

# U.S. Customs Service

## *General Notices*

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, January 15, 2003.*

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.*

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two ruling letters pertaining to the tariff classification of smokeless inhalers under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. No comments were received in response to this notice.

DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2003.

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)), a notice was published on December 4, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 49, proposing to revoke NY 875303, dated June 17, 1992, and NY 874119, dated May 21, 1992, which classified smokeless inhalers in subheading 3004.90.60, HTSUS. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or 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 have advised Customs during this notice period. An importer's reliance on treatment of substantially identical transactions or on a specific ruling concerning merchandise covered by this notice which was not identified 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 final decision.

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

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

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY 875303, NY 874119 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966027 and HQ 966028, which are attachments A and B to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

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

Dated: January 8, 2003.

JOHN G. BLACK,  
(for Myles B. Harmon, Director,  
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, January 8, 2003.  
CLA-2: RR:CR:GC 966027 DBS  
Category: Classification  
Tariff No. 3824.90.91

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

Re: Smokeless inhaler; NY 875303 revoked.

DEAR MR. DEKEL:

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on December 4, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 49. No comments were received in response to the notice.

*Facts:*

The facts as stated in NY 875303 are as follows:

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

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

*Issue:*

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

*Law and Analysis:*

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the 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. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

**3004** Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale:

3004.90 Other:  
3004.90.91 Other

\* \* \* \* \*

<b>3824</b>	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.
3824.90	Other: Other: Other:
3824.90.91	Other

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

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

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

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

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

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

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

*Holding:*

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

*Effect on Other Rulings:*

NY 875303, dated June 17, 1992, is hereby REVOKED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN G. BLACK,  
(for Myles B. Harmon, Director,  
Commercial Rulings Division.)

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
Washington, DC, January 8, 2003.  
CLA-2 RR:CR:GC 966028 DBS  
Category: Classification  
Tariff No. 3824.90.91

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

Re: Smokeless inhaler; NY 874119 revoked.

DEAR MR. KROUSE:

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on December 4, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 49. No comments were received in response to the notice.

*Facts:*

The facts as stated in NY 874119 is as follows:

The submitted sample, “Paipo,” is a non-smoking, disposable, flavored cigarette substitute, whose flavor is claimed to last more than 24 hours. It resembles a cigarette in appearance and is available in eight flavors (e.g., fruit, lemon-lime, etc.). Among the listed ingredients are various natural essential oils and flavoring agents. “Paipos” are put up in a blister pack, each of which contains 3 “cigarettes”, and packaged in a small box for retail sale.

*Issue:*

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

*Law and Analysis:*

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

ording to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

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

The HTSUS provisions under consideration are as follows:

<b>3004</b>	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale:
3004.90	Other:
3004.90.91	Other
*	* * * * *
<b>3824</b>	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.
3824.90	Other:
	Other:
	Other:
3824.90.91	Other

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

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

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

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

We now must determine the appropriate classification of this product. “Paipo” is in part a plastic article, in part cotton, and in part a mixture containing natural essential oils and flavoring agents. As no single heading describes the article as a whole, the smokeless in-

haler is not classifiable according to GRI 1, but is a composite good according to GRI 3. Therefore, we must apply GRI 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character.

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

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

*Holding:*

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

*Effect on Other Rulings:*

NY 874119, dated May 21, 1992, is hereby REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN G. BLACK,  
(for Myles B. Harmon, Director,  
Commercial Rulings Division.)

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking four ruling letters, and any treatment previously accorded by Customs to substantially identical transactions, pertaining to the eligibility for treatment under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS) of certain photocopiers. Notice of the proposed revocation was published in Vol. 36, No. 49 of the “CUSTOMS BULLETIN” dated December 4, 2002. No comments were received in response to the notice.



EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Special Classification and Marking Branch, (202) 572-8837.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), a notice was published in the "CUSTOMS BULLETIN" on December 4, 2002, Volume 36, Number 49, proposing to revoke four ruling letters pertaining to the treatment provided under subheading 9802.00.50, HTSUS, to the repair and alteration of certain photocopiers. No comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the law. Any person involved in substantially identical transactions should have advised Customs during the comment period. An import-

er's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking Headquarters Ruling Letters (HRLs) 559418, dated December 12, 1996, 559672, dated December 17, 1996, 560006, dated March 21, 1997, 560290, dated May 10, 2000, and any other ruling not specifically identified in order to reflect the proper classification of the photocopiers under subheading 9802.00.50, HTSUS, pursuant to the analysis set forth in proposed HRLs 562513, 562514, 562515, and 562516. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HRL 562513 revoking HRL 560290, HRL 562514 revoking HRL 559418, HRL 562515 revoking HRL 560006, and HRL 562516 revoking HRL 559672, are set forth as Attachments A through D, respectively, to this document.

In accordance with 19 U.S.C. 1625(c), HRLs 562513, 562514, 562515, and 562516 will become effective 60 days after publication in the "CUSTOMS BULLETIN."

Dated: January 14, 2003.

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

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 14, 2003.*

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

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

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

DEAR PORT DIRECTOR:

This letter is to inform you that Customs has reconsidered Headquarters Ruling Letter ("HRL") 560290, dated May 10, 2000, addressed to you, concerning the classification and eligibility of photocopiers exported to Mexico from the U.S. and returned for duty exemption provided under subheading 9802.00.50, Harmonized Tariff Schedule of the United

States (HTSUS). After review of this ruling, we have determined that the operations in Mexico performed on certain Kodak copiers ("Model A") resulting in "Model D" qualify as "repairs or alterations" as provided under 9802.00.50, HTSUS. For the reasons that follow, this ruling revokes HRL 560290.

