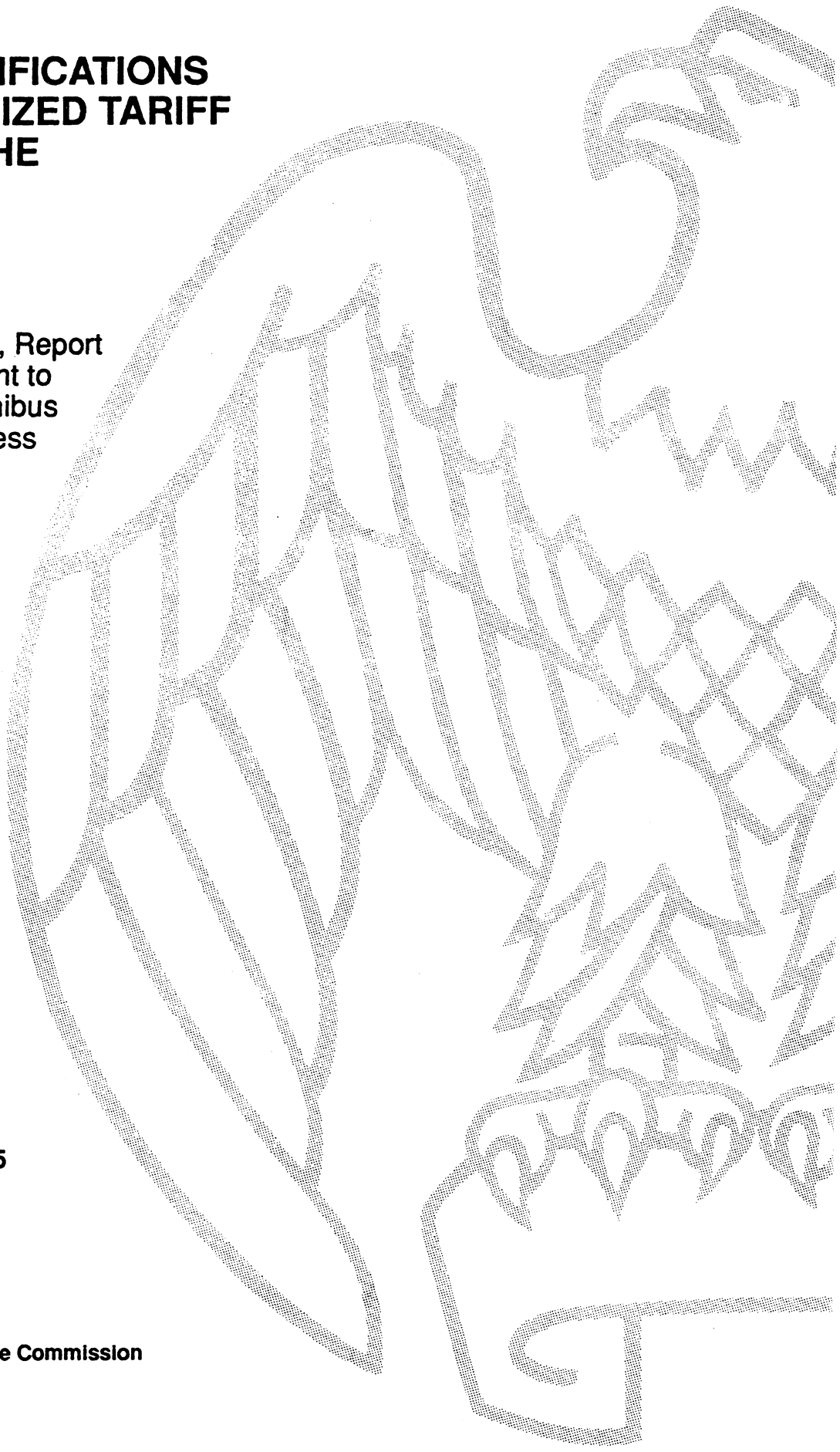
PROPOSED MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Investigation No. 1205-2, Report to the President, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988



USITC PUBLICATION 2455

NOVEMBER 1991

United States International Trade Commission
Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Washington, DC 20436

PREFACE

Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3005) provides for the continuous review of the Harmonized Tariff Schedule of the United States (HTS) by the U.S. International Trade Commission (Commission). Under section 1205, the Commission may recommend to the President modifications to the HTS in order to reflect amendments to the Harmonized System Convention that are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant.

In a letter dated April 14, 1991, the Commissioner of Customs asked that this Commission recommend to the President certain modifications to the HTS. The Commissioner wished to classify orange juice with added calcium under provisions of the tariff that are consistent with a decision of the Harmonized System Committee of the Customs Cooperation Council, and which are different from current Customs treatment. Further, the Commission learned that the current provisions for extracted oleoresins in the HTS were at variance with the international Harmonized System and should be provided for properly.

The Commission must solicit, and give consideration to, the views of interested Federal agencies and the public before finalizing such recommendations. Section 1205 provides that the Commission is to submit to the President a report that presents recommendations, summarizes the information on which the Commission's recommendations are based, and provides a statement of the probable economic effects of recommended changes on any industry in the United States. A copy of all written views received from Federal agencies and a copy or Commission-prepared summary of the views of other interested parties must also be included.

This is the second Commission report to the President pursuant to section 1205. The first such report was submitted in March 1991 as a memorandum from the Commission to the President. An addendum to the first report was submitted in June 1991. On May 24, 1991, the Commission designated the March 1991 report as USITC investigation No. 1205-1 and, at the same time, instituted the present investigation No. 1205-2. A copy of the Commission's notice of institution of the present investigation is included in appendix A.

CONTENTS

Recommendations

Consequent to its investigation, the U.S. International Trade Commission is recommending that the President proclaim certain amendments to the Harmonized Tariff Schedule of the United States (HTS), pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988.[1] The recommended amendments, which are presented in Appendix B and are discussed in detail below, involve a reclassification of extracted oleoresins and certain fruit and vegetable juices which have been fortified or enriched with vitamins or minerals. These reclassifications involve no changes in duty levels. In particular, the duties on the enriched or fortified fruit and vegetable juices would remain the same as those applicable to similar juices without such fortification or enrichment.

Background

Provisions of Sections 1205 and 1206

Sections 1205 and 1206 of the Omnibus Trade and Competitiveness Act of 1988 are reproduced in appendix C. Section 1205 directs the Commission to keep the HTS under continuous review. The Commission is to recommend modifications to the HTS (1) when amendments to the international Convention on the Harmonized Commodity Description and Coding System[2] (Harmonized System) are recommended by the Customs Cooperation Council (CCC) for adoption and (2) as other circumstances warrant.

Section 1205(a) of the act provides that the Commission—

> . . .shall recommend to the President such modifications in the Harmonized Tariff Schedule as [it] considers necessary or appropriate—
>
> (1) to conform the [HTS] with amendments made to the Convention;
>
> (2) to promote the uniform application of the Convention and particularly the Annex thereto;
>
> (3) to ensure that the HTS is kept up-to-date in light of changes in technology or changes in patterns of international trade;
>
> (4) to alleviate unnecessary administrative burdens; and
>
> (5) to make technical rectifications.[3]

Section 1205(d) provides that the Commission may not recommend any modification to the HTS unless the modification (1) is "consistent with the Harmonized System Convention or any amendment thereto recommended for adoption;" (2) is "consistent with sound nomenclature principles;" and (3) "ensure[s] substantial rate neutrality." Modifications that involve a change in any rate of duty must be consequent to, or necessitated by, recommended nomenclature changes. Finally, recommended modifications "must not alter existing conditions of competition for the affected U.S. industry, labor, or trade."

In the event that an amendment to the Convention is recommended by the CCC for adoption, under article 16 of the Convention, such amendment is deemed to be accepted 6 months after the date of notification of the recommendation, unless a Contracting Party to the Convention notifies the CCC of an objection thereto. When a recommended modification is accepted, the Commission is required to complete its consideration of any necessary or appropriate modifications and report them to the President.

Source of Proposed Modifications

Extracted oleoresins

The CCC's Harmonized System Committee (HSC), during its sixth session (November 1990), recommended certain amendments to the legal texts and Explanatory Notes of the international Harmonized System, with regard to extracted oleoresins, also known as prepared oleoresins. During the course of the HSC deliberations, it became clear that the U.S. tariff and statistical provisions for extracted oleoresins in the HTS (as it was implemented in 1989) had been positioned under the wrong six-digit subheading.

Specifically, in the conversion from the Tariff Schedules of the United States (TSUS) to the format of the Harmonized System, prepared (or extracted) oleoresins had been provided for incorrectly as resinoids under subheading 3301.30 of the HTS. Instead, as the HSC concluded, these products are considered to be separate and distinct from resinoids and are classified under HTS subheading 3301.90. The Commission is recommending, therefore, that the U.S. provisions covering extracted oleoresins simply be transferred from HTS subheading 3301.30 to subheading 3301.90, with no consequent changes in duty rates.

The article description for proposed new subheading 3301.90.10 (i.e., "Extracted oleoresins") appears, at first, to be significantly different from that for present subheading 3301.30.10 (i.e., "Prepared oleoresins consisting essentially of nonvolatile components of the natural raw plant"). In fact, the proposal to modify the description to read merely "extracted oleoresins" does not constitute a significant change.

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[1] 19 U.S.C. 3005.

[2] The Convention was done at Brussels on June 14, 1983, and the protocol thereto was done at Brussels on June 24, 1986. Together they are referred to as the Harmonized System Convention.

[3] "Technical rectifications" are limited by section 1202(6) of the Act to minor technical or clerical changes that do not affect the substance or meaning of the text, such as errors in spelling, numbering, punctuation, or indentation, errors (including inadvertent omissions) in cross-references to headings or subheadings or notes, and other clerical or typographical errors.

In the TSUS/HTS conversion, Commission staff had felt it necessary to propose a definition of "prepared oleoresins" and to insert the expression, "consisting essentially of nonvolatile components of the natural raw plant" in the article description of subheading 3301.30.10. However, the legal and Explanatory Note amendments recommended by the HSC at its sixth session reflected the consensus that the term "extracted oleoresins" is a more accurate term. Further, amendments adopted in the Explanatory Notes to describe extracted oleoresins in detail obviate the need to expand upon the article description to proposed subheading 3301.90.10.

Certain fruit and vegetable juices

In a letter (reproduced in appendix D) dated April 4, 1991, the U.S. Customs Service requested the Commission, pursuant to section 1205, to recommend that the President proclaim modifications to the HTS to reflect a decision by the HSC to classify orange juice with added calcium in an area of the Harmonized System nomenclature different from that where U.S. Customs classifies the product. Although the HSC has made no recommendation to amend the Convention in this regard, the Commission is of the opinion that circumstances warrant modifications to the HTS to give effect to the decision.

The orange juice issue arose in January 1989, when the Procter & Gamble Co. requested that Customs issue a binding tariff classification ruling on imported frozen concentrated orange juice with added calcium. While Customs Headquarters was considering the ruling, Procter & Gamble also wrote to the CCC, requesting its views. Although the CCC generally entertains classification questions only from member governments, and not from the private sector, the CCC's Secretariat notified the United States that it was placing this question on the agenda of HSC's fourth session.

At its fourth session (October 1989), the HSC decided that orange juice with added calcium is not classifiable under Harmonized System heading 2009, "Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter." The principal justification for this decision came from the Explanatory Notes to heading 2009, which provide, in part, that—

> . . .the heading **excludes** fruit juices in which one of the constituents (citric acid, essential oil extracted from the fruit, etc.) has been added in such quantity that the balance of the different constituents as found in the natural juice is clearly upset; in such case the product has lost its original character.[4]

[4] CCC, *Harmonized Commodity Description and Coding System, Explanatory Notes,* First ed. (1986), Brussels, vol. 1, p. 154.

In this case, the addition of calcium (in the form of calcium hydroxide)[5] and of excess citric and malic acids (to counteract the adverse flavoring effects of the calcium hydroxide) was considered sufficient to cause the orange juice to lose its original character. Consequently, the HSC decided that the product was properly classifiable in heading 2106, "Food preparations not elsewhere specified or included."

The HSC decision reflected the majority opinion of the delegates present, but was not unanimous. The U.S. delegation[6] and others argued for classification in heading 2009, noting that the product was marketed as orange juice, with a flavor that was virtually indistinguishable from that of orange juice containing no added calcium. It was further argued that calcium was added for a subsidiary nutritional purpose and that such addition could not be considered to affect the nature of the product as orange juice, notwithstanding the Explanatory Note cited above.

Following the HSC fourth session decision, Procter & Gamble asked the Customs Service to issue its classification ruling in conformity with the HSC decision. However, the U.S. administration filed a reservation with the CCC, in accordance with article 8 of the Convention. As a result, the question was referred back to the sixth session of the HSC. Customs deferred its ruling, pending reconsideration of the question by the HSC.

At its sixth session (October 1990), the HSC confirmed its previous decision, which was reportedly based upon the existing legal texts and Explanatory Notes. However, after further debate, the HSC agreed to request that the Secretariat of the CCC initiate a study on the possibility of amending the Explanatory Notes or the Harmonized System Nomenclature or both to reflect changes in the trade of fruit juice products.

Despite the HSC decision, Customs issued its ruling on April 8, 1991, which classifies orange juice with added calcium as orange juice in HTS subheading 2009.11.00, with a column 1 duty rate of 9.25¢/liter.[7] This ruling and a subsequent ruling are presented in their entirety as exhibits J and M of the Customs Service's written submission to the Commission (see appendix E).[8] Two days later, Customs submitted its

[5] The amount of calcium in the fortified product is nearly 14 times that normally found in natural orange juice, but still accounts for less than 0.7 percent by weight of the frozen orange juice concentrate.

[6] Section 1210 of the 1988 Trade Acts designates the Treasury Department (represented by the U.S. Customs Service), the Commission, and the Commerce Department (represented by the Bureau of the Census) as members of the delegation.

[7] In 1990 the ad valorem equivalent duty paid on imports of $614.3 million (mostly from Brazil) under HTS subheading 2009.11.00 was 25.0 percent. These figures include U.S. imports of all frozen orange juice; the portion of the total accounted for by product containing added calcium is believed to be negligible, if any.

[8] Upon reconsideration, requested by Procter & Gamble, Customs reconfirmed its ruling on May 28, 1991.

request to the Commission to conform the HTS to reflect the Customs ruling and the HSC decision. Under section 1205(a) of the 1988 Trade Act, the Commission is to recommend to the President such modifications to the HTS as it believes necessary orappropriate, among other things, "to conform the HTS with amendments made to the Convention" and "to promote the uniform application of the Convention and particularly the Annex thereto, which contains the Harmonized System." Customs used similar terminology in its request to the Commission.

Subsection 1205(d)(1) provides that—

> The Commission may not recommend any modification to the Harmonized Tariff Schedule unless the modification meets the following requirements:
>
> (1) The modification must—
>
> (A) be consistent with the Convention or any amendment thereto recommended for adoption;
>
> (B) be consistent with sound nomenclature principles; and
>
> (C) ensure substantial rate neutrality.
>
> (2) Any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.
>
> (3) The modification must not alter existing conditions of competition for the affected United States industry, labor, or trade.

The Commission is of the view that the recommendations made in this report comply fully with the requirements of the law. With respect to the question of ensuring substantial rate neutrality, the Commission, after carefully considering all available information, has determined that (1) existing conditions of competition in the fruit juice industry in the United States are not likely to be affected by its recommended modifications to the HTS, and (2) given existing Customs practice, there are no changes in duty rates for individual products.

The HSC's decision was made with respect to frozen concentrated orange juice with added calcium. However, the Explanatory Notes to chapter 2009 (cited above), which served as the principal basis for the HSC decision to exclude the product from heading 2009, cover not only frozen concentrated orange juice, but also single strength (ready-to-drink) orange juice and other fruit and vegetable juices. Consequently, the possibility that other juices of heading 2009 may undergo addition of vitamins or minerals, and thereby be precluded from classification in heading 2009, had to be considered in the Commission's recommendations. Since the *Federal Register* notice of institution of this study did not anticipate this development, the Commission decided to extend the comment period through September 25, 1991, to allow time for any interested party to respond (see *Federal Register* notice in appendix F).

The Customs Service rulings on frozen concentrated orange juice with added calcium indicate that there is currently no legal basis in the HTS to justify classification of the product in other than heading 2009.[9] However, in the interest of uniform application of the international Harmonized System, i.e., classifying the product in heading 2106, Customs requested that the Commission recommend modifications that would provide for it in heading 2106. It is for this reason that the Commission recommends the amendment of the text of heading 2009.

The revised heading text legally precludes the classification in heading 2009 of fruit and vegetable juices that have been fortified with vitamins or minerals. Concentrated orange juice (whether or not frozen) with added calcium, then, falls to be classified in heading 2106, "Food preparations not elsewhere specified or included." This would be true, as well, for other concentrated fruit and vegetable juices containing constituents not permitted by the Explanatory Notes to heading 2009. Single strength (i.e., noncon-centrated, ready-to-drink) juices with such constituents would be classifiable in heading 2202, "Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009." This dichotomy is clarified by the insertion of new complementary additional U.S. notes to chapters 21 and 22.

Since the focus of this action is orange juice that has been fortified or enriched with calcium, orange juice is assigned a separate eight-digit tariff line under heading 2106. To avoid loss of rate neutrality in transferring to chapter 21 any other concentrated, nutritionally fortified fruit or vegetable juices, the tariff rate language applicable for the basket, or "Other," tariff line is designed to "borrow" the rates applicable to the corresponding juices in heading 2009. Relevant additional U.S. legal notes from chapter 20 are adapted and recommended for insertion as new additional U.S. note 2 to chapter 21.

Similarly, the Commission recommends separate eight-digit tariff lines for orange juice in heading 2202. In this case, there are two such provisions, one for reconstituted orange juice (e.g., from concentrate) and one for all other orange juice. This delineation reflects current Customs treatment for these products. As in heading 2106, all other fruit and vegetable juices are provided for in a single "Other" provision, with duty rates borrowed from heading 2009, as appropriate.

Views of Interested Parties

The Commission, in its *Federal Register* notice instituting this investigation, solicited written comments from any interested parties. In addition, the

[9] Indeed, the HSC's decision was made principally on the basis of Explanatory Notes, which have no legal force in the Harmonized System Convention.

Commission held a hearing in Washington, DC, on July 15, 1991, in connection with this study. Written submissions were received from the U.S. Customs Service; a group of U.S. orange juice industry organizations (the Florida Citrus Mutual, the California Citrus Mutual, the Florida Citrus Processors Association, the State of Florida Department of Agriculture and Consumer Services, and the State of Florida Department of Citrus) (hereinafter referred to as Florida Citrus Mutual and others); the Procter & Gamble Co.; and Tropicana Products, Inc. Hearing testimony was presented by Customs, by Florida Citrus Mutual et al., and by Tropicana Products. In a *Federal Register* notice (dated August 21, 1991), the Commission published specific proposed textual changes and extended the written comment period for 6 weeks to allow time for any parties interested in fruit juices other than orange juice or in vegetable juices to make submissions. Customs and the Florida Citrus Mutual and others responded to this second notice with technical comments. All written submissions and oral testimony are discussed below.

Government

Written submissions

In its prehearing submission (appendix F), Customs explained the history of the current provisions under consideration, the history of its involvement in the recent classification dispute concerning the subject product, and its position concerning possible section 1205 actions. In Customs' view, the appropriate duty rate follows from the U.S. Government (Customs) classification of the product. The United States is classifying the frozen concentrate orange juice in a Harmonized System heading that differs from what appears to be the international consensus on classification of the product. If the President decides under section 1205 to align the HTS classification of the subject product on the international consensus, it is therefore necessary (1) to modify the legal text of the HTS to effect such an alignment and (2) to replicate the current duty rates in the new heading(s) for the products.

Customs indicated that its classification was consistent with both the Harmonized System legal text and its Explanatory Notes. Its written submission included a detailed defense of its decision, and annexes contained copies of pertinent documents.

In its posthearing statement (appendix G), Customs sought technical changes to the Commission's proposals published in the *Federal Register* on August 21, 1991. Customs' suggestions provided for a simpler approach to achieving the desired results.

Hearing testimony

In testimony before the Commission, Myles B. Harmon, Director, International Nomenclature Staff, Office of Commercial Operations at Customs reiterated that agency's interest in international uniformity of classification, summarized the history of the current situation, and restated Customs' proposal for legal changes to the HTS that would move frozen concentrated orange juice from chapter 20 to chapter 21, along with their current rates of duty. Mr. Harmon stressed that in Customs' view, CCC decisions pursuant to article 7 of the Harmonized System Convention are not legally binding, but section 1205 procedures can "enable Customs to legally classify the product at issue in Heading 2106 as the Harmonized System Committee did."

Nongovernment

Written submissions

Florida Citrus Mutual and others (FCM).—A prehearing brief (appendix H) was submitted by James H. Lundquist, Matthew T. McGrath, and Peter A. Martin of the law firm of Barnes, Richardson & Colburn, representing the views of these industry organizations. FCM expressed support for Customs' classification of calcium-fortified orange juice. Referring to section 1206(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 (appendix C), FCM stated that any change to the HTS with regard to the subject product must not lower the rate of duty from the current rate, i.e., the rate corresponding to the classification that Customs currently applies to the product pursuant to its statutory authority for classification. FCM criticized the Harmonized System Committee for making its decision on the basis of Explanatory Notes while ignoring the General Rules for the Interpretation of the Nomenclature (GRIs), and stated that the Customs interpretation represents a correct application of the GRIs and heading texts.

In a posthearing letter (appendix I), FCM reiterated the position it presented in its prehearing brief (and in hearing testimony, discussed below). FCM also sought technical modifications of the proposals published by the Commission in the *Federal Register* of August 21, 1991.

Procter & Gamble Co. (P&G).—Gilbert Lee Sandler of Sandler, Travis & Rosenberg, P.A., submitted a brief (see appendix J) on behalf of the Procter & Gamble Co., a domestic producer of orange juice concentrate with added calcium and the party originally requesting the binding Customs ruling on the classification on the product. The brief supported the addition of new tariff lines under subheading 2106.90 but stated that the current HTS rates for 2106.90.90 should apply to the product. In P&G's opinion, Customs erred in classifying the subject product in heading 2009. Citing section 1205(d)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, P&G stated that since the Harmonized System Committee twice ruled that the subject product was not classifiable in 2009, any textual modification that would establish heading 2009 duty rates for the product would be "demonstrably inconsistent with sound nomenclature principles." P&G also asserted that any increase in rates under 2106.90.60 would violate

United States obligations under the General Agreement on Tariffs and Trade (GATT).

Tropicana Products, Inc.—Steven B. Gold, Esq. and Nancy R. Levinson of Tropicana Products, Inc., a domestic producer of orange juice, submitted their views (appendix K) prior to the public hearing on this matter. Paul C. Rosenthal of Collier, Shannon & Scott entered an additional brief (appendix L) on behalf of Tropicana following the hearing. The original submission expressed support for the Customs classification of frozen concentrated frozen orange juice with added calcium and for retention of the duty rates from heading 2009 in any new tariff lines that might result from a section 1205 action. Tropicana advised the Commission that any lowering of the duty rate would serve as a price subsidy to the importers of the fortified product, and that the subsidy would effectively be paid by importers of competing orange juice concentrate without added calcium, which would continue to receive the higher duty rate. The supplementary brief addressed the GATT binding issue, arguing that new products not in existence at the time of a GATT binding are not subject to that binding.

Hearing testimony

Florida Citrus Mutual et al. (FCM).—In the public hearing, Bobby F. McKown spoke on behalf of Florida Citrus Mutual (of which he is executive vice president) and the other organizations participating in the joint written submission. Mr. McKown was accompanied by Dan Gunter, Executive Director of the Florida Department of Citrus, and James H. Lundquist, Matthew T. McGrath, and Peter A. Martin of Barnes, Richardson & Colburn. FCM urged the Commission to "give substantial weight" to Customs' written and oral testimony, and summarized FCM's previous written brief on this matter. Under questioning by the Commission concerning foreign exporters' perception of rate increases under the Customs proposal for 2106.90, Mr. Lundquist stated that if the U.S. Government determines that the HSC interpretation of classification under the Harmonized System nomenclature is incorrect but decides to modify its tariff in order to align it with international consensus concerning classification, it has the right to carry over the U.S. rates into the revised tariff classification scheme.

Tropicana Products, Inc—Steven Gold, Vice President and General Counsel of Tropicana, was accompanied at the public hearing by Paul Rosenthal, of Counsel. Mr. Gold's oral testimony emphasized that the end product from the subject concentrate is packaged and otherwise marketed as orange juice, the only difference being a reference to the added calcium. This similarity makes it a close competitor of "unfortified" orange juice produced from imported concentrate. Mr. Gold urged the Commission to make sure that any recommended action would not establish different duty rates for the fortified concentrate on the one hand and the unfortified concentrate on the other.

Probable Effects of Proposed Modifications

In the Commission's judgment, the proposed amendments do not alter existing Customs tariff treatment of the commodities involved. Furthermore, the modifications do not alter existing conditions of competition for the affected U.S. industry, labor, or trade. Consequently, it is believed that the amendments, if proclaimed, will have no probable economic effect on U.S. industry or labor.

The Commission notes the assertion made by Proctor and Gamble that the creation of new subheadings within heading 2106 to accommodate the classification of products transferred from heading 2009 would result in the application of duty rates to those products different from and higher than those currently provided for in heading 2106 of our schedule of tariff concessions made under the General Agreement on Tariffs and Trade. This assertion is based on the proposition that the products to be transferred are properly classifiable in accordance with the CCC decision in heading 2106, as it is currently written. The Commission notes that the United States has excepted from that decision.

The assertion of possible GATT consequences relates to the Commission's recommendations to create new subheadings both within heading 2106 and within heading 2209. Whether the adoption of the Commission's recommendations could justifiably lead to the initiation of dispute settlement procedures under the GATT or give rise to retaliatory action is not clear and has not been addressed in this report.

APPENDIX A
FEDERAL REGISTER NOTICE OF COMMISSION'S INSTITUTION OF INVESTIGATION NO. 1205-2

Dickinson Bancorporation, Inc., Dickinson, North Dakota, for a total of 25.59 percent, and thereby indirectly acquire Liberty National Bank and Trust Company, Dickinson, North Dakota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ray Kandt, Prarie Village, Kansas; to acquire 3.9 percent, and State Line Eye Consultants Profit Sharing Trust, Kansas City, Missouri, to acquire 8.6 percent of the voting shares of State Bank and Trust, Colorado Springs, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. James R. Lightner, Dallas, Texas; to acquire an additional 4.37 percent of the voting shares for a total of 13.67 percent; and Robert L. Carrel, Dallas, Texas, to acquire an additional 4.37 percent for a total of 13.20 percent of the voting shares of Equitable Bankshares, Inc., Dallas, Texas, and thereby indirectly acquire Equitable Bank, N.A., Arlington, Texas, and Equitable Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, May 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13203 Filed 6-4-91; 8:45 am]

BILLING CODE 6210-01-F

Terrapin Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

CORRECTION

This notice corrects a previous *Federal Register* notice (FR Doc. 91-12597) published at page 24194 of the issue for Wednesday, May 29, 1991.

Under the Federal Reserve Bank of Chicago, the entry for Terrapin Bancorp, Inc. is amended to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Terrapin Bancorp, Inc., Elizabeth, Illinois; to acquire a portfolio of general property insurance business from Marvin Wurster and thereby engage in conducting general insurance activities in Elizabeth, Illinois, a town with a population of less than 5,000 people, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Comments on this application must be received by June 24, 1991.

Board of Governors of the Federal Reserve System, May 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13204 Filed 6-4-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time and date: 10 a.m., June 19, 1991.
Place: 5th Floor, Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC.
Status: Open.
Matters to be considered: Approval of the minutes of the February 26, 1991, meeting; report of the Executive Director on the status of the Thrift Savings Plan; employee survey highlights; status of Desert Storm legislation; frequency of Council meetings; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-6367.

Dated: May 30, 1991.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 91-13249 Filed 6-4-91; 8:45 am]

BILLING CODE 6710-01-M

GENERAL SERVICES ADMINISTRATION

Multiple Award Federal Supply Schedule

Notice is hereby given that the Office Supplies and Paper Products Commodity Center, Federal Supply Service, is developing technical requirements for various items currently on Multiple Award Federal Supply Schedule for conversion to competitive award. The items include: Diskettes, erasable ball point pens, ribbons, liftoff tapes, note trays, tape flags (repositionable), writing paper pads (repositionable), suspended file folders and colored file folders. Some sizes, colors, types, styles, etc. within an item category may be removed from the Multiple Award Schedule for competitive award while other sizes, colors, types, styles, etc. may continue being supplied from the Schedule. Upon their availability, the technical requirements will be made available to all interested parties for comment. Request for the technical requirements should be submitted to Mr. John Marrone, Engineering and Commodity Management Division, room 20-130, 26 Federal Plaza, New York, NY 10278. Requests for the technical requirements should be made within thirty days from the date of this notice.

Dated: May 28, 1991.

A. Troglio,

Acting Director, Office Supplies and Paper Products Commodity Center (2FY).

[FR Doc. 91-13150 Filed 6-4-91; 8:45 am]

BILLING CODE 6820-24-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205-2]

Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION, CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (telephone 202-252-1592), or Dave Beck, Supervisory Nomenclature Analyst (202-252-1604), U.S. International Trade Commission, Washington, DC 20436.

Background and Scope of Investigation: On May 24, 1991, the Commission instituted investigation No. 1205-2, Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Section 1205 directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System) and the Protocol thereto, are recommended by the Customs Cooperation Council (CCC) for adoption, and (2) as other circumstances warrant. This investigation represents the Commission's second under section 1205. The Commission forwarded recommendations to the President on March 26, 1991, in the form of a memorandum, which has been

designated as USITC investigation No. 1205–1.

Investigation No. 1205–2 will address two questions affecting the HTS. The first question arises from the determination by the CCC's Harmonized System Committee (6th Session) that frozen concentrated orange juice with added calcium is classifiable not as orange juice of HS heading 2009, but as a food preparation of HS heading 2106.

In a letter dated April 4, 1991, the Commissioner of Customs requested that the Commission recommend to the President appropriate modifications to the HTS to permit the Customs Service to follow the Harmonized System Committee's decision on orange juice. A copy of the Customs Commissioner's letter is attached.

The second question arises from the determination by the CCC's Harmonized System Committee (5th Session) that extracted oleoresins (also known as prepared oleoresins) are properly classifiable in HS subheading 3301.90, not in HS subheading 3301.30. In this case, it is proposed that subheadings 3301.30.10, 3301.30.50, and 3301.90.00 of the HTS be deleted, and the following be substituted in lieu thereof:

"3301.30.00	Resinoids	Free		Free
3301.90	Other:			
3301.90.10	Extracted oleoresins	6%	Free (A, CA, E, IL)	25%
3301.90.90	Other	Free		20%"

Pubic Hearing: A public hearing in connection with its investigation will be held in the Main Hearing Room (room 101) of the U.S. International Trade Commission, 500 E Street SW., Washington, DC., on July 15, 1991, at 9:30 a.m. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than noon, July 8, 1991. Written prehearing comments (original and 14 copies) should be filed not later than noon, July 8, 1991. Post-hearing comments may be submitted by no later than July 22, 1991.

Written Submissions: Interested parties (including other Federal agencies) are invited to submit written statements concerning the subject of the report. Such statements must be submitted by no later than July 22, 1991, in order to be considered by the Commission. Commercial or financial information that 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 § 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 persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

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

Issued: May 24, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Dear Chairman Brunsdale:

As you know, pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the International Trade Commission is charged with keeping the Harmonized Tariff Schedule of the United States (HTSUS) under continuous review and, as circumstances warrant, to promote the uniform application of the Harmonized System Convention and particularly the annex thereto. The purpose of this letter is to bring to your attention a matter which we believe warrants the exercise of this authority.

At its fourth session in October 1989, the Harmonized System Committee of the Customs Cooperation Council (CCC) examined the classification of certain orange juice which was fortified with calcium. After discussion, the Committee voted to classify the product as a food preparation not elsewhere specified or included in heading 21.06 rather than as orange juice of heading 20.09. The United States entered a reservation to this decision, pursuant to Article 8 of the Harmonized System Convention, setting forth its view that the addition of calcium to the product did not change the classification of the product under the Harmonized System, citing the General Rules of Interpretation to the system and the heading text.

In accordance with Article 8 of the Convention, the Customs Cooperation Council referred the question back to the Harmonized System Committee for reexamination at its sixth session in November 1990. The United States presented at considerable length the basis for its view that the addition of calcium did not alter the classification of the product. After discussion, however, the Committee affirmed its previous decision that the product was not classified as orange juice.

The United States Customs Service continues to be of the opinion that the product that was the subject of these decisions is properly classifiable as orange juice under the Harmonized System and under the Harmonized Tariff Schedule of the United States. However, in the interest of uniformity of application of the Harmonized System Convention, the Customs Service would like to be able to classify the product under the U.S. tariff in accordance with the HSC decision. Accordingly, we request that the Commission recommend to the President such modifications as are necessary or appropriate to promote the uniform application of the Harmonized System Convetion by conforming the HTSUS to the CCC decision.

Your attention to this matter is appreciated.

Sincerely,

Carol Hallett,

Commissioner.

The Honorable Anne E. Brunsdale, Acting Chairman, United States International Trade Commission, Washington, DC 20436.

[FR Doc. 91–13221 Filed 6–4–91; 9:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–324

Certain Acid-Washed Denim Garments and Accessories; Decision To Review and Affirm an Initial Determination Amending the Complaint To Add Ten Firms as Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review and affirm the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 6) granting a motion by complainants Greater Texas Finishing Corporation and Golden Trade S.r.L. to amend the complaint in the above-captioned investigation to add ten firms as respondents. The Commission also ordered that the notice of investigation be amended to include the ten firms as additional respondents.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commision, 500 E Street SW., Washington, DC 20436; telephone: (202)–

APPENDIX B
COMMISSION'S PROPOSED MODIFICATIONS TO THE HTS

RECOMMENDED MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

1. Subheadings 3301.30, 3301.30.10, 3301.30.50, and 3301.90.00 are deleted and the following inserted in lieu thereof:

"3301.30.00	Resinoids.....	Free		Free
	Other:			
3301.90.10	Extracted oleoresins...	6%	Free (A,CA,E,IL)	25%
3301.90.50	Other.....	Free		20%"

2. Heading 2009 is amended by inserting the expressions "not fortified with vitamins or minerals," after the expression "Fruit juices (including grape must) and vegetable juices,".

3. Chapter 21 is amended by inserting new additional U.S. notes 1 and 2, as follows:

"1. Subheadings 2106.90.16 and 2106.90.19 cover vitamin or mineral fortified fruit or vegetable juices that are imported only in concentrated form. Such juices imported in non-concentrated form are classifiable in subheadings 2202.90.30, 2202.90.35 or 2202.90.39, as appropriate.

2. For the purposes of subheadings 2106.90.16 and 2106.90.19:

(a) The term "liter" in the "Rates of Duty" column of the provisions applicable to fruit juices means liter of reconstituted fruit juice;

(b) The term "reconstituted fruit juice" means the product which can be obtained by mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secretary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States;

(c) The term "Brix value" means the refractometric sucrose value of the juice, adjusted to compensate for the effect of any added sweetening materials, and thereafter corrected for acid;

(d) In determining the number of liters of reconstituted fruit juice which can be obtained from a concentrate, the degree of concentration shall be calculated on a volume basis to the nearest 0.5 degree, as determined by the ratio of the Brix value of the imported concentrated juice to that of the reconstituted juice, corrected for differences of specific gravity of the juices. Any juice having a degree of concentration of less than 1.5 (as determined before correction to the nearest 0.5 degree) shall be regarded as a natural unconcentrated juice; and

(e) In determining the degree of concentration of mixed fruit juices, the mixture shall be considered as being wholly of the component juice having the lowest Brix value. "

4. Subheading 2106.90 is amended by inserting the following new subheadings, with the superior heading at the same level of indentation as the article description in subheading 2106.90.15:

"	Fruit or vegetable juices, fortified with vitamins or minerals:			
2106.90.16	Orange juice.....	9.25¢/liter	Free (E) 5.5¢/liter (CA)	18¢/liter
2106.90.19	Other.....	The rate applicable to the natural juice in heading 2009	The rate applicable to the natural juice in heading 2009	The rate applicable to the natural juice in heading 2009 "

Any staged reductions of a special rate of duty set forth in subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before January 1, 1992, and are scheduled to take effect on or after January 1, 1992, shall apply to the corresponding special rate of duty in subheading 2106.90.16.

5. Chapter 22 is amended by inserting new additional U.S. notes 2, as follows:

"2. Subheadings 2202.90.30, 2202.90.35 and 2202.90.39 cover vitamin or mineral fortified fruit or vegetable juices that are imported only in non-concentrated form. Such juices imported in concentrated form are classifiable in subheadings 2106.90.16 or 2106.90.19, as appropriate."

6. Subheading 2202.90 is amended by inserting the following new subheadings, with the superior heading at the same level of indentation as the article description in subheading 2202.90.90:

"	Fruit or vegetable juices, fortified with vitamins or minerals:			
	Orange juice:			
2202.90.30	Not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).....	5.3¢/liter	Free (E) 3.1¢/liter (CA)	18¢/liter
2202.90.35	Other.....	9.25¢/liter	Free (E) 5.5¢/liter (CA)	18¢/liter
2202.90.39	Other.....	The rate applicable to the natural juice in heading 2009	The rate applicable to the natural juice in heading 2009	The rate applicable to the natural juice in heading 2009 "

Any staged reductions of a special rate of duty set forth in subheading 2009.19.20 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before January 1, 1992, and are scheduled to take effect on or after January 1, 1992, shall apply to the corresponding special rate of duty in subheading 2202.90.30.

Any staged reductions of a special rate of duty set forth in subheading 2009.19.40 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before January 1, 1992, and are scheduled to take effect on or after January 1, 1992, shall apply to the corresponding special rate of duty in subheading 2202.90.35.

APPENDIX C
SECTIONS 1205 AND 1206 OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

(4) If a rate of duty is suspended or terminated by the President by proclamation or Executive order and the proclamation or Executive order does not specify the rate that is to apply in lieu of the suspended or terminated rate, the last rate of duty that applied prior to the suspended or terminated rate shall be the efffective rate of duty.

(d) INTERIM INFORMATIONAL USE OF HARMONIZED TARIFF SCHEDULE CLASSIFICATIONS.—Each—

(1) proclamation issued by the President;

(2) public notice issued by the Commission or other Federal agency; and

(3) finding, determination, order, recommendation, or other decision made by the Commission or other Federal agency;

during the period between the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988 and the effective date of the Harmonized Tariff Schedule shall, if the proclamation, notice, or decision contains a reference to the tariff classification of any article, include, for informational purposes, a reference to the classification of that article under the Harmonized Tariff Schedule.

19 USC 3005.

SEC. 1206. COMMISSION REVIEW OF, AND RECOMMENDATIONS REGARDING, THE HARMONIZED TARIFF SCHEDULE.

(a) IN GENERAL.—The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary or appropriate—

(1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;

(2) to promote the uniform application of the Convention and particularly the Annex thereto;

(3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;

(4) to alleviate unnecessary administrative burdens; and

(5) to make technical rectifications.

(b) AGENCY AND PUBLIC VIEWS REGARDING RECOMMENDATIONS.—In formulating recommendations under subsection (a), the Commission shall solicit, and give consideration to, the views of interested Federal agencies and the public. For purposes of obtaining public views, the Commission—

(1) shall give notice of the proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing; and

(2) may provide for a public hearing.

Reports.

(c) SUBMISSION OF RECOMMENDATIONS.—The Commission shall submit recommendations under this section to the President in the form of a report that shall include a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The report also shall include a copy of all written views submitted by interested Federal agencies and a copy or summary, prepared by the Commission, of the views of all other interested parties.

(d) REQUIREMENTS REGARDING RECOMMENDATIONS.—The Commission may not recommend any modification to the Harmonized Tariff Schedule unless the modification meets the following requirements:

(1) The modification must—

(A) be consistent with the Convention or any amendment thereto recommended for adoption;

(B) be consistent with sound nomenclature principles; and

(C) ensure substantial rate neutrality.

(2) Any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.

(3) The modification must not alter existing conditions of competition for the affected United States industry, labor, or trade.

SEC. 1206. PRESIDENTIAL ACTION ON COMMISSION RECOMMENDATIONS. 19 USC 3006

(a) IN GENERAL.—The President may proclaim modifications, based on the recommendations by the Commission under section 1205, to the Harmonized Tariff Schedule if the President determines that the modifications—

(1) are in conformity with United States obligations under the Convention; and

(2) do not run counter to the national economic interest of the United States.

(b) LAY-OVER PERIOD.—

(1) The President may proclaim a modification under subsection (a) only after the expiration of the 60-day period beginning on the date on which the President submits a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the proposed modification and the reasons therefor. President of U.S. Reports

(2) The 60-day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(c) EFFECTIVE DATE OF MODIFICATIONS.—Modifications proclaimed by the President under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 1207. PUBLICATION OF THE HARMONIZED TARIFF SCHEDULE. 19 USC 3007

(a) IN GENERAL.—The Commission shall compile and publish, at appropriate intervals, and keep up to date the Harmonized Tariff Schedule and related information in the form of printed copy; and, if, in its judgment, such format would serve the public interest and convenience—

(1) in the form of microfilm images; or

(2) in the form of electronic media.

(b) CONTENT.—Publications under subsection (a), in whatever format, shall contain—

(1) the then current Harmonized Tariff Schedule;

(2) statistical annotations and related statistical information formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)); and

APPENDIX D
U.S. CUSTOMS SERVICE REQUEST LETTER TO THE COMMISSION

Corrected Copy

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

April 1 91 APR 10 A9:09

CO:R:I:MBH

1205

Dear Chairman Brunsdale:

As you know, pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the International Trade Commission is charged with keeping the Harmonized Tariff Schedule of the United States (HTSUS) under continuous review and, as circumstances warrant, to promote the uniform application of the Harmonized System Convention and particularly the annex thereto. The purpose of this letter is to bring to your attention a matter which we believe warrants the exercise of this authority.

At its fourth session in October 1989, the Harmonized System Committee of the Customs Cooperation Council (CCC) examined the classification of certain orange juice which was fortified with calcium. After discussion, the Committee voted to classify the product as a food preparation not elsewhere specified or included in heading 21.06 rather than as orange juice of heading 20.09. The United States entered a reservation to this decision, pursuant to Article 8 of the Harmonized System Convention, setting forth its view that the addition of calcium to the product did not change the classification of the product under the Harmonized System, citing the General Rules of Interpretation to the system and the heading text.

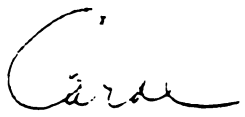
In accordance with Article 8 of the Convention, the Customs Cooperation Council referred the question back to the Harmonized System Committee for reexamination at its sixth session in November 1990. The United States presented at considerable length the basis for its view that the addition of calcium did not alter the classification of the product. After discussion, however, the Committee affirmed its previous decision that the product was not classified as orange juice.

The United States Customs Service continues to be of the opinion that the product that was the subject of these decisions is properly classifiable as orange juice

under the Harmonized System and under the Harmonized Tariff Schedule of the United States. However, in the interest of uniformity of application of the Harmonized System Convention, the Customs Service would like to be able to classify the product under the U.S. tariff in accordance with the HSC decision. Accordingly, we request that the Commission recommend to the President such modifications as are necessary or appropriate to promote the uniform application of the Harmonized System Convention by conforming the HTSUS to the CCC decision.

Your attention to this matter is appreciated.

Sincerely,



Carol Hallett
Commissioner

The Honorable
Anne E. Brunsdale
Acting Chairman
United States International Trade Commission
Washington, D.C. 20436

APPENDIX E
PREHEARING SUBMISSION FROM THE U.S. CUSTOMS SERVICE

U.S. Customs Statement on Orange Juice with Calcium

The United States Customs Service appreciates the opportunity afforded by the International Trade Commission (Commission) to present its views concerning its request for action by the Commission pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 with respect the classification of orange juice with calcium.

The importance of this issue to Customs arises from the importance Customs places in the uniform application of the Harmonized Commodity Description and Coding System, commonly referred to as the Harmonized System. Since January 1, 1989, for the first time in our history, the United States applies as the basis of our tariff a nomenclature that is internationally uniform and is applied by more than sixty other contracting parties, including all the world's major trading partners. Obviously, the United States, together with all of the contracting parties to the Harmonized System Convention, has a substantial interest in the uniform application of that tariff so that, as much as possible, classification decisions throughout the world will be in harmony. Moreover, the international trade community as a whole has a similar interest because of the important trade facilitation consequences of uniform application.

At the same time, under Title 19, United States Code, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)) and section 1624 as implemented in part 177, Customs Regulations, the Customs Service issues rulings interpreting the text of the HTSUS in accordance with sound principles of the Customs laws of the United States. The importance of the procedure set forth in section 1205 that gives rise to this hearing is that it represents an opportunity to "harmonize" or reconcile the interest in international uniformity with what is in our judgment, the correct legal interpretation of the United States tariff.

Our statement will be in two parts. The first will trace the procedural background that led to the request by the Customs Service that the Commission recommend to the President such modifications as are necessary to conform the Harmonized Tariff Schedule (HTS) to the Customs Cooperation Council (hereinafter CCC or Council) decision. The second part will set forth our views on the underlying classification issue.

Procedural Background

Pursuant to Part 177, Customs Regulations (19 CFR Part 177), any person who has a direct and demonstrable interest in any transaction which is affected by the Customs and related laws may submit a request for a ruling in advance of the actual importation of the goods. The purpose of this ruling procedure is to afford the importer predictability concerning the tariff treatment that his or her goods will be accorded upon importation. Among the types of rulings issued by the Customs Service are rulings concerning the tariff classification of imported merchandise under the HTSUS which pursuant to Section 1217 (b), Public Law 100-418, the Omnibus Trade and Competitiveness Act of 1988 (hereinafter the Trade Act of 1988), went into effect into the United States as to merchandise entered or withdrawn from warehouse for consumption on or after January 1, 1989. The request for a classification ruling must be in sufficient detail to permit the Customs Service to reach a determination on the classification of the merchandise. Part 177 of the Customs Regulations is attached as Exhibit A.

On January 25, 1989, representatives of Procter and Gamble (P&G) submitted a request for a tariff classification ruling to the Regional Commissioner of Customs, New York, concerning a product which we will refer to as calcium fortified orange juice. Because of the importance of the classification issue raised, the ruling request was referred to Customs Headquarters for decision.

The merchandise at issue is frozen concentrated orange juice for manufacturing (FCOJM), supplemented with calcium for nutritional purposes. Specifically, 670 milligrams of calcium in the form of calcium hydroxide is added to 100 grams of 65 degree Brix FCOJM. Calcium amounts to approximately 6 tenths of one percent of the imported product by weight. Since calcium is present in trace amounts in oranges, this amount added represents thirteen times the amount normally found in the product.

In addition, citric and malic acid are added to the mixture, to counter the undesirable flavor of the added calcium, to increase the physical stability of the orange juice, and to enhance solubility of the calcium. Most of the additional acid added is neutralized. Thus, in terms of the free acid present in the product, it is claimed that there is actually slightly less acid than is normally present in FCOJM to which calcium has not been added. After importation, the product is mixed with orange oil, orange essence, pulp and water to make orange juice at retail.

During Customs consideration of the ruling request, Procter and Gamble wrote to the Nomenclature Directorate of the CCC, requesting its views with respect to the classification of its product. The CCC is an international Customs organization whose Nomenclature Directorate is charged with the examination of questions involving the classification of goods under the international Harmonized System. This System is the Annex to the Harmonized System Convention (Convention) to which the United States is a contracting party. The Convention, without the Annex, is attached as Appendix B.

As an international government organization, the CCC responds directly to inquiries from governments. Inquiries from private concerns such as P&G are referred to the government whose classification decision is concerned. Accordingly, the CCC apprised the Customs Service of the inquiry from P&G. In addition, the CCC advised Customs of its intention to place the question on the agenda of the HSC. See Appendix C.

The Harmonized System Committee (hereinafter HSC or Committee) is a body established under Article 6 of the Convention, consisting of representatives of the contracting parties to the Convention. Pursuant to section 1210 of the Trade Act of 1988, the United States delegation to the HSC consists of representatives of the Department of Treasury (United States Customs), the Commission, and the Department of Commerce (Bureau of the Census).

Under Article 7 of the Convention, the principal responsibilities of the HSC include the examination of classification issues such as the one involving orange juice with calcium. These issues are the subject of decisions by the Committee. Decisions of the HSC require a simple majority vote of the contracting parties present at the meeting. HSC decisions may be implemented as the Committee decides, reflected via a formal Classification Opinion, by an amendment to the Explanatory Notes, or simply by a mention in the report of the Committee's deliberations. Pursuant to Article 7 of the Convention, these decisions are guidance concerning the interpretation of the Harmonized System and are not legally binding. However, the Customs Service considers the decisions to be very useful and as a matter of policy generally applies the decisions.

The classification of orange juice with calcium was discussed at the Fourth Session of the HSC in October 1989. After a brief discussion, the Committee voted to classify the product in heading 2106 as a food preparation not elsewhere specified or included, rather than as orange juice of heading 2009. The United States was among the delegations which voted for classification as orange juice. A copy of the decision is attached as Exhibit D.

Under the Convention, decisions of the HSC are submitted for approval by the CCC. Decisions of the HSC are considered to be approved by the Council unless within the two months following the month of the HSC decision, one of the contracting parties files a reservation to the decision. A reservation is the method by which a contracting party may express its disagreement with the decision and its desire for the matter to be referred to the HSC for reexamination.

After the decision of the HSC in October 1989, P&G asked the Customs Service to issue a ruling in conformity with the decision by the HSC. See Exhibit E. Customs replied that we were considering entering a reservation because we disagreed with the decision as a matter of law. See Exhibit F.

The United States decided that the decision of the Committee was an incorrect interpretation of the legal text of the Harmonized System. Therefore, it filed a reservation to the decision of the HSC at its Fourth Session, attached as Exhibit G. Pursuant to Article 8 of the Convention, this issue was referred back to the Committee by the Council during the Council meeting in June 1990. Customs decided to defer a decision on the P&G ruling until after the reconsideration of the issue by the HSC.

In October of 1990, at its Sixth Session, the Committee reexamined the issue on the basis of the reservation entered by the United States and in view of technical information concerning the composition of orange juice that was submitted. See Exhