

U.S. Customs Service

General Notices

MODIFICATION OF NATIONAL CUSTOMS AUTOMATION PROGRAM TEST REGARDING ELECTRONIC PRESENTATION OF CARGO DECLARATIONS

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

ACTION: General notice.

SUMMARY: This notice announces modifications to the vessel paperless manifest program test that provides for the electronic transmission of certain vessel cargo declaration information to Customs through the Vessel Automated Manifest System (AMS). Specifically, the changes to the program test relate to the following: (1) Test participants must electronically transmit cargo declaration information to Customs through Vessel AMS 24 hours prior to lading the cargo aboard the vessel at the foreign port; (2) test participants must electronically transmit manifest information on empty containers to Customs through the Empty Container Module within Vessel AMS; and (3) Customs is discontinuing use of the paperless cargo declaration standards checklist that was developed for determining carrier compliance with the test. Public comments are invited on any aspect of the program test as further modified by today's announcement.

DATES: The effective date for test participants to transmit cargo declaration information 24 hours prior to lading the cargo aboard vessels at foreign ports is December 2, 2002. The effective date for test participants to electronically transmit manifest data on empty containers to Customs through the Empty Container Module within Vessel AMS is June 2, 2003. Letters requesting participation in the test and comments concerning any aspect of the test will continue to be accepted throughout the testing period.

ADDRESSES: Written comments regarding the program test and letters requesting participation in the program test should be addressed to the Manifest and Conveyance Branch, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2b, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

For operational or policy matters: Julie Hannan, Manifest and Conveyance Branch, (202-927-1364); or Pete Flores, Manifest and Conveyance Branch, (202-927-0333).

For legal matters: Larry L. Burton, Office of Regulations and Rulings, (202-572-8724).

SUPPLEMENTARY INFORMATION:**BACKGROUND**

On September 10, 1996, Customs published a notice in the Federal Register (61 FR 47782) announcing a program test to allow the electronic transmission of certain vessel cargo declaration information to Customs through the Automated Manifest System (AMS). The September 10, 1996, notice described the parameters and requirements of the test, informed interested members of the public of the eligibility and application criteria for participation in the test, and requested comments concerning any aspect of the test. The test commenced on February 11, 1997, and, by a notice published in the Federal Register (62 FR 66719) on December 19, 1997, the program test was extended and modified with respect to the presentation of manifest information on empty containers. Since its inception, as noted, the test has been running successfully with 35 vessel carriers as participants.

PERTINENT ASPECTS OF CURRENT PROGRAM TEST

As prescribed in the September 10, 1996, program test notice, a participating vessel carrier must electronically transmit to Customs complete and accurate cargo declaration information no less than 48 hours prior to the actual arrival of the vessel at a port in the United States.

Furthermore, as modified by the December 19, 1997, notice, the program test provided that empty containers were to be manifested either by transmitting through the Customs Automated Manifest System (AMS) a list of the empty containers on board the vessel by port of discharge, or by providing the same list to Customs on paper, using a CF (Customs Form) 1302 Cargo Declaration.

Lastly, it is observed that, in implementing the program test, Customs developed a paperless manifest standards checklist for determining carrier compliance with all parameters and operating procedures established under the program test.

MODIFICATIONS TO THE VESSEL PAPERLESS MANIFEST PROGRAM TEST

Today's notice announces a number of changes to the above-described requirements and operating procedures for the vessel paperless manifest program test. These changes to the program test are discussed below.

PRESENTATION OF INFORMATION 24 HOURS BEFORE FOREIGN LADING

Most significantly, today's notice modifies the program test to provide that test participants must electronically transmit required vessel cargo

declaration information to Customs 24 hours before the cargo is laden aboard the vessel at the foreign port. This modification to the program test is necessary to ensure that test participants comply with the final rule document published in the Federal Register (67 FR 66318) as Treasury Decision (T.D.) 02-62 on October 31, 2002. The final rule document, T.D. 02-62, amended the Customs Regulations principally to require that vessel cargo declaration information be presented to Customs at least 24 hours prior to lading the cargo aboard the vessel at the foreign port.

In this regard, it is noted that T.D. 02-62 expressly informed the public that the vessel paperless manifest program test would be amended by the effective date of the final rule (December 2, 2002) so as to require participants in the test to abide by the 24-hour requirement for presenting required vessel cargo declaration information to Customs (67 FR at 66324). As explained in the final rule document, such advance presentation of vessel cargo declaration information to Customs is required and urgently needed in order to enable Customs to evaluate the risk of smuggling weapons of mass destruction through the use of oceangoing cargo containers before goods are loaded on vessels at a foreign port for importation into the United States, and for enforcement of other Customs law violations.

ELECTRONIC PRESENTATION OF EMPTY CONTAINER LISTS

Vessel carriers participating in the program test must electronically transmit to Customs lists of empty containers that are carried aboard any of their vessels destined for the United States. Also, any vessel carrier participating in the test that slot charters a vessel destined for the United States must electronically transmit any required lists of empty containers carried aboard the vessel for which that carrier is responsible. It is noted that there is no requirement that a bill of lading be associated with any empty container manifesting under the program test.

Moreover, as made clear in T.D. 02-62 (67 FR at 66328), all participants in the vessel paperless manifest program test must continue to file an empty container list with Customs 48 hours prior to the arrival of the vessel in the United States.

LISTS PRESENTED THROUGH EMPTY CONTAINER MODULE OF AUTOMATED MANIFEST SYSTEM

Beginning June 2, 2003, the electronic transmission of such empty container lists to Customs must be effected through the Empty Container Module of the Customs Vessel Automated Manifest System (AMS). To successfully effect such transmissions and continue participation in this empty container manifest program, test participants using the American National Standards Institute, Accredited Standards Committee X12 (ANSI, ASCX12) electronic format must convert to the latest version of that format (4010).

INITIAL EMPTY CONTAINER LIST; RE-TRANSMITTED LISTS FOR
INTERMEDIATE PORTS

Specifically, 48 hours prior to the arrival of a vessel at the first port in the United States, the test participant, beginning June 2, 2003, must electronically transmit to Customs through the Empty Container Module an initial list of all empty containers carried aboard the vessel, regardless of their anticipated port(s) of unloading. The electronically transmitted list must also reflect the foreign port of loading of each empty container.

Furthermore, if the vessel is thereafter proceeding coastwise, within 24 hours after the time of the vessel's arrival at the first United States port, and at least two hours prior to its estimated time of arrival at the next United States port, the test participant must retransmit the empty container list indicating all empty containers remaining on board the vessel from foreign as well as those domestic containers which were laden aboard at the previous United States port and which are to be discharged either at other United States ports or at foreign destinations. This same procedure of re-transmitting an updated listing of empty containers to Customs must be repeated for each intermediate port at which the vessel calls in the United States.

In addition, if empty containers were laden aboard the vessel at any preceding United States port, the re-transmitted empty container list must reflect the specific United States port where those containers were laden and, if applicable, the domestic port where such containers are to be discharged from the vessel. To accomplish this, the Census Schedule D code for the domestic port of lading or discharge, if applicable, must be included in the re-transmitted list in connection with such containers; these codes may be found in the port record (P01/P4).

FINAL EMPTY CONTAINER LIST AFTER ARRIVAL AT
LAST UNITED STATES PORT

After the vessel has arrived at its last United States port of call and before the vessel proceeds foreign, the test participant is required to transmit a final updated empty container list that must enumerate all empty containers then aboard the vessel; and if any of those containers were laden either at any preceding United States port and/or at the last United States port of call, the final empty container list must again specify each port where such containers were laden, with reference to the Census Schedule D code for that port. Customs presumes that all the empty containers in this final listing will be carried foreign.

EXCEPTION FOR VESSEL TRANSPORTING ONLY EMPTY CONTAINERS

For any vessel destined to the United States carrying only empty containers, a test participant may transmit only one empty container list without also having to transmit the electronic equivalent of a cargo declaration for such containers; the empty container list must be transmitted 48 hours prior to the arrival of the vessel at the first port in the United States. However, if the vessel will call at multiple ports in the

United States, an electronic equivalent of a cargo declaration covering all the ports at which the vessel will call in the United States must be transmitted to Customs prior to the submission of the empty container list.

ERROR IN TRANSMITTING EMPTY CONTAINER LIST

Customs wishes to advise that if the Empty Container Module registers or detects any error or omission in connection with information transmitted for any container included on an electronic empty container list, the entire list will fail to be processed through the system. In such a case, the information for the container must be corrected or included on the list and the list re-transmitted to Customs in its entirety.

RELEASE OF EMPTY CONTAINERS UNLADEN AT A PORT

Any empty containers that are unladen at a United States port will be considered automatically released from Customs custody, unless the local Customs office indicates by physical means (by telephone or facsimile notification) that some empty containers are to be held. No electronic status notifications will be generated related to the empty container list transmitted. The AMS Empty Container Module does not allow electronic holds to be placed on empty containers.

EVALUATIONS OF CARRIER COMPLIANCE; CHECKLISTS

In implementing the program test, Customs developed a paperless manifest standards checklist for determining carrier compliance with all test parameters and operating procedures required under the program test. However, this paperless manifest standards checklist and associated reviews that were established to evaluate carrier performance in the program test are being discontinued.

Anyone interested in participating in the test should refer to the test notice published in the September 10, 1996, Federal Register for eligibility and application information.

Dated: November 26, 2002.

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, December 17, 2002 (67 FR 77318)]

**MODIFICATION, EXPANSION, AND RE-DESIGNATION OF
NATIONAL CUSTOMS AUTOMATION PROGRAM TEST OF THE
ACCOUNT-BASED DECLARATION PROTOTYPE TO FREE AND
SECURE TRADE**

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: In this notice, Customs is re-designating the National Customs Automation Program (NCAP) test of an Account-Based Declaration Prototype (NCAP/P) as the Free and Secure Trade (FAST) prototype, and modifying the importer eligibility requirements from those set forth in a notice published in the Federal Register on August 21, 1998. The FAST prototype will provide expedited processing of participants' qualifying merchandise in designated traffic lanes, provided that the merchandise is transported by certain registered highway carriers and drivers and that specified data is submitted to Customs prior to the merchandise's arrival at the border. Customs is also announcing the addition of two additional ports of entry along the Northern Border for the testing of the prototype and the suspension of prototype participation at the one port of entry along the Southern Border. Participants in the present NCAP/P test need not reapply for participation in the FAST if they are participants in the Customs Trade Partnership against Terrorism (C-TPAT) initiative. Current NCAP/P participants must continue to follow all the operational procedures of the program and will be bound by the terms and conditions found in this notice effective upon publication of this notice. Public comments concerning any aspect of this test program or procedure are solicited.

EFFECTIVE DATES: The redesignated FAST program will begin upon publication of this notice. This prototype will be tested until the Automated Commercial Environment (ACE) is completed. Applications to participate in this NCAP prototype test may be submitted at any time throughout the duration of this test. Evaluations of the prototype will occur periodically. Public comments on any aspect of the planned test must be received on or before January 1, 2003. All comments received will be part of the public record and made available to third parties upon request.

ADDRESSES: Written requests to participate in the prototype test should be sent to U.S. Customs Service, FAST Registration Office, 50 South Main Street, Suite 100R, St. Albans, Vermont 05478. Comments regarding any aspect of the test should be sent or faxed to Enrique S. Tamayo, U.S. Customs Service, 1300 Pennsylvania Avenue NW, Room 5.2A, Washington, DC 20229, telephone number: (202) 927-3112; fax number: (202) 927-1096.