*Facts:*

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

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

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

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

- Station 10: Cabinetry and feeder removal:  
The top hopper, feeder cover, and logic molding covers were replaced with new panels. All other panels were reused but painted a different color.
- Station 30: Tear down, main frame alterations and cleaning:  
Drilling operations were performed to the main frame to accommodate harness modifications and unique components of the model D.  
Subassemblies:  
The registration assembly was altered to accommodate the addition of the Pressure Assist Corona Transfer (PACT) modification. The PACT modification was stated to keep the paper flatter as it works its way through the imaging process, but allegedly does not change the copier's function. Two new subassemblies were added, a document positioner hopper and a paper supply cover. In the logic and control assembly, the EPROMs were erased and reprogrammed with new software, including an energy saving feature that puts the copier in stand-by mode. The developer station was totally replaced with a new high definition grain station, which allows for superior image quality. The document feeder was replaced with a trimodal feeder that incorporates a semi-automatic positioner.
- Station 35: Wiring:  
The copier main harness was modified to accommodate the model D new features.

## Station 40: Main frame reassembly:

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

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

## Station 120: Functional set up and testing:

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

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

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

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

In a letter from counsel for Kodak, dated March 10, 1998, it was stated that there are approximately 3,100 parts making up a copier and they are separated into three categories: A parts costing more than \$11.00 each; B parts costing between \$2.50 and \$11.00; and C parts costing less than \$2.50. Of the parts that are replaced 100 percent of the time, it was stated that there were 143 parts replaced with a value over \$2.50; the C parts were entirely omitted. Of the 143 parts, 9 parts were listed: wire harnesses, muffler boxes, fuser assemblies, paper supplies, IQE stations, blowers, cabinetry, logic control units, and registrations. After Customs request for a more detailed list, on April 7, 1998, it was stated that 124 out of a total of 877 A and B parts were replaced, and the following parts were listed: solenoids, filters, switches, sensors, brushes, actuators, paper feed rollers, clutches, chains, bearings, brackets, pulleys, belts, valves, hoses, guide plates, circuit boards, labels, motors, casters, panels, and springs. On April 20, 1998, a complete list of all 124 A and B

parts replaced was submitted, in what the letter referred to as “engineering short-hand.” Customs also requested information regarding whether a particular part was a consumable; however, this information was not provided. While the model A has a magnetic scavenger, when it was converted to the model D, the roller was replaced with a vacuum scavenger for the purpose of the reduction in image quality defects. The last difference between the two models was the addition of a document positioner. It allows the operator to feed single originals across the platen glass for imaging.

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

*Issue:*

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

*Law and Analysis:*

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

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

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

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles subject to both partial and complete disassembly, where repairs are made and parts are replaced as long as the essential components and therefore the identity of the article remain intact throughout the repair process. For example, in HRL 554731, dated February 2, 1989, Customs considered fuel injectors which involved the replacement of parts and cleaning after disassembly. Customs determined that the fuel injectors qualified for subheading 9802.00.50, HTSUS, treatment, as long as the adapter and re-

tainer of the fuel injector were not replaced and remained together as a matched set, as these constituted the essential identity of the fuel injector.

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

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

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

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

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

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

the cartridges which are replaced about every 10,000 copies). Therefore, for purposes of our determination of eligibility for subheading 9802.00.50, HTSUS, treatment, we have focused upon the effect of the operations performed abroad upon the above copier assemblies.

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

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

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

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

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

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

*Holding:*

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

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 14, 2003.*

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

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

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

DEAR PORT DIRECTOR:

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

*Facts:*

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

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

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

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



the positioner interlock harness in the cabinetry as the remaining internal space was diminished. As a result, a new wire harness was inserted to make the static eliminator smaller.

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

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

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

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

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

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

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

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

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

It is also stated that if a lens/mirror is scratched or broken, the lens or mirror itself will be replaced.

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

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

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

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

*Issue:*

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

*Law and Analysis:*

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

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

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

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles subject to both partial and complete disassembly, where repairs are made and parts are replaced as long as the essential components and therefore the identity of the article remain intact throughout the repair process. For example, in HRL 554731, dated February 2, 1989, Customs considered fuel injectors which involved the replacement of parts and cleaning after disassembly. Customs determined that the fuel injectors qualified for subheading 9802.00.50, HTSUS, treatment, as long as the adapter and re-

tainer of the fuel injector were not replaced and remained together as a matched set, as these constituted the essential identity of the fuel injector.

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

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

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

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

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

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

the cartridges which are replaced about every 10,000 copies). Therefore, for purposes of our determination of eligibility for subheading 9802.00.50, HTSUS, treatment, we have focused upon the effect of the operations performed abroad upon the above copier assemblies.

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

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

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

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

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

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

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

Accordingly, with regard to the Model B to D process, it is now our opinion that, although the foreign processing involved extensive reconditioning of numerous parts and replacement of a number of parts resulting in an enhancement of certain copier functions, the changes made are not so extensive as to destroy the essential identity of the exported

photocopier or create a new or commercially different article. Furthermore, the fact that many of the parts are identified as being able to be replaced in the field, indicates that the replacement of such parts restore the products to their original condition and, therefore, may be considered "repairs" within the meaning of subheading 9802.00.50, HTSUS.

*Holding:*

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

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

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[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, January 14, 2003.  
CLA-2 RR:CR:SM 562515 TJM  
Category: Classification  
Tariff No. 9802.00.50

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

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

DEAR PORT DIRECTOR:

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

*Facts:*

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

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

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

Station 10: Cabinetry was removed and repainted;

Station 20: Major subassemblies were removed, including blowers, chargers, paper supply, and muffler box. These subassemblies are critical to the

function of the paper supply and feeders. Minor subassemblies were also removed. Parts were replaced as required. For example, in the charger assembly, components which were replaced included the corona wires and the grill. Worn-out rollers which start the movement of the image loop around the film core area were also replaced.

