CERTAIN FINAL JUDICIAL DECISIONS RELATING TO TARIFF TREATMENT

Report to the Committee on Ways and Means and to the Committee on Finance and to the President, on Investigation No. 332-273 Under Section 332 of the Tariff Act of 1930

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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PREFACE

The U.S. International Trade Commission (Commission) instituted the present investigation, Certain Final Judicial Decisions Relating to Tariff Treatment, Investigation No. 332-273, on March 14, 1989, pursuant to section 332(g) of the Tariff Act of 1930,[1] to fulfill the requirements of section 1211(d) of the Omnibus Trade and Competitiveness Act of 1988 (1988 Trade Act).[2] Section 1211(d) of the 1988 Trade Act directs the Commission to investigate certain final judicial decisions that would have affected tariff treatment under the Harmonized Tariff Schedule (HTS) if they had been published prior to February 1, 1988. The Commission is further directed to recommend to the President and to the Congress[3] such changes in tariff treatment under the HTS, based on these decisions, as it would have recommended prior to February 1, 1988.[4]

The Commission's report is due no later than September 1, 1990.[5] The report provides background information, analyzes the submissions received in connection with this investigation, and sets forth the Commission's recommendations in accordance with the statute.

Public notice of the investigation was given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 20, 1989 (54 F.R. 16011).[6] A notice soliciting comments concerning suggested changes to the HTS pursuant to this investigation was published in the *Federal Register* of May 18, 1990 (55 F.R. 20666).[7] The information contained in this report was obtained from the Commission's files, other Federal agencies, submissions by the public, and other sources.

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[1] 19 U.S.C. 1332(g).
[2] Public Law 100-418, Aug. 23, 1988, 102 Stat 1107-1574.
[3] Specifically, the Commission is directed to report to the Committee on Ways and Means and to the Committee on Finance.
[4] Section 1211(d) of the 1988 Trade Act, 102 Stat. 1154-1155, 19 U.S.C. 3011(d).
[5] Since Sept. 1, 1990, falls on a Saturday, and the following Monday is a Federal holiday, the report is due on Sept. 4, 1990.
[6] The notice of the institution of the Commission's Investigation No. 332-273 is reproduced in app. A.
[7] This notice is reproduced in app. B.

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EXECUTIVE SUMMARY

This investigation was instituted pursuant to section 1211(d) of the Omnibus Trade and Competitiveness Act of 1988. That Act requires the Commission to recommend to the President and to the Congress those changes to the Harmonized Tariff Schedule (HTS) that would have been incorporated in the HTS before enactment if certain "final judicial decisions" had been "published" prior to February 1988.

In response to the Commission's notice instituting this investigation, the Commission was advised of two judicial decisions concerning power supplies for computers and 28 judicial decisions concerning chromatography and electrophoresis equipment in submissions from interested parties. Interested parties have requested that the Commission recommend changes in two product areas based on these decisions: (1) duty-free treatment for certain power supplies for computers that are now dutiable at 3 percent ad valorem; and (2) a one-percent reduction (to 3.9 percent ad valorem) for certain chromatography and electrophoresis equipment.

Based on the information provided in these submissions, the Commission identified one decision concerning power supplies for computers and 20 decisions concerning electrophoresis equipment as "final judicial decisions" that are "published" within the scope of section 1211(d). These "final judicial decisions," in turn, form the basis for the Commission's recommendations with respect to changes in rates of duty in the HTS for two products, which this report transmits to the President and to the Congress pursuant to section 1211(d).

The Commission has identified the decision by the Court of Appeals for the Federal Circuit in *Digital Equipment Corp. v. U.S.*[1] as a "final judicial decision" within the scope of section 1211(d). Based upon this decision, the Commission recommends that certain power supplies[2] for automatic data processing (ADP) machines or units[3] be accorded a free rate of duty in column 1 of the HTS in order to maintain the rate of duty to which this merchandise was subject under the Tariff Schedules of the United States (TSUS).

If the current tariff treatment is modified to provide duty-free treatment to these power supplies, the loss in revenue can be expected to amount to at least $19.8 million per year. This amount is expected to increase at an estimated rate of about 10 percent per year as imports of ADP machines increase.

The Commission has identified twenty unreported decisions by the Court of International Trade that are described more specifically in an appendix to this report as "final judicial decisions" that are "published" within the scope of section 1211(d). Based upon these decisions, the Commission recommends that certain electrophoresis equipment[4] be accorded a rate of duty of 3.9 percent ad valorem in column 1 of the HTS in order to maintain the rate of duty to which this merchandise was subject under the TSUS.

The Commission estimates that the amount of customs revenue that will not be collected, if the proposal to reduce the duty to 3.9 percent ad valorem is adopted, would be $25,000 to $30,000 per year.

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[1] 889 F.2d 267 (Fed. Cir. 1989).

[2] For purposes of this investigation, these power supplies are defined as "Power supply units suitable for physical incorporation into automatic data processing machines or units thereof, however provided for in the HTS."

[3] The phrase "ADP machines or units" means "ADP machines or units of heading 8471, HTS."

[4] For purposes of this investigation, this equipment is defined as (1) "Electrophoresis instruments not incorporating an optical or other measuring device, however provided for in the HTS" and (2) "Parts and accessories of electrophoresis instruments not incorporating an optical or other measuring device, however provided for in the HTS." The instruments, parts, and accessories that are the subject of this investigation are more specifically described in an appendix to this report.

Background

Section 1211(d) of the Omnibus Trade and Competitiveness Act of 1988 (1988 Trade Act) directs the Commission to investigate certain final judicial decisions which would have affected tariff treatment if they had been published prior to February 1988. The Commission is further directed to report its recommendations for changes to the Harmonized Tariff Schedule based on these decisions to the Congress and to the President by September 1, 1990.[1] The following discussion is intended to provide some context for the scope of this investigation and the Commission's recommendations thereunder.

Legislative History of Section 1211(d)

Section 1211(d) was enacted as part of subtitle B (Implementation of the Harmonized Tariff Schedule) of title I (Trade, Customs, and Tariff Laws) of the 1988 Trade Act.[2] Enactment of subtitle B approved the accession to the Harmonized System Convention by the United States Government, and implemented the international nomenclature established by the Convention in a new U.S. customs tariff. Subtitle B provided for the new tariff, the Harmonized Tariff Schedule, to take effect on January 1, 1989. This subtitle also established administrative arrangements for future U.S. participation in the international development of the system, and provided legal authority to the Commission and the President to ensure that the new U.S. customs tariff would continue to be maintained in accordance with the international system.[3]

As described in the Commission's June 1990 report, the HTS replaced the former Tariff Schedules of the United States (TSUS).[4] The TSUS was enacted by the Tariff Classification Act of 1962[5] (1962 Classification Act), which greatly simplified the structure of the tariff schedules enacted in titles I and II of the Tariff Act of 1930.[6] The 1962 Classification Act reduced the 16 schedules in the 1930 Tariff Act to 8 schedules plus the Appendix[7] in the TSUS.[8] The TSUS, in turn, was replaced by a *single* schedule, the Harmonized Tariff Schedule of the United States (HTS).[9]

The problems faced by the Commission in converting the TSUS into the format of the new HTS were similar to the problems faced by the then-Tariff Commission in converting the tariff schedules in the 1930 Tariff Act into the TSUS format. These problems lead the Congress, in each instance, to enact somewhat similar provisions to take into account the effect that pending tariff classification litigation might have on the conversion. The 1962 Classification Act contains an analogous provision to section 1211(d), i.e., section 202.[10] However, section 202 differs in some respects from section 1211(d) in that the proposed Commission report[11] was limited to successful petitions under section 516 of the Tariff Act of 1930[12] and did not address successful protests under section 514 of the Tariff Act of 1930.[13]

Section 516 provides a procedure whereby a domestic manufacturer may challenge the tariff classification of competing imported goods by the Customs Service, which is believed to be in error. If successful, the 516 petition usually results in an increased rate of duty, or imposition of quantitative restraints, or other nontariff barriers to importation, or both. By contrast, section 514 provides a procedure for the importer to contest the correctness of tariff classification decisions by the Customs Service. If successful, the outcome (generally speaking) is the reverse of that resulting from section 516 litigation. But, in either case, the resulting judicial decision overturns the classification decision previously made by the Customs Service. Consequently, the validity of information upon which the Commission relied in converting one classification system to another may be called into question. Section 202 (and its 1988 counterpart, section 1211(d)) recognized the need to reevaluate the tariff conversion based upon subsequent judicial decisions which overturned prior classification decisions by the Customs Service.

There were several other legislative precursors to section 1211(d). A bill was introduced in the Senate, in February 1987, which addressed similar questions as part of an implementation package for the proposed new tariff.[14] Sec-

[1] Section 1211(d) is reproduced in app. C.

[2] Subtitle B comprises sections 1201-1217 of the 1988 Trade Act. 102 Stat. 1147-1163.

[3] A history of events leading up to enactment of subtitle B, a section-by-section analysis of the subtitle, and a review of actions taken to implement subtitle B at the national and international levels subsequent to enactment is contained in U.S. International Trade Commission, *Investigation with Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988* (Investigation No. 332-274), USITC Publication 2296, June 1990.

[4] 19 U.S.C. 1202 (1988).

[5] Public Law 87-456, May 24, 1962, 76 Stat. 72.

[6] Title I (Dutiable List) of Public Law 361 (46 Stat. 590-763) enumerated all articles subject to duty in 15 separate schedules. 46 Stat. 590-672, 19 U.S.C. 1001 (1930). Title II (Free List) enumerated all articles admitted free of duty in a 16th schedule. 46 Stat. 672-685, 19 U.S.C. 1201 (1930).

[7] The Appendix to the TSUS is often referred to, incorrectly, as schedule 9 of the TSUS.

[8] 19 U.S.C. 1202 (1963).

[9] Section 1204(a) of the 1988 Trade Act, 102 Stat. 1148.

[10] 76 Stat. 72, 75. Section 202 of the 1962 Classification Act is reproduced in app. D.

[11] There is no record of a report by the Commission pursuant to section 202 of the 1962 Classification Act.

[12] 19 U.S.C. 1516.

[13] 19 U.S.C. 1514.

[14] Section 5010(b) (Harmonized System) of subtitle A (the Trade Competitiveness Act of 1987) of title V (the International Economic Environment Improvement Act of

tion 5010(b)(16) of S. 539 provided "transition rules for pending protests" in the context of the conversion from the TSUS to the HTS. However, it is not clear that section 5010(b)(16)(C) would have included successful "petitions" under section 516 within the scope of the Commission's investigation since the language of subparagraph C is confined to "sustained protests."[15]

The United States Trade Representative (USTR) submitted[16] the proposed new U.S. tariff[17] to the Committee on Ways and Means[18] and to the Committee on Finance[19] for review in July 1987. In the *Submitting Report,* the USTR presented draft legislative language for the "Harmonized System Implementation Act of 1987" which also addressed the issue of pending tariff classification litigation. Section 1(n) of the draft bill deals with "transition rules for pending protests" in a fashion similar to the language of section 5010(b)(16) of S. 539 above. Section 1(n)(2) refers both to section 516 petitions and section 514 protests, but the language directing the Commission to investigate is similarly limited to "sustained protests."[20] However, the "section-by-section analysis" submitted by the USTR to the Congress together with the proposed legislation expressly states that the Commission "will investigate such sustained protests and petitions" and report its recommendations to the President with respect to the changes to the HTS "which it believes are necessary to conform" the new tariff to the final judicial decisions.[21]

The next version of section 1211(d) appeared as part of the "Harmonized Tariff Schedule Implementation Act" which was introduced in the House of Representatives on December 3, 1987.[22] Section 12(d) of H.R. 3690 covers "certain protests and petitions under the customs law" and reflects a considerable reworking of the language of the earlier USTR submission. Section 12(d)(2) makes clear that both sustained protests and petitions are to be within the scope of the Commission's investigation.[23] The language of section 12(d) of H.R. 3690 was incorporated by the 1988 Trade Act conferees, with slight modifications, in the enacted bill as section 1211(d).

Scope of the Investigation

The statutory parameters of this investigation are found in section 1211(d) of the 1988 Trade Act. This section directs the Commission to conduct an investigation, under section 332 of the Tariff Act of 1930, of certain final judicial decisions and to report the results of that investigation to the President and to the relevant committees of Congress by September 1, 1990. The Commission is directed to examine those final judicial decisions which sustain, in whole or in part, certain protests or petitions. Section 1211(d)(1)(A) defines these as protests filed under section 514 of the Tariff Act of 1930, or petitions filed under section 516 of that Act, which cover articles entered before January 1, 1989, under the TSUS.

Section 1211(d)(2)(B) limits the judicial decisions that may be considered within the scope of the investigation to those that have become "final" and are "published" between February 1, 1988, and January 31, 1990, and that would have affected tariff treatment if they had been published "during the period of the conversion" of the TSUS into the HTS. Neither the statute nor the report of the conferees defines this period of time. An analogous formulation is used in section 1204(b)(1) but without reference to a specific period of time.

On August 24, 1981, the President requested the Commission to initiate an investigation for the purpose of converting the TSUS into the format of the HTS.[24] The investigation was initiated on September 16, 1981; the report of this investigation was transmitted to the President on June 30, 1983.[25] However, Commission staff continued to participate closely in the development and further modification of the draft tariff submitted in

[14]—*Continued*
1987) of S. 539, 100th Cong., 1st Sess., Calendar No. 18, Feb. 19, 1987, pp. 618-639.

[15] Section 5010(b)(16)(C) of S. 539. The text of section 5010(b)(16) of S. 539 (pp. 633-635) is set out in app. E.

[16] United States Trade Representative, *Submitting Report with Respect to the Harmonized System Implementation Act of 1987*, June 1987.

[17] United States Trade Representative, *Proposed United States Tariff Schedule Annotated in the Harmonized System Nomenclature*, July 1987.

[18] Executive Communication 1641, A letter from the United States Trade Representative, transmitting a draft of proposed legislation to approve the International Convention on the Harmonized Commodity Description and Coding System, to authorize the implementation in the U.S. customs tariff of the Harmonized System nomenclature established internationally by the Convention, and for other purposes; to the Committee on Ways and Means. 133 *Congressional Record*, 100th Cong., 1st Sess., H-5388, June 22, 1987.

[19] EC-1470, A communication from the United States Trade Representative transmitting a draft of proposed legislation entitled "Harmonized System Implementation Act of 1987", to the Committee on Finance. 133 *Congressional Record*, 100th Cong., 1st Sess., S-8455, June 23, 1987.

[20] Section 1(n)(2) of the proposed "Harmonized System Implementation Act of 1987." The text of section 1(n) (pp. 13-16) is set out in app. F.

[21] A copy of the USTR section-by-section analysis is set out in app. G.

[22] H.R. 3690, 100th Cong., 1st Sess. 133 *Congressional Record* H-10988, December 3, 1987. The substance of H.R. 3690, as amended, was incorporated in H.R. 4848, 100th Cong., 2d Sess., as subtitle B of title I of that Act. H.R. 4848 was enacted as Public Law 100-418.

[23] The text of section 12(d) of H.R. 3690 (pp. 19-22) is set out in app. H.

[24] U.S. International Trade Commission, *Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1400, June 1983, p. v.

[25] Ibid.

1983.[26] The process of staff involvement in the tariff conversion continued through the publication of the "baseline edition" of the HTS in 1988.[27]

A narrow reading of the language might limit the relevant time frame to 1981–83; however the language of section 1211(d) would appear equally susceptible to an interpretation that describes 1981–1988. The reference to a February 1988 cut-off date in section 1211(d)(2)(B)(i) implies an understanding by the Congress that the "period of the conversion" had continued up to that date. Either interpretation appears to be acceptable for purposes of this investigation since these final judicial decisions[28] would have received the same consideration during either time period.

Section 1211(d)(2)(B) requires the Commission to recommend changes to the HTS, based on these decisions, that it "would have recommended if [these decisions] had been made before the conversion ... occurred." Thus, even if the decisions had been available during the conversion and the Commission would not have recommended any changes to the HTS, the Commission is not now required to make any recommendation. Conversely, if the decisions had been available and they would have caused the Commission to recommend different tariff treatment during the conversion, it must do so in this investigation.