FOR FURTHER INFORMATION CONTACT:

For inquiries regarding the eligibility of specific importers contact: Richard DiNucci at (202) 927-6302;

For questions on reconciliation contact: John Leonard at (202) 927-0915;

For questions on statement processing contact: Debbie Scott at (202) 927-1962;

For questions on violation billing contact: Byron Kissane at (202) 927-2148;

For questions on other aspects of the FAST Prototype contact: Daniel Buchanan at (617) 565-6236.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 27, 1997 Customs published a General Notice in the Federal Register (62 FR 14731) that announced Customs plan to conduct a test, pursuant to § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), of a planned National Customs Automation Program component (see 19 U.S.C. 1411-1414) called an account-based declaration prototype, known by the acronym NCAP/P. The NCAP/P was developed to provide the first operational demonstration of the Automated Commercial Environment (ACE), with capabilities for processing imports that would integrate the new account-based import declaration process with other aspects of the Trade Compliance process and selected features of NCAP elements of Title VI of the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057 (December 8, 1993), popularly known as the Customs Modernization Act which established the National Automation Program (NCAP) as an automated and electronic system for the processing of commercial importations. This phase of the NCAP/P test was initially limited to certain importers that imported certain merchandise by truck through three ports: Laredo, Texas; and Detroit and Port Huron, Michigan.

On August 21, 1998 Customs published another General Notice in the Federal Register (63 FR 44949) that replaced the previously published document to revise the importer eligibility requirements for participation in the NCAP/P, incorporate enhancements to reconciliation, and clarify the statement process. This second General Notice also outlined the development and evaluation methodology that would be used in the test. As with the first notice, public comments were invited on any aspect of the test. Reference to these earlier documents should be sought by importers interested in participating in this account-based declaration processing prototype, or interested in understanding the ACE Trade Compliance account-based declaration process, which includes remote location filing, statement processing, and reconciliation. Further, the information published by Customs on August 21, 1998, concerning the test development methodology, the general requirements for the prototype test, maintenance of account, misconduct procedures,

identification of the regulatory provisions suspended, and evaluating the prototype, remains the same except as provided below.

It is noted that Customs also published another document in the Federal Register concerning the NCAP/P on October 15, 1998 (63 FR 55426). That document discussed Customs plan to expand the NCAP/P to five additional ports of entry. The planned expansion to those ports has yet to occur.

Prototype Changes

This document advises the public that Customs is redesignating the NCAP/P as the Free and Secure Trade (FAST) prototype and is modifying the importer eligibility requirements to reflect the need for ensuring security while facilitating the processing of merchandise. This document also announces the addition of two additional ports of entry along the Northern Border for the testing of the prototype and the suspension of prototype participation at the one port of entry along the Southern Border. Public comments concerning any aspect of this test are solicited.

The NCAP/P is redesignated as the FAST prototype to clearly show that importers must now participate in the Customs-Trade Partnership Against Terrorism (C-TPAT) Program to participate or to continue participating in the testing of the prototype and that U.S./Canada border highway carriers and their drivers must be FAST registered. Merchandise imported by C-TPAT participating importers will also be eligible for expedited processing along the U.S./Canada border in FAST-designated traffic lanes under Pre-Arrival Processing System (PAPS) procedures, provided that the U.S./Canada border highway carriers and the drivers are FAST registered. Conveyances transporting merchandise that is comprised of both shipments of merchandise of C-TPAT-participating importers and shipments of non-C-TPAT-participating importers will not be afforded FAST-expedited processing.

The C-TPAT is a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security for the United States. Importers participate in the C-TPAT by agreeing to work with Customs in improving security procedures along the entire supply chain of the merchandise they import.

The FAST Program is a bilateral initiative between the United States and Canada to enhance the security and safety along their shared border, while also enhancing the economic prosperity of each country, by aligning, to the maximum extent possible, their customs commercial programs. A component of the Northern-border FAST Program is Highway Carriers Registration, which allows FAST-approved highway carriers and their designated drivers in possession of a valid FAST/Commercial Driver Card to use FAST-lane processing at designated ports of entry.

The PAPS (Pre-Arrival Processing System) is an automated cargo release procedure adopted by Customs that requires certain entry data generated by a carrier to be submitted to Customs prior to the arrival of the merchandise at the designated port of entry for cargo selectivity con-

cerns and utilizes barcode technology to expedite the release of those commercial shipments not selected for examination. To process a PAPS transaction, the carrier attaches a unique barcode label which consists of the carriers Standard Carrier Alpha Code (SCAC) and pro bill number to each invoice and truck manifest while the merchandise is still in Canada. This information is then transmitted to the U.S. Customs broker who prepares a Border Cargo Selectivity entry in the Automated Commercial System (ACS) before the merchandise arrives at the U.S. border. When the merchandise arrives at the U.S. border, the Customs inspector wands the barcode information which automatically retrieves the entry information from the ACS system. If no examination is needed, the Inspector releases the truck from the primary booth; thus, reducing the carrier's wait time and easing congestion at that border crossing.

For further information and application procedures regarding the C-TPAT and Northern-border FAST initiatives, and for further information regarding the PAPS procedures visit Customs website at <http://www.customs.ustreas.gov/tpatf.htm>

The importer eligibility requirements for participation in the redesignated FAST prototype are modified to reflect the need for ensuring security while facilitating the processing of properly documented merchandise. Applicants no longer have to be designated as within the top echelon of importers or import merchandise within any of the Customs Primary Focus Industry categories, but must be a participant in the C-TPAT initiative; existing NCAP/P participants must be prepared to follow all the operational procedures and will be bound by the terms and conditions found in this and the previously cited notice. Further, if the importer will be entering merchandise along the Northern border, then both the Northern-border highway carriers and their drivers must be FAST registered.

Regarding the addition of two additional ports of entry along the Northern Border for the testing of the prototype and the suspension of prototype participation at the one port of entry along the Southern Border, from the date of publication of this notice, importers may now enter merchandise for prototype processing at the Northern-border ports of:

1. Port Huron (Blue Water Bridge) and Detroit (Ambassador Bridge and/or Windsor Tunnel), Michigan;
2. Blaine, Washington; and
3. Buffalo (including the Peace Bridge and Lewiston Bridge) and Champlain, New York.

At this time, prototype processing is suspended at the Southwest-border port of entry at Laredo, Texas. Customs will consider re-establishing this prototype at the Laredo port of entry if sufficient interest is shown by the importing community.

Application for FAST

Participants in the present NCAP/P need not re-apply to participate in the FAST prototype, but must be prepared to follow all the operational procedures and will be bound by the terms and conditions found in the

previously cited notice and this notice effective upon publication of this notice and their carriers and drivers must become FAST registered by February 1, 2003 to continue receiving expedited release under FAST. For ease of reference, the application information for new applicants, is set forth in this document.

Importers who wish to participate in the FAST prototype must submit an application to the St. Albans, Vermont, Service Port at the address indicated with the following information:

A. Importer's name, address, and IRS employer identification number or social security number;

B. Names and addresses of all shippers and all sellers/vendors for the FAST prototype;

C. A listing of all the 6-digit HTS numbers under which the imported commodities will be classified;

D. The surety and surety code and the number of the continuous surety bond which will cover all cargo processed under FAST procedures. If the applicant plans to reconcile their FAST entry summaries, a commitment to file the bond rider prior to flagging underlying entry summaries for reconciliation, along with identification of the port in which the continuous bond and rider are filed must be included;

E. Names, addresses, and SCAC of truck carriers who will be transporting FAST shipments across the international borders. Note, both the highway carriers and their drivers must be FAST registered;

F. Names, addresses and filer codes of any customs brokers who will be filing data;

G. The approximate total number of entries per month expected to be processed at each of the following locations:

1. Port Huron (Blue Water Bridge) and Detroit (Ambassador Bridge and/or Windsor Tunnel), Michigan;

2. Blaine, Washington; and

3. Buffalo (including the Peace Bridge and Lewiston Bridge) and Champlain, New York;

H. Detailed description of anticipated issues and/or commodities for which the participant anticipates electing reconciliation.

I. Because the Importer Compliance Monitoring Program test was terminated on May 30, 2002 (see, Federal Register document published April 30, 2002 (67 FR 21322)) in favor of a new program called the Importer Self-Assessment (see, Federal Register document published June 17, 2002 (67 FR 41298)), the former NCAP/P requirement to furnish in the application a statement in which the applicant commits to undergo and cooperate fully with a Customs Compliance Assessment is no longer applicable.

Customs will make admissibility determinations on FAST shipments based on cargo examinations and the information supplied with the application, which will serve as a pre-filed entry for FAST purposes. Existing NCAP/P participants are not required to re-submit identification of their existing suppliers. However, the carriers and drivers employed for FAST processing under this prototype will be required to become FAST

registered for the importer to continue receiving expedited release under FAST by February 1, 2003.

Importers who submit applications to participate in the FAST will be notified in writing of their acceptance or rejection. If an applicant is denied participation, the notification letter will include the reasons for that denial. Eligible importers whose initial application is rejected may re-apply upon correction of the situation that led to the denial.

Dated: December 11, 2002.

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, December 16, 2002 (67 FR 77128)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 18, 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.

MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED MODIFICATION OF RULING LETTER CONCERNING
STATUTORY REQUIREMENTS OF 19 U.S.C. SECTION 1520(c)(1)

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

ACTION: Notice of proposed modification of ruling letter to modify a misstatement of the statutory requirements of 19 U.S.C. Section 1520(c)(1).

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a sentence in a ruling that misstated a statutory requirement of 19 U.S.C. Section 1520(c)(1). Comments are invited on the correctness of the intended actions.

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

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Duty and Refund Determination Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ada Loo, Duty and Refund Determination Branch: (202) 572-8869.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a misstatement of law, concerning the statutory requirements of 19 U.S.C. Section 1520(c)(1).

With regards to this notice, ruling letter, HQ 227822, dated February 27, 1998, concerned a petition pursuant to 19 U.S.C. Section 1520(c)(1), set forth in “Attachment A” of this document. According to this ruling, the protestant filed a petition, pursuant to 19 U.S.C. Section 1520(c)(1), seeking a refund under the Harbor Maintenance Fee (HMF) provisions (26 USC Section 4462, et seq.) which was properly denied. However, one of the statutory requirements outlined in 19 U.S.C. Section 1520(c)(1) was misstated and therefore, should be modified. Furthermore, this misstatement of the law does not affect the outcome of the ruling.

On page 3, in the fourth paragraph, the fifth sentence reads, “[o]ne of the statutory requirements for a request to reliquidate is that it must be filed within one year from the date of liquidation.” See Attachment A. This statement is misleading as to the correct procedural application of 19 U.S.C. Section 1520 (c)(1). Therefore, it is important to modify this misstatement so that the true intent of the statute is stated correctly. A request for reliquidation of entry or reconciliation can be “*brought to the attention of the Customs Service * * **” 19 U.S.C. Section 1520 (c)(1) (emphasis added), rather than being filed.

The Court of International Trade, which was formally known as the U.S. Customs Court, has held that “[t]he one year provision applies only to bringing the mistake to the attention of the customs service.” *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 68 Cust. Ct. 17, 22 (1972). As a result, a request does not have to be filed but can be made orally, so long as the request is brought to the attention of Customs within one year after the date of liquidation. Thus, the ruling should be modified to reflect the correct application of the law.

In *Hambro Automotive Corp. v. United States*, the Court disregarded the petitioner’s claims, because they failed to “bring the alleged errors

to the attention of customs in the required manner, that is to say, within the proper time and with sufficient particularity to allow remedial action." *Hambro Automotive Corp. v. United States*, 81 Cust. Ct. 29, 31 (1978), see also *United China & Glass Co. v. United States*, 66 Cust. Ct. 207. The alleged error, in this case, involved an error in the construction of the law. The failure to bring this to the attention of Customs has no effect on the decision or the analysis of the ruling because it is a harmless error. Such an error is harmless because it cannot be corrected under 19 U.S.C. §1520 (c)(1), even if the petition for the error was made timely.

Pursuant to 19 U.S.C. § 1625(c)(1), Customs intends to modify HQ 227822, by ruling HQ 229846 (See Attachment B), as appropriate, to correct the misstatement of the law, concerning the statutory requirements of 19 U.S.C. Section 1520(c)(1). Before taking this action, consideration will be given to any written comments timely received.

Dated: December 11, 2002.

WILLIAM G. ROSOFF,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 27, 1998.
LIQ-9-01/12/15 RR:CR:DR 227822 CB
Category: Liquidation

PORT DIRECTOR
U.S. CUSTOMS SERVICE
Num. 1 Puntilla Street
San Juan, PR 00901

Attn.: Protest Officer
Hampton Carter

Re: Protest and Application for Further Review No. 4909-97-100055; Harbor Maintenance Fee; Exemption; 26 U.S.C. § 4462(b)(1)(B) and (C); Mistake of Fact; 19 U.S.C. § 1520(c).