- Station 30: The mainframe underwent required modifications, and cleaning.
- Station 35: Wiring and wiring harnesses were removed and replaced as required.
- Station 40: At this station, the main drive was reconditioned, and other work was performed relating to illumination, fuser area core, and the optics sub-assembly.
- Station 45: Cabinetry and feeder were installed and a functional test was performed.
- Station 120: Feeder and paper run cabinetry were set up, and after certain other finishing steps were performed, the copiers were packed and sent out for distribution.

The modifications performed on the copiers were as follows:

- 1) The toning station (toner and developer assembly) was replaced with a new toning station to provide enhanced image quality. The function of the toning assembly is to receive toner from a bottle and pass it on to the image loop for transfer onto the paper on which the image results. Kodak stated that the key components in the older version were a replenisher housing and motor, station sump casting, two developer rollers with two magnet rollers, two mixing blenders and miscellaneous gears, bearings and hardware. The new version had only one developer roller and one magnet roller. It allowed for a different formulation of the developer because the formulation carrier size was reduced in the new version to a much decreased size. Additionally, in the old version, the magnetic properties were soft and not permanent while they were hard and permanent in the new version. Lastly, the developer roller is 200" from the image loop in the older version and .020" in the new version. Kodak stated that these alterations enhance the image quality;
- 2) Paper level indicators were added to the paper supply drawers which help the customer to determine the amount of paper in each drawer without having to stop the copier while it is running; and
- 3) An improved latch was added to the document feeder allowing for smoother operation; and
- 4) New trade dress was applied.

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

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

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

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

*Issue:*

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

*Law and Analysis:*

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

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

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

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

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

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

In HRL 558858/558859, the EPROMS contained in the copier’s control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or

reprogramming of EPROMS, which upgraded the copiers to conform to current industry standard, Customs determined that this did not change the identify of the exported articles, but rather improved the product and advanced its value. Accordingly, Customs found in that case that the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

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

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

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

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

The drum is the "heart" of the copier and almost every step involved with making a copy takes place around the drum. *Kuaimoku, Photocopier Maintenance and Repair Made Easy (1st Ed. 1994)*. There are eight main steps in the copy process, all of which involve the imaging assemblies: (1) charging, (2) exposing, (3) developing, (4) transferring, (5) separating, (6) fusing, (7) cleaning, and (8) erasing. The charging corona unit applies the charge on the drum. The exposing step illuminates the document and projects the image on the drum and involves the platen glass, exposure lamp, reflectors, aperture, and manual exposure control. Also involved in exposure is the projection of the image onto the



drum's surface which involves the mirrors, scanner carriage, solid lens and drums of the optical system. The developer section involves the developer (toner and carrier mix); bucket roller; magnetic roller, bias circuit, toner-carrying screw, and developer section body. The transfer step removes the toner image from the drum and places it onto the copy paper by applying a strong electrical charge from the transfer corona to the back side of the copy paper.

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

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

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

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

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

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

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

*Holding:*

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above with regard to the Model C to D conversion operations constitute "repairs or alterations" since they did not destroy the identity of the exported copiers or create new or commercially different articles. Therefore, the imported Model D copiers which were exported as Model C copiers are eligible for the full duty exemption under sub-

heading 9802.00.50, HTSUS. Consistent with this ruling, HRL 560006, dated March 21, 1997, is hereby revoked.

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

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[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 14, 2003.*

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

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

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

DEAR PORT DIRECTOR:

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

*Facts:*

In Headquarters Ruling Letter (“HRL”) 559672, dated December 17, 1996, the facts indicate that Kodak exported used model F copier-duplicators to Mexico, performed various processes to these copiers, and imported model D copier-duplicators to the U.S. It is claimed that the processes performed in Mexico were “repairs or alterations” and that the returned articles qualified for duty-free entry under subheading 9802.00.50, HTSUS. Before describing the processes performed to make a model F into a model D, counsel stated that the processes performed were similar to those performed in converting a model B to a model D, which in turn are similar to the processes performed on a model B when it became a model C, and which involve those operations performed to the model B when it remained a model B.

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

Next, counsel presented the processes performed to convert a model B to a model C. It was stated that none of the operations sped up the photocopier or altered the type or size of

paper the copier is able to process. Speed and paper size and type were stated by protestant to be the criteria in the marketplace to determine whether or not a copier has been upgraded. The only features which appeared on the model C which did not appear on the model B were the specific document feeder and the Pressure Assist Corona Transfer (PACT). The document feeder incorporated a semi-automatic positioning feature. The PACT modification kept the paper flatter as it works its way through the imaging process but allegedly did not change the copier's function. When the document feeder was installed, it required a modification to the static eliminator harness in the duplex tray and the positioner interlock harness in the cabinetry as the remaining internal space was diminished. As a result, a new wire harness was inserted to make the static eliminator smaller.

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

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

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

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

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

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

On November 27 and December 6, 1996, counsel provided additional explanations of certain operations in response to our request. It was stated that the IQE station slider, plenum assembly build, backup slider assembly, and assembly drive roller were the worn components that were replaced in the photoreceptor belt and handling assembly. The IQE station slider basically allows the developer assembly to be removed from the machine

without disassembling the machine. The new model of the plenum assembly build installed into model D photocopiers used hoses and ducts instead of magnets to collect excess toner flakes and developer from the film loop. The backup slider assembly moves the image loop toward the developer roller when actuated. The assembly drive roller starts the movement of the image loop around the film core area, and it was stated that worn out rollers were replaced and the same rollers were used regardless of the resulting finished model.