The Commission's recommendations for changes to the HTS, pursuant to section 1211(d), are based on the conversion guidelines given by the President to the Commission in 1981.[29] The most relevant guidelines are as follows—

> In converting the tariff schedules the Commission should avoid, to the extent practicable and consonant with sound nomenclature principles, changes in rates of duty on individual products. However, the U.S. tariff structure should be simplified to the extent possible without rate changes significant for U.S. industry, workers, or trade. Within these guidelines, the Commission should suggest modifications to the rate structure which, in the Commission's judgment, would alleviate administrative burdens on the Customs Service.[30]

By following these guidelines in this investigation, the Commission is recommending "those changes to the [HTS] that the Commission would have recommended if the final [judicial] decisions concerned had been made before the conversion ... occurred."[31]

Section 1211(d)(3) further directs the President to review the Commission's recommendations and proclaim "those changes, if any, which he decides are necessary or appropriate" to conform the HTS to the tariff treatment provided under the TSUS by these decisions. The President's authority to act pursuant to section 1211(d)(3) is limited to the scope of the Commission's recommendations in this investigation.[32] Any proclamation by the President is to be effective for entries made on or after the date of the proclamation. For entries made after January 1, 1989, and before the date of the proclamation, the importer must file a request for liquidation or reliquidation within 180 days of the effective date of the proclamation.

In accordance with the Commission's notice of institution, interested parties have advised the Commission of "final judicial decisions" that they believe are within the scope of this investigation and have suggested changes to the HTS based upon these decisions. These suggestions may be grouped into two product categories, as follows: (1) certain power supplies for automatic data processing (ADP) machines; and (2) certain chromatography and electrophoresis equipment.

The remainder of this report is divided into two parts which address the issues raised by the decisions in each of these product categories. Each part will: (1) identify the judicial decisions that have been notified to the Commission; (2) discuss the issues raised in the submissions relating to these decisions; (3) set forth the Commission's recommendations with respect to these decisions; and (4) provide an estimate of the revenue implications of the Commission's recommendations in each case.

Certain Power Supplies for ADP Machines

Decisions Notified to the Commission

Numerous submissions on behalf of individual importers and an industry trade association request that the power supplies that were the

[26] The development process is described in greater detail in U.S. International Trade Commission, *Investigation with Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988* (Investigation No. 332-274), USITC Publication 2296, June 1990, pp. 4-6.

[27] U.S. International Trade Commission, *Harmonized Tariff Schedule of the United States, Annotated for Statistical Reporting Purposes (First Edition)*, USITC Publication 2030, and Supplement No. 1 thereto (Mar. 25, 1988).

[28] These decisions are described in a subsequent section of the report.

[29] The President's guidelines to the Commission for the original conversion are set forth and analyzed in U.S. International Trade Commission, *Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1400, June 1983, pp. 30-38.

[30] Ibid.

[31] Section 1211(d)(2)(B) of the 1988 Trade Act.

[32] Section 1211(d) clearly limits action by the President to those "changes recommended by the Commission." The President may proclaim some or all of the recommended changes "which he decides are necessary or appropriate" (or none), but he may not go beyond the scope of the changes recommended by the Commission.

subject of the decisions[33] by the Court of International Trade, and by the Court of Appeals for the Federal Circuit, in *Digital Equipment Corp. v. U.S.*,[34] (hereafter *DEC*) be accorded a free rate of duty in column 1-general in order to conform tariff treatment under the HTS to that decision. The Customs Service contended that the imported merchandise in *DEC* should be classified as "rectifiers and rectifying apparatus" under TSUS item 682.60 at 3 percent ad valorem. The importer sought classification under the provision for "parts of automatic data processing machines and units thereof" under TSUS item 676.54. Both the trial and appellate courts in *DEC* ruled in favor of the importer and classified the merchandise under TSUS item 676.54, which was dutiable at a free rate of duty.

The merchandise was generally described as power supplies for computers and stipulated as represented by the DEC Model H 7862-C Computer Power Supply. The appellate court[35] emphasized the fact that the imported merchandise "contains more significantly different functions" than devices that had been the subject of earlier decisions.[36] The trial court in *DEC* had found that the functional aspects of these power supplies went well beyond the rectification functions encompassed under TSUS item 682.60, thus holding that the merchandise was "more than" the "rectifiers and rectifying apparatus" described by that item. The court further held that these power supplies should therefore be classified as parts of the machines for which they were designed to supply power, namely computers.[37]

The judgment of the appellate court in *DEC* was entered on November 14, 1989. The Government filed a petition for rehearing; this petition was denied in an order filed December 12, 1989. The Government also filed a suggestion for rehearing *in banc* and the court invited the parties to file a response thereto. Subsequently, the suggestion for rehearing *in banc* was declined in an order filed January 25, 1990. The Commission understands that a petition for a writ of *certiorari* was not filed.[38]

[33] As discussed later in the report, some of the submissions argue that the decision by the Court of International Trade should be treated as a "final judicial decision" *separate* and distinct from the decision by the Court of Appeals for the Federal Circuit. For purposes of this report, the Commission assumes that each decision constitutes a separate "judicial decision;" however, this assumption does not imply that either is a "final" decision as that term is used in section 1211(d).

[34] *Digital Equipment Corp. v. U.S.*, 710 F. Supp. 1381 (CIT 1988); *affirmed* 889 F.2d 267 (Fed. Cir. 1989).

[35] The majority opinion was written by Senior Circuit Judge Cowen.

[36] 889 F.2d 267, 269.

[37] Known generically as automatic data processing machines.

[38] Thus, the decision by the Court of Appeals for the Federal Circuit (CAFC) in *DEC* is "final" as of the date of this report. However, it is not clear that it was "final" as of the date required by section 1211(d) (January 31, 1990) since the time for application for *certiorari* had not yet run. The term "final" is not defined in the statute or in the report of the conferees on the 1988 Trade Act. Consequently, the time when a decision of the CAFC becomes "final" for purposes of this investigation has not been authoritatively determined. The CAFC has recently interpreted the term "final court decision" in another statutory context but it shed no light on this specific question. "Because the issue is not before us in this appeal, we need not decide whether a decision of this court is 'final' within the meaning of section 1516a(e) before the time for application for certiorari to the Supreme Court expires." *Timken Co. v. U.S.*, 893 F.2d 337, 340 note 5 (Fed. Cir. 1990).

Submissions Received by the Commission

A total of 14 submissions were received from interested private sector parties concerning this proposed change to the HTS. In addition, one letter was received from the U.S. Customs Service,[39] in response to a letter from Commission staff,[40] answering certain questions concerning the current classification practice for this merchandise under the HTS.

The private sector submissions were submitted on behalf of the following importers: Astec USA,[41] Computer Products/Power Conversion America, Data General Corp., Digital Equipment Corp. (hereafter, Digital),[42] Force Computers, Inc.,[43] Hewlett-Packard Co., NCR Corp., and Zenith Electronics Corp. In addition, the Computer and Business Equipment Manufacturers Association (CBEMA) made a submission on behalf of their membership. CBEMA states that they represent the "leading edge of American high technology companies in computers, business equipment and telecommunications ... [with] combined sales of $250 billion in 1989." All of the submissions from the importers and from CBEMA urge the Commission to recommend duty-free treatment for the computer power supplies that were the subject of the DEC decisions. There were no submissions received in opposition to the request for duty-free treatment for these computer power supplies.

The merchandise under consideration has been described in various ways in several submissions. For example, Digital distinguishes the merchandise of interest to it ("power supplies made to be incorporated into computers") from other computer power supplies ("separately

[39] Letter from Director, Office of Regulations and Rulings, U.S. Customs Service, to Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Mar. 2, 1990, Customs Service Headquarters File No. 086513. The letter from the Customs Service is reproduced in app. I.

[40] Letter from Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission to Director, Office of Regulations and Rulings, U.S. Customs Service, Feb. 12, 1990.

[41] Two submissions dated Feb. 1, 1990, and June 13, 1990, respectively.

[42] Four submissions dated May 31, 1989, Nov. 21, 1989, Jan. 31, 1990, and June 15, 1990, respectively.

[43] Two submissions dated Mar. 7, 1990, and June 18, 1990, respectively.

housed stand-alone power supplies for computers (sometimes known as 'power distribution units')") which they do not consider within the scope of their request to the Commission.[44] Data General argues that computer power supplies "consisting of printed circuit boards upon which are mounted certain active and passive electronic components, that have no commercial or technical application until they are physically integrated within the housing of ADP equipment, ought not to be considered 'units' merely because they are unitary objects."[45]

Computer Products/Power Conversion America states that all of "our power supplies are subassemblies that are either incorporated into computer cabinets or are inserted into racks (open architecture). None of the computer power supplies that we manufacture are 'stand alone' power supplies with bases."[46] Similarly, Force Computers describes their imported merchandise as "primarily printed circuit boards stuffed with various components, which are thereafter inserted into racks (open architecture)."[47]

Major issues raised in these submissions include: (1) the correct classification of the merchandise; (2) the effect of the "U.S.-Japan Semiconductor Agreement;" (3) the retroactive effect to be given to the proposed changes; and (4) the finality of the decisions. These issues are summarized below.

Classification of the Merchandise

One submission asserts that "units" of Heading 8471, HTS, means "separately housed units" or "separately presented constituent units" rather than any "unitary object" that is to be incorporated into an ADP machine.[48] "The intention that 'units' be synonymous with 'separately housed units' is made clear in Explanatory Notes to Heading 8471(I)(A): 'Digital data processing machines usually consist of a number of *separately housed* units.'"[49] The Data General submission also argues that the Explanatory Notes to Heading 8471(I)(D) make "clear the intention [of the Harmonized System nomenclature] that to find classification as a 'separately presented constituent unit' [the Harmonized System] requires that [the unit] be 'separately housed' ... We believe the phrase 'parts of a system' in [Explanatory Notes to Heading 8471(I)(D)] means nothing more than requiring that the separately housed unit be connectable to the CPU either directly or through other units and that it be specifically designed to function within an ADP system as required in [Explanatory Notes to Heading 8471(I)(A)]."[50] Data General also believes that the line between "separately housed units" and "unhoused parts" is demarcated by Additional U.S. Rules of Interpretation 1(c), HTS. Data General concludes, as do the other industry submissions, that the correct classification of this merchandise is as "parts" of Heading 8473, HTS.

U.S.-Japan Semiconductor Agreement

This merchandise is currently classified by the Customs Service as "units" of ADP machines in Heading 8471, HTS, at 3 percent ad valorem. However, most submissions argue that this merchandise should be classified as "parts" of ADP machines in Heading 8473, HTS, at a free rate of duty in column 1-general, in order to carry out U.S. obligations under the "U.S.-Japan Semiconductor Agreement" (also referred to as the "Computer Parts Agreement").[51] They disagree with the current classification practice[52] by the Customs Service; however, there is no indication that any importer has sought judicial review of the current classification practice, for example by filing a protest pursuant to section 514 of the Tariff Act of 1930.

The argument with respect to the U.S.-Japan Semiconductor Agreement appears to make two distinct points. The first assertion is that this "agreement" requires the Commission, under section 1211(d), to recommend a free *rate of duty* in order to fulfill U.S. obligations under the agreement. The second part of the argument, although not made in these exact terms, is that the agreement creates an obligation upon the United States to maintain the same *classification position* in the tariff; that is, they argue that the merchandise must be described by the same *nomenclature* in the HTS[53] as encompassed the merchandise under the TSUS (after the decision in DEC). Postulating such an obligation on the part of the United States, the submissions further urge that the Commission implement that "treaty obligation," pursuant to section 1211(d), in its recommendations to the President and the Congress by "clarifying" the HTS. In effect, they seek an opinion with respect to the tariff classification of this merchandise in the HTS (in the

[44] Submission on behalf of Digital Equipment Corp., May 31, 1989, p. 3.
[45] Submission on behalf of Data General Corp., June 15, 1990, p. 1.
[46] Submission on behalf of Computer Products/Power Conversion America, Mar. 7, 1990, p. 2.
[47] Submission on behalf of Force Computers, Inc., Mar. 7, 1990, p. 1.
[48] Submission on behalf of Data General Corp., June 15, 1990, p. 1-2. The submission cites *Explanatory Notes* 8471(I)(A) and 8471(I)(D) in support of this position.
[49] Ibid., p. 1. (emphasis in original).
[50] Ibid., p. 2.
[51] See Proclamation No. 5305 of Feb. 21, 1985 (50 F.R. 7571), and USTR Notice of Jan. 7, 1986 (51 F.R. 1590, Jan. 14, 1986).
[52] The current practice is to classify this merchandise as "units" of ADP machines under subheading 8471.99.30. See app. I.
[53] Specifically, they claim that this merchandise is embraced within the provisions for "parts" of ADP machines or units, rather than in the provisions for "units" of ADP machines or units.

guise of a recommendation pursuant to section 1211(d)) that contradicts the expressed position of the Customs Service.[54]

Retroactivity

Several submissions[55] urge the Commission to recommend retroactive duty-free treatment; that is, that any recommendation for duty-free treatment be accompanied by a further recommendation that the duty-free treatment be extended to all entries of this merchandise since January 1, 1989.

Finality

Several submissions[56] argue that one (or both) of the *DEC* decisions be considered "final" within the scope of section 1211(d). One submission asserts that the decision by the Court of International Trade (CIT) in *DEC* is "final" since "if it were not [a final judicial decision], it would not have been possible for the United States to maintain the present appeal in the [CAFC]."[57] The CAFC has recently discussed the meaning of the term "final" in a statutory phrase ("final court decision") analogous to that in section 1211(d). The CAFC carefully pointed out the distinction between a court decision that is "'final' in the sense that a court is done with the action and has entered final judgment ... [citing 28 U.S.C. 1295(a)(5)]" and a decision that is "final in the sense that the court has conclusively decided the controversy and the decision can no longer be attacked, either collaterally or by appeal. ... [citing 28 U.S.C. 2645(c)]."[58] The decision by the CIT in *DEC* appears to fall within the first definition of "final" given by the CAFC in *Timken*.

The same submission argues that the Commission's definition of a "final judicial decision" is "too restrictive and prevents the full Congressional intent of section 1211(d) from being implemented."[59] In its notice instituting this investigation, the Commission defined the phrase "final judicial decision" as follows: "For purposes of this investigation, a 'final judicial decision' is a judgment of the Court of International Trade or the Court of Appeals for the Federal Circuit, which is not subject to further review or collateral attack."[60]

The submission further notes that "because of the definition ... adopted by the Commission, DEC has requested that the [CAFC] expedite the appeal in [*DEC*], and the Court has agreed to do so."[61] However, the importer also took care to point out in its memorandum to the CAFC[62] that "despite the definition of 'final' formulated by the ITC, Digital will notify the ITC of the decision [by the CIT] in [*DEC*], and argue that it is 'final' within the intent of the [1988 Trade Act]."[63]

After the decision in *DEC* by the CAFC on November 14, 1989, Digital filed a further submission in this investigation which argued that *this* decision was "final" for purposes of the investigation even while acknowledging the possibility of a motion for rehearing or a writ of *certiorari*.[64] However, with respect to the possibility of *certiorari*, Digital observed that this possibility "is a largely theoretical one; we are not aware of any tariff classification decision for which the United States has sought a writ of *certiorari* in at least the last thirty years."[65]

As noted above, the decision by the CAFC of November 14, 1989, was the subject of both a petition for rehearing and a suggestion for rehearing *in banc*. Ultimately, both were disposed of by the CAFC before the statutory deadline of January 31, 1990, but the time for application for *certiorari* to the Supreme Court did not expire prior to that date. In a memorandum filed with the CAFC in May 1989, Digital had stated that the appeal in *DEC* "needs to be decided by *November 2, 1989*" in order for the Commission to treat the CAFC decision as falling within the scope of this investigation.[66] Submissions on behalf of other importers took the position that the decision by the CAFC in *DEC* did not become "final" until "January 25, 1990"[67] or "January 26, 1990."[68] The arguments by the other import-

[54] The expressed position of the Customs Service is that this merchandise is classifiable in the HTS as "units" of ADP machines and *not* as "parts" of ADP machines. See app. I.

[55] See, for example, submissions on behalf of Astec USA, Force Computers, and Computer Products/Power Conversion America.

[56] See, for example, submissions on behalf of Digital Equipment Corp., Astec USA, and Computer Products/Power Conversion America.

