basically stating that it needed additional time in order to formulate its concerns and make appropriate comments. Customs believes, under the circumstances, that this request has merit. Accordingly, the period of time for the submission of comments is being reopened until February 14, 2002, as indicated above. It should be noted that no further extension of the comment period beyond this additional period will be granted.

Dated: January 15, 2002.

DOUGLAS M. BROWNING,  
*Acting Assistant Commissioner,*  
*Office of Regulations and Rulings.*

[Published in the Federal Register, January 23, 2002 (67 FR 3135)]