DEAR SIR/MADAM:

The above-referenced protest was forwarded to this office for a determination. We have considered the points raised and a decision follows.

Facts:

There are thirty-three entries which are the subject of this protest. The entries cover shipments of petroleum products shipped from St. Croix, U.S. Virgin Islands by Hess Oil Virgin Islands Corporation and unloaded for consumption in San Juan, Puerto Rico and consigned to protestant. All entries were liquidated with the assessment of the harbor maintenance fee (HMF). The earliest liquidation date covered by this protest is June 28, 1996, and the most recent is dated February 14, 1997.

According to the file, protestant filed a 19 U.S.C. § 1520(c)(1) petition with your office on June 26, 1997, seeking a refund of the HMF. Your denial of the petition is dated October 20,

1997. You denied the 1520(c)(1) petition on the grounds that assessment of the HMF was a mistake of law not correctable under this statutory provision. The subject protest was filed on November 6, 1997.

Protestant is seeking a refund of the HMF based on the exemption provided for in 26 U.S.C. § 4462. Protestant is alleging that (as a matter of equity), because Customs has not amended its regulations to conform with the statutory language, the period to file claims and protests against the assessment of the HMF should be extended until the applicable regulations are amended. Protestant also contends that your office's failure to correctly apply the statute is not a mistake of law. This conclusion is based on Protestant's interpretation that, because the applicable regulations have not been amended, your office correctly interpreted and applied the regulations.

Issue:

Should the subject protest be granted?

Law and Analysis:

Initially, we note that the protest, with application for further review, was timely filed under the statutory and regulatory provisions for protests (*see* 19 U.S.C. § 1514 and 19 CFR Part 174) and that the decision protested, assessment of the harbor maintenance fees, is a protestable decision (*see* 19 U.S.C. § 1514(a)(5) and 26 U.S.C. § 4462(f)). We also note that refusal to reliquidate an entry under section 1520(c) is a protestable decision under section 1514 (19 U.S.C. 1514(a)(7)).

The statutory authority for the harbor maintenance fee is found in the Water Resources Development Act of 1986 (Pub. L. 99-662; 100 Stat. 4082, 4266; 26 U.S.C. § 4461 et seq.) Under this statute, a fee is imposed for the use of a port, defined as any channel or harbor or component thereof in the United States which is not an inland waterway, is open to public navigation, and at which Federal funds have been used since 1977 for construction, maintenance, or operation. Pursuant to 26 U.S.C. § 4462(b), no tax shall be imposed with respect to—

- * * * * *
- (B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a possession for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,
 - (C) the unloading of cargo described in subparagraph (A) or (B) in Alaska, Hawaii, or any possession of the United States, or in the United States mainland, respectively,
- * * *

The Customs Regulations implementing this provision are found at 19 CFR Part 24. The applicable regulation provides that "possessions" of the United States include Puerto Rico and the U.S. Virgin Islands. *See* 19 CFR 24.24(c)(4)(ii)(C).

As indicated in the FACTS portion of this ruling, the consumption entries under protest covered merchandise loaded on a vessel in the U.S. Virgin Islands and unloaded in San Juan, Puerto Rico. Thus, both movements (i.e., the loading and unloading) are exempt from the HMF pursuant to 26 U.S.C. § 4462(b).

According to information provided by your office, the port determined that such movements between insular possessions were subject to the HMF based on your reading of the applicable regulation and required that the HMF be paid. The regulation (19 CFR 24.24(c)(4)(i)(B)) was not amended to conform to the 1988 statutory change which exempts such movements from the HMF. A regulatory provision does not override statutory language. Thus, the fact that the regulation has not been amended to include movements for ultimate consumption in an insular possession does not negate the fact that statutorily these movements are exempt from the HMF.

Having said that, we disagree with protestant's contention that the Customs officer's failure to follow 26 U.S.C. § 4462(b) is not a mistake of law. The courts have defined mistake of law as mistakes which occur " * * * where the *facts are known*, but their *legal consequences* are not known or are *believed to be different than they really are*" (*Executone Information Systems v. United States*, 96 F.3d 1383, 1386 (Fed. Cir. 1996) (emphasis in original), citing *Hambro Automotive Corporation v. United States*, 66 CCPA 113, 118, C.A.D. 1231, 603 F.2d 850 (1979); see also, *Degussa Canada Ltd. v. United States*, 87 F.3d 1301 (Fed. Cir. 1996)). The instant protest falls squarely within that definition. Customs was aware that the entries covered movements between two insular possessions but incor-

rectly believed that these movements were subject to the HMF. This is a mistake of law which is not correctable under 19 U.S.C. § 1520(c)(1).

We note that these entries were made after December 8, 1993, the date of enactment of the North American Free Trade Agreement Implementation Act (NAFTA). That Act amended the entry statute (19 U.S.C. § 1484) to require importers to use reasonable care in making entry and permitting Customs to rely on the accuracy of the information submitted by importers. See H. Rept. No. 103-361, Part 1, p. 136 (Nov. 15, 1993).

Finally, protestant contends that failure to refund these paid fees would be equivalent to compensating the government for its inaction in amending timely the Customs regulations. Equity is inapplicable in this instance. As stated by the Court of International Trade in *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517 (1985), “[a] time limitation that is a jurisdictional prerequisite is not subject to waiver or estoppel.” (citations omitted) Congress has enacted a statutory scheme within which an importer can request that Customs correct any perceived mistakes in the liquidation of an entry, i.e., through a § 1514 protest or a § 1520(c)(1) petition (except for mistakes of law). One of the statutory requirements for a request to reliquidate is that it must be filed within one year from the date of liquidation. The Customs Service **does not have any** discretionary authority to waive this statutory requirement. Thus, since neither a timely protest nor a timely petition was filed and, given our conclusion that liquidation resulted from a mistake of law, there is no relief available to protestant.

Finally, protestant contends that the erroneous deposits of the HMF were made because the ABI program was erroneous. It appears that protestant is misinformed as to the nature of the ABI filing process. The software program used by ABI filers is not provided by Customs; rather, the software is sold by private vendors. Thus, protestant is incorrect when it alleges that Customs required the payment of the HMF through the ABI program. The onus is on the ABI filer to know when it is appropriate to pay the HMF. If the software program being used by the filer requires that the HMF be calculated then it is up to the filer to discuss this problem with the software vendor.

Holding:

The subject protest against the denial of a 19 U.S.C. § 1520(c)(1) petition should be DENIED. The petition was untimely because it was not filed within the statutory time frame. Thus, the subject protest is also untimely.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be mailed by your office, with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act, and other public access channels.

WILLIAM G. ROSOFF
(for John A. Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

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

LIQ-9-01/12/15 RR:CR:DR 229846 AL
Category: Liquidation

PORT DIRECTOR
U.S. CUSTOMS SERVICE
Num. 1 Puntilla Street
San Juan, PR 00901

Attn: Protest Officer
Hampton Carter

Re: Modification of Protest and Application for Further Review No. 4909-97-100055;
Harbor Maintenance Fee; Exemption; 26 U.S.C. §4462(b)(1)(B) and (C); Mistake of
Fact; 19 U.S.C. §1520(c).

DEAR SIR/MADAM:

On February 27, 1998, our office issued a ruling letter, HQ 227822, regarding a protest and application for further review of case no. 4909-97-10055. A review of this case has revealed a misstatement of the statutory requirements of 19 U.S.C. Section 1520(c)(1). Although the holding remains the same, modifications are being made to the ruling letter to clarify any misinterpretations of the statute. Accordingly, this ruling letter sets forth the modifications of HQ 227822.

Facts:

There are thirty-three entries which are the subject of this protest. The entries cover shipments of petroleum products shipped from St. Croix, U.S. Virgin Islands by Hess Oil Virgin Islands Corporation and unloaded for consumption in San Juan, Puerto Rico and consigned to protestant. All entries were liquidated with the assessment of the harbor maintenance fee (HMF). The earliest liquidation date covered by this protest is June 28, 1996, and the most recent is dated February 14, 1997.

According to the file, protestant filed a 19 U.S.C. § 1520(c)(1) petition with your office on June 26, 1997, seeking a refund of the HMF. Your denial of the petition is dated October 20, 1997. You denied the 1520(c)(1) petition on the grounds that assessment of the HMF was a mistake of law not correctable under this statutory provision. The subject protest was filed on November 6, 1997.

Protestant is seeking a refund of the HMF based on the exemption provided for in 26 U.S.C. § 4462. Protestant is alleging that (as a matter of equity), because Customs has not amended its regulations to conform with the statutory language, the period to file claims and protests against the assessment of the HMF should be extended until the applicable regulations are amended. Protestant also contends that your office's failure to correctly apply the statute is not a mistake of law. This conclusion is based on Protestant's interpretation that, because the applicable regulations have not been amended, your office correctly interpreted and applied the regulations.

Issue:

Should the subject protest be granted?

Law and Analysis:

Initially, we note that the protest, with application for further review, was timely filed under the statutory and regulatory provisions for protests (see 19 U.S.C. § 1514 and 19 CFR Part 174) and that the decision protested, assessment of the harbor maintenance fees, is a protestable decision (see 19 U.S.C. § 1514(a)(5) and 26 U.S.C. § 4462(f)). We also note that refusal to reliquidate an entry under section 1520(c) is a protestable decision under section 1514 (19 U.S.C. 1514(a)(7)).

The statutory authority for the harbor maintenance fee is found in the Water Resources Development Act of 1986 (Pub. L. 99-662; 100 Stat. 4082, 4266; 26 U.S.C. § 4461 et seq.) Under this statute, a fee is imposed for the use of a port, defined as any channel or harbor or component thereof in the United States which is not an inland waterway, is open to public navigation, and at which Federal funds have been used since 1977 for construction,

maintenance, or operation. Pursuant to 26 U.S.C. § 4462(b), no tax shall be imposed with respect to—

- * * * * *
- (B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a possession for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,
- (C) the unloading of cargo described in subparagraph (A) or (B) in Alaska, Hawaii, or any possession of the United States, or in the United States mainland, respectively,
- * * *

The Customs Regulations implementing this provision are found at 19 CFR Part 24. The applicable regulation provides that “possessions” of the United States include Puerto Rico and the U.S. Virgin Islands. See 19 CFR 24.24(c)(4)(ii)(C).

As indicated in the FACTS portion of this ruling, the consumption entries under protest covered merchandise loaded on a vessel in the U.S. Virgin Islands and unloaded in San Juan, Puerto Rico. Thus, both movements (i.e., the loading and unloading) are exempt from the HMF pursuant to 26 U.S.C. § 4462(b).

According to information provided by your office, the port determined that such movements between insular possessions were subject to the HMF based on your reading of the applicable regulation and required that the HMF be paid. The regulation (19 CFR 24.24(c)(4)(i)(B)) was not amended to conform to the 1988 statutory change which exempts such movements from the HMF. A regulatory provision does not override statutory language. Thus, the fact that the regulation has not been amended to include movements for ultimate consumption in an insular possession does not negate the fact that statutorily these movements are exempt from the HMF.

Having said that, we disagree with protestant’s contention that the Customs officer’s failure to follow 26 U.S.C. § 4662(b) is not a mistake of law. The courts have defined mistake of law as mistakes which occur “* * * where the facts are known, but their legal consequences are not known or are believed to be different than they really are” (*Executone Information Systems v. United States*, 96 F. 3d 1383, 1386 (Fed. Cir. 1996) (emphasis in original), citing *Hambro Automotive Corporation v. United States*, 66 CCPA 113, 118, C.A.D. 1231, 603 F. 2d 850 (1979); see also, *Degussa Canada Ltd. v. United States*, 87 F. 3d 1301 (Fed. Cir. 1996)). The instant protest falls squarely within that definition. Customs was aware that the entries covered movements between two insular possessions but incorrectly believed that these movements were subject to the HMF. This is a mistake of law which is not correctable under 19 U.S.C. § 1520(c)(1).