[57] Submission on behalf of Digital Equipment Corp., May 31, 1989, p. 4.

[58] *Timken Co. v. U.S.*, 893 F.2d 337, 339 (Fed. Cir. 1990).

[59] Submission on behalf of Digital Equipment Corp., May 31, 1989, p. 4.

[60] The notice is set out in app. A.

[61] Submission on behalf of Digital Equipment Corp., May 31, 1989, p. 4.

[62] Submission on behalf of Digital Equipment Corp., May 31, 1989, Enclosure: Memorandum In Support of Motion of Plaintiff-Appellee, etc., May 9, 1989, pp. 7-8.

[63] Ibid.

[64] Submission on behalf of Digital Equipment Corp., Nov. 21, 1989, pp. 2-3.

[65] Ibid.

[66] "Thus, although we expect the Solicitor General will not authorize the filing of a petition for a writ of *certiorari* if the defendant loses this appeal, in order to meet the ITC's definition of 'final' by the deadline of January 31, 1990, it is necessary to allow the ninety days for the filing of such a petition to expire, and to allow three additional days [for service on the defendant-appellant]." Submission on behalf of Digital Equipment Corp., May 31, 1989, Enclosure: Memorandum In Support of Motion of Plaintiff Appellee, etc., May 9, 1989, p. 2, note 1 (emphasis added). The decision by the CAFC was not filed until *November 16, 1989*.

[67] Submission on behalf of Computer Products/Power Conversion America, Mar. 7, 1990, p. 1.

[68] "We consider the *D.E.C.* case to *now* be a 'final' decision ..." Submission on behalf of Astec USA, Feb. 1, 1990, p. 1 (emphasis added).

ers with respect to "finality" appear to be based on the date of the order declining the suggestion for rehearing *in banc*.[69] However, these submissions do not address the question of the time for application for *certiorari*.

Recommendations by the Commission

The Commission has identified the decision by the Court of Appeals for the Federal Circuit in *Digital Equipment Corp. v. U.S.*[70] as a "final judicial decision" within the scope of section 1211(d). Based upon this decision, the Commission recommends that certain power supplies[71] for ADP machines or units[72] be accorded a free rate of duty in column 1 of the HTS in order to maintain the rate of duty to which this merchandise was subject under the TSUS.

Classification of the merchandise

As noted above, under section 1211(d)(2)(B), the Commission is to "recommend those changes to the Harmonized Tariff Schedule that the Commission would have recommended if the final decisions concerned had been made before the conversion into the format of [Harmonized System] Convention occurred." Power supplies are classified under the provisions for ADP machines and units thereof in heading 8471, HTS, whether such units are stand-alone machines or are suitable for incorporation into ADP machines or units of ADP machines. Due to differences between the Harmonized System nomenclature and the TSUS nomenclature, the HTS categories for ADP machines and units thereof encompass TSUS categories that covered both ADP machines and devices classified as "parts" of ADP machines. Under the current and previous versions of the HTS, the parts rate (which is free in column 1) has been carried over into the appropriate categories for ADP machines and units thereof to maintain rate neutrality for TSUS "parts" which are now classified as HTS "units."

Because of the previous practice by the Customs Service of classifying power supplies as rectifiers under the TSUS, the draft conversion to the HTS, and the current HTS, provide for them as power supply "units" of ADP machines in subheading 8471.99.30, HTS, at the rate of 3 percent ad valorem. It would appear appropriate, therefore, for the Commission to recommend that this category be modified to provide for a free rate of duty in keeping with the decision by the CAFC in *DEC*.

However, the Commission notes that there are two kinds of power supply units which are currently covered in subheading 8471.99.30, HTS. The Commission understands that the devices that were before the court all represented goods that were units suitable for physical incorporation into either ADP machines or units of ADP machines. They were not "stand-alone" units. With respect to such stand-alone units, it is not clear that they would have been classified by the court as parts of ADP machines inasmuch as they might have been classified as office machines (in TSUS item 676.30). Or, these devices could have been classified as other types of electrical devices elsewhere in the TSUS since there might be a question as to whether they perform "office work." Under the circumstances, the Commission cannot recommend a free rate of duty in column 1 for such stand-alone devices. The Commission's suggested language[73] provides for changes in the HTS nomenclature with respect to power supplies of the type suitable for physical incorporation into ADP machines or units thereof. The Commission makes no recommendation, nor does it propose a change in the rate treatment, for these so-called stand-alone units.

It should also be noted that this recommendation is based upon information submitted by the Customs Service[74] which indicates that the current treatment of these goods is in heading 8471, HTS. Should the Customs Service, upon reexamination, modify its classification practice with respect to these products, then the Commission would recommend that they be accorded appropriate duty-free treatment wherever the Customs Service ultimately decides to classify these goods. For example, it is not inconceivable that either the Customs Service, or another interested party, may assert that classification lies under heading 8504, HTS, as "static converters (rectifiers)." Such an assertion would, of course, resurrect the issue litigated in *DEC*; but a decision concerning classification under the TSUS is not necessarily determinative of classification under the HTS.[75]

During the 1981–1988 conversion process, numerous modifications were made to the draft tariff conversion based upon advice from the Customs Service with respect to then-current classification treatment. The recommendations made in this investigation are in keeping with that previous practice by the Commission.

U.S.-Japan Semiconductor Agreement

The Commission does not agree with the assertions that a previous "agreement" with Japan

[69] The date of the order declining the suggestion for rehearing *in banc* is Jan. 25, 1990.

[70] 889 F.2d 267 (Fed. Cir. 1989).

[71] For purposes of this investigation, these power supplies are defined as "Power supply units suitable for physical incorporation into automatic data processing machines or units thereof, however provided for in the HTS."

[72] The phrase "ADP machines or units" means "ADP machines or units of heading 8471, HTS."

[73] The recommended changes in nomenclature for the HTS with respect to computer power supplies are set out in app. J.

[74] The expressed position of the Customs Service is that this merchandise is classifiable in the HTS as "units" of ADP machines and *not* as "parts" of ADP machines. See app. I.

[75] Congress, H. Rept. 100-576, 100th Cong., 2d Sess. 549-550 (1988).

requires it to recommend either a specific rate of duty or a specific tariff classification position.

Many rates of duty which were bound in various trade agreements prior to the conversion were changed during the conversion and, subsequently, were renegotiated with U.S. trading partners.[76] The Congress was well aware of the tariff implications with respect to prior trade agreements when the HTS was enacted.[77] The Commission cannot find any basis in section 1211(d) for the assertion that it requires the Commission to recommend rate changes in the HTS to conform to this "agreement."

The contention that an "agreement" with Japan creates a "treaty obligation" with respect to the tariff classification position of this merchandise under the HTS is similarly unsustainable. The essence of the new tariff is that merchandise will be classified uniformly by all signatories[78] to the international Harmonized System Convention.[79] Congress recognized that the tariff classification position (i.e., the descriptive nomenclature applicable to the imported merchandise) would not remain the same in many cases since the HTS is a "new nomenclature."[80]

Retroactivity

The arguments with respect to "retroactivity" do not require extended analysis. Section 1211(d) does not direct the Commission to make any recommendation with respect to this issue. Moreover, the statute is explicit on the subject; there is no discretion given to the President. If the President proclaims some, or all, of the recommended changes, the change is effective retroactively for all goods entered since January 1, 1989, if the importer files the necessary application with the Customs Service within 180 days of the effective date of the proclamation.[81]

Finality

The question of the "finality" of the decisions in DEC has been discussed extensively. The Commission does not agree with the assertion by Digital that the decision *by the CIT* in *DEC* is a "final judicial decision" for purposes of section 1211(d). The discussion of a similar issue by the CAFC in *Timken v. U.S.*[82] appears most relevant.

The CAFC in *Timken* pointed out that an interpretation of "final" meaning "conclusive" avoids what the CAFC characterizes as a "'yo-yo' effect" or "flip-flop" when a decision by a lower court is reversed on appeal.[83] That analogy appears equally valid in the context of section 1211(d) recommendations by the Commission. Consequently, the Commission does not believe that the decision by the CIT in *DEC* is a "final judicial decision" within the scope of this investigation.

The decision *by the CAFC* in *DEC,* however, had become "final" in all respects save expiration of the time for application for *certiorari.* Whether this is necessarily determinative appears to be an open question.[84] In the absence of controlling precedent, the Commission believes that section 1211(d) requires that it treat the decision by the CAFC in *DEC* as it would have treated it if that decision had been published during the conversion from the TSUS into the HTS. There was no occasion during the conversion in which the Commission failed to take into account a tariff classification decision by the CAFC simply because the time for *certiorari* had not run.[85] The Commission does not believe that section 1211(d) compels a contrary result in this investigation. Moreover, such an outcome appears to run counter to the remedial nature of this statute.

The Commission agrees with Digital that its definition of "final," in the notice instituting this investigation, is "too restrictive" *insofar as* it may be interpreted as requiring expiration of the time for application for *certiorari.* This definition was intended to exclude from the scope of the investigation decisions by the CIT (or by the CAFC) which were subject to reversal while under consideration by the Commission. Since the likelihood of *certiorari* in a tariff classification case is almost entirely hypothetical, there is no intent to require exhaustion of that avenue prior to consideration by the Commission. The CAFC decision would have affected tariff treatment under the President's guidelines during the conversion; consequently, the Commission believes that there are no obstacles to its implementation in accordance with the intent expressed in section 1211(d).

[76] U.S. International Trade Commission, *Investigation with Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988* (Investigation No. 332-274), USITC Publication 2296, June 1990, p. 5.

[77] Congress, H. Rept. 100-576, 100th Cong., 2d Sess. 548 (1988).

[78] Japan is a Contracting Party to the Harmonized System Convention.

[79] U.S. International Trade Commission, *Investigation with Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988* (Investigation No. 332-274), USITC Publication 2296, June 1990, pp. 1-2.

[80] Congress, H. Rept. 100-576, 100th Cong., 2d Sess. 548 (1988).

[81] Section 1211(d)(3)(B).

[82] 893 F.2d 337, 342 (Fed. Cir. 1990).

[83] Ibid.

[84] *Timken Co. v. U.S.*, 893 F.2d 337, 340 note 5 (Fed. Cir. 1990).

[85] Digital asserts, and the Commission has no information to the contrary, that *certiorari* has not been sought in a tariff classification case in more than 30 years.

Estimated Revenue Impact of the Proposed Changes

Under the TSUS prior to 1989, power supplies of all types that rectified alternating current to produce direct current were classified *eo nomine* as "rectifying apparatus" in TSUS item 682.60 at a rate of duty of 3 percent ad valorem. During the final stages of the conversion from the TSUS to the HTS, a separate *eo nomine* provision was made for those "power supplies" considered to be "units" of ADP machines under HTS subheading 8471.99.30. This subheading carried forward the same rate of duty (3 percent ad valorem) that was then assessed under the Customs Service's interpretation of the TSUS.

Trade Data

Table 1 below summarizes the available data with respect to total imports of this merchandise in 1989.

The tabulation that follows table 1 reflects the value of merchandise entered duty-free in 1989 for power supplies for automatic data processing machines (HTS subheading 8471.99.30), by trade preference program.

Revenue Implications

The total value of imports minus the value of imports entered free of duty under a preference program leaves a value for dutiable imports of $659 million. Based on a rate of duty of 3 percent ad valorem, the revenue collected from the dutiable imports was $19.8 million in 1989.

It is conservatively estimated that 95 percent of these imports, by volume, are board- or chassis-mounted power supplies designed to be incorporated into micro- and mini-computers.[86] The remaining 5 percent is believed to be stand-alone power supply units that serve large mainframe computers consisting of one (or more) central processors and a variable number of peripheral devices. Therefore, if the current tariff treatment is modified to provide duty-free treatment to those power supplies designed for direct incorporation into ADP machines, the loss in revenue can be expected to amount to approximately $19.8 million per year. This amount is expected to increase at an estimated rate of about 10 percent per year as imports of ADP machines and units of ADP machines increase.

Certain Electrophoresis Equipment[87]

Decisions Notified to the Commission

Several submissions on behalf of one importer request that the chromatography[88] and electrophoresis equipment that was the subject of

[86] Modern designs for power supplies provide highly efficient conversion of AC service power (120/240 volts) to the low, regulated DC voltages used internally by computers. Such designs dissipate very little (waste) heat and require little external cooling. Therefore, the power supplies can be built into the computer, thereby reducing the requirement for cabling, connectors, and separate cabinets.

[87] Electrophoresis equipment is described in U.S. Customs Service Ruling No. 082462 in app. O. A list by product name and type is set out in app. k.

[88] The column 1-general rate of duty assessed by the Customs Service on the chromatography equipment that is the subject of these decisions is currently 3.9 percent ad valorem under the provisions for "... filtering or purifying machinery and apparatus, for liquids and gases; parts thereof" in Heading 8421, HTS. Thus, it appears that no further examination need be given these decisions (insofar as chromatography equipment is concerned) since this equipment is currently assessed duty at the rate requested by the interested party.

Table 1
Power supplies for data processing machines (HTS subheading 8471.99.30): U.S. imports for consumption, by principal sources, 1989

Principal Source	*Value*	*Quantity*	*Average Unit Value*
	($1,000)	*(units)*	
Taiwan	152,489	3,636,614	$41.93
Mexico	118,741	1,577,838	75.26
Japan	98,260	1,107,387	88.73
Singapore	95,089	851,333	111.69
Hong Kong	87,188	1,033,329	84.38
All other	196,153	2,101,679	93.33
Total	747,920	10,308,180	72.56

	9802.00.80	*GSP*	*CBI*	*Israel FTA*	*Canada FTA*	*Total*
Value($1,000)	32,332	25,459	90	30	30,765	88,676

numerous decisions[89] by the Court of International Trade in 1988 and 1989, be accorded a 3.9 percent ad valorem rate of duty in column 1-general in order to conform tariff treatment under the HTS to those decisions. These submissions identified 28 such decisions. The importer submitted copies of 20 of these decisions[90] to the Commission variously captioned *LKB Instruments v. U.S.* or *Pharmacia Inc. v. U.S.*[91] These 20 decisions generally recite that the merchandise that is the subject of the decision is the same in all material respects as the merchandise in *Pharmacia Fine Chemicals, Inc. v. U.S.*[92] The 1985 decision in *Pharmacia Fine Chemicals, Inc.* itself is outside the scope of this investigation based on its publication date.

These 20 decisions are unreported. However, abstracts of these decisions have appeared as "abstracted classification decisions" in the weekly *Customs Bulletin.*[93] In addition, the *United States Court of International Trade Reporter* publishes "abstracted classification decisions" of that court.[94] A notice in the first volume of this reporter states: "Abstracts of decisions not supported by an opinion will continue to be numbered, published, and cited as they have been in the past".[95]

Submissions Received by the Commission

Four submissions were received on behalf of Pharmacia LKB Biotechnology, Inc.,[96] (hereafter Pharmacia) with respect to this merchandise. In addition, one submission was received from the American Association of Exporters and Importers[97] (AAEI). This submission does not notify the Commission of any particular final judicial decision, nor does it discuss any particular product. The AAEI comments, for the most part, are general in nature and to the extent they touch upon specific issues, these issues are best addressed in the context of the request concerning tariff treatment for certain electrophoresis equipment. There were no submissions received in opposition to the requested change in tariff treatment for this merchandise.

In general, AAEI (as do all submissions) urge the Commission to maintain the principle of "tariff-rate neutrality" in making recommendations pursuant to this investigation. AAEI argues that section 1211(d) does not give the Commission discretion "to recommend only those changes it deems appropriate."[98] AAEI believes that the Commission is obligated to "implement all final judicial decisions ... that have determined the rate of duty on imported merchandise" during the 2-year period described in the statute.[99]

In addition, AAEI urges that the Commission not confine its investigation solely to "*published* decisions that are supported with an opinion or by findings of fact and conclusions of law, but also [to include] final judicial decisions in the form of a stipulated judgment on agreed statement of facts and other *unreported* final judicial decisions. Stipulated judgments and *unreported* decisions satisfy the definition of 'final judicial decision' stated [in the notice of institution], since they are, after 60 days, subject neither to further review nor to collateral attack."[100] AAEI does not offer any specific rationale, or statutory analysis, to support its contention that the term "published" in section 1211(d) embraces "unreported" as well as reported decisions.