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

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

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

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

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

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

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

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

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

*Issue:*

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

*Law and Analysis:*

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

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

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

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

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

assemblies (pwba) paper size pwba, feeder motor, copy cartridge, counter solenoid, counter, balance spring, half rate cartridge, and front/rear rail were removed, repaired, and re-assembled along with the previously removed parts.

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

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

We note that in HRL 558858/558859, Customs stated that subheading 9802.00.50, HTSUS, is applicable to articles subject to both partial and complete disassembly, where parts are replaced, as long as the essential components and therefore the identity of the article remains intact throughout the repair operation. As determined in HRL 558858/558859, the copiers were found not to have lost their identity as a result of the foreign operations. We note that in HRL 555819, dated October 11, 1991, it was stated that the replacement and/or addition of parts to restore products to their original condition may constitute repair operations for purposes of subheading 9802.00.50, HTSUS, if the particular article does not lose its identity and the replacements and/or additions are not so extensive as to create a new or different article. In HRL 555117, dated December 22, 1988, the essential components were also required to be tagged as a matched set. The regulatory requirements of not destroying the identity of the exported articles, however, are clear. Court decisions pertaining to this statute also set forth this requirement; however, none of the decisions appear to have addressed complex machinery and extensive parts replacement.

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

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

The drum is the "heart" of the copier and almost every step involved with making a copy takes place around the drum. *Kuaimoku, Photocopier Maintenance and Repair Made Easy (1st Ed. 1994)*. There are eight main steps in the copy process: (1) charging, (2) exposing, (3) developing, (4) transferring, (5) separating, (6) fusing, (7) cleaning, and (8) erasing. The charging corona unit applies the charge on the drum. The exposing step illuminates

the document and projects the image on the drum and involves the platen glass, exposure lamp, reflectors, aperture, and manual exposure control. Also involved in exposure is the projection of the image onto the drum's surface which involves the mirrors, scanner carriage, solid lens and drums of the optical system. The developer section involves the developer (toner and carrier mix); bucket roller; magnetic roller, bias circuit, toner-carrying screw, and developer section body. The transfer step removes the toner image from the drum and places it onto the copy paper by applying a strong electrical charge from the transfer corona to the back side of the copy paper.

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

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

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

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

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

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

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

*Holding:*

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above with regard to the conversion of Model F to D constitute "repairs or alterations" since they did not destroy the identity of the exported copiers or create new or

commercially different articles. Therefore, the imported Model D copiers are eligible for the full duty exemption under subheading 9802.00.50, HTSUS. Consistent with this ruling, HRL 559672, dated December 16, 1996, is hereby revoked.

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

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## PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF SANDBOX COVERS

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

ACTION: Notice of proposed revocation of classification ruling letters and treatment relating to the classification of sandbox covers.

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 two rulings pertaining to the tariff classification under the Harmonized Tariff Schedule of the United States ("HTSUS"), of sandbox covers. Similarly, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 28, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9<sup>th</sup> Street, NW, Washington, DC, 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: Benjamin J. Bornstein, General Classification Branch, (202) 572-8786.

### 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 **"in-**



**formed 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 two ruling letters pertaining to the tariff classification of sandbox covers. Although in this notice Customs is specifically referring to two rulings, Headquarters Ruling Letter (“HQ”) 961120, dated October 14, 1998, and New York Ruling Letter (“NY”) I81451, dated May 22, 2002, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer’s failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In HQ 961120, dated October 14, 1998, (“Attachment A”), Customs classified a sand box cover in subheading 9503.90.00, HTSUS, as “[o]ther toys; reduced-size (“scale”) models and similar recreational

models, working or not; puzzles of all kinds; parts and accessories thereof: [o]ther: [p]arts and accessories.” In NY I81451, dated May 22, 2002, (“Attachment B”), Customs classified another sandbox cover in subheading 6307.90.98, HTSUS, as “[o]ther made up articles \* \* \*: Other: Other[.]” Since the issuance of these rulings, Customs has had a chance to review the classification of this merchandise and has determined that these classifications are in error.

It is now Customs position that the subject sandbox covers are classifiable in subheading 9506.99.60, HTSUS, which provides for “[a]rticles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: \* \* \* Other: \* \* \* Other[.]”

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 961120 and NY I81451, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters 966135 and 966140 (see “Attachments C and D,” respectively, to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 14, 2003.

JOHN G. BLACK,  
(for Myles B. Harmon, Director,  
Commercial Rulings Division.)

[Attachments]



[ATTACHMENT A]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*Washington, DC, October 14, 1998.*  
CLA-2 RR:CR:GC 961120 MMC  
Category: Classification  
Tariff No. 9503.90.0070

MR. WILLIAM C. NEAL  
THE LITTLE TIKES COMPANY  
2180 Barlow Road  
Hudson, OH 44236

Re: Sun Canopy; Accessory to the “Sun & Shade Sandbox”.

DEAR MR. NEAL:

This is in reference to your October 15, 1996, letter to the Director, Customs National Commodity Specialist Division, New York, requesting a binding classification for a sun canopy under the Harmonized Tariff Schedule of the United States (HTSUS). Company literature depicting the article as well as a sample was submitted with your request. Your letter was referred to this office for reply. We regret the delay in responding.