We note that these entries were made after December 8, 1993, the date of enactment of the North American Free Trade Agreement Implementation Act (NAFTA). That Act amended the entry statute (19 U.S.C. § 1484) to require importers to use reasonable care in making entry and permitting Customs to rely on the accuracy of the information submitted by importers. See H. Rept. No. 103-361, Part 1, p. 136 (Nov. 15, 1993).

Finally, protestant contends that failure to refund these paid fees would be equivalent to compensating the government for its inaction in amending timely the Customs regulations. Equity is inapplicable in this instance. As stated by the Court of International Trade in *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517 (1985), “[a] time limitation that is a jurisdictional prerequisite is not subject to waiver or estoppel.” (citations omitted) Congress has enacted a statutory scheme within which an importer can request that Customs correct any perceived mistakes in the liquidation of an entry, i.e., through a §1514 protest or a §1520(c)(1) petition (except for mistakes of law). One of the statutory requirements for a request to reliquidate is that it must be brought to the attention of Customs within one year from the date of liquidation. The Customs Service does not have any discretionary authority to waive this statutory requirement. Thus, since neither a timely protest nor a timely petition was filed and, given our conclusion that liquidation resulted from a mistake of law, there is no relief available to protestant.

Finally, protestant contends that the erroneous deposits of the HMF were made because the ABI program was erroneous. It appears that protestant is misinformed as to the nature of the ABI filing process. The software program used by ABI filers is not provided by Customs; rather, the software is sold by private vendors. Thus, protestant is incorrect when it alleges that Customs required the payment of the HMF through the ABI program. The onus is on the ABI filer to know when it is appropriate to pay the HMF. If the software

program being used by the filer requires that the HMF be calculated then it is up to the filer to discuss this problem with the software vendor.

Holding:

The subject protest against the denial of a 19 U.S.C. § 1520(c)(1) petition should be DENIED. The petition was untimely because it was not filed within the statutory time frame. Thus, the subject protest is also untimely.

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

PROPOSED REVOCATION AND MODIFICATION OF RULING
LETTERS AND TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF WOMEN'S KNIT GARMENTS

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

ACTION: Notice of proposed revocation of one tariff classification ruling letter and proposed modification of one tariff classification ruling letter and treatment relating to the classification of women's knit garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling and modify one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain women's knit garments. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

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

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke one ruling and modify one ruling relating to the tariff classification of certain women’s knit garments. Although in this notice Customs is specifically referring to two New York Ruling Letters, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs 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 of the same or similar merchandise, or the importer’s or Customs previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer’s failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

In New York Ruling Letter (NY) I84948, dated August 26, 2002, the Customs Service classified five styles of women’s knit garments under heading 6110, HTSUSA, which provides for “sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or cro-

cheted.” In NY H87322, dated February 15, 2002, the Customs Service classified four out of five styles of women’s knit garments under heading 6104, HTSUSA, which provides for “Women’s * * * dresses.” NY I84948 is set forth as “Attachment A” and NY H87322 is set forth as “Attachment B” to this document.

It is now Customs determination that the proper classification for the women’s knit garment is heading 6108, HTSUSA, which provides for “Women’s or girls’ slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted.” Proposed Headquarters Ruling Letter (HQ) 965874 revoking NY I84948 and modifying NY H87322 is set forth as “Attachment C” to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I84948 and modify NY H87322 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analyses set forth in Proposed HQ 965874, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 12, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, August 26, 2002.
CLA-2-61:RR:NC:TA: 359 I84948
Category: Classification
Tariff No. 6110.20.2075 and 6110.30.3055

MS. AMANDA WILSON
DILLARD’S, INC.
CUSTOMS COMPLIANCE DEPT.
*1600 Cantrell Road
Little Rock, AR 72201*

Re: The tariff classification of five women’s knit garments from Macau.

DEAR MS. WILSON:

In your letter dated August 7, 2002, you requested a tariff classification ruling.

You submitted five samples of women’s knit garments. The outer surface of each of the five garments measures more than 9 stitches per 2 centimeters in the horizontal direction. Each of the five garments extends from the shoulder to the mid-thigh area. Style S31DW270 is a 100% cotton, sleeveless pullover that features a scoop neckline, 2 side slits, and a hemmed bottom.

Style S31DW271 is a 55% cotton, 45% polyester cardigan that features a hood, short hemmed sleeves, a full front opening with a zipper closure, 2 side seam pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW272 is a pullover that is constructed from 100% polyester, openwork net fabric. The garment features a round neckline with a V-front, long hemmed sleeves, 2 side seam pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW279 is a cardigan that is constructed from 100% polyester, openwork net fabric. The garment features a hood, long hemmed sleeves, a full front opening with a zipper closure, front pouch pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW384 is a pullover that is constructed from 60% cotton, 40% polyester openwork, net fabric. The garment features a V-neckline, short hemmed sleeves, and a hemmed bottom. Your samples are being returned as requested.

The applicable subheading for styles S31DW270, S31DW271, and S31DW384 will be 6110.20.2075, Harmonized Tariff Schedule of the United States (HTS), which provides for sweaters, pullovers * * * and similar articles, knitted: of cotton: other * * * other: women's. The duty rate will be 17.3% ad valorem.

The applicable subheading for styles S31DW272 and S31DW279 will be 6110.30.3055, which provides for sweaters, pullovers * * * and similar articles, knitted: of man made fibers: other * * * other: women's. The duty rate will be 32.4% ad valorem.

Styles S31DW270, S31DW271 and S31DW384 fall within textile category designation 339. Styles S31DW272 and S31DW279 fall in category 639. Based upon international textile trade agreements products of Macau are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Mike Crowley at 646-733-3049.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

New York, NY, February 15, 2002.

CLA-2-61:RR:NC:TA:359 H87322

Category: Classification

Tariff No. 6104.42.0010,

6104.43.2010 and 6108.91.0030

MS. RITA PITTS
DILLARD'S, INC.
1600 Cantrell Road
Little Rock, AR 72201

Re: The tariff classification of five women's garments from Macau.

DEAR MS. PITTS:

This letter replaces New York Ruling Letter (NYRL) **NY H87034** that was issued to you on January 16, 2002. In your letter dated January 25, 2002 you state that the fiber content

for styles S21DW317 and S21DW318 have been changed from 100% polyester to 60% cotton, 40% polyester. Please see change below.

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

You submitted five samples of women's knitted garments. Style S21DW310 is a 55% cotton, 45% polyester, jacquard knit robe that extends from the shoulders to the mid-thigh area. The robe features a hood, short hemmed sleeves, a full front opening with a zipper closure, 2 front patch pockets below the waist, and a hemmed bottom.

Style number S21DW311 is a 55% cotton, 45% polyester, jacquard knit sleeveless dress that extends from the shoulders to the mid-thigh area. The dress features a round neckline, a full front opening with a zipper closure, 2 sideseam pockets below the waist, and a hemmed bottom.

Style number S21DW316 is a 100% polyester, openwork, knit sleeveless tank-style dress that extends to the mid-thigh area. The dress features shoulder straps, a scoop neck and a scoop back, and a hemmed bottom.

Style number S21DW317 is a 60% cotton, 40% polyester, openwork knit dress that extends to the mid-thigh area. The dress features a round neckline, short hemmed sleeves, a full front opening with a zipper closure, 2 front patch pockets below the waist, 2 side slits, and a hemmed bottom.

Style number S21DW318 is a 60% cotton, 40% polyester, openwork knit dress that extends to the mid-thigh area. The dress features a V-neckline and short sleeves.

Your samples are being returned as requested.

The applicable subheading for style S21DW310, the robe, will be 6108.91.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for women's slips * * * nightdresses * * * bathrobes * * * and similar articles, knitted: other: of cotton: other: women's. The duty rate will be 8.6% ad valorem.

The applicable subheading for styles S21DW311, S21DW317 and S21DW318, the cotton dresses, will be 6104.42.0010, which provides for women's dresses, knitted: of cotton: women's. The duty rate will be 11.6% ad valorem.

The applicable subheading for style S21DW316, the polyester dress, will be 6104.43.2010, which provides for women's dresses, knitted: of synthetic fibers: other: women's. The duty rate will be 16.2% ad valorem.

The robe falls within textile category designation 350. The cotton dresses fall in category 336. The polyester dress falls in category 636. Based upon international textile trade agreements products of Macau (cat. 350) are not subject to quota nor the requirement of a visa. Categories 336 and 636 are subject to quota and visa requirements.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Mike Crowley at 646-733-3049.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
 Washington, DC.
 CLA-2-61:RR:CR:TE ttd
 Category: Classification
 Tariff No. 6108.91.0030 and 6108.92.0030

MS. AMANDA WILSON
 DILLARD'S, INC.
 CUSTOMS COMPLIANCE DEPT.
 1600 Cantrell Road
 Little Rock, AR 72201

Re: Revocation of New York Ruling Letter (NY) I84948, Dated August 26, 2002; Modification of H87322, dated February 15, 2002; Classification of Women's Knit Garments.

DEAR MS. WILSON:

This is in response to your letter of August 30, 2002, requesting reconsideration of New York Ruling Letter (NY) I84948, regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain women's knit garments. After review of NY I84948, Customs has determined that the classification of the merchandise considered under heading 6110, HTSUSA, was incorrect. In addition, after reviewing NY H87322, also issued to your company, we have concluded that the classification of similar merchandise in heading 6104, HTSUSA, was partially incorrect. For the reasons that follow, this ruling revokes NY I84948 and modifies, in part, NY H87322. Samples were submitted.

Facts:

In I84948, dated August 26, 2002, five styles of women's knit garments were classified under heading 6110, HTSUSA, which provides for, *inter alia*, sweaters, pullovers * * * and similar articles, knitted. The items were described as follows:

The outer surface of each of the five garments measures more than 9 stitches per 2 centimeters in the horizontal direction. Each of the five garments extends from the shoulder to the mid-thigh area. **Style S31DW270** is a 100% cotton, sleeveless pullover that features a scoop neckline, 2 side slits, and a hemmed bottom.

Style S31DW271 is a 55% cotton, 45% polyester cardigan that features a hood, short hemmed sleeves, a full front opening with a zipper closure, 2 side seam pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW272 is a pullover that is constructed from 100% polyester, openwork net fabric. The garment features a round neckline with a V-front, long hemmed sleeves, 2 side seam pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW279 is a cardigan that is constructed from 100% polyester, openwork net fabric. The garment features a hood, long hemmed sleeves, a full front opening with a zipper closure, front pouch pockets in the waist area, 2 side slits, and a hemmed bottom.

Style S31DW384 is a pullover that is constructed from 60% cotton, 40% polyester openwork, net fabric. The garment features a V-neckline, short hemmed sleeves, and a hemmed bottom.

In NY H87322, dated February 15, 2002, four styles of women's knit garments (S21DW311, S21DW317 S21DW318 and S21DW316) were classified in heading 6104, HTSUSA, which provides for, *inter alia*, knitted women's dresses. One style (S21DW310) was classified in heading 6108, HTSUSA, which provides for women's slips * * * night-dresses * * * bathrobes * * * and similar articles, knitted. The articles were described as follows:

Style S21DW310 is a 55% cotton, 45% polyester, jacquard knit robe that extends from the shoulders to the mid-thigh area. The robe features a hood, short hemmed sleeves, a full front opening with a zipper closure, 2 front patch pockets below the waist, and a hemmed bottom.

Style number S21DW311 is a 55% cotton, 45% polyester, jacquard knit sleeveless dress that extends from the shoulders to the mid-thigh area. The dress features a round neckline, a full front opening with a zipper closure, 2 side seam pockets below the waist, and a hemmed bottom.

Style number S21DW316 is a 100% polyester, openwork, knit sleeveless tank-style dress that extends to the mid-thigh area. The dress features shoulder straps, a scoop neck and a scoop back, and a hemmed bottom.

Style number S21DW317 is a 60% cotton, 40% polyester, openwork knit dress that extends to the mid-thigh area. The dress features a round neckline, short hemmed sleeves, a full front opening with a zipper closure, 2 front patch pockets below the waist, 2 side slits, and a hemmed bottom.

Style number S21DW318 is a 60% cotton, 40% polyester, openwork knit dress that extends to the mid-thigh area. The dress features a V-neckline and short sleeves.