Pharmacia seeks a decrease in the rate of duty applicable to its imports of certain electrophoresis equipment from 4.9 percent ad valorem to 3.9 percent ad valorem. It grounds this request upon 20 unreported decisions by the CIT (which Pharmacia initially described as "unpublished" decisions[101]) during the relevant time period.[102]

The basis for the stipulation by the United States to entry of judgment against it[103] in these

[89] Each submitted decision is entitled "Stipulated Judgment On Agreed Statement Of Facts."

[90] The importer has identified, by court number and by copy of the relevant portions of each decision, 20 such decisions. These 20 decisions, which form the basis for further consideration in this investigation, are listed in the order submitted in app. K.

[91] The earliest such decision is cited as Abs. C88/204 of Nov. 1, 1988 (Court No. 87-7-00792), and the most recent is cited as Abs. C89/158 of July 27, 1989 (Court No. 85-12-01702).

[92] 9 CIT 438 (1985).

[93] See, e.g., 23 *Customs Bulletin*, No. 36, pp. 50-52 (Sept. 6, 1989). The weekly *Customs Bulletin* routinely contains "abstracts of unpublished rulings" issued by the Customs Service; decisions of the Customs Service which are published in complete form; and "abstracted classification decisions" of the Court of International Trade. Examples of all three types of publications are set out in app. L.

[94] A recent example appearing in 11 CIT is set out in app. M.

[95] Excerpts from 1 CIT are set out in app. N.

[96] Four submissions dated May 25, 1989, Dec. 28, 1989, Apr. 25, 1990, and June 17, 1990, respectively.

[97] Submission dated July 13, 1989.

[98] Submission on behalf of AAEI, July 13, 1989, p. 2.

[99] Ibid.

[100] Submission on behalf of AAEI, July 13, 1989, p. 4 (emphasis added).

[101] In a submission transmitting copies of these 20 decisions which had been described in prior submissions, Pharmacia states that it is providing "copies of the *unpublished* court decisions" previously identified. Submission on behalf of Pharmacia, Inc., Apr. 25, 1990, p. 1, note 1 (emphasis added).

[102] The decisions are enumerated in app. K.

[103] "Stipulated judgments on agreed statements of facts are a procedural device unique to customs litigation." Submission on behalf of Pharmacia, Inc., June 17, 1990, p. 3. This submission further quotes former Chief Judge Rao of the Customs Court in support of its assertion that "one of the situations in which the Government agrees to a stipulated judgment arises when a court decision in favor of the importer in another case is directly on point and 'the Government decides to accede to the court's decision'." Ibid., p. 4, note 8.

20 unreported decisions is the 1985 decision reported in *Pharmacia Fine Chemicals, Inc. v. U.S.*[104] The stipulated judgments in these actions generally hold that certain electrophoresis instruments, accessories and parts thereof, were subject to duty at 3.9 percent ad valorem under TSUS item 661.95 as "filtering and purifying machinery and apparatus and parts thereof." Subsequently, the Customs Service ruled that, under the HTS, this merchandise was classifiable as "Instruments and apparatus for physical or chemical analysis ... electrophoresis instruments ... electrical" under subheading 9027.20.40 at 4.9 percent ad valorem.[105]

Although the ruling does not explicitly classify parts and accessories of these instruments, it states that parts and accessories are classifiable in the same heading (i.e., heading 9027, HTS) "if the parts and accessories do not fall within their own heading [citing note 2 to section XVI and note 2 to chapter 90, HTS]."[106] Those parts and accessories of electrophoresis instruments classifiable in heading 9027, would fall to subheading 9027.90.40 at 4.9 percent ad valorem. Thus, it seems clear that at least some of the parts and accessories that entered at 3.9 percent under the TSUS, based on these 20 unreported decisions, are now dutiable under the HTS at 4.9 percent ad valorem. Pharmacia requests that the Commission recommend that the subject merchandise be made dutiable under the HTS at 3.9 percent ad valorem.

Major issues raised in these submissions include: (1) the finality of the decisions; and (2) the meaning of the term "published" in section 1211(d). These issues are summarized below.

Finality

Pharmacia argues that these 20 decisions are "final" for purposes of this investigation. AAEI makes the same point, more generally, when they state that stipulated judgments are not subject to further review or collateral attack after 60 days. Pharmacia states that a stipulated judgment "conclusively determines the proper classification of the merchandise in issue. It also orders the responsible customs officials to reliquidate the entries in issue, to classify the merchandise on reliquidation in accordance with the court's decision, and to refund to the importer all excessive duties that were paid on the entries."[107]

[104] 9 CIT 438 (1985).
[105] U.S. Customs Service Ruling No. 082462 set out in app. O.
[106] App. O, p. O-8.
[107] Submission on behalf of Pharmacia, Inc., June 17, 1990, p. 5. The submission further cites 19 C.F.R. 176.31(a) that provides that entries which are the subject of stipulated judgments "may be reliquidated immediately upon receipt of the judgment orders" from the CIT.

Publication

Pharmacia and AAEI also argue that the term "published" as used in section 1211(d) includes unreported decisions. Pharmacia points out that neither the statute, nor the report of the conferees on the 1988 Trade Act, nor the Commission's notice of institution defines this term. Pharmacia then advances two alternative constructions for this statutory language.

The first alternative construction relies upon dictionary definitions of "publish;" i.e., "to declare publicly : to make known ... to proclaim officially ... [citing *Webster's Third New International Dictionary of the English Language, Unabridged*, p. 1837 (rev. ed. 1981)]."[108] Although not cited by Pharmacia, other dictionaries provide similar definitions.[109] Based on these definitions, Pharmacia argues that "stipulated judgments are published when they are entered and a notice of entry of the judgment is served."[110] These actions serve "to promulgate, or to give legal notification" of the judgment.[111]

The second alternative construction advanced by Pharmacia, also based on lexicographic sources, is that "publish" means to issue, print or reproduce for general distribution. Pharmacia then asserts that stipulated judgments not supported by a reported opinion "are *published in this sense* in the form of a so-called 'Abstract' or 'Abstracted Decision'."[112] As noted earlier, examples of published abstracts of unreported decisions by the CIT, and by the Customs Service, are set out in appendixes.[113] In addition to dissemination in printed form, Pharmacia notes that abstracts of unpublished CIT decisions are also disseminated electronically via the "LEXIS" computerized legal information service.

Pharmacia also argues that, since published (i.e., reported) abstracts can affect tariff treatment by alerting customs officials to the existence of the underlying unreported decision, the Commission should give the same effect to the published abstracts of these decisions in this investigation. "Furthermore, it would be illogical for the Commission to draw a distinction between stipulated judgments [reported only in abstract form] and judgments supported by an opinion [reported in full-text form]. In customs jurisprudence, both types of judgments have the same *res judicata* effect. [Note omitted.] Both are *res judicata* for the specific entries that are the sub-

[108] Submission on behalf of Pharmacia, Inc., June 17, 1990, p. 7.
[109] "Publish" is defined as "to make generally known ... to make public announcement of ... to place before the public." *Webster's New Collegiate Dictionary*, p. 933 (Springfield, MA, 1977).
[110] Submission on behalf of Pharmacia, Inc., June 17, 1990, p. 8.
[111] Ibid.
[112] Ibid. (Emphasis added)
[113] See app. L, app. M, and app. N.

ject of the court's decision, but neither is *res judicata* for other entries."[114]

Recommendations by the Commission

The Commission has identified twenty unreported decisions by the Court of International Trade[115] as "final judicial decisions" that are "published" within the scope of section 1211(d). Based upon these decisions, the Commission recommends that certain electrophoresis equipment[116] be accorded a rate of duty of 3.9 percent ad valorem in column 1 of the HTS in order to maintain the rate of duty to which this merchandise was subject under the TSUS.

As in the case of computer power supplies, the recommended language[117] is based upon the Commission's understanding of current customs treatment. Should the Customs Service, upon reconsideration, classify these products elsewhere than in heading 9027, HTS,[118] the Commission recommends that a rate of 3.9 percent ad valorem be reflected wherever they are classified.

Finality

The Commission agrees with Pharmacia that these 20 decisions are "final" for purposes of section 1211(d). The *Customs Regulations*[119] and the rules of the Court of International Trade[120] clearly support the assertions made in this respect by Pharmacia and the AAEI.[121]

[114] Submission on behalf of Pharmacia, Inc., June 17, 1990, p. 11.

[115] These decisions are described more specifically in app. K.

[116] For purposes of this investigation, this equipment is defined as (1) "Electrophoresis instruments not incorporating an optical or other measuring device, however provided for in the HTS" and (2) "Parts and accessories of electrophoresis instruments not incorporating an optical or other measuring device, however provided for in the HTS." The instruments, parts, and accessories that are the subject of this investigation are more specifically described in app. K.

[117] The recommended changes in nomenclature for the HTS with respect to electrophoresis equipment are set out in app. P.

[118] The Commission notes that the importer and the Customs Service have considered at least three headings as possibly appropriate for this merchandise; heading 8421, heading 8543, and heading 9027, HTS.

[119] 19 C.F.R. 176.31(a).

[120] CIT, rules 58 and 58.1.

[121] "Rule 58.1 is a rule that is unique to the jurisdiction of the [CIT]. Pursuant to Rule 58.1, in any action described in 28 U.S.C. sections 1581(a) or (b), the parties may stipulate to the entry of a final judgment, at any time (without the filing of a complaint, brief or formal amendment of any pleading), by filing with the clerk of the court an original and copy of a stipulation for judgment signed by the parties or their attorneys, together with a proposed stipulated judgment. This has been the long standing method by which the parties effectuate the settlement of individual cases or large groups of cases, based upon negotiated agreement among the parties. *** After the entry of judgment and the period for rehearing has elapsed, the judgment order and entry papers are sent to the Customs Service at the ports of entry for further action in accordance with the judgment." Proposed Amendments to the Rules of the Court of International Trade: Recommendations and Comments by the Advisory Committee Appointed by the Chief Judge: Advisory Committee Note, 24 *Customs Bulletin*, No. 16, pp. 70-71 (Apr. 18, 1990).

Publication

The Commission does not agree with Pharmacia that the abstract is the "published" equivalent of the underlying decision, as their submission seems to infer. The published abstract is, at best, a surrogate for the underlying unreported decision. "To take an abstract for a decision is like taking a headnote for a court opinion."[122] The Commission agrees that the abstract does, however, serve to alert customs officials and importers to the existence of the underlying decision.

The underlying decisions are not "published" if that term is limited to "reported" decisions. But they may be considered "published" if that term is read as meaning decisions that have been promulgated or made public. There is nothing in the statutory language or the report of the conferees on the 1988 Trade Act to support one interpretation over another.

The Commission cannot say that it would not have considered these decisions had they been brought to its attention during the conversion, whatever their reported or unreported character. The principle that the Commission followed during the conversion was to ascertain whether there was a judicial determination of the tariff classification which overturned a prior decision by the Customs Service. The Commission would then be guided by that judicial decision, assuming its "finality" was not in question.

In this instance, the 1985 reported decision was not appealed and the Government appears to have followed a consistent practice of stipulating to judgments based on the earlier reported decision. Under these circumstances, the Commission would have considered the unreported decisions to be a sufficient expression of settled classification practice with respect to the merchandise at issue and taken them into account in making the conversion.[123] Since the statute is clearly intended to be remedial in nature, the Commission believes that an expansive interpretation of the term "published" is more in keeping with the thrust of this section of the 1988 Trade Act. Accordingly, the Commission concludes that these twenty decisions are "published" for purposes of this investigation.

[122] *Borneo Sumatra Trading Co. v. U.S.*, 56 Cust. Ct. 166, 173 (C.D. 2624, 1966).

[123] The conversion did provide a rate of 3.9 percent ad valorem for this merchandise under subheading 8421.29.00, HTS, and subheading 8543.30.00, HTS. However, there are no records to indicate why a rate of 3.9 percent was not also provided under heading 9027, HTS.

Estimated Revenue Impact of the Proposed Changes

Trade data

The column 1-general rate of duty assessed by the Customs Service on the electrophoresis equipment that is the subject of these decisions is currently 4.9 percent ad valorem under the provisions for "Instruments and apparatus for physical or chemical analysis [and] parts and accessories thereof" in Heading 9027. The total value and quantity of U.S. imports entered under HTS statistical reporting number (SR No.) 9027.20.40.40 (electrophoresis instruments), and the customs revenue collected, in 1989, are shown in table 2 below.

In 1989, there were no U.S. imports under HTS SR No. 9027.20.40.40 which entered under the special tariff treatment provisions, such as 9802.00.80, GSP, CBI, Israel FTA, and Canada FTA.

Import data for parts and accessories for electrophoresis instruments are not available for 1989 for HTS SR No. 9027.90.40.20 because this statistical reporting number was created during 1990. The Commission estimates that imports of the parts and accessories for electrophoresis instruments (which were first reported under HTS SR No. 9027.90.40.20 in 1990) amounted to about $300,000 in 1989. Estimated imports and customs revenue for the major supplying countries are shown in table 3.

It is believed that, in 1989, there were no U.S. imports of parts and accessories for electrophoresis instruments that entered under the special tariff treatment provisions, such as 9802.00.80, GSP, CBI, Israel FTA, and Canada FTA.

Revenue implications

The Commission estimates that the amount of customs revenue that will not be collected, if the proposal to subdivide HTS subheadings 9027.20.40 and 9027.90.40 is adopted, would be $25,000 to $30,000 per year based on the Commission's estimate of the dutiable value of imports of this merchandise.

The following factors were taken into consideration in estimating the possible loss in customs revenues. U.S. Customs Service Headquarters Ruling 082462, dated November 13, 1989,[124] determined that the principal use of certain electrophoresis equipment (otherwise provided for under HTS heading 8421) is for "'physical and chemical analysis' within the research industry, and not for 'filtering' for commercial purposes." Based on this analysis, the Customs Service decided that such products are electrophoresis instruments classifiable under

[124] This ruling is set out in app. O.

Table 2
Electrophoresis instruments (HTS SR No. 9027.20.40.40): Customs value, quantity, and customs revenue collected, for imports for consumption, by principal supplier, 1989

Imports	*Customs Value*	*Quantity*	*Customs Revenue Collected*
Total imports	$970,000	773	$47,489
Five leading countries:			
Japan	814,549	591	39,914
Sweden	75,065	119	3,678
West Germany	55,968	36	2,742
United Kingdom	8,520	20	417
Italy	6,182	4	302
Total, five countries	$960,284	770	$47,053

Table 3
Electrophoresis parts and accessories (HTS subheading 9027.90.40): Estimated customs value, and customs revenue collected, for imports for consumption, by principal supplier, 1989

Imports	*Customs Value*	*Customs Revenue Collected*
Total imports	$300,000	$14,700
Five leading countries:		
Japan	251,000	12,300
Sweden	24,000	1,200
West Germany	18,000	800
United Kingdom	3,300	160
Italy	2,700	130
Total, five countries	$299,000	$14,590

heading 9027. As a result of this decision, in the first 4 months of 1990, U.S. imports from Sweden, the primary source of subject apparatus, amounted to $608,000 under HTS SR No. 9027.20.40.40; in 1989 total imports from Sweden amounted to $75,000 under this HTS SR number. The annual value of imports of the subject apparatus is estimated at $2.5 million to $3 million.[125]

[125] Estimated by Commission staff.

APPENDIX A
NOTICE OF INSTITUTION OF THE INVESTIGATION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

(332-273)

Certain Final Judicial Decisions Relating to Tariff Treatment

AGENCY: United States International Trade Commission

ACTION: Institution of investigation and request for public comment

SUMMARY: This notice is intended to describe the procedures for a Commission investigation of certain final judicial decisions as required by subsection 1211(d)(2)(B) of the Omnibus Trade and Competitiveness Act of 1988 (the Act).

EFFECTIVE DATE: March 14, 1989

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (202-252-1592) or Leo A. Webb (202-252-1599).

BACKGROUND AND SCOPE OF INVESTIGATION: The Commission instituted investigation No. 332-273, on March 14, 1989, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), as required by subsection 1211(d)(2)(B) of the Act (Pub. L. 100-418). Subsection 1211(d)(2)(B) directs the Commission to initiate an investigation under section 332 of the Tariff Act of 1930 at the earliest practicable date after the effective date of the Harmonized Tariff Schedule of the United States (HTS) of any protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any petition by an American manufacturer, producer, or wholesaler under section 516 of such Act (19 U.S.C. 1516), covering articles entered before the effective date of the HTS, which protest or petition is sustained in whole or in part by a final judicial decision which is published during the two-year period beginning on February 1, 1988, and which would have affected tariff treatment under the HTS if the decision had been published during the period of the conversion of the Tariff Schedules of the United States (TSUS) into the format of the Harmonized System-based HTS.

The Act directs the Commission to report the results of this investigation to the President, the Committee on Ways and Means of the U.S. House of Representatives, and the Committee on Finance of the U.S. Senate no later than September 1, 1990. The Commission is directed to recommend those changes to the HTS that the Commission would have recommended if such final judicial decisions had been made before the conversion of the TSUS into the format of the Harmonized System. Thereafter, the President is directed to review all changes recommended by the Commission and, as soon as practicable, to proclaim any such changes which the President determines are necessary or appropriate to conform the HTS to such final judicial decisions.

WRITTEN SUBMISSIONS: Interested parties are invited to submit written statements concerning the investigation. More specifically, interested

parties are requested to notify the Commission of particular final judicial decisions which they believe are within the scope of this investigation and to suggest changes to the HTS which they believe are necessary or appropriate to conform the HTS to such decisions.

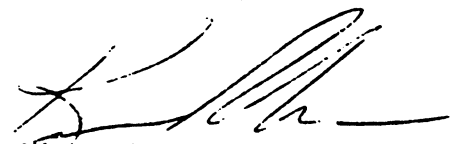
A final judicial decision within the scope of this investigation is a final judicial decision that: (1) sustains, in whole or in part, a protest filed under section 514 of the Tariff Act of 1930 or a petition by an American manufacturer, producer, or wholesaler under section 516 of such Act, covering articles entered before the effective date of the HTS; (2) is published during the two-year period beginning on February 1, 1988; and (3) would have affected tariff treatment under the HTS if the decision had been published during the period of the conversion of the TSUS to the HTS. For purposes of this investigation, a "final judicial decision" is a judgment of the Court of International Trade or the Court of Appeals for the Federal Circuit, which is not subject to further review or collateral attack. Interested parties who notify the Commission of such decisions shall state, as a part of the written submission, that, to the best of their information and belief, such decisions are not subject to further review or collateral attack.

The Commission will publish the suggested changes to the HTS for public comment and will hold a hearing, if deemed appropriate by the Commission.

Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of sec. 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. To be assured of consideration by the Commission, written requests suggesting changes to the HTS must be received by the close of business on June 1, 1989, if the final judicial decision concerned is published prior to January 1, 1989, or within 45 days of the date when the final judicial decision is published, if such decision is published on or after January 1, 1989 and before February 1, 1990. Failure to respond by the indicated dates may preclude consideration of any such decision by the Commission. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: April 12, 1989

APPENDIX B
NOTICE SOLICITING COMMENT ON PROPOSED CHANGES TO THE HTS

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

(332-273)

Certain Final Judicial Decisions Relating to Tariff Treatment

AGENCY: United States International Trade Commission

ACTION: Request for public comment

SUMMARY: This notice publishes proposals to change the Harmonized Tariff Schedule of the United States (HTS) pursuant to subsection 1211(d)(2)(B) of the Omnibus Trade and Competitiveness Act of 1988 (the OTCA) and solicits comments on such proposals from other Federal agencies and the public.

EFFECTIVE DATE: May 10, 1990

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (202-252-1592), Craig M. Houser (202-252-1597), or Leo A. Webb (202-252-1599).

BACKGROUND: The Commission instituted investigation No. 332-273, on March 14, 1989, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), as required by subsection 1211(d)(2)(B) of the OTCA (19 U.S.C. 3011(d)(2)(B)). Notice of the institution of this investigation was published in the Federal Register of April 20, 1989 (54 FR 16011). The notice requested interested parties to advise the Commission of particular "final judicial decisions" which they believe are within the scope of this investigation and to suggest changes to the HTS which they believe are necessary or appropriate to conform the HTS to such decisions. The notice further stated that the Commission would publish the suggested changes for public comment, and would hold a hearing if deemed appropriate by the Commission.

Subsection 1211(d)(2)(B) of the OTCA requires the Commission to review the suggested changes and to "recommend those changes to the Harmonized Tariff Schedule that the Commission would have recommended if the final decisions concerned had been made before the conversion [of the TSUS] into the format of the [Harmonized System] Convention occurred". As directed by subsection 1211(d)(2)(B), the Commission will report its recommendations with respect to these suggested changes to the President, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate by no later than September 1, 1990.

PROPOSED CHANGES TO THE HTS: Interested parties have suggested changes to the HTS based upon "final judicial decisions" which they believe are within the scope of this investigation. These suggestions may be grouped into two product categories: (1) certain power supplies for ADP machines; and (2) certain chromatography and electrophoresis equipment. The changes to the HTS suggested by interested parties are set forth below.

Certain power supplies for ADP machines.--Numerous submissions request that the power supplies which were the subject of the decision in Digital Equipment Corp. v. U.S., 889 F.2d 267 (Fed. Cir. 1989), be accorded a free rate of duty in column 1-general in order to conform tariff treatment under the HTS to that decision. The column 1-general rate of duty assessed by the Customs Service under the HTS is currently 3 percent ad valorem. This merchandise is currently classified by the Customs Service as "units" of ADP machines in Heading 8471, HTS. At least one submission also argues that this merchandise should be classified as "parts" of ADP machines in Heading 8473, HTS, at a free rate of duty in column 1-general, in order to carry out U.S. obligations under the "U.S.-Japan Semiconductor Agreement" (also referred to as the "Computer Parts Agreement"). See Proclamation No. 5305 of February 21, 1985 (50 FR 7571), and USTR Notice of January 7, 1986 (51 FR 1590, January 14, 1986).

Certain chromatography and electrophoresis equipment.--Several submissions request that the chromatography and electrophoresis equipment which was the subject of numerous decisions of the Court of International Trade in 1988 and 1989, each entitled "Stipulated Judgment On Agreed Statement Of Facts", be accorded a 3.9 percent ad valorem rate of duty in column 1-general in order to conform tariff treatment under the HTS to those decisions. These submissions identified 28 such decisions, of which copies of 21 decisions were submitted to the Commission variously captioned LKB Instruments v. U.S. or Pharmacia Inc. v. U.S.; the earliest such decision is cited as Abs. C88/204 of November 1, 1988 (Court No. 87-7-00792), and the most recent is cited as Abs. C89/158 of July 27, 1989 (Court No. 85-12-01702). These decisions are based on Pharmacia Fine Chemicals, Inc. v. U.S., 9 CIT 438 (1985), and are unreported. However, abstracts of these decisions have appeared as "abstracted classification decisions" in the weekly Customs Bulletin. See, e.g., 23 Cust. Bull. No. 36 at 50-52 (September 6, 1989). Another submission argues that the Commission should include within the scope of this investigation "not only published decisions that are supported with an opinion or by findings of fact and conclusions of law, but also final judicial decisions in the form of a stipulated judgment on agreed statement of facts and other unreported final judicial decisions". (Emphasis supplied.) Acknowledgement of the receipt of such submissions in this notice does not imply any judgment by the Commission, at this time, that such decisions are: (1) "final judicial decisions", or (2) "published" within the scope of subsection 1211(d)(2)(B) of the OTCA.

The column 1-general rate of duty assessed by the Customs Service on the chromatography equipment which is the subject of these decisions is currently 3.9 percent ad valorem under the provisions for "...filtering or purifying machinery and apparatus, for liquids and gases; parts thereof" in Heading 8421, HTS. Thus, it appears that no further examination need be given this request since the subject chromatography equipment is currently assessed duty at the rate requested by the interested party.

The column 1-general rate of duty assessed by the Customs Service on the electrophoresis equipment which is the subject of these decisions is currently 4.9 percent ad valorem under the provisions for "Instruments and apparatus for physical or chemical analysis [and] parts and accessories thereof" in Heading 9027. We shall continue to examine this request.

WRITTEN SUBMISSIONS: Interested parties (including other Federal agencies) are invited to submit written statements concerning these proposed changes to the HTS. To be assured of consideration by the Commission, written statements must be received by the close of business on the day that is 30 days after the date of publication of this notice in the Federal Register. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on 202-252-1809.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: May 11, 1990

APPENDIX C
SECTION 1211(d) OF PUBLIC LAW 100-418

SEC. 1211. TRANSITION TO THE HARMONIZED TARIFF SCHEDULE. 19 USC 3011.

(a) EXISTING EXECUTIVE ACTIONS.—

(1) The appropriate officers of the United States Government shall take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule all proclamations, regulations, rulings, notices, findings, determinations, orders, recommendations, and other written actions that—

(A) are in effect on the day before the effective date of the Harmonized Tariff Schedule; and

(B) contain references to the tariff classification of articles under the old Schedules.

(2) Neither the repeal of the old Schedules, nor the failure of any officer of the United States Government to make the conforming changes required under paragraph (1), shall affect to any extent the validity or effect of the proclamation, regulation, ruling, notice, finding, determination, order, recommendation, or other action referred to in paragraph (1).

(b) GENERALIZED SYSTEM OF PREFERENCES CONVERSION.—

(1) The review of the proposed conversion of the Generalized System of Preferences program to the Convention tariff nomenclature, initiated by the Office of the United States Trade Representative by notice published in the Federal Register on December 8, 1986 (at page 44,163 of volume 51 thereof), shall be treated as satisfying the requirements of sections 503(a) and 504(c)(3) of the Trade Act of 1974 (19 U.S.C. 2463(a), 2464(c)(3)).

(2) In applying section 504(c)(1) of the Trade Act of 1974 (19 U.S.C. 2464(c)(1)) for calendar year 1989, the reference in such section to July 1 shall be treated as a reference to September 1.

(c) IMPORT RESTRICTIONS UNDER THE AGRICULTURAL ADJUSTMENT ACT.—

(1) Whenever the President determines that the conversion of an import restriction proclaimed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) from part 3 of the Appendix to the old Schedules to subchapter IV of chapter 99 of the Harmonized Tariff Schedule results in—

(A) an article that was previously subject to the restriction being excluded from the restriction; or

(B) an article not previously subject to the restriction being included within the restriction;

the President may proclaim changes in subchapter IV of chapter 99 of the Harmonized Tariff Schedule to conform that subchapter to the fullest extent possible to part 3 of the Appendix to the old Schedules.

(2) Whenever the President determines that the conversion from headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules to Additional U.S. Note 2, chapter 17, of the Harmonized Tariff Schedule results in—

(A) an article that was previously covered by such headnote being excluded from coverage; or

(B) an article not previously covered by such headnote being included in coverage;

the President may proclaim changes in Additional U.S. Note 2, chapter 17 of the Harmonized Tariff Schedule to conform that note to the fullest extent possible to headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules.

(3) No change to the Harmonized Tariff Schedule may be proclaimed under paragraph (1) or (2) after June 30, 1990.

Courts, U.S.

(d) CERTAIN PROTESTS AND PETITIONS UNDER THE CUSTOMS LAW.—

(1)(A) This subtitle may not be considered to divest the courts of jurisdiction over—

(i) any protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514); or

(ii) any petition by an American manufacturer, producer, or wholesaler under section 516 of such Act (19 U.S.C. 1516);

covering articles entered before the effective date of the Harmonized Tariff Schedule.

(B) Nothing in this subtitle shall affect the jurisdiction of the courts with respect to articles entered after the effective date of the Harmonized Tariff Schedule.

(2)(A) If any protest or petition referred to in paragraph (1)(A) is sustained in whole or in part by a final judicial decision, the entries subject to that protest or petition and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with such final judicial decision under the old Schedules.

(B) At the earliest practicable date after the effective date of the Harmonized Tariff Schedule, the Commission shall initiate an investigation under section 332 of the Tariff Act of 1930 (19 U.S.C. 1332) of those final judicial decisions referred to in subparagraph (A) that—

(i) are published during the 2-year period beginning on February 1, 1988; and

(ii) would have affected tariff treatment if they had been published during the period of the conversion of the old Schedules into the format of the Convention.

Reports. No later than September 1, 1990, the Commission shall report the results of the investigation to the President, the Committee on Ways and Means, and the Committee on Finance, and shall recommend those changes to the Harmonized Tariff Schedule that the Commission would have recommended if the final decisions concerned had been made before the conversion into the format of the Convention occurred.

President of U.S. (3) The President shall review all changes recommended by the Commission under paragraph (2)(B) and shall, as soon as practicable, proclaim such of those changes, if any, which he decides are necessary or appropriate to conform such Schedule to the final judicial decisions. Any such change shall be effective with respect to—

(A) entries made on or after the date of such proclamation; and

(B) entries made on or after the effective date of the Harmonized Tariff Schedule if, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), application for liquidation or reliquidation thereof is made by the importer to the customs officer concerned within 180 days after the effective date of such proclamation.

(4) If any protest or petition referred to in paragraph (1)(A) is not sustained in whole or in part by a final judicial decision, the entries subject to that petition or protest and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with the final judicial decision under the old Schedules.

APPENDIX D
SECTION 202 OF PUBLIC LAW 87-456

SEC. 202. (a) This Act shall not divest the courts of their jurisdiction over a protest filed under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), or by an American manufacturer, producer, or wholesaler under section 516(b) of such Act (19 U.S.C. 1516(b)), against a liquidation covering articles entered, or withdrawn from warehouse, for consumption before the effective date of the Tariff Schedules of the United States.

46 Stat. 734.

52 Stat. 1084.

(b) If such a protest filed under section 516(b) is sustained in whole or in part by a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, the liquidations covering articles of the character covered by such court decision, which are entered, or withdrawn from warehouse, for consumption after the date of publication of such court decision, shall be suspended until final disposition is made in accordance with subsection (c).

(c) If such a protest filed under section 516(b) is not sustained in whole or in part by a final judicial decision, the entries made before the effective date of the Tariff Schedules of the United States shall be liquidated in accordance with such final decision, and all other entries shall be liquidated subject to such schedules. If such a protest is sustained in whole or in part by a final judicial decision, the entries made before the effective date of the Tariff Schedules of the United States shall be liquidated in accordance with such final decision, and the Commission shall report to the President such changes in the Tariff Schedules of the United States as the Commission decides are necessary to conform them to the fullest practicable extent to the substance of such final decision. The President shall, as soon as practicable, proclaim such changes. The changes shall be effective with respect to entries, the liquidation of which was suspended in accordance with subsection (b), covering articles entered, or withdrawn from warehouse, for consumption on or after the effective date of the Tariff Schedules of the United States.

Report to President.

APPENDIX E
SECTION 5010(b)(16) OF S. 539

Calendar No. 18

100TH CONGRESS
1ST SESSION

S. 539

To increase investment in human and intellectual capital, to promote the development of science and technology, to enhance the protection of intellectual property, to bring about legal and regulatory reform essential to the elimination of obstacles to competitiveness, to improve the international economic environment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1987

Mr. DOLE (for himself, Mr. SIMPSON, and Mr. COCHRAN) introduced the following bill; which was read twice and ordered placed on the calendar

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A BILL

To increase investment in human and intellectual capital, to promote the development of science and technology, to enhance the protection of intellectual property, to bring about legal and regulatory reform essential to the elimination of obstacles to competitiveness, to improve the international economic environment, and for other purposes.

(16) TRANSITION RULES FOR PENDING PROTESTS.—

(A) Subsection (b) shall not divest the courts of their jurisdiction over a protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), or a petition filed by an American manufacturer, producer, or wholesaler under section 516(b) of such Act (19 U.S.C. 1516(b)), concerning liquidated entries of articles entered, or withdrawn from warehouse for consumption, before the effective date of the new United States Tariff Schedule. Nothing in this subparagraph shall affect the jurisdiction of the courts with respect to articles entered, or withdrawn from warehouse for consumption, after the effective date of the new Tariff Schedule.

(B) If such a petition referred to in subparagraph (A) filed under section 516(b) of the Tariff Act of 1930 is sustained in whole or in part by a final judicial decision, the liquidation of entries of articles covered by such court decision, which are entered, or withdrawn from warehouse for consumption, after the date of publication of such

court decision, shall be suspended until final disposition of the petition is made in accordance with subparagraphs (C) and (D) of this paragraph.