*Facts:*

The article is designated as item 682570000. It is a sun canopy constructed of either nylon or polyester woven fabric. It measures approximately 40 inches by 42 inches and has rounded corners. The canopy has a metal strip sewn into its edges which shapes it. Four textile fabric tabs are sewn onto the edges to facilitate the canopy's attachment to the top of the plastic posts of the "Sun & Shade Sandbox." The fabric tabs have had hemmed holes cut in them which are slipped into complementary plastic buttons on the plastic posts. This secures the canopy to the top of the posts and creates a cover which shields children playing in the sandbox. When the sandbox is not in use, the canopy is removed from the top of the posts and attached to the base of the box to act as a protective cover from the elements.

After importation, the canopy will be combined with item number 4850 "Sun & Shade Sandbox." This combination is then shipped to various retail outlets.

*Issue:*

Whether the canopies are accessories to sandboxes.

*Law and Analysis:*

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

In *Bauerhin Technologies Ltd. Partnership v. U.S.* 110 F.3d 774 (Fed. Cir. 1997), (hereinafter *Bauerhin*) the United States Court of Appeals for the Federal Circuit held that canopies for infant car seats which were solely dedicated for use with child safety seats, and were neither designed nor sold to be used independently, were properly classified as parts of car seats. Like the canopies in *Bauerhin*, these canopies are solely dedicated for use with the sandboxes, and are not designed nor sold to be used independently. As such, they have the potential for being considered a part of the sandbox for tariff purposes, if the sandbox is classifiable under a heading which provides a subheading for parts and accessories.

We are of the opinion that the sandboxes are classifiable as toys. Heading 9503, HTSUS, provides for [o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.

The term "toy" is not defined in the HTSUS. However, 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. 89-90, 54 FR 35127, 35128 (August 23, 1989).

The ENs to Chapter 95, HTSUS, state, in pertinent part, that "[t]his Chapter covers toys of all kinds whether designed for the amusement of children or adults." Although not set forth as a definition of "toys," we have interpreted the just-quoted passage from the ENs as equating "toys" with articles "designed for the amusement of children or adults," although we believe such design must be corroborated by evidence of the articles' principal use.

The physical characteristics of the sandbox indicate that it is classifiable as a toy. While it has a container component, holding sand, it holds that sand so that children may play in and with it. Such play indicates that the article has a significant amount of manipulative play value. In addition, the sandbox is not the usual container used for packing and storing sand. Finally, these sandboxes are sold in the toy channel of trade, not that for construction or household wares. All of these factors indicate that the sandboxes are classifiable in heading 9503, HTSUS. As the canopies are parts of the sandboxes they are classifiable under subheading 9503.90.0070, HTSUS, which provides for other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:[o]ther: [p]arts and accessories.

*Holding:*

The sun canopies are classifiable under subheading 9503.90.0070, HTSUS, which provides for [o]ther toys; reduced-size ("scale") models and similar recreational models,

working or not; puzzles of all kinds; parts and accessories thereof:[o]ther: [p]arts and accessories. The applicable rate of duty is free.

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

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*New York, NY, May 22, 2002.*  
CLA-2-63:RR:NC:TA:351 I81451  
Category: Classification  
Tariff No. 6307.90.9889

MS. HOPE BAILEY  
SCHENKER, INC.  
*1300 Diamond Springs Road*  
*Suite 300*  
*Virginia Beach, VA 23455*

Re: The tariff classification of a sandbox cover from Hong Kong.

DEAR MS. BAILEY:

In your letter dated May 8, 2002, on behalf of The Little Tikes Company, you requested a tariff classification ruling.

The sample submitted is a sandbox cover made of man-made textile panels. The panels are sewn together and designed to fit a sandbox. The edges are hemmed. Sewn into each corner is an elastic fabric. Attached onto one side, at set intervals, are textile web fabric straps. Depicted onto one side is a design with the printed words "Little Tikes."

The applicable subheading for the sandbox cover will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles \* \* \* Other. The rate of duty will be 7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

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

[ATTACHMENT C]

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

CLA-2 RR:CR:GC 966135 BJB  
Category: Classification  
Tariff No. 9506.99.60

MR. WILLIAM C. NEAL  
THE LITTLE TIKES COMPANY  
2180 Barlow Road  
Hudson, OH 44236

Re: Proposed Revocation of HQ 961120; Sandbox covers.

DEAR MR. NEAL:

On October 14, 1998, this office issued you Headquarters Ruling Letter (HQ) 961120, classifying a “sandbox canopy and cover” under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 9503.90.00, HTSUS, as “[o]ther toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: [o]ther: [p]arts and accessories[.]”

We have reviewed the ruling in HQ 961120, and have determined the classification to be incorrect. This ruling revokes HQ 961120 and sets forth the correct classification.

*Facts:*

The merchandise is identified as a sun canopy and cover for a sandbox, model #682570000 (sandbox cover), made for use with the “Sun & Shade Sandbox,” model #4850. The sandbox cover is made of “either nylon or polyester woven fabric” measuring approximately 40-inches by 42-inches. The cover has four textile fabric tabs, each with a hemmed hole, to secure the cover to plastic buttons attached at the tops of the sandbox’s four posts.

The cover is designed to provide shade as a canopy when the sandbox is in use, and protective cover, attached to the base of the sandbox, when it is not.

*Issue:*

Whether the sandbox cover is classifiable under heading 9503, HTSUS, as “[o]ther toys; \* \* \*; parts and accessories thereof[;]” heading 9506, HTSUS, as “outdoor games, not specified or included elsewhere in this chapter; \* \* \*; parts and accessories thereof[;]” or elsewhere in the HTSUS?

*Law and Analysis:*

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, HTSUS, goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS (2003) provisions under consideration are as follows:

6307	Other made up articles, including dress patterns:
6307.90	Other:
6307.90.98	Other
*	* * * * *
9503	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90	Other
*	* * * * *

9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Other:
9506.99	Other:
9506.99.60	Other
*	*

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F. Supp. 401, 405 (1991). See also *United States v. Citroen*, 223 U.S. 407 (1911). In its condition, as imported, the subject good is a sandbox cover made of nylon or polyester fabric.

At GRI 1, heading 6307, HTSUS, provides for “[o]ther made up articles, including dress patterns[.]” However, Note 1(t) to Section XI, (which covers heading 6307, HTSUS), provides that the section does not cover: “[a]rticles of chapter 95 (for example, toys, games, sports requisites and nets)[.]” Therefore, if the sandbox cover is a good classifiable under heading 9503, or 9506, HTSUS, it cannot be classifiable under Chapter 63, HTSUS.

Heading 9503, HTSUS, provides for, in pertinent part, “[o]ther toys \* \* \*; parts and accessories thereof[.]” and heading 9506, HTSUS, provides for, in pertinent part, “[a]rticles and equipment for \* \* \* other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; \* \* \*; parts and accessories thereof[.]”

Since articles and equipment for outdoor playground games provide some amusement, the issue is whether or not the sandbox provides the “amusement” and “play” of an “other toy” described in heading 9503, HTSUS. The determination of whether the sandbox (model 4850), for which the subject cover is designed, is classifiable as an “other toy” or as an “outdoor game,” is not *prima facie* clear.

In HQ 961120, the issue before Customs was whether the subject sandbox cover was an accessory to a sandbox. Customs determined that the cover was classifiable in heading 9503, HTSUS, which provides for, in pertinent part, “parts or accessories” of “[o]ther toy[s.]” The sandbox, as *dicta*, was classified in heading 9503, HTSUS, as an “[o]ther toy[.]”

With regard to heading 9503, HTSUS, the term “toy” is not specifically defined in the tariff, or the ENs. The ENs to Chapter 95, HTSUS, provide that: “this chapter covers toys of all kinds whether designed for the amusement of children or adults.”

It is Customs position that a toy is essentially a plaything, something that is intended and designed for the amusement of children or adults, and which by its very nature and character is reasonably fitted for no other purpose. Customs views the “amusement” requirement as indicating that toys should be designed and used principally for amusement and that they not serve a **utilitarian purpose**. See Additional U.S. Rule of Interpretation 1(a), HTSUS. Further, Customs defines “principal use” as that use which exceeds each other single use of the article.

A sandbox is designed to hold sand in a prescribed area and provide a play environment for children’s playground games. A sandbox itself does not provide the manipulative play value or frivolous amusement characteristic of toy playthings. In this case, children play with the sand in the sandbox, they do not play with the sandbox. Any amusement derived from playing in the sandbox, *e.g.*, from its shape, digging in the sand, and tumbling, is incidental or secondary to its utility of providing a play environment and keeping the sand in one area on the playground. Thus, a sandbox, in its entirety, is not a toy “designed and used principally for amusement” and cannot be classifiable under heading 9503, HTSUS.

Heading 9506, HTSUS, in pertinent part, provides for articles and equipment for outdoor games, not specified elsewhere in the chapter. This describes certain outdoor playground equipment and games. Sandboxes are specifically designed for outdoor playground use and therefore fit within the scope of the heading.

EN 95.06(B), in pertinent part, provides that “[t]his heading covers:

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03)** \* \* \* [.]”

(12) Equipment of a kind used in children’s playgrounds (e.g., swings, slides, see-saws and giant strides).”

EN 95.06 (B)(12) describes specific examples of equipment of a kind used in children’s playgrounds, including swings, slides, and see-saws. This sandbox is made of plastic;

sturdy enough to hold 300 pounds of sand. It is also made to be stored out-of-doors in all kinds of weather. It has rounded corners and surfaces designed for child safety. Sandboxes, and the swings, slides, and see-saws described in EN 95.06 (B)(12), all provide outdoor activity bases on children's playgrounds that are similar in nature. Thus, the sandbox is specifically described under heading 9506, HTSUS, as articles and equipment for outdoor games.

Note 3, Chapter 95, HTSUS, provides that subject to Note 1, Chapter 95, "parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles." General ENs to Chapter 95, HTSUS, provide, in pertinent part, that "[e]ach of the headings of this Chapter also covers identifiable parts and accessories of articles of this Chapter which are suitable for use solely or principally therewith, and **provided** they are **not** articles excluded by Note 1 to this Chapter." (Emphasis in the original). Sandbox covers are not excluded by Note 1 to Chapter 95, HTSUS.

The United States Court of Appeals for the Federal Circuit has held that canopies solely dedicated for use with child safety seats, and not designed or sold to be used independently, were properly classified as "parts" of the car safety seats (*Bauerhin Technologies Ltd. Partnership v. United States*, 110 F.3d 774 (Fed. Cir. 1997)). Like the safety seat canopies in *Bauerhin*, the subject sandbox covers are solely dedicated for use with LTC sandboxes, specifically designed to be securely attached to the tops of the sandbox's four poles or to the sides of the box. Similarly, the subject cover is not designed or sold to be used independently.

Thus, the sandbox cover is classifiable under heading 9506, HTSUS, which provides for, in pertinent part, "[a]rticles and equipment for \* \* \* outdoor games, not specified or included elsewhere in this chapter; \* \* \*; parts and accessories thereof[.]" Having established that the subject merchandise satisfies the terms provided in heading 9506, HTSUS, at GRI 1, consideration of any other headings is precluded.

Our determination is supported by New York Ruling (NY) 895598, dated March 28, 1994, where Customs determined that "equipment principally designed for use by children in an outdoor playground activity is classified for tariff purposes in Heading 9506, HTSUS[.]"

*Holding:*

Based on the foregoing findings, at GRI 1, the subject sandbox cover, model #682570000, is classifiable in subheading 9506.99.60, HTSUS, which provides for "[a]rticles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: \* \* \* Other[.]"

*Effect on Other Rulings:*

**HQ 961120**, dated October 14, 1998, is **revoked**.

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

[ATTACHMENT D]

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

CLA-2 RR:CR:GC 966140 BJB  
Category: Classification  
Tariff No. 9506.99.60

Ms. HOPE BAILEY  
SCHENKER, INC.  
1300 Diamond Springs Road  
Virginia Beach, VA 23455

Re: Proposed Revocation of HQ NY I81451; Sandbox cover.

DEAR Ms. BAILEY:

This is in reference to New York Ruling Letter (NY) I81451, issued to you on behalf of The Little Tikes Company (LTC), on May 22, 2002, by the Director, Customs National Commodity Specialist Division, New York, New York, concerning the classification of a "sandbox cover," under the Harmonized Tariff Schedule of the United States (HTSUS).

In NY I81451, it was determined that a sandbox cover was classifiable under subheading 6307.90.98, HTSUS (2002), as "[o]ther made up articles, including dress patterns: Other: Other[.]"

We have reviewed the ruling in NY I81451, and have determined the classification to be incorrect. This ruling revokes NY I81451 and sets forth the correct classification.

*Facts:*

The merchandise was identified as a cover of man-made textile panels sewn together, and designed, for a sandbox (sandbox cover), measuring approximately 50-inches by 50-inches square. The edges of the cover are hemmed with an elastic fabric sewn into each corner and textile straps attached to one side of the cover to secure it to the sandbox.

*Issue:*

Whether the sandbox cover is classifiable under heading 6307, HTSUS, as "[o]ther made up articles[.]" 9503, HTSUS, as "[o]ther toys; \* \* \*; parts and accessories thereof[.]" heading 9506, HTSUS, as "outdoor games, not specified or included elsewhere in this chapter; \* \* \*; parts and accessories thereof[.]" or elsewhere in the HTSUS?

*Law and Analysis:*

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, HTSUS, goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS (2003) provisions under consideration are as follows:

6307	Other made up articles, including dress patterns:
6307.90	Other:
6307.90.98	Other
*	* * * * *
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90	Other
*	* * * * *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not spe-



cified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

9506.99	Other:						
9506.99.60	Other						
*	*	*	*	*	*	*	*

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F. Supp. 401, 405 (1991). See also *United States v. Citroen*, 223 U.S. 407 (1911). In its condition, as imported, the subject good is a sandbox cover made of nylon or polyester fabric.

At GRI 1, heading 6307, HTSUS, provides for “[o]ther made up articles, including dress patterns[.]” However, Note 1(t) to Section XI, (which covers heading 6307, HTSUS), provides that the section does not cover: “[a]rticles of chapter 95 (for example, toys, games, sports requisites and nets)[.]” Therefore, if the sandbox cover is a good classifiable under heading 9503, or 9506, HTSUS, it cannot be classifiable under Chapter 63, HTSUS.

Heading 9503, HTSUS, provides for, in pertinent part, “[o]ther toys \* \* \*; parts and accessories thereof[.]” and heading 9506, HTSUS, provides for, in pertinent part, “[a]rticles and equipment for \* \* \* other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; \* \* \*; parts and accessories thereof[.]”

Since articles and equipment for outdoor playground games provide some amusement, the issue is whether or not the sandbox provides the “amusement” and “play” of an “other toy” described in heading 9503, HTSUS. The determination of whether a sandbox for which the subject cover is designed is classifiable as an “other toy” or as an “outdoor game,” is not *prima facie* clear.

With regard to heading 9503, HTSUS, the term “toy” is not specifically defined in the tariff, or the ENs. The ENs to Chapter 95, HTSUS, provide that: “this chapter covers toys of all kinds whether designed for the amusement of children or adults.”

It is Customs position that a toy is essentially a plaything, something that is intended and designed for the amusement of children or adults, and which by its very nature and character is reasonably fitted for no other purpose. Customs views the “amusement” requirement as indicating that toys should be designed and used principally for amusement and that they not serve a **utilitarian purpose**. See Additional U.S. Rule of Interpretation 1(a), HTSUS. Further, Customs defines “principal use” as that use which exceeds each other single use of the article.

A sandbox is designed to hold sand in a prescribed area and provide a play environment for children’s playground games. A sandbox itself does not provide the manipulative play value or frivolous amusement characteristic of toy playthings. In this case, children play with the sand in the sandbox, they do not play with the sandbox. Any amusement derived from playing in the sandbox, *e.g.*, from its shape, digging in the sand, and tumbling, is incidental or secondary to its utility of providing a play environment and keeping the sand in one area on the playground. Thus, a sandbox is not a toy “designed and used principally for amusement,” and cannot be classifiable under heading 9503, HTSUS.

Heading 9506, HTSUS, in pertinent part, provides for articles and equipment for outdoor games, not specified elsewhere in the chapter. This describes certain outdoor playground equipment and games. Sandboxes are specifically designed for outdoor playground use and therefore fit within the scope of the heading.

EN 95.06(B), in pertinent part, provides that “[t]his heading covers:

(B) **Requisites for other sports and outdoor games (other than** toys presented in sets, or separately, of **heading 95.03)** \* \* \* [.]”

\* \* \* \* \*

(12) Equipment of a kind used in children’s playgrounds (*e.g.*, swings, slides, see-saws and giant strides).”

EN 95.06 (B)(12) describes specific examples of equipment of a kind used in children’s playgrounds, including swings, slides, and see-saws. Much of the literature available about LTC sandboxes on the internet provides that they are sturdy and geared for playground use. LTC sandbox, model #4850, for example (not subject of this ruling), is covered by a smaller 40-inch by 42-inch cover but sturdy enough to hold 300 pounds of sand, and to be stored out-of-doors in all kinds of weather. Generally, LTC sandboxes have rounded corners and surfaces designed for child safety. Sandboxes, and the swings, slides, and see-saws described in EN 95.06 (B)(12), all provide outdoor activity bases on children’s

playgrounds that are similar in nature. Thus, sandboxes are specifically described under heading 9506, HTSUS, as articles and equipment for outdoor games.

Note 3, Chapter 95, HTSUS, provides that subject to Note 1, Chapter 95, “parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.” General ENs to Chapter 95, HTSUS, provide, in pertinent part, that “[e]ach of the headings of this Chapter also covers identifiable parts and accessories of articles of this Chapter which are suitable for use solely or principally therewith, and **provided** they are **not** articles excluded by Note 1 to this Chapter.” (Emphasis in the original). Sandbox covers are not excluded by Note 1 to Chapter 95, HTSUS.

The United States Court of Appeals for the Federal Circuit has held that canopies solely dedicated for use with child safety seats, and not designed or sold to be used independently, were properly classified as “parts” of the car safety seats (*Bauerhin Technologies Ltd. Partnership v. United States*, 110 F3d 774 (Fed. Cir. 1997)). Like the safety seat canopies in *Bauerhin*, the subject sandbox cover is solely dedicated for use with an LTC sandbox, specifically designed to be fitted to the corners of the base, and attached to at least one side, of the box. Similarly, the subject cover is not designed or sold to be used independently.

Thus, this sandbox cover is classifiable under heading 9506, HTSUS, which provides for, in pertinent part, “[a]rticles and equipment for \* \* \* outdoor games, not specified or included elsewhere in this chapter; \* \* \*; parts and accessories thereof[.]” Having established that the subject merchandise satisfies the terms provided in heading 9506, HTSUS, at GRI 1, consideration of any other headings is precluded and we conclude that NY I81451 was in error.

Our determination is supported by New York Ruling (NY) 895598, dated March 28, 1994, where Customs determined that “equipment principally designed for use by children in an outdoor playground activity is classified for tariff purposes in Heading 9506, HTSUS[.]”

*Holding:*

Based on the foregoing findings, at GRI 1, the subject sandbox cover, is classifiable in subheading 9506.99.60, HTSUS, which provides for “[a]rticles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other[.]”

*Effect on Other Rulings:*

**NY I81451, dated May 22, 2002, is revoked.**

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

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter and modifying a ruling letter pertaining to the tariff classification of alkaline batteries under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on December 4, 2002. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2003.

FOR FURTHER INFORMATION CONTACT: David 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)), a notice was published in the CUSTOMS BULLETIN on December 4, 2002, proposing to revoke NY D83627, dated November 12, 1998, and proposing to modify NY I84002, dated July 24, 2002, which involved the classification of alkaline batteries. No comments were received in response to the notice.

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

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY I84002 and is revoking NY D83627 and any other ruling not specifically identified in order to reflect the proper classification of the alkaline batteries pursuant to the analysis set forth in HQ 966022 and 966038. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 966022 and 966038 are "Attachments A and B" respectively.

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

Dated: January 10, 2003.

JOHN G. BLACK,  
(for Myles B. Harmon, Director,  
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
 U.S. CUSTOMS SERVICE,  
 Washington, DC, January 10, 2003.  
 CLA-2 RR:CR:GC 966022 DSS  
 Category: Classification  
 Tariff No. 8506.10.00

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

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

DEAR MR. YEPEZ:

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modification) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), a notice was published on December 4, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 49, proposing to revoke NY D83627. No comments were received in response to this notice.

*Facts:*

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

*Issue:*

What is the proper tariff classification for alkaline batteries?

*Law and Analysis:*

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

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

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

Thus, the HTSUS provisions under consideration are as follows:

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

Goods of heading 8506 generate electrical energy by means of chemical reactions. Primary cells of heading 8506 consist of a container holding an alkaline or non-alkaline electrolyte in which two electrodes, an anode and a cathode, are immersed. Each electrode is

provided with a terminal or other arrangement for connection to an external circuit. Primary cells may be used individually or they may be grouped together in batteries, either in series, or in parallel or a combination of both. The principal characteristic of goods of heading 8506 is that they cannot be readily or efficiently recharged. Heading 8506 provides for a class of goods *eo nomine*, by name. See *HQ 954373*, dated September 14, 1993. Therefore, alkaline batteries are classified under heading 8506, HTSUS.

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

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

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

*Holding:*

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

*Effect on Other Rulings:*

NY D83627 is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

JOHN G. BLACK,  
(for Myles B. Harmon, Director,  
Commercial Rulings Division.)

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, January 10, 2003.*

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

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

Re: Modification of NY I84002; alkaline batteries.

DEAR MS. DAVENPORT:

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modification) of the North American Free Trade Agreement Im-

plementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), a notice was published on December 4, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 49, proposing to modify NY I84002. No comments were received in response to this notice.

*Facts:*

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

*Issue:*

What is the proper tariff classification for alkaline batteries?

*Law and Analysis:*

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

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

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

Thus, the HTSUS provisions under consideration are as follows:

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

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

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

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

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

*Holding:*

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

*Effect on Other Rulings:*

NY I84002 is MODIFIED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

JOHN G. BLACK,  
(for Myles B. Harmon, Director,  
Commercial Rulings Division.)