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (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 Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

Following GRI 1, there are three headings under consideration: heading 6104, HTSUSA, which provides for, *inter alia*, women’s knitted dresses; heading 6110, HTSUSA, which provides for, *inter alia*, women’s knitted sweaters, pullovers and similar articles; and heading 6108, HTSUSA, which provides for, *inter alia*, women’s knitted bathrobes, dressing gowns, and similar articles.

Heading 6104, HTSUSA, provides for, among other things, knit dresses. In Headquarters Ruling Letter (HQ) 958741, dated March 28, 1996, Customs found that the garment considered was more casual than what is generally considered a dress. We noted that the cut and styling of the submitted garment was significantly different than most garments commonly recognized in the trade as dresses. Weighing the characteristics of the garment in HQ 958741, we concluded that it was “too relaxed in both cut and style, lacking in structure and coverage, to be worn alone as a dress.”

In this case, in NY H87322, Customs incorrectly classified four of the subject styles, identified as S21DW311, S21DW316, S21DW317, and S21DW318, under heading 6104, HTSUSA, as women’s dresses. After further review of each of the submitted samples, we now find that three of those styles (S21DW317, S21DW318, and S21DW316), like the garment considered in HQ 958741, lack the appropriate structure and coverage to be worn alone as a dress. In particular, the three styles, identified as S21DW316, S21DW317 and S21DW318, each features a see-through open-work knit construction which fails to conceal undergarments like a dress. Moreover, we have determined that style S21DW311, while it could be worn as a dress, such a use would be fugitive to its intended use as a beach cover-up. Like the garment considered in HQ 958741, each of the subject articles is “too relaxed in both cut and style, lacking in structure and coverage, to be worn alone as a dress.” Accordingly, these four articles are not classifiable in heading 6104, HTSUSA, as women’s dresses.

Heading 6110, HTSUSA, covers “[s]weaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted.” A recent informed compliance publication on apparel terminology describes sweaters as:

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 any 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 or partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9th and 10th 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.

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, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 (*Guidelines*) is appropriate in this case. 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. The *Guidelines* provide a similar description for sweaters. Notably, the *Guidelines* indicate that garments commercially known as sweaters or pullovers cover the upper body from the neck or shoulders to the waist or below. The EN to heading 6110, HTSUSA, also indicate that the heading covers garments designed to cover the upper parts of the body.

In NY I84948, dated August 26, 2002, Customs classified five styles of women’s garments, identified as S31DW270, S31DW271, S31DW272, S31DW279 and S31DW384, as sweater-like cardigans and pullovers of heading 6110, HTSUSA. Regarding the classification of the garments considered in NY I84948 as being similar to sweaters, we disagree. The garments lack the general appearance of sweaters and are not commercially recognized as sweaters. Merely because they cover the upper body and are worn as outer-garments (in this case, over swimwear) does not make them classifiable as a sweater. As the articles lack the general characteristics of the garments of heading 6110, HTSUSA, they are not classifiable as sweaters and similar articles.

Heading 6108, HTSUSA, provides for “Women’s or girls’ slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted.” The EN provide the following relevant guidance as to the scope of heading 6108:

This heading covers two separate categories of knitted or crocheted clothing for women or girls, namely * * * and nightdresses, pyjamas, negliges, bathrobes (including beachrobes), dressing gowns and similar articles.

The *Guidelines* state the following to describe the characteristics of dressing gowns, which include bath robes, beach robes, lounging robes and similar apparel:

Physical characteristics which are expected in garments included in this category include:

- 1) Looseness.
- 2) Length, reaching to the mid-thigh or below.
- 3) Usually a full or partial opening, with or without a means of closure.
- 4) Sleeves are usually, but not necessarily, present.

In HQ 964641, dated May 21, 2001, Customs stated the following:

“beachrobes,” included in the parenthetical following bathrobes, have the same features and functions as bathrobes, although they are worn in a different setting. They are designed to be worn after the wearer has been in the water. They absorb water, provide warmth, protect the body, and cover the body for modesty purposes.

In HQ 088266, dated March 22, 1991, Customs classified a women’s knit cover-up in subheading 6108.91.0030, HTSUSA. The garment considered was designed as loose fitting, with short sleeves, and extended from the shoulder to the mid-thigh or below. Notwithstanding that the garment lacked a full or partial opening, we determined that it was properly classified in heading 6108, HTSUSA, as a beach cover-up. In that ruling, we noted that the full or partial opening characteristic is prefaced with the term “usually” which meant it was not absolutely required.

Customs indicated in HQ 962385, dated July 27, 1999, that a crucial factor in the classification of a garment is the garment itself. See HQ 962385 wherein Customs classified a women’s robe in heading 6108, HTSUSA. As stated in *Mast Industries v. United States*, 9 CIT 549, 552 (1985), aff’d, 786 F. 2d 1144 (1986), at 552, “the merchandise itself may be strong evidence of use.” When presented with a garment which is ambiguous in appearance, Customs looks 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. In HQ 962385, we noted that these factors should be considered in totality and that no one factor is determinative of classification.

In this case, the subject garments are recognizable as beach cover-ups. They are designed as loose fitting, with either long-sleeves, short-sleeves or no sleeves at all, and extend from the shoulder to the mid-thigh. Accordingly, the simple design, looseness and length of each of the garments under consideration are typical features of beach cover-up garments. Moreover, the subject garments are designed to be worn after the wearer has been in the water and protect the body and cover the body for modesty purposes. To varying degrees, each robe also serves to absorb water and provide warmth, regardless of the fact that none are made of terry cloth material. In addition, the submitted hangtags and design specifications for the garments indicate that they will be marketed and sold exclusively as beach cover-ups. Notably, the court in *Mast Industries* observed that most consumers use a garment in the manner in which it is marketed. Therefore, we find it unlikely that the subject garments will be principally used as something other than beach cover-ups. Therefore, like the garment in HQ 088266, the subject garments are properly classified in heading 6108, HTSUSA, as beach cover-ups. This finding is consistent with NY H80783, dated June 20, 2001, wherein Customs classified similar beach robes under heading 6108, HTSUSA. See also HQ 964641, dated May 21, 2001 and HQ 962385, dated July 27, 1999.

Holding:

The styles identified as S21DW311, S21DW317, S21DW318, S31DW270, S31DW271 and S31DW384 are classified under subheading 6108.91.0030, HTSUSA, which provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of cotton, Other: Women's." The general column one duty rate is 8.6 percent *ad valorem* and the items fall within textile category designation 350.

The styles identified as S31DW272, S31DW279 and S21DW316 are classified under subheading 6108.92.0030, HTSUSA, which provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of man-made fibers, Other: Women's." The general column one duty rate is 16.2 percent *ad valorem* and the items fall within textile category designation 650.

NY I84948 is hereby REVOKED. NY H87322 is hereby MODIFIED, in part.

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

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

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

PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN
INK JET COLOR PREPARATION

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to tariff classification of an ink jet color preparation.

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 proposing to revoke three rulings pertaining to the tariff classification of an ink jet color preparation under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is proposing to revoke any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

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

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as

amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the tariff classification of an ink jet color preparation. Although in this notice Customs is specifically referring to three rulings (HQ 962365, HQ 962918 and HQ 964191), 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 three 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 HQ 962365 and HQ 962918, dated April 28, 2000, and HQ 964191, dated May 24, 2000 (Attachments A-C, respectively), Customs directed three ports to reclassify "Pro-Jet Fast Yellow 2 RO Feed," a color preparation for ink jet printing as printing ink of heading 3215, HTSUS, based on a determination that ink jet printing ink did not require a traditional ink binder. It is now Customs position that that product in its condition as imported is not classifiable as a printing ink because it requires a degree of post-importation processing which exceeds the simple dilution or dispersion described in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to that heading before it is ready for use.

The instant product requires the same post-importation processing before it is passed to consumers as "Pro-Jet Fast Cyan 2 Stage" and "Pro-Jet Cyan 1 Press Paste," substantially similar products Customs classified as color preparations of heading 3204, HTSUS, in HQ 965614

and HQ 965615, dated September 30, 2002, respectively. It would be incongruous to maintain the instant product's classification in heading 3215, HTSUS, while substantially similar products requiring the same post-importation processing are classified in heading 3204, HTSUS, as color preparations. As such, the instant product is classifiable in sub-heading 3204.14.00, HTSUS, which provides for "Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined: synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter: direct dyes and preparations based thereon: other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 962365, HQ 962918, HQ 964191 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966036 (Attachment D). 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: December 16, 2002.

JAMES A. SEAL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, April 28, 2000.
CLA-2 RR:CR:GC 962365 MGM
Category: Classification
Tariff No. 3215.19.00

PORT DIRECTOR
U.S. CUSTOMS SERVICE
*2nd & Chestnut Sts.
Philadelphia, PA 19106*

Re: Protest 1101-98-100179; "ProJet Fast Yellow 2" Coloring Preparation for Inkjet Printers

DEAR PORT DIRECTOR:

This is our decision regarding Protest 1101-98-100179, concerning your classification of colorant for inkjet printers under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The instant merchandise, traded as “ProJet Fast Yellow 2,” consists of a dye and certain other additives in an aqueous medium made up of water and organic solvent. It is used in inkjet printers. The merchandise differs from traditional inks in that it does not include a binder. The product is described in Patent # 5,374,301, issued December 20, 1994, entitled “Inks Suitable for Use in Ink Jet Printing.”

The merchandise was entered in November 1997, under subheading 3204.12.30, HTSUS, which provides for preparations based on synthetic organic coloring matter. The entries were liquidated on September 25 and October 2, 1998, with classification as entered. The liquidation of these entries was timely protested on October 21, 1998. In a submission which accompanied the protest, the protestant argues against the entered classification in heading 3204, HTSUS, and in favor of classification in heading 3215, HTSUS, which provides for printing ink and other inks.

Issue:

Is the described merchandise an “ink” of heading 3215, HTSUS?

Law and Analysis:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The merchandise was classified in heading 3204, HTSUS, upon liquidation. This heading provides for “Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter. * * *” Note 3 to Chapter 32 states that heading 3204 applies also to preparations based on coloring matter of a kind used for coloring any material or used as ingredients in the manufacture of coloring preparations. Note 3 to Chapter 32 further states that heading 3204 does not apply to preparations of heading 3215, HTSUS. Thus, if the merchandise is an ink of heading 3215, it cannot be classified as a preparation based on synthetic organic coloring matter of heading 3204.

Heading 3215, HTSUS, provides for “Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid.” The term “ink” is not defined in the HTSUS, however, it has been judicially construed. In *Corporacion Sublistatica, S.A. v. U.S.*, decided under the Tariff Schedules of the United States (TSUS), predecessor to the HTSUS, the Court of International Trade (CIT) held that gravure ink was defined as containing “a colorant, consisting of a pigment or a dye, a binder and a solvent.” *Corporacion Sublistatica, S.A. v. U.S.*, 1 Ct. Int’l Trade 120, 124, 511 F.Supp. 805, 808 (1981). In a subsequent case, also decided under the TSUS, the CIT stated that “inks contain colorants, binders and solvents.” *BASF Wyandotte Corp. v. U.S.*, 11 Ct. Int’l Trade 652, 656, 674 F.Supp 1477, 1480 (Ct. Int’l Trade 1987), *aff’d* 6 Fed. Cir. (T) 164, 855 F.2d 852 (1988) (where an expert witness “utilized this definition in his testimony and recognized it as a long-standing printing industry definition.”). In a third TSUS case, which pertained to the classification of toner and developer used in printing, the CIT stated “plaintiff is unable to distinguish the clear and categorical definition of ink established by this court in *Corporacion Sublistatica, S.A. v. United States*.” *Tomoeogawa USA, Inc. v. United States*, 12 Ct. Int’l Trade 112, 117, 681 F.Supp. 867, 870–1 (1988).

The CIT has also held that powders which contain colorants and binders, but not solvents, were classified as “ink powders,” rather than as dyes. *Corporacion Sublistatica, S.A. v. U.S.* Thus, under the TSUS, a colorant preparation (either pigment or dye) was considered an ink or ink powder if a binder were present, and other than an ink or ink powder

if no binder were present. “A binder for printing inks is defined as a solid substance that is soluble in an oil or in a solvent * * *[t]he binder derives its name from the fact that it binds the pigments to the surface printed.” Larsen, *Industrial Printing Inks*, Reinhold Publishing Corp., 1962, at 84–5. This definition of “ink” has been followed by Customs in determining the scope of heading 3215, HTSUS. See **HQ 953655**, dated March 3, 1995; **HQ 954611**, dated January 12, 1995; **HQ 956158**, dated July 27, 1995; **HQ 956976**, dated March 7, 1995.

The present situation differs from that addressed in previous cases in that there have been technical advances in the formulation of ink used in inkjet printers. Traditional inks used a binder to affix colorant particles to a substrate (typically paper). The “ProJet Fast Yellow 2” coloring preparation achieves the same end by using a dye that is soluble in an alkaline aqueous medium, but less soluble on paper, which tends to be acidic. Thus the “ProJet Fast Yellow 2” coloring preparation adheres to paper without a traditional binder. The tariff classification of a product of this nature has not before been addressed by Customs.

Counsel for protestant argues that “ProJet Fast Yellow 2” coloring preparation should be classified as an ink because it functions in the manner of an ink and is sold as an ink. It is an established principle of tariff classification that “tariff acts are made not only for the present but also for the future, thereby embracing articles produced by technologies which may not have been employed or known to comm[e]rce at the time of the enactment of the original provision.” *Sublistatica* at 809. This principle was applied in the *BASF* case where the court stated that the merchandise in question did “not appear to have been specifically contemplated by the drafters of the TSUS. Nonetheless, as is usual in tariff classification, if [the preparations] fit the definition of either inks or dyes they will be classified as such.” *BASF* at 1480. In the case at hand, the merchandise is traded in commerce in the same manner as traditional inks. Further, it possesses chemical functional groups which serve to bind the colorant to the substrate and allow the merchandise to act as an ink. That is, the function of a binder is achieved despite the absence of a separate compound dedicated to this role. Accordingly, the instant merchandise should be classified as an ink of heading 3215, HTSUS.

Within heading 3215, HTSUS, there are subheadings for “[p]rinting ink” and “[o]ther” than printing ink. As “ProJet Fast Yellow 2” is designed solely for use in inkjet printers, it is classified as a “printing ink.” Within the subheading for “[p]rinting ink” are provisions for black printing ink and printing inks which are other than black. As the instant merchandise is yellow in color, it is classified as other than black and falls to subheading 3215.19.00, HTSUS.

Holding:

“ProJet Fast Yellow 2” is classified in subheading 3215.19.00, HTSUS. Since reclassification of the merchandise as indicated above will result in a lower rate of duty than claimed, you should allow the protest.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 28, 2000.
CLA-2 RR:CR:GC 962918 MGM
Category: Classification
Tariff No. 3215.19.00

PORT DIRECTOR
U.S. CUSTOMS SERVICE
200 Granby St.
Ste. 839
Norfolk, VA 23510

Re: Protest 1401-98-100063; "ProJet Fast Yellow 2" Coloring Preparation for Inkjet Printers.

DEAR PORT DIRECTOR:

This is our decision regarding Protest 1401-98-100063, concerning your classification of colorant for inkjet printers under the Harmonized Tariff Schedule of the United States (HTSUS).

The merchandise was entered in June and July of 1997, under subheading 3204.12.30, HTSUS, which provides for preparations based on synthetic organic coloring matter. The entries were liquidated in May of 1998, with classification as entered. The liquidation of these entries was timely protested on June 18, 1998. In a submission which accompanied the protest, the protestant argues against the entered classification in heading 3204, HTSUS, and in favor of classification in heading 3215, HTSUS, which provides for printing ink and other inks.

In **Headquarters Ruling Letter 962365** of this date, this office issued a ruling upon identical merchandise. That ruling, copy attached, sets forth our analysis of the merchandise and an explanation of our application of the relevant provisions of the HTSUS to such merchandise.

Holding:

"ProJet Fast Yellow 2" is classified in subheading 3215.19.00, HTSUS. Since reclassification of the merchandise as indicated above will result in a lower rate of duty than claimed, you should allow the protest.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 24, 2000.
CLA-2 RR:CR:GC 964191 MGM
Category: Classification
Tariff No. 3215.19.00

PORT DIRECTOR
PORT OF NEW YORK
C/O CHIEF, RESIDUAL LIQUIDATION AND PROTEST BRANCH
Room 761
U.S. Customs Service
6 World Trade Center
New York, NY 10048

Re: Protest 1001-99-102017; "ProJet Fast Yellow 2" Coloring Preparation for Inkjet Printers.

DEAR PORT DIRECTOR:

This is our decision regarding Protest 1001-99-102017, concerning your classification of colorant for inkjet printers under the Harmonized Tariff Schedule of the United States (HTSUS).

The merchandise was entered in March and April of 1998, under heading 3204, HTSUS, which provides for preparations based on synthetic organic coloring matter. The entries were liquidated in January and March of 1999, with classification as entered. The liquidation of these entries was timely protested on April 21, 1999. In a submission which accompanied the protest, the protestant argues against the entered classification in heading 3204, HTSUS, and in favor of classification in heading 3215, HTSUS, which provides for printing ink and other inks.

In **Headquarters Ruling Letter 962365** of April 28, 2000, this office issued a ruling upon identical merchandise. That ruling, copy attached, sets forth our analysis of the merchandise and an explanation of our application of the relevant provisions of the HTSUS to such merchandise.

Holding:

"ProJet Fast Yellow 2" is classified in subheading 3215.19.00, HTSUS. Since reclassification of the merchandise as indicated above will result in a lower rate of duty than claimed, you should allow the protest.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

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

CLA-2: RR:CR:GC 966036 DBS
Category: Classification
Tariff No. 3204.14.00

MR. ALEXANDER H. SCHAEFER
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20005

Re: Printing ink; Pro-Jet Fast Yellow 2 RO Feed color preparation; HQ 962365, HQ 962918 and HQ 964191 revoked.

DEAR MR. SCHAEFER:

On April 28, 2000, this office issued HQ 962365, our decision on the Application for Further Review of Protest # 1101-98-100179, which reclassified a color preparation for ink jet printers as a printing ink under heading 3215, Harmonized Tariff Schedule of the United States (HTSUS). We recently issued HQ 965614 (copy enclosed) and 965615, dated September 30, 2002, to you on behalf of your client, Avecia Inc. who filed Protest # 1101-98-100179 on products substantially similar to the product at issue in the protest. Those products were determined to be classifiable not as printing inks, but as color preparations of heading 3204, HTSUS. In light of this outcome, we have reconsidered HQ 962365 and determined the classification to be incorrect.

HQ 962918, dated April 28, 2000, answering the Application for Further Review of Protest # 1401-98-100063, and HQ 964191, dated May 24, 2000, answering the Application for Further Review of Protest # 1001-99-102017, addressed the identical product, imported at different ports. Copies of this letter will be forwarded to all three ports.

Facts:

The imported product, "Pro-Jet Fast Yellow 2 RO Feed" ("Fast Yellow 2"), consists of a dye and certain other additives in an aqueous medium made up of water and organic solvent. It is used in inkjet printers. Aqueous ink jet systems require specific ink properties to be present for the machinery to work optimally and for the ink and substrate to bond properly. Ink jet ink is distinguishable from traditional ink by its purity. It cannot contain extraneous material that may clog the fine printhead nozzles of an ink jet printer.

"Fast Yellow 2" is a mixture of an anionic water-soluble dye in an aqueous vehicle. No binder is present because after the dye mixture penetrates ink jet media (plain paper or special media), elements present in the mixture cause it to "lock" into plain paper or bond to special media by interacting with the chemical qualities of that substrate.

A sample of "Fast Yellow 2" was provided to the Customs laboratory in conjunction with samples of the products at issue in HQ 964614 and HQ 965615. Lab analysis showed that "Fast Yellow 2" was imported in a condition substantially similar to those in the aforementioned prospective rulings issued by this office.

Issue:

Whether "Fast Yellow 2" is a preparation based on a dye of heading 3204, HTSUS, or a printing ink of heading 3215, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Cus-

toms 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:

3204	Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined: Synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter:
3204.14	Direct dyes and preparations based thereon:
3204.14.30	Other
*	* * * * *
3215	Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid: Printing ink: Other
3215.19.00	Other

In HQ 962365, the primary issue was whether a product lacking a binder could be classifiable as a printing ink of heading 3215, HTSUS. While a printing ink may not require a traditional binder if it binds to its intended media without one, it still must be a printing ink in its condition as imported to be classifiable in heading 3215, HTSUS. In HQ 965614, a color preparation for ink jet printers, "Pro-Jet Fast Cyan 2 Stage" ("Cyan 2") in its condition as imported required more post-importation processing than the "simple dilution or dispersion" allowed of printing inks of heading 3215, HTSUS. *See* EN 32.15. Therefore, we determined that "Cyan 2" was not classifiable in heading 3215, HTSUS, as the importer claimed, but in heading 3204, HTSUS, as a color preparation.

Avecia's claim that "Cyan 2" is sold as an ink is questionable because of the post-importation processing required. The "Fast Yellow 2" product as imported requires the same post-importation processing as "Cyan 2." It would be incongruous to maintain that "Fast Yellow 2" is classifiable in heading 3215, HTSUS, while "Cyan 2," and "Pro-Jet Cyan 1 Press Paste," classified in HQ 965615, are classifiable in heading 3204, HTSUS. Therefore, the LAW AND ANALYSIS section of HQ 965614 is hereby incorporated by reference. Accordingly, HQ 962365, HQ 962918 and HQ 964191 are incorrect.

Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the merchandise which was the subject of Protests 1001-99-102017, 1401-98-100063 and 1101-98-100179 was final on both the protestant and the Customs Service. Accordingly, this decision will not impact entries subject to HQ 962365, HQ 962918 and HQ 964191.

Holding:

"Pro-Jet Fast Yellow 2 RO Feed" is classifiable in subheading 3204.14.00, HTSUS, which provides for, "Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined: synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter: direct dyes and preparations based thereon: other."

Effect on Other Rulings:

HQ 962365 and HQ 962918, dated April 28, 2000, and HQ 964191, dated May 24, 2000, are hereby REVOKED.

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

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
GARAGE DOOR ROLLERS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of garage door rollers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of garage door rollers under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

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

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as

amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the classification of garage door rollers. Although in this notice Customs is specifically referring to one ruling, NY D89002, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

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

In NY D89002, dated April 8, 1999, set forth as Attachment A to this document, Customs classified garage door rollers in subheading 8482.10.10, HTSUS, as: "Ball or roller bearings, and parts thereof: [b]all bearings: [b]all bearings with integral shafts."

It is now Customs position that the subject garage door rollers are classified in subheading 8302.41.60, HTSUS, "Base metal mountings, fittings, and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: [o]ther mountings, fittings and similar articles, and parts thereof: [s]uitable for buildings: [o]ther: [o]f iron or steel of aluminum or of zinc." Proposed HQ 966024 revoking NY D89002 is set forth as Attachment B.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY D89002 and any other ruling not specifically identified in order to re-

flect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966024. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: December 16, 2002.

JAMES A. SEAL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 8, 1999.
CLA-2-84:RR:NC:1:102 D89002
Category: Classification
Tariff No. 8482.10.1040 and 8482.10.1080

MR. KARL F. KRUEGER
AEI CUSTOMS BROKERAGE SERVICES
P.O. Box 5129
Southfield, MI 48086-5129

Re: The tariff classification of garage door rollers from Canada.

DEAR MR. KRUEGER:

In your letter dated March 1, 1999 you requested a tariff classification ruling on behalf of Canimex.

The items in question are garage door rollers. Descriptive information and technical drawings are submitted.

The garage door rollers are used in conjunction with other fittings to allow garage doors to operate within guide tracks. The technical drawings submitted reveal that the rollers are ball bearings consisting of steel balls positioned between an outer race formed from cold rolled strip steel and a cold rolled steel stem.

The stem is an integral round shaft which is grooved at one end to serve as the inner race of the bearing and extends beyond the face of the bearing to facilitate mounting of the bearing in a suitable fitting. Although the drawings depict two different rollers, one with an outside diameter of 28mm and the other with an outside diameter of 46mm, both are integral shaft ball bearings of essentially similar construction.

The applicable subheading for the garage door rollers with an outside diameter of 28mm will be 8482.10.1040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for ball bearings with integral shafts having an outside diameter not over 30mm. The general rate of duty will be 2.4 percent ad valorem.

The applicable subheading for the garage door rollers with an outside diameter of 46mm will be 8482.10.1080, HTSUS, which provides for other ball bearings with integral shafts. The general rate of duty will be 2.4 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Kenneth T. Brock at 212-637-7026.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 966024 DSS
Category: Classification
Tariff No. 8302.41.60

MR. R. KEVIN WILLIAMS
RODRIGUEZ, O'DONNELL, ROSS, FUREST, GONZALEZ & WILLIAMS, PC.
20 North Wacker Drive
Suite 1416
Chicago, IL 60606

Re: Request for Reconsideration of NY D89002; Garage Door Rollers.

DEAR MR. WILLIAMS:

This is our decision on your request for reconsideration of New York Ruling letter (NY) D89002, on behalf of your client Canimex, filed against classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of garage door rollers under subheading 8482.10.10. You submitted this request to the Director, National Commodity Specialist Division, who forwarded it to this office for reply. Three samples were included in your submission. After review of NY D89002, Customs has determined that the classification of garage door rollers under subheading 8482.10.10, HTSUS, is incorrect.

Facts:

In NY D89002, dated April 8, 1999, we classified garage door rollers as integral shaft bearings under subheading 8482.10.10, HTSUS. You argue that the subject garage door rollers are properly classified under subheading 8302.41.60, HTSUS, as base metal mountings, fittings, and similar articles suitable for buildings.

The rollers consist of steel balls positioned between an outer ring formed from cold-rolled strip steel and a cold rolled steel shaft. The stem is an integral shaft which serves as the inner race of the bearing and extends beyond the face of the bearing to facilitate mounting of the bearing in a suitable fitting, which you describe as a roller bracket, which mounts the roller on a sectional garage door. In NY D89002, the shafts of the garage door rollers were grooved, but the stems of the garage door rollers you submitted were not grooved. Two of the samples submitted contained outer rings of steel; the other sample contained an outer ring of plastic.

You state that garage door rollers are also referred to as track rollers in the industry, and are defined as a "roller assembly for guiding the door sections along a track" by the Door and Access Systems Manufacturers Association (DASMA).

A garage door roller is mounted to a sectional garage door using a roller bracket. The rollers travel in a track and guide the garage door as it is raised and lowered. The rollers facilitate the raising and lowering of the garage door by the path prescribed by the track (*i.e.*, they keep the garage door in the correct lateral position as it is raised and lowered). You state that the weight of the garage door is not carried by the rollers or the tracks during the opening and closing operation, but is borne by the springs in the door system which serve as the counterbalance to the weight of the door. You also state that the rollers and track do support the weight of the door when it is in the horizontal (open) position.

The HTSUS provisions under consideration are as follows:

8302 Base metal mountings, fittings, and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof:

*	*	*	*	*	*	*
		Other mountings, fittings and similar articles, and parts thereof:				
8302.41		Suitable for buildings:				
*	*	*	*	*	*	*
		Other:				
8302.41.60		Of iron or steel of aluminum or of zinc				
*	*	*	*	*	*	*
8482		Ball or roller bearings, and parts thereof:				
8482.10		Ball bearings:				
8482.10.10		Ball bearings with integral shafts				

Issue:

What is the proper tariff classification for the subject garage door rollers?

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. Pursuant to GRI 3(b), when goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to [GRI] 3(a) [i.e., by the heading which provides the most specific description], shall be classified as if they consisted of the material or component which gives them their essential character, insofar as the criterion is applicable.

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

Heading 8302 is contained in Chapter 83 and Section XV, HTSUS; Heading 8482 is contained in Chapter 84 and Section XVI, HTSUS. According to Note 1, Section XVI, HTSUS, parts of general use, as defined in Note 2, Section XV, cannot be classified in section XVI. Parts of general use are defined by reference to “the articles of heading 8301, 8302, 8308 or 8310,” according to Note 2 to Section XV. EN 83.02 provides in relevant part:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). This heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

- * * * * *
- (D) Mountings, fittings, and similar articles suitable for buildings**

This group includes:

- * * * * *

- (3) Fittings for sliding doors or windows of shops, garages, sheds, hangars, etc. (e.g., grooves and tracks, runners and rollers) [emphasis in original].

You state that the subject garage door rollers are specifically designed for use with the standard size tracks used with garage doors in the United States and are sold solely to companies in the garage door industry. You claim that the garage door rollers are not suitable for any other use.

Relevant ENs for Chapter 84 state that heading 8482 covers ball, roller, or needle roller type bearings that enable friction to be considerably reduced. They may be designed to give radial support or to resist thrust. This EN states further that normally, bearings consist of two concentric rings or races enclosing the balls or rollers, and a cage which keeps them in place and ensures that their spacing remains constant.

In other articles of this type, similar to track rollers and cam followers, the outer portion of the wheel or ring is significantly reinforced in thickness to provide weight-carrying capability. In addition, the inner and outer diameter surfaces are slightly contoured to permit the wheels to fit into and roll smoothly in the track. Known by various names, articles that function to position, hold and guide moving machine parts, as well as reduce friction during such movement, have been held to be ball or roller bearings of heading 8482. See *THK America, Inc. v. United States*, 17 CIT 1169 (1993), and lexicographic sources cited. Although, *prima facie*, these rollers would appear to function similarly to the description of ball bearings cited above, there is one fundamental difference between ball bearings and the subject garage doors rollers. While ball and roller bearings function to position, hold and guide moving machine parts the subject rollers function to position, hold and guide moving sections of a garage door, not machine parts.

We conclude that the rollers fall within the definition of rollers in EN 83.02. The term “roller” is not defined in the HTSUS or the ENs. When terms are not so defined, tariff terms are construed in accordance with their common and commercial meaning. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). The term “roller” is broadly defined as “a revolving cylinder over or on which something is moved or on which is used to press, shape, spread or smooth something.” *Merriam-Webster’s Collegiate Dictionary* (10th ed. 2002). Thus, it appears that the subject garage door rollers fall within the common meaning of the term “roller.”

Therefore, based on the foregoing analysis it appears that the articles fall within the common meaning of the term “rollers” and are classifiable under subheading 8302.41.60, HTSUS, as base metal mountings, fittings, and similar articles suitable for buildings.

In regard to the roller with the plastic outer ring, we feel that this particular roller is a composite good, with the essential character of the roller provided by the steel portion of the roller. EN Rule 3(b)(IX) states, in part, that:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separate components, provided these components are adopted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

In this case, we are of the opinion that the garage door roller with the plastic outer ring is a composite good. According to GRI 3(b), classification must be made according to the essential character of the good. In general, essential character has been construed to mean the attribute which strongly marks or serves to distinguish what an article is or that which is indispensable to the structure, core or condition of the article. EN Rule 3(b)(VIII) provides factors which help determine the essential character of goods. The factors listed in EN Rule 3(b)(VIII) include the nature of the material or component, bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods.

The components of the article, the steel roller shaft and bearings and plastic outer ring, are adapted one to the other, mutually complementary, and together form a whole which would not normally be offered for sale in separate parts. The bearings of the roller assembly fit into the outer ring which fits into the track. Based on the information submitted, we determine that the essential character of the roller is provided by the steel portion of the roller; it provides the bulk of the weight and form of the roller and attaches to the garage door itself, through a roller bracket. Thus, we find that the garage door roller with the plastic outer ring would be classified similarly to the other garage door rollers provided which are comprised entirely of steel.

Thus, based on the foregoing analysis, we conclude that the subject garage door rollers are within the common meaning of the term “rollers” and are classifiable under subheading 8302.41.60, HTSUS. Since the garage door rollers are parts of general use classified in subheading 8302.41.60, HTSUS, they are excluded from classification under subheading 8482.10.10, HTSUS, according to Note 1, Section XVI.

Holding:

In accordance with the above discussion, the correct classification for the subject garage door rollers is under subheading, 8302.41.60, HTSUS, which provides for “Base metal mountings, fittings, and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-

pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: * * * Other mountings, fittings and similar articles, and parts thereof: * * * Suitable for buildings: * * * Other: * * * Of iron or steel of aluminum or of zinc.”

Effect on Other Rulings:

NY D89002 is REVOKED.

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

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO VALUATION OF ASSISTS

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the valuation of assists.

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 Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying one ruling pertaining to the valuation of certain assists. Customs is also revoking any treatment previously accorded by it to substantially identical merchandise.

Notice of the proposed action was published in the CUSTOMS BULLETIN, Volume 36, Number 34, on August 21, 2002. The Customs Service received one comment.

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

FOR FURTHER INFORMATION CONTACT: Laurie E. Ross, Value Branch, Office of Regulations and Rulings (202) 572-8740.

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) Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI, a notice (HRL 548097) was published on August 21, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 34, proposing to modify HRL 547808, dated December 19, 2001, in which Customs determined that the value of certain films and transparencies provided free of charge by the buyer to the manufacturer of the imported goods included certain royalty payments made by the buyer to an artist pursuant to the terms of a licensing agreement between the two parties. In that decision, Customs also determined that certain payments made by the buyer to a third party in the Netherlands were not part of the value of the assist.

As stated in the proposed notice, upon further review of HRL 547808, Customs has concluded that pursuant to 19 U.S.C. 1401a(h)(1)(C)(ii), the value of the assist should be determined based on the value of the assist that is added outside the United States in the Netherlands by the third party. However, because the work performed by the artist was not part of the production process of the assist, the royalty payments made by the buyer for the right to use the artist's work should not be part of the value of the assist. Customs, accordingly, announced its intention to modify HRL 547808 such that the value of the assist would be determined based on the work performed by the third party in the Netherlands, as reflected by the payments from the buyer to the third party.

In the comment received by Customs in response to the proposed notice, the author disagreed with the proposed conclusion in the notice in which Customs relies on 19 U.S.C. 1401a(h)(1)(C)(ii) for the proposition that the work performed by the third party in the Netherlands comprises a dutiable portion of the completed design work provided by the buyer to its foreign vendors. The author stated that section 1401a(h)(1)(C)(ii) provides that "[i]f the production of an *assist* occurred in the United States and one or more foreign countries, the value of the *assist* is the value thereof that is added outside the United States." 19 U.S.C. 1401a(h)(1)(C)(ii) (emphasis added). The author argued that the plain language of 19 U.S.C. 1401a(h)(1)(C)(ii) requires an initial finding that an assist is being supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United

States of the merchandise. The author stated that in the transaction at issue, however, no assist was provided by the buyer to its foreign vendors. Instead, the work performed by the third party was merely a transfer of information from its digital library, and as such did not constitute design work. Accordingly, the author concluded that 19 U.S.C. 1401a(h)(1)(C)(ii) does not apply to the transaction at issue.

As stated in HRL 548097 (“Attachment” to this notice), the transparencies and films constitute assists as they are design work supplied by the buyer free of charge for use in connection with the production or sale for export of the imported merchandise. 19 U.S.C. 1401a(h)(1)(A)(iv). To the extent that part of the production of the transparencies and films occurs in the Netherlands, the design work is “undertaken elsewhere than in the United States” within the meaning of 19 U.S.C. 1401a(h)(1)(A)(iv). Additionally, because the transparencies and films impart the essence of the product design to the imported merchandise, without which the manufacturers could not produce the imported merchandise, the design work is “necessary for the production of the imported merchandise.” Accordingly, Customs made the determination in HRL 548097 that the transparencies and films meet the definition of an assist.

Having made the determination that an assist exists, it is not relevant whether each stage in the production of an assist constitutes design work or something other than design work. Instead, as is explained in HRL 548097, Customs looks at *where* each stage of the assist’s production is performed, *i.e.* either inside the United States or outside the United States. Because one step in the production of the assist occurred in the Netherlands, pursuant to 19 U.S.C. 1401a(h)(1)(C)(ii), the payments made to the third party by the buyer represent the value of the assist, and are dutiable.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HRL 547808 and any other rulings not specifically identified to reflect the proper appraisal of the above described merchandise, as described in the analysis set forth in HRL 548097 (*see* “Attachment” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is modifying any treatment previously accorded by Customs to substantially identical transactions.

This modification 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 or decision or protest review decision) on the merchandise subject of this notice, should have advised the Customs Service during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is modifying any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party,

Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous value determination. Any persons involved in substantially identical transactions should have advised Customs during the notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

Pursuant to 19 U.S.C. 1625(c), this final decision modifies HRL 547808 and will become effective sixty (60) days after the publication date of this decision.

LARRY BURTON,
Acting Director,
International Trade Compliance Division.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:IT:VA 548097er
Category: Valuation

HARVEY B. FOX, ESQ.
GREGORY C. ANTHES, ESQ.
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1200 Seventh Street, NW
Washington, DC 20036

Re: Modification of Headquarters Ruling Letter 547808; Valuation of Assists.

DEAR MESSRS. FOX AND ANTHES:

This is in response to your requests for reconsideration, dated January 15 and April 17, 2002 of HRL 547808, dated December 19, 2001, regarding the determination that certain design work provided free of charge by your client, Hallmark Cards, Inc. ("Hallmark"), to foreign manufacturers constitutes an assist within the meaning of 19 U.S.C. 1401a(h). Your request for confidential treatment of the contents of the license agreements, and amendments thereto, as well as certain proprietary information identified within brackets in your request, is granted. Accordingly, all proprietary information in this decision appears within brackets and will be redacted from the public version.

Facts:

Hallmark provides design work, free of charge, to the foreign producers of imported products. The imported products consist of a wide range of items including greeting cards, guest books, diaries, gift bags, tins, ceramics, photo albums and Christmas ornaments. The design work consists of transparencies and films sent by Hallmark to foreign manufacturers for use in manufacturing the imported merchandise. The transparencies are used in the production of specialty products and the films are used in the production of printed products.

In HRL 547808 this office made the determination that the transparencies and films provided by Hallmark free of charge to the foreign manufacturers constituted assists

within the meaning of 19 U.S.C. 1401a(h). The value of the assists was determined to be royalty payments made by Hallmark to a Dutch artist pursuant to a license agreement between the two parties.

Subsequent to counsel's request for reconsideration, representatives from this office met with you and representatives from Hallmark. At the meeting, you provided additional examples of the design work and provided us with further explanations regarding how the design work is produced.

The Production of the Design Work

According to your submissions, the design process begins when Hallmark designers in the U.S. look through catalogs of the artist's works and use the works as inspiration to design new products ranging from greeting cards to three-dimensional sculptures. Hallmark's designers conceive a general design intent for a particular product format (e.g., a winter theme with birds for plates and cups or a box and candle set which incorporates a winter theme). The designers review catalogs of the artist's original paintings to find various images or portions of images that may be used to construct the Hallmark design. The designers cut and paste parts of these images and apply some or all of the following additional steps in order to complete the design: [] Once this portion of the design work is completed, Hallmark's designers create a tight layout that contains the specifications, including dimensions, shape and format, of the finished product. The tight layout is sent to Repro Wes in the Netherlands.

At this point, the second stage of the design work begins. It is our understanding that Repro Wes is the only company that maintains a digital library of the artist's original works. Therefore, in order for Hallmark to obtain the digital files of the artist's works it must work in conjunction with Repro Wes. [] This process results in the production of digital files, proofs (wet or Iris) and/or film. The proofs are used by Repro Wes to validate color, integrity and placement. The tight mechanical layout is returned to Hallmark along with the newly created digital file.

The Hallmark designers complete the third and final stage of the production of the design work, creating a new digital file that contains all elements of the new product's design. [] New proofs (Iris/Fiji) are created. Hallmark stores the color correct files into Hallmark's digital library. These new files are used to create the separations or transparencies supplied to the foreign manufacturers of the imported products.

HRL 547808 dated December 19, 2001.

As noted above, in HRL 547808 this office made the determination that the transparencies and films provided by Hallmark to the foreign manufacturers, free of charge, constitute assists within the meaning of 19 U.S.C. 1401a(h). As stated in HRL 547808, in order for design work to be included in transaction value as an assist, the design work must be undertaken elsewhere than in the U.S. and it must be necessary for the production of the imported merchandise. 19 U.S.C. 1401a(h)(1)(A). In the past, this office has excluded from the value of an assist that portion of the assist undertaken in the U.S. (See, HRL 545341, dated August 3, 1994). Accordingly, in HRL 547808, the value of the design work undertaken by Hallmark designers in the U.S. was not included in the value of the transparencies and films.

In HRL 547808 this office also made the determination that the work undertaken by Repro Wes is not dutiable. Customs reasoned that because Repro Wes does not participate in the creative process or exercise discretion in choosing images or color, nor does it perform any work in the development, engineering, planning or sketching of the product to be manufactured, the work it performs is not an assist.

The remaining portion of the design work examined in HRL 547808 was the artist's work. Customs ruled in HRL 547808 that the artist's work is an assist because her artwork is part of the creative process in that she had discretion in creating the images, including their shape and color. Further, the coloring and images are the same in the assist sent to the manufacturers as in the original artwork. Moreover, the artist retained the right to approve or disapprove the use of her artwork. The value of the artwork assist was determined based on the royalty payments made by Hallmark to the artist.

Issue:

Whether the transparencies and films provided free of charge by Hallmark to the foreign manufacturers constitute assists? If so, how should the assists be valued?

Law and Analysis:

Merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). Transaction value, the preferred method of appraisement, is defined in section 402(b) of the TAA as the “price actually paid or payable for the merchandise when sold for exportation to the United States,” plus certain enumerated additions. One of the additions includes the value, apportioned as appropriate, of any assists. 19 U.S.C. 1401a(b)(1)(C).

Are the transparencies and films assists?

The first issue to be resolved is whether the transparencies and film constitute assists. The term “assist” refers to an item that is supplied directly or indirectly by the buyer free of charge or at a reduced cost, for use in connection with the production or sale for export of the imported merchandise. The type of assist at issue in this case is “engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.” 19 U.S.C. 1401a(h)(1)(A)(iv).

The transparencies and films that are provided free of charge by the buyer to the foreign manufacturers of the imported products constitute design work and fall within the scope of the elements described by section 402(h)(1)(A)(iv). The transparencies and films impart the essence of the product design to the imported merchandise, without which the manufacturers could not produce the imported merchandise. Accordingly, we find that the design work is “necessary for the production of the imported merchandise” within the meaning of 19 U.S.C. 1401a(h)(1)(A)(iv). To the extent that part of the production of the transparencies and films occurs in the Netherlands, the design work is “undertaken elsewhere than in the United States”. Accordingly, it is our determination that the design work meets the definition of an assist. The remaining question, therefore, is how to value the transparencies and films.

As described above, transparencies and films are produced in three stages. One stage is undertaken in the Netherlands and the other two are undertaken in the United States. In the past, Customs has ruled that in such circumstances, only the portions of the design work undertaken outside the U.S. are dutiable. See HRL 545341, dated August 3, 1994. Accordingly, in HRL 547808, we ruled that the portion of the design work undertaken in the United States, *i.e.*, the work performed by the Hallmark designers, is not a dutiable portion of the assist provided to the foreign manufacturers. We believe that this determination was correctly reached in HRL 547808.

In HRL 547808 we ruled that the artist’s work is an assist because her artwork is part of the creative process in that she had discretion in creating the images, including their shape and color. Further, the coloring and images are the same in the assist sent to the manufacturers as in the original artwork. Moreover, the artist retained the right to approve or disapprove the use of her artwork. In HRL 547808, we also ruled that the work performed by Repro Wes, even though undertaken elsewhere than in the U.S., is not an assist as the involvement of Repro Wes does not involve creative process or the exercise of discretion in choosing images or color. As you have requested a *de novo* review of the ruling, we will reexamine both of these two determinations reached in HRL 547808.

Valuing the transparencies and films.

The valuation statute addresses valuing assists that are produced in the United States and elsewhere than in the United States. Specifically, for purposes of determining the value of assists described in 19 U.S.C. 1401a(h)(1)(A)(iv) the valuation statute provides:

If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

19 U.S.C. 1401a(h)(1)(C)(ii).

Upon reconsideration, we find that it was incorrect in HRL 547808 for this office to subject each stage of the assist’s production process to a separate assist analysis, as though each stage of production results in the creation of a separate assist. The statute does not provide that each stage of the production of the assist must individually meet the definition of an assist; only that the value of the assist is the value thereof that is added outside the U.S.

In HRL 547808 we specifically analyzed whether the work performed by Repro Wes constituted an assist. This analysis is incorrect as it centers upon whether Repro Wes’

work meets the definition of an assist instead of focusing on whether the work performed by Repro Wes constitutes a dutiable portion of the completed design work provided to the manufacturers—*i.e.* the completed transparencies and films.¹ Likewise, we made the same error in our analysis of the artist's work, concentrating on whether her artwork is an assist, instead of whether her artwork is a dutiable portion of the assist provided to the sellers.

As set forth under 19 U.S.C. 1401a(h)(1)(C)(ii), quoted above, the issue with which we need to be concerned is whether the work performed by each party is part of the production process of the assist, and if so, *where* each stage of the assist production was performed, such that the value of the finished assist is determined based on its production elsewhere than in the U.S.

According to counsel's submissions, the design process begins when Hallmark designers in the U.S. look through catalogs of the artist's works and use the works as inspiration to design new products ranging from greeting cards to three-dimensional sculptures. Given the fact that the artist's work precedes the inception of the production of the assist and is the result of her own artistic endeavors, undertaken without knowledge of or regard for the imported products, we find her work to be outside the scope of the assist production process. This artwork is the inspiration from which the design work is conceived and is not part of production process of the assist itself. Accordingly, the royalty payments made by Hallmark to the artist pursuant to the license agreement between the two parties are not a dutiable portion of the assist.

Unlike the artist's work, however, the work performed by Repro Wes begins after the inception of the assist production process by Hallmark, and precedes the final steps performed by Hallmark to fully complete the transparencies and films. As Repro Wes is the only company that maintains the digital files of the artist's work, Hallmark must contract with Repro Wes. However, Repro Wes' digital color separation is not compatible to Hallmark's production systems without further manipulations in the U.S. Nor does the digital file supplied by Repro Wes contain all the essential elements of the design. Repro Wes' contribution is a middle step in the production of the assist, with Hallmark's designers completing the process upon receipt of the digital file. Accordingly, because Repro Wes' contribution is part of the assist production process and because it occurs in the Netherlands, pursuant to 19 U.S.C. 1401a(h)(1)(C)(ii), the payments made to Repro Wes's by Hallmark represent the value of the assist added outside the United States, and are dutiable.

Holding:

Upon reconsideration of HRL 547808 we find that the design work was properly determined to constitute an assist within the meaning of 19 U.S.C. 1401a(h)(1)(A)(iv). However, HRL 547808 is modified to the extent that the value of the assist is determined based on the payments made by Hallmark to Repro Wes and not based on the royalty payments made by Hallmark to the Dutch artist.

LARRY BURTON,
Acting Director,
International Trade Compliance Division.

¹ In HRL 547808 we compared the work undertaken by Repro Wes to that in HRL 546720, dated June 21, 1999 and concluded that it was similar. In HRL 546720 the CAD-generated prints supplied by the buyer to the overseas manufacturer did not constitute design work due to the level of skill involved in creating the prints. We found that the person producing the prints merely input data provided by the buyers and did not have any discretion in creating or arranging color schemes. Accordingly, we concluded that the computer generated printing had no artistic value and was not an assist. Upon reconsideration, we find that HRL 546720 is not relevant for comparison purposes to the work performed by Repro Wes. In HRL 546720 the color prints were created solely by data entry personnel reproducing color specifications previously communicated to them via e-mail. Conversely, as explained above, Repro Wes is not the sole creator of assists, but rather performs a stage in the production process of the assist.