(C) If a protest referred to in subparagraph (A) is sustained in whole or in part by a final judicial decision, the entries made before the effective date of the new United States Tariff Schedule shall be liquidated in accordance with that final judicial decision. The Commission shall initiate an investigation under section 332 of the Tariff Act of 1930 (19 U.S.C. 1332) of such sustained protests which would have affected tariff treatment if such protest had been sustained during the period of the conversion of the Tariff Schedules of the United States (19 U.S.C. 1202) into the format of the Convention. This investigation shall continue for a period of two years from the date of enactment of the new United States Tariff Schedule in accordance with paragraph (26) of subsection (b). The Commission shall report the results of its investigation under section 332 to the President, the Committee on Ways and Means, and the Committee on Finance, and recommend such changes to the new United States Tariff Schedule as the Commission would have recommended if

the final decision had been made prior to the conversion into the format of the Convention.

(D) The President shall review any changes so recommended by the Commission and he shall, as soon as practicable, proclaim those changes, if any, which he decides are necessary to conform the new Tariff Schedule to the fullest practicable extent to the final judicial decision. The changes shall be effective with respect to entries, the liquidation of which was suspended in accordance with subparagraph (B), covering articles entered, or withdrawn from warehouse for consumption, on or after the effective date of the new United States Tariff Schedule.

(E) If a petition referred to in subparagraph (A) above is not sustained in whole or in part by a final judicial decision, the entries made before the effective date of the new United States Tariff Schedule shall be liquidated in accordance with the final judicial decision subject to the old Tariff Schedules, and entries made after the effective date of the new United States Tariff Schedule shall be liquidated subject to such new United States Tariff Schedule.

APPENDIX F
SECTION 1(n) OF THE HARMONIZED SYSTEM IMPLEMENTATION ACT OF 1987

HARMONIZED SYSTEM IMPLEMENTATION ACT OF 1987

Submitting Report

June, 1987

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

HARMONIZED SYSTEM IMPLEMENTATION ACT OF 1987

(n) TRANSITION RULES FOR PENDING PROTESTS

(1) Section 1 shall not divest the courts of their jurisdiction over a protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), or a petition by an American manufacturer, producer, or wholesaler under section 516(b) of such Act (19 U.S.C. 1516(b)), concerning liquidated entries of articles entered, or withdrawn from warehouse for consumption, before the effective date of the United States Tariff Schedule. Nothing in this subsection shall affect the jurisdiction of the courts with respect to articles entered, or withdrawn from warehouse for consumption, after the effective date of the United States Tariff Schedule.

(2) If a petition or protest referred to in paragraph (1) of this subsection is sustained in whole or in part by a final judicial decision, the entries made before the effective date of the United States Tariff Schedule shall be liquidated in accordance with that final judicial decision. The Commission shall initiate an investigation under section 332 of the Tariff Act of 1930 (19 U.S.C. 1332) of such sustained protests which would have affected tariff treatment if such protest had been sustained during the period of the conversion of the Tariff Schedules of the United States (19 U.S.C. 1202) into the format of the Convention. This

investigation shall cover a period of two years from May 1, 1987. The Commission shall report the results of its investigation under section 332 to the President, the Committee on Ways and Means, and the Committee on Finance, and shall recommend such changes to the United States Tariff Schedule as the Commission would have recommended if the final decision had been made prior to the conversion into the format of the Convention.

(3) The President shall review any changes so recommended by the Commission and shall, as soon as practicable, proclaim such changes, if any, which he decides are necessary or appropriate to conform the United States Tariff Schedule to the fullest practicable extent to the final judicial decision. The changes shall be effective with respect to entries, made on or after the date of the President's proclamation referred to above and to entries of articles made on and after the effective date of the United States Tariff Schedule for which, notwithstanding section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), application for liquidation or reliquidation is made by the importer to the customs officer concerned within 90 days of the effective date of such proclamation.

(4) If a petition or protest referred to in paragraph (1) of this subsection is not sustained in whole or in part by a final judicial decision, the entries made

before the effective date of the United States Tariff Schedule shall be liquidated in accordance with the final judicial decision subject to the old Tariff Schedules, and entries made after the effective date of the United States Tariff Schedule shall be liquidated subject to such United States Tariff Schedule.

APPENDIX G
USTR SECTION-BY-SECTION ANALYSIS

SECTION-BY-SECTION ANALYSIS OF THE HARMONIZED SYSTEM IMPLEMENTATION ACT OF 1987

Overview

This bill authorizes the President to accept for the United States the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System") and to implement in the U.S. customs tariff the nomenclature established by the Harmonized System. This entails repeal of the existing Tariff Schedules of the United States and adoption of a new United States Tariff Schedule.

The Harmonized System is an international product nomenclature and numbering system developed under the aegis of the Customs Cooperation Council. The United States participated actively in the development of the international system, as mandated by Congress in section 608 of the Trade Act of 1974. The Harmonized System was designed to provide a common core structure for countries to use in their tariff nomenclatures and international statistical reporting systems. It consists of some 5,000 discrete six-digit product categories onto which countries may build additional detail if needed.

The Harmonized System is intended to facilitate trade and trade analysis by introducing greater cross-border predictability in the customs classification of merchandise and by improving the comparability and quality of trade data. U.S. private sector views and advice were taken into account by the U.S. participants in the development of the international nomenclature, and private sector advisers often were included on U.S. delegations to the international meetings.

Subsection (a)

Subsection (a) states the purposes of the Act, which are to approve the Harmonized System Convention, to authorize the President to implement in the U.S. customs tariff the nomenclature established by the Harmonized System, to authorize the President to accept the final legal text of the Harmonized System Convention, and to provide that the Convention shall be treated as a trade agreement obligation of the United States.

Subsection (b)

This provision defines frequently used terms. "Commission" means the U.S. International Trade Commission. "Convention" and "Harmonized System Convention" mean the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986. "Trade Act" means the Trade Act of 1974.

Subsection (n)

This subsection provides transition rules for protests under section 514 of the Tariff Act of 1930 or petitions under section 516 of the Act of classification decisions by the U.S. Customs Service. It is expressly stated that the courts are not divested of jurisdiction over protests or petitions concerning liquidated entries of articles entered or withdrawn from warehouse for consumption before the effective date of the new United States Tariff Schedule.

Where the court sustains such protests or petitions in whole or in part, entries covered by that final court decision and made before the effective date of the new United States Tariff Schedule are to be liquidated in accordance with the final judicial decision. The U.S. International Trade Commission will investigate such sustained protests and petitions and report to the President on changes to the United States Tariff Schedule which it believes are necessary to conform the Tariff Schedule to the final judicial decision. The President, after reviewing the Commission recommendation, will decide what changes he believes are necessary to conform the Tariff Schedule to the fullest practicable extent to the final judicial decision. The President will proclaim such changes, which will be effective as to (a) subsequent entries and (b) those entries between the effective date of the new Tariff Schedule and the date of the President's proclamation for which an application for liquidation or reliquidation had been filed within 90 days after the date of the President's proclamation.

Where the court does not sustain a protest or petition concerning entries liquidated before the effective date of the new United States Tariff Schedule, entries made prior to the effective date of the new Tariff Schedule will be liquidated in accordance with the final judicial decision, and entries thereafter will be liquidated in accordance with the new Tariff Schedule.

APPENDIX H
SECTION 12(d) OF H.R. 3690

100TH CONGRESS
1ST SESSION

H. R. 3690

To approve the International Convention on the Harmonized Commodity Description and Coding System, to implement the nomenclature established by the Convention, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 1987

Mr. GIBBONS introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To approve the International Convention on the Harmonized Commodity Description and Coding System, to implement the nomenclature established by the Convention, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Harmonized Tariff Schedule Implementation Act".

SEC. 2. PURPOSES.

The purposes of this Act are—

SEC. 12. TRANSITION TO THE HARMONIZED TARIFF SCHEDULE.

(a) EXISTING EXECUTIVE ACTIONS.—

(1) The appropriate officers of the United States Government shall take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule all proclamations, regulations, rulings, notices, findings, determinations, orders, recommendations, and other written actions that—

(A) an article that was previously covered by such headnote being excluded from coverage; or

(B) an article not previously covered by such headnote being included in coverage;

the President may proclaim changes in Additional U.S. Note 2, chapter 17 of the Harmonized Tariff Schedule to conform that note to the fullest extent possible to headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules.

(3) No change to the Harmonized Tariff Schedule may be proclaimed under paragraph (1) or (2) after June 30, 1989.

(d) CERTAIN PROTESTS AND PETITIONS UNDER THE CUSTOMS LAW.—

(1)(A) This Act may not be considered to divest the courts of jurisdiction over—

(i) any protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514); or

(ii) any petition by an American manufacturer, producer, or wholesaler under section 516 of such Act (19 U.S.C. 1516);

covering articles entered before the effective date of the Harmonized Tariff Schedule.

(B) Nothing in this Act shall affect the jurisdiction of the courts with respect to articles entered after the effective date of the Harmonized Tariff Schedule.

(2)(A) If any protest or petition referred to in paragraph (1)(A) is sustained in whole or in part by a final judicial decision, the entries subject to that protest or petition and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with such final judicial decision under the old Schedules.

(B) At the earliest practicable date after the effective date of the Harmonized Tariff Schedule, the Commission shall initiate an investigation under section 332

of the Tariff Act of 1930 (19 U.S.C. 1332) of those final judicial decisions referred to in subparagraph (A) that—

(i) are published during the 2-year period beginning on September 1, 1987; and

(ii) would have affected tariff treatment if they had been published during the period of the conversion of the old Schedules into the format of the Convention.

No later than March 1, 1990, the Commission shall report the results of the investigation to the President, the Committee on Ways and Means, and the Committee on Finance, and shall recommend those changes to the Harmonized Tariff Schedule that the Commission would have recommended if the final decisions concerned had been made before the conversion into the format of the Convention occurred.

(3) The President shall review all changes recommended by the Commission under paragraph (2)(B) and shall, as soon as practicable, proclaim such of those changes, if any, which he decides are necessary or appropriate to conform the Harmonized Tariff Schedule to the final judicial decisions. Any such change shall be effective with respect to—

(A) entries made on or after the date of such proclamation; and

(B) entries made on or after the effective date of the Harmonized Tariff Schedule if, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), application for liquidation or reliquidation thereof is made by the importer to the customs officer concerned within 90 days after the effective date of such proclamation.

(4) If any protest or petition referred to in paragraph (1)(A) is not sustained in whole or in part by a final judicial decision, the entries subject to that petition or protest and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with the final judicial decision under the old Schedules.

APPENDIX I
U.S. CUSTOMS SERVICE LETTER 086513

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C.

02MAR 1990

CLA-2:CO:R:C:G
086513

Eugene A. Rosengarden
Director
Office of Tariff Affairs
and Trade Agreements
500 E St., S.W.
Washington, DC 20436

RE: Your investigation No. 332-273 regarding U.S. Customs classification of power supplies for ADP machines

Dear Gene:

In your letter of February 12, 1990, you inquired as to Customs classification of power supplies for ADP machines in light of the decision in Digital Equipment Corp. v. U.S., 889 F.2d 267 (1989) (hereafter "DEC").

The DEC decision was a classification issue under the Tariff Schedules of the United States (TSUS). The Harmonized Tariff Schedule of the United States (HTSUSA) is significantly different from TSUS in this area. Thus, although power supplies for ADP machines were held to be "parts" in the DEC decision, the DEC decision is not binding on classifications under the present HTSUSA.

Under the HTSUSA, power supplies for ADP machines are provided for, eo nomine, under subheading 8471.99.30, HTSUSA, which provides for: "Automatic data processing machines and units thereof; [o]ther: [o]ther: [p]ower supplies."

Furthermore, Legal Note 5(B) to chapter 84 states:

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all the following conditions:

(a) It is connectable to the central processing unit either directly or through one or more other units; and

(b) It is specifically designed as part of such system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

Such units entered separately are also to be classified in heading 8471.

It is Customs position that the statement: "[a] unit is to be regarded as being a part of the complete system" means "a unit is to be regarded as a unit of the complete system." Additionally, Legal Note 5(B) denotes that power supplies are units of ADP machines even though they do not accept or deliver code or signals to the system, and that power supplies, entered separately are to be classified in heading 8471 (which provides for units), not 8473 (which provides for parts of units and accessories).

Therefore, classification of power supplies for ADP machines is appropriate under subheading 8471.99.30, HTSUSA, which unequivocally provides for ADP power supplies. Please see attached rulings HQ 083956 (dated April 12, 1989), NY 834022 (dated December 5, 1988) and NY 832482 (dated October 4, 1988).

If you have any question concerning this issue, please contact me or Matthew Riley, Esq. (566-8181).

Sincerely,

Harvey B. Fox, Director
Office of Regulations and Rulings

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C.

HQ 083956

CLA-2 CO:R:C:G 083956 MR APR 12 1989

CATEGORY: Classification

TARIFF NO: 8473.30.40, 8471.93.30, 8471.92.30, 8471.99.30
8471.92.20, 8536.69.00, 8544.41.00, 7318.15.80
7318.16.00, 7326.90.90, 8507.20.00, 8507.30.00
8506.19.00

Dr. Bo Denysyk
Senior Vice President
Global USA Inc.
2121 K Street, N.W.
Washington, D.C. 20037

RE: Classification of certain components for laptop computer

Dear Dr. Denysyk:

In your letter dated January 27, 1989, you requested, on behalf of Kyocera Electronics, Inc., the tariff classification and duty rate for certain computer parts and components that will be imported from Japan. These parts will be assembled, along with other parts of U.S. and non-U.S. origin, into an 80386 (or equivalent) microprocessor-based laptop computer.

Finished or unfinished articles of this nature, if of Japanese origin, would be classifiable under subheading 9903.41.15, Harmonized Tariff Schedule of the United States (HTSUS), and subject to a 100 percent ad valorem rate of duty. For purposes of this ruling, we are assuming that the parts will be separately entered, rather than imported in a "kit" form.

COMPONENT	HTSUS CLASSIFICATION	DUTY RATE
Partial Mainboard Assembly (without CPU and EPROMs)	8473.30.40	free
SIMM 256K Memory Module	8473.30.40	free
Floppy Disk Drive Unit	8471.93.30	free
I/O Printed Circuit Board	8473.30.40	free
Liquid Crystal Display Unit	8471.92.30	free

Power Supply Unit	8471.99.30	3 percent
Keyboard Unit	8471.92.20	free
Cable Connector	8536.69.00	5.3 percent
Cable with Connector	8544.41.00	5.3 percent
Screws	7318.15.80	9.5 percent
Nuts	7318.16.00	0.2 percent
Steel Bracket	7326.90.90	5.7 percent
Plastic and Metal Case	8473.30.40	free
Lead-Acid Storage Battery	8507.20.00	5.3 percent
Nickel-Cadmium Battery	8507.30.00	5.1 percent
Disposable Type Battery	8506.19.00	5.3 percent

Sincerely,

John Durant, Director
Commercial Rulings Division

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

NY 834022

DEC 0 5 1988

CLA-2-84:S:N:N1:110 834022

CATEGORY: Classification

TARIFF NO.: 9903.4120; 8473.30.4000; 8471.92.2000; 8471.99.3000

Mr. Jon D. Wilkins
Hitachi America, Ltd.
50 Prospect Avenue
Tarrytown, New York 10591-4698

RE: The tariff classification of components for a Quick Terminal from Japan

Dear Mr. Wilkins:

In your letter dated November 15, 1988, you requested a tariff classification ruling.

The merchandise under consideration includes component parts for a Hitachi Financial Information Display Terminal. This Quick-10E intelligent terminal is primarely designed for on-line access of financial stock information. The unit incorporates a 80286 microprocessor and has 1M byte of main memory. The components of this system will be separately shipped in five major sections that will consist of the following: Group 1- consisting of the main board that contains the CPU chip and EPROMS; Group 2- display terminal and communication line control package; Group 3- keyboard and printer data control package; Group 4- controller assembly (whose main component is a dual disk drive) that includes a cabinet, but without power supply, cables, floppy disks, and manuals; Group 5- display control package and power supply. The 80286 CPU chip and EPROMS may at times be shipped separately.

This classification decision is under the Harmonized Tariff Schedule of the United States (HTS), effective January 1, 1989, subject to changes before the effective date.

The applicable HTS subheading for the components of this Quick Terminal will be as follows:

Main Board (with CPU and EPROM)- 9903.41.20 100 percent ad valorem

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

Display Terminal	8471.92.4025	3.7 percent ad valorem
Communications Line Control unit	8517.40.8090	4.7 percent ad valorem
Keyboard	8471.92.2000	Free
Printer data control board	8473.30.4000	Free
Controller assembly	8471.93.3020	Free
Cables with fittings	8544.41.0000	5.3 percent ad valorem
Floppy disks (recorded)	8524.90.4080	9.7 cents per square meter of recording surface
Cabinet parts	8473.30.4000	Free
Display control board	8473.30.4000	Free
Power supply	8471.99.3000	3 percent ad valorem
80286 CPU chip, when separately imported	8542.11.0045	Free
EPROMS (separate)	8542.11.0040	Free

The issue of how manuals are to be classified under HTS is currently before our Headquarter's office, and will be resolved shortly.

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

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

Sincerely,

Jean F. Maguire

Jean F. Maguire
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____ E10

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

NY 832482

OCT 0 4 1988

CLA-2-84:S:N:N1:110 832482

CATEGORY: Classification

TARIFF NO.: 8471.93.6000; 8473.30.4000; 8471.99.3000

Mr. Terry Moran
Hitachi Transport System (America), Ltd.
455 West Victoria Street
Compton, California 90220

RE: The tariff classification of magnetic tape storage system assemblies and sub-assemblies from Japan.

Dear Mr. Moran:

This is in response to your request for a tariff classification ruling dated September 27, 1988.

The merchandise under consideration are assemblies and sub-assemblies for magnetic tape storage systems, that are described as the MT 400 series. A magnetic tape storage system consists of a controller unit (MTC 410) and tape units (MT405). A system consists of up to four magnetic tape units, each consisting of two tape drive assemblies. The shipments will consist of assemblies and sub-assemblies for the tape drives and controller units, and will be described as "L" group and "M" group components. The "L" group are basically large frame and cabinet assemblies for the tape drive and controller units. The "M" group consists essentially of various sub-assemblies in the controller and tape drive sections. In the tape unit section, the "M" group components include such sub-assemblies as the tape drive assembly, pneumatic supply assembly, AC power supply assembly, and the frame assembly.

The MT-400 Controller is also imported as a complete unit at times, and is basically an interface unit between the CPU and storage unit. It exists for the purpose of transmitting data and instructions on how to manipulate that data to storage devices. The MTC410V-X controller has a base, but is physically attached to the device to which it belongs - the MT405 storage units. The controller includes the following components: frame and cabinet; AC box assembly; switching box regulators; PDB assembly;

connector panel assembly; floppy disk drive; control panel; operator panel; and logic assembly.

The Harmonized Tariff Schedule of the United States (HTS) is scheduled to replace the Tariff Schedules of the United States (TSUS) on January 1, 1989.

The applicable HTS subheading for the "L" and "M" assemblies and subassemblies, with the exception of the AC Power supply assembly will be 8473.30.4000 which provides for parts and accessories of the machines of heading 8471 not incorporating a cathode ray tube. The duty rate will be free.

The applicable HTS subheading for the AC Power supply assembly will be 8471.99.3000, which provides for power supplies. The duty rate will be 3 percent ad valorem. The applicable HTS subheading for the MT-400 controller will be 8471.99.1500, which provides for control or adapter units. The duty rate will be free.

This classification represents the present position of the Customs Service regarding the dutiable status of the merchandise under the HTS. If there are changes before enactment this advice may not continue to be applicable.

Until the HTS is implemented, the applicable TSUS item number for the "M" and "L" components, with the exception of the AC power supply, is 676.5425 which provides for parts of automatic data-processing machines and units thereof. The rate of duty is free.

The applicable TSUS item number for the AC power supply is 682.6053 which provides for rectifiers and rectifying apparatus. The rate of duty is 3 percent ad valorem. The applicable TSUS item number for the MT-400 Controller is 676.3077 which provides for office machines not specially provided for. The rate of duty is 3.7 percent ad valorem.

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

APPENDIX J
CHANGES IN NOMENCLATURE WITH RESPECT TO COMPUTER POWER SUPPLIES

Proposed language

8471	Automatic data processing machines and units thereof ***:
	*****
	*****
8471.99	Power supplies:
8471.99.XX	Units suitable for physical incorporation into automatic data processing machines or units thereof....Free
8471.99.YY	Other.....3%

APPENDIX K
LIST OF 20 ELECTROPHORESIS DECISIONS

EXHIBIT A:

Electrophoresis Apparatus
Judicially Classified In Item 661.95, TSUS

Court No.	Product Name	Type of Product
87-2-00282 (Ex. B)	Multiphor II EPH Unit	Base Unit
	Macrophor	Base Unit
	Electrofocusing Lid	Part of Base Unit
	Polyacrylamide EF Accessory Kit	Accessory Kit
	Lid complete for Multiphor II	Part of Base Unit
	DNA Sequencing Accessory Kit	Accessory Kit
	Multiphor II IEF Unit	Base Unit
	Pegg Kit	Accessory Kit
	Agarose EPH Accessory Kit	Accessory Kit
83-10-01458 (Ex. C)	FBE 3000	Base Unit
	Isoelectric Focusing Kit	Accessory Kit
	Electrophoresis Kit	Accessory Kit
	GE 4 Sample Applicator	Accessory
	GE 2/4 LS 220V	Base Unit
83-11-01605 (Ex. D)	Electrophoresis Apparatus	Base Unit
	FBE Base Unit	Base Unit
	IEF Kit	Accessory Kit
	GE 2/4 LS 115V	Base Unit
	GE 2/4 110V	Base Unit
	Prep IEF Kit FBE 3000	Accessory Kit
	Electro/Immuno Kit	Accessory Kit
	Flat Bed Apparatus	Base Unit
81-12-01673 (Ex. E)	IEF Kit	Accessory Kit
	Electrophoresis Kit	Accessory Kit
	Prep[arative] Kit	Accessory Kit
81-08-01105 (Ex. F)	GE-4, 115V	Base Unit
	FBE 3000 Base Unit	Base Unit
	GE 2/4	Base Unit

EXHIBIT A:

(continued)

Court No.	Product Name	Type of Product
81-8-01021 (Ex. G)	GE 4 Sample Applicator	Accessory
	GE 4 Applicator guide	Accessory
	Lid I	Part of Base Unit
	GE 4 II, 115V	Base Unit
	Electro/Immuno Kit	Accessory Kit
	Leveling plate	Part of Base Unit
	Electrophoresis Kit	Accessory Kit
	GE 2/4 LS 115V	Base Unit
	Isoelectric Focusing Kit	Accessory Kit
	FBE-3000 Base Unit	Base Unit
79-10-01492 (Ex. H)	GE 4, 115V	Base Unit
	GE 4 II, 115V	Base Unit
	GE-4	Base Unit
	IEF Kit	Accessory Kit
	Electrophoresis Kit	Accessory Kit
	IEF Lid Complete	Part of Base Unit
	Flat Bed Apparatus FBE Base	Base Unit
	GE 4 Applicator guide	Accessory
	GE 4 Wire	Accessory
	GE 4 Gel Slicer	Accessory
	GE 4 Slicing Frame	Accessory
	GE 4 Sample Applicator	Accessory
	GE 4 Blind Cassette	Accessory
	Preparative IEF Kit	Accessory Kit
81-8-01008 (Ex. I)	Lid	Part of Base Unit
	Upper buffer vessel	Part of Base Unit
	GE 4 II, 115V	Base Unit
	Base Unit	Base Unit
	IEF Kit	Accessory Kit
	Electrophoresis Kit	Accessory Kit
	Preparative IEF Kit	Accessory Kit
	GE-4	Base Unit
81-5-00656 (Ex. J)	GE-4, 115V	Base Unit
	Front plate	Part of Base Unit
85-1-00023 (Ex. K)	GE 2/4 LS 115V	Base Unit

EXHIBIT A:

(continued)

Court No.	Product Name	Type of Product
	Isoelectric Focusing Kit	Accessory Kit
	Electrophoresis Apparatus	Base Unit
87-12-01164 (Ex. L)	Analytical Sephadex IEF Kit	Accessory Kit
	Analytical Agarose IEF Kit	Accessory Kit
	Gel Tray GNA 200	Part of Base Unit
	Gel Tray GNA 100	Part of Base Unit
	Comb Pack I, GNA 100	Accessory Kit
	Flanging Start Up Kit	Accessory Kit
	Gel Tray 2, GNA 100	Part of Base Unit
87-6-00754 (Ex. M)	IEF Sample Applicator	Accessory
	GNA	Base Unit
	FBE 3000 Base Unit	Base Unit
	GE 2/4 LS 115V	Base Unit
	Agarose IEF Accessory Kit	Accessory Kit
	Isoelectric Focusing Kit	Accessory Kit
85-3-00417 (Ex. N)	GE 2/4 LS 115V	Base Unit
	Preparative Kit	Accessory Kit
87-10-01062 (Ex. O)	ELP Lid Complete	Part of Base Unit
	Isoelectric Focusing Kit	Accessory Kit
87-7-00792 (Ex. P)	ELP Lid Complete	Part of Base Unit
87-8-00888 (Ex. Q)	GNA 100	Base Unit
	Gel Tray I, GNA 100	Part of Base Unit
	Electrophoresis Kit	Accessory Kit
	GE 2/4 LS 115V	Base Unit
	Comb Rack, GNA 200	Accessory Kit
	Cathode GNA 100	Part of Base Unit
	Anode/RA 100	Part of Base Unit
	Comb Pack, GNA	Accessory Kit
	Comb Pack 2, GNA	Accessory Kit
	GNA 200	Base Unit
87-1-00063 (Ex. R)	ELP Lid Complete	Part of Base Unit

EXHIBIT A:

(continued)

Court No.	Product Name	Type of Product
85-8-01128 (Ex. S)	GE 2/4 LS 115V	Base Unit
	FBE-Immuno Apparatus	Base Unit
	Electrophoresis Kit	Accessory Kit
85-12-01702 (Ex. T)	Upper Buffer Vessel	Part of Base Unit
	FBE 3000 Base Unit	Base Unit
	GE 2/4 LS 115V	Base Unit
	GE 2/4 LS	Base Unit
	ELP Lid Complete	Part of Base Unit
	Comb Pack III GNA 100	Accessory Kit
	Comb Pack II GNA 200	Accessory Kit
86-10-01335 (Ex. U)	GE 2/4 LS 115V	Base Unit

APPENDIX L
EXAMPLES OF THREE PUBLICATIONS IN THE CUSTOMS BULLETIN

Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 22 SEPTEMBER 7, 1988 No. 36

This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 17, 1988.

The following are abstracts of unpublished rulings recently issued by the U.S. Customs Service. The abstracts are set forth to provide interested parties with the general information regarding the type of issues currently being addressed by the U.S. Customs Service. By their inclusion herein, the rulings abstracted shall not be considered "published in the CUSTOMS BULLETIN," within the meaning of section 177.10 of the Customs Regualtions (19 CFR 177.10), nor do such abstracts establish a uniform practice. CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 88–11)

COMMODITY CLASSIFICATION

C.S.D. 88–11(1)—*Commodity:* Appliques of mixed sequins, bugles, and beads hand-sewn to pieces of nylon organza fabric. *Classification:* Importer requests classification under the proposed HTSUS only. Item is classifiable as embroidery under heading 5810 following GRI 1. The applicable subheading is 5810.92.0020, HTSUS, textile category 229. *Document:* Hqs. ruling letter 081784 dated May 25, 1988.

C.S.D. 88–11(2)—*Commodity:* Belts (beaded textile) of man-made fiber; back closure by means of velcro-type strips fastened inside the ends. Outer surface decorated with various designs of beads and bugles. *Classification:* Importer requests classification under the HTSUSA only. Item is classifiable under subheading 6217.10.0030, HTSUSA, textile category 659, as other made up clothing accessories of man-made fibers. *Document:* Hqs ruling letter 082326, dated June 8, 1988.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 17, 1988.

The following are decisions of the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 88–12)

This ruling concerns the fungibility of anhydrous ethanol under substitution same condition drawback.

Date: December 18, 1987
File: CO:R:CD:D
219955 NK

Facts:

The raw source material for the imported designated anhydrous ethanol is sugar cane. Sugar cane juice is fermented to 95% hydrous alcohol. The hydrous alcohol is dehydrated through azeotropic distillation, using benzene to separate the water from the ethanol resulting in the finished designated imported product of 99.6% purity.

The raw source material for the substituted anhydrous ethanol is corn. The production process resulting in a finished anhydrous ethanol of 99.6% purity is the same as for the designated merchandise except glycerine instead of benzene may be used in the dehydration process.

Both the imported designated and substituted ethanols may be used as fuels. However, in addition to fuel use, ethanol dehydrated with glycerine can be used for beverage purposes or in production processes which involve catalysts. Ethanol dehydrated with the use of benzene cannot be used for beverage purposes or in production processes which involve catalysts.

Issue:

The issue is whether anhydrous ethanol derived from sugar cane may be fungible with anhydrous ethanol derived from corn under the substitution same condition drawback law.

Law and Analysis:

The substitution same condition drawback law (19 USC 1313(j)(2)) requires that the merchandise substituted for exportation must be fungible with the duty-paid merchandise and in the same condition as was the imported merchandise at the time of its importation.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and rate	Item No. and rate		
C88/114	Re, C J July 27, 1988	Boehringer Mannheim Corp.	84-4-00523	Not stated	Item 712.49 7.5%	Agreed statement of facts	Los Angeles Model 705 Automatic Analyzer
C88/115	Re, C J July 27, 1988	Belwith Int'l Inc.	80-9-01372	Item 546.54 Various rates	Item 548.05 Various rates	Agreed statement of facts	Los Angeles Glass balls and glass knobs
C88/116	Newman, S J August 2, 1988	Canadian Corporate Management Co.	86-6-00796	Item 735.20 5.52%	Item 270.25 Free of Duty	RBW Inc. v. U.S., 632 F. F. Supp. 13, *aff'd*, 806 F.2d 249 (1986)	Detroit Puzzle and activity books
C88/117	Re, C J August 5, 1988	Belwith Int'l Inc.	83-4-00616	Item 534.94 Various rates	Item 727.55 or 727.70 Various rates	Agreed statement of facts	Los Angeles Porcelain knobs
C88/118	Re, C J August 5, 1988	Import Leather Inc.	81-5-00511	Item 121.59 5%, 2%, or 1%	Item A121.65 Free of duty	Leather's Best, Inc. v. U.S., 708 F.2d 715	New York Leather
C88/119	Re, C J August 8, 1988	Belwith Int'l, Inc	80-3-00427	Item 534.94 Various rates	Item 727.70 Various rates	Agreed statement of facts	Detroit Porcelain knobs
C88/120	Re, C J August 3, 1988	Belwith Int'l, Inc	78-11-02016	Item 534.94 Various rates	Item 727.55 Various rates Item 727.70 Various rates	Agreed statement of facts	Detroit Porcelain knobs
C88/121	Re, C J August 3, 1988	Belwith Int'l, Inc.	79-4-00574	Item 534.94 Various rates	Item 727.55 Various rates Item 727.70 Various rates	Agreed statement of facts	Los Angeles Porcelain knobs
C88/122	Re, C J August 3, 1988	Belwith Int'l, Inc	79-9-01379	Item 534.94 Various rates	Item 727.55 Various rates Item 727.70 Various rates	Agreed statement of facts	Detroit Porcelain knobs

APPENDIX M
EXCERPT FROM 11 CIT

UNITED STATES COURT OF INTERNATIONAL TRADE REPORTS

VOLUME 11

CASES ADJUDGED IN THE
UNITED STATES COURT
OF INTERNATIONAL TRADE

JANUARY—DECEMBER 1987

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and rate	Item No. and rate		
C87/1	DiCarlo, J. January 6, 1987	Farwest Garments, Inc.	85-5-00652, etc	Item 383.90 21¢ per lb. plus 27.5% Item 379.95 19¢ per lb plus 27.5% Item 379.96 Various rates Item 383.92 12¢ per lb plus 22.3%	Item 376.56 12.1%	Pacific Trail Sportswear Mills, Inc v U.S., 5 CIT 206 and Izod v U.S., S.O. 85-72	Tacoma Unisex jackets and ladies jackets
C87/2	DiCarlo, J. January 6, 1987	Gund, Inc.	85-6-00389	Item 737.40 10.9%	Item 737.30 6.8%	Agreed statement of facts	New York Stuffed toys
C87/3	DiCarlo, J. January 6, 1987	Teleflora Products, Inc.	85-11-01589	Item 206.98 5.1%	Item A207.00 Free of duty	Agreed statement of facts	Los Angeles Birdhouses
C87/4	Restani, J January 8, 1987	Coburn Optical Industries	84-9-01275	Item 709.05 17.5% or 19.4%	Item 709.15 Various rates for photocoagulator Item 709.05 Various rates for slit lamp	Agreed statement of facts	Tampa Laser photocoagulator and slit lamp
C87/5	Restani, J January 8, 1987	Kwanasia of America	84-12-01773, etc.	Items 716.10-716.29 Various rates for electronic watch modules Item 760.05 Various rates for pens with digital watches	Item 688.36 5.1% for electronic watch modules Item 688.45 or 688.36 Free of duty for pens with digital watches	Agreed statement of facts	New York Electronic watch modules and pens with digital watchee

APPENDIX N
EXCERPTS FROM 1 CIT

UNITED STATES COURT OF INTERNATIONAL TRADE REPORTS

VOLUME 1

CASES ADJUDGED IN THE
UNITED STATES COURT
OF INTERNATIONAL TRADE

November 1980–June 1981

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

NOTICE

The President approved and signed Public Law 96-417, the Customs Courts Act of 1980, on October 10, 1980. The Act, which became effective on November 1, 1980, clarified and expanded the status, jurisdiction, and powers of the former United States Customs Court and changed the name of the court to the United States Court of International Trade.

Volume 85 was the last volume of the U.S. Customs Court Reports. This volume of the U.S. Court of International Trade Reports begins with the first opinion published after November 1, 1980 and ends with the last opinion published in June 1981. Succeeding volumes will be published semi-annually: July-December and January-June.

The procedures for publication and the forms of citation of decisions of the court are as follows:

1. A slip opinion number (Slip Op.) is assigned to an opinion on the date of publication and is used as the official citation, together with the date of publication, until the opinion appears in the official reports of the U.S. Court of International Trade. The form of citation to a slip opinion is *American Schack Co.* v. *United States*, 1 CIT —, Slip Op. 80-1 (Nov. 3, 1980).

2. After an opinion appears in the official reports, the slip opinion number is not used, and the citation is to the volume and page of the official reports together with the year of publication; e.g., *American Schack Co.* v. *United States*, 1 CIT 1 (1980).

3. When an opinion is also published in the Federal Supplement, that citation is included following the citation to the official reports. (Federal Supplement citations are given at the top of each opinion in this volume to the extent that they are available at the time of publication. Not all opinions are reported in the Federal Supplement.)

4. The form of citation to opinions of the former U.S. Customs Court remains the same; e.g., *J. E. Mamiye & Sons, Inc.* v. *United States*, 85 Cust. Ct. 92, C.D. 4878, 509 F. Supp. 1268 (1980); *Alberta Gas Chemicals, Inc.* v. *United States*, 85 Cust. Ct. 122, C.R.D. 80-13, 496 F. Supp. 1332 (1980).

5. Abstracts of decisions not supported by an opinion will continue to be numbered, published, and cited as they have been in the past. Examples of forms of citations to them are: *Uniroyal, Inc., c/o A. N. Deringer, Inc.* v. *United States*, 84 Cust. Ct. 275, Abs. P80/59 (1980); *Conti Rubber Products, Inc.* v. *United States*, 85 Cust. Ct. 180, Abs. R80/340 (1980); *Montgomery Ward & Co.* v. *United States*, 1 CIT —, Abs. P81/68 (1981).

ABSTRACTS OF COURT OF INTERNATIONAL TRADE DECISIONS

Protests

The following abstracts of decisions of the U.S. Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/176	Richardson, J. November 13, 1980	Capitol Wine & Liquor Co.	76-11-02502	Sec. 303, Tariff Act of 1930, countervailing duties	Dutiable without assessment of countervailing duties because no bounty or grant was paid or bestowed upon the manufacture, production, or export of the merchandise	Agreed statement of facts	Chicago Gin exported from Great Britain
P80/177	Watson, J. November 13, 1980	WFS Div. Amer. Rec. Grp., Ltd.	79-2-00319	Item 389.60 or 389.62 25¢ per lb. + 17%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4649)	Chicago Parts of nylon backpacking tents

APPENDIX O
U.S. CUSTOMS SERVICE RULING 082462

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C.

HQ 082462

NOV 13 1989

CLA-2 CO:R:C:G JMH 082462

CATEGORY: Classification

TARIFF NO.: 9027.20.80; 9027.20.40; 8421.29.00; 8543.30.00, 3926.90.90

Patrick C. Reed, Esq.
Freeman, Wasserman & Schneider
Attorneys and Counsellors at Law
90 John Street
New York City, NY 10038

RE: Chromatography and electrophoresis equipment

Dear Mr. Reed:

Your letter of December 1, 1987, requesting a ruling regarding the classification of certain chromatography and electrophoresis equipment under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) was referred to this office for a reply.

FACTS:

The subject merchandise consists of certain chromatography and electrophoresis equipment imported from Sweden by Pharmacia LKB Biotechnology Inc.

Chromatography

Chromatography is a separation and isolation method by which a liquid or a gas (the mobile phase) is passed through a porous solid (the stationary phase). The components of the mobile phase separate by migrating at different rates through the stationary phase. Once the mobile phase has traveled through the stationary phase, the components are dispensed into different tubes or vessels. See McGraw-Hill Encyclopedia of Science & Technology, Vol. 3, p. 568 (6th Edition 1987). The chromatography equipment in question is used for liquid chromatography, and may be used for both analytical and preparative purposes. The equipment includes columns, flow adaptors, packing reservoirs and sample injectors, tubing connectors and fraction collectors.

Chromatography columns are transparent plastic tubes, which are fitted with supports at each end. The columns vary in size from 0.5 cm to 25 cm in interior diameter and from 2.5 cm to 100 cm in length. They are imported either empty or pre-packed with a separation medium.

The flow adaptors are attachments to be inserted into the top of the columns. They function to protect the media bed and to distribute the entering liquid evenly upon the surface of the separation media within the column.

The packing reservoirs and sample injectors contain the liquid that is to be run through the columns. The reservoirs are made of plastic while the injectors are made of stainless steel. These items are designed for use with other chromatographic equipment.

The tubing connectors are specially designed plastic fittings. The name connotes the connectors' function to join together the various components of chromatographic apparatus.

Finally, the fraction collectors are machines which collect the separated liquid after it flows through the chromatographic column. A rack for test tubes or other vessels and a collection funnel which deposits the sample into a test tube or vessel are included with the collector. The collector is powered during the collection process by an electric motor.

Electrophoresis

Electrophoresis involves the use of an electrical field to cause particles in a solution to migrate toward the electrode of opposite electrical polarity. This is performed by a base unit which is fitted with electrodes. Generally, the unit has either a flat slab or round rods to which a separative gel medium and liquid sample is applied. A power supply delivers a measured electrical charge to the base unit causing the particles within the liquid sample to migrate toward the electrode of opposite electrical polarity. The samples, which are usually clear, may then be stained for better viewing. See McGraw-Hill Encyclopedia of Science & Technology, Vol. 3, p. 238 (6th Edition 1987). An electrophoresis experiment may be either analytical or preparative. The following electrophoresis equipment are included in this ruling request:

Basic electrophoresis units

Instruments used in nucleic acid electrophoresis:

- Pulsaphor unit
- GNA-100 and GNA-200 units
- Miniphor and Macrophor submarine units
- Macrophor unit

Instruments for horizontal electrophoresis:
Multiphor II base units
FBE-3000 Base Unit
Ultrophor unit
Instruments for vertical electrophoresis:
Midget Electrophoresis Unit
2001 Vertical Electrophoresis Unit
GE 2/4 and GE 2/4 LS Vertical Electrophoresis Units

Application Kits: contain the components necessary to use the basic units for particular techniques
Multiphor electrofocusing and immunoelectrophoresis kits
Ultrophor application kits
201 Vertical system application kits

Electrophoresis Systems: contain the basic unit and accessories which are imported and sold together as an entirety
"Phast System": contains a gel staining and destaining area and is controlled by a microprocessor
Pulsaphor Systems One, Two, Three and Four: contains a base unit, control unit, power supply and thermostatic circulator
Macrophor System: contains a base unit and a gel casting unit and a DNA/RNA sequencing accessory unit
Ultrophor Starter System: contains two movable long electrodes and the base unit

The instant ruling request does not cover various parts and accessories used in electrophoresis such as the humidity chamber, lid/cooling plate kits, electrofocusing strips and sample application pieces used in horizontal electrophoresis. Nor does the request include the importer's laser densitometer, electrophoresis chemicals, various power supplies (when imported separately) or the computer systems used in conjunction with densitometry.

ISSUE:

Chromatography

Is the subject chromatography equipment properly classified under heading 9027, HTSUSA, as "Instruments and apparatus for physical or chemical analysis..."; under heading 8421, HTSUSA, as "Filtering or purifying machinery and apparatus, for liquids or gases..."; or under heading 3926, HTSUSA, as "Other articles of plastics..."?

Electrophoresis

Is the subject electrophoresis equipment properly classified under heading 9027, HTSUSA, as "Instruments and apparatus for physical or chemical analysis..."; under heading 8543, HTSUSA, as "Electrical machines and apparatus...not specified or included elsewhere in this chapter..."; or under heading 8421, HTSUSA, as "Filtering or purifying machinery and apparatus, for liquids or gases..."?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes..." The heading which provides the most specific description is preferred. GRI 3(a), HTSUSA.

You contend that chromatography and electrophoresis equipment are similar and therefore should be addressed in this classification ruling together. As the foregoing description of the equipment details, the design and nature of the two types of instruments are dissimilar. Therefore, chromatography and electrophoresis instruments will be discussed separately.

Chromatography

There are three competing headings for classification of the chromatography instruments. The headings are 3926, 8421 and 9027, HTSUSA. These headings describe:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914...
3926.90.90	Other...

* * * * * * * * * * * * *

8421	...filtering or purifying machinery and apparatus, for liquids and gases; parts thereof...
8421.29.00	Filtering or purifying machinery and apparatus for liquids...Other

* * * * * * * * * * * * *

9027	Instruments and apparatus for physical or chemical analysis...parts and accessories thereof...

9027.20.80 Chromatographs and electrophoresis instruments...Other

It is the opinion of this office that the appropriate classification for the chromatography equipment is within heading 8421, HTSUSA. The Court of International Trade addressed this specific equipment in Pharmacia Fine Chemicals, Inc., v. United States, 9 CIT 438 (1985). That decision was based upon the prior Tariff Schedule of the United States (TSUS) which is no longer in affect. Therefore, the case is not binding on the present tariff schedule. This office, however, finds the determination of the chief use of these exact goods by the Court of International Trade to be persuasive.

The merchandise in question has been studied by the Court of International Trade and found to be "chiefly used for filtering and purifying liquids to obtain pure materials for industrial or commercial use." Pharmacia Fine Chemicals, Inc. v. United States, 9 CIT at 441. Within the United States, unless the language or context of the HTSUSA otherwise requires, goods classified by use are classified according to their "principal use". Additional U.S. Rule of Interpretation 1(a), HTSUSA. "Principal use" is the present tariff's equivalent to the former "chief use." Therefore, since the Court has examined this equipment and determined that these apparatus are for filtering and purifying purposes, they are classified within subheading 8421.29.00, HTSUSA.

You state that each of the above listed chromatography equipment will be imported separately. The articles are not imported with detectors, nor are they imported as a system. A chromatographic system or the inclusion of a detector would indicate a different principal use. The articles would then be classifiable within Heading 9027, HTSUSA, which describes "Instruments and apparatus for physical or chemical analysis...Chromatographs and electrophoresis instruments...". See Chapter 90, Note 3, HTSUSA.

Heading 3926, HTSUSA, addresses the material components of the chromatography instruments. General content headings should only be looked to if no other heading provides a more specific description of the goods. Heading 3926, HTSUSA, is not applicable since other specific headings exist.

Electrophoresis

The three competing headings concerning the classification of the electrophoresis equipment are headings 8421, 8543 and 9027, HTSUSA. These headings describe:

8421	...filtering or purifying machinery and apparatus, for liquids and gases; parts thereof...
8421.29.00	Filtering or purifying machinery and apparatus for liquids...Other

* * * * * * * * * * * * *

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof...
8543.30.00	Machines and apparatus for...electrophoresis

* * * * * * * * * * * * *

9027	Instruments and apparatus for physical or chemical analysis...parts and accessories thereof...
9027.20.40	Chromatographs and electrophoresis instruments...Electrical...

It is the opinion of this office that the electrophoresis instruments in question are classifiable within heading 9027, HTSUSA. The classification of these goods, like the chromatography instruments, is controlled by their principal use. The principal use is judged by "the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong..." Additional U.S. Rules of Interpretation 1(a), HTSUSA. The class of electrophoresis instruments are principally used in research for physical or chemical analysis.

That electrophoresis instruments are principally used for analytical purposes is substantiated by the United States Electrophoresis Society and by other American manufacturers of similar units including Hoeffer Scientific, Biorad, and International Biotechnology. Furthermore, your catalogue details graph and curve production, and densitometric techniques that are integral aspects of electrophoresis capabilities. The separate importation of these articles does not alter their actual use within this country.

You contend that heading 8543, HTSUSA, is an appropriate classification for these articles. Heading 8543, HTSUSA, is a general heading to be resorted to only when no other more

specific heading within the Nomenclature applies. GRI 3(a), HTSUSA; Explanatory Note 85.43, Harmonized Commodity Description and Coding System, Vol. 4, p. 1402. Since other more specific headings pertain to the goods, heading 8543, HTSUSA, is not a proper classification.

Alternataively, you argue that heading 8421, HTSUSA, describes the electrophoresis instruments, should heading 8543, HTSUSA, not apply. It is your contention that the merchandise in question merely separates or filters substances. Although the items do have preparative uses, it is our determination that this is not their principal use. Electrophoresis is primarily used to analyze protein and DNA samples. Since the articles principal use is for "physical or chemical analysis" within the research industry, and not for "filtering" for commercial purposes, heading 8421, HTSUSA, does not apply.

Parts and Accessories

You request in your letter of September 29, 1989, that this ruling not include the parts and accessories to the instruments in question, as they are "properly classifiable in the same tariff provision as the merchandise included in the ruling request." This is only the situation if the parts and accessories do not fall within their own heading, as Section XVI, Note 2, HTSUSA and Chapter 90, Note 2, HTSUSA, clearly state. For example, a device which enables chromatography equipment to perform analytical functions would be properly classified within heading 9027, HTSUSA, not heading 8421, HTSUSA.

HOLDING:

The chromatography columns, flow adaptors, packing reservoirs and sample injectors, tubing connectors and fraction collectors are classified within subheading 8421, HTSUSA. The rate of duty is 3.9 percent ad valorem. The electrophoresis equipment is classified within subheading 9027.20.40, HTSUSA. The rate of duty is 4.9 percent ad valorem.

Sincerely,

For John Durant, Director
Commercial Rulings Division

APPENDIX P
CHANGES IN NOMENCLATURE WITH RESPECT TO ELECTROPHORESIS EQUIPMENT

Proposed Language

9027	Instruments and apparatus for physical and chemical analysis ... parts and accessories thereof:	
9027.20	Electrophoresis instruments:	
	Electrical:	
9027.20.XX	Electrophoresis instruments not incorporating an optical or other measuring device	3.9%
9027.20.YY	Other	4.9%
**********		
9027.90	Parts and accessories:	
	Of electrical instruments and apparatus:	
9027.90.XX	Of electrophoresis instruments not incorporating an optical or other measuring device	3.9%
9027.90.YY	Other	4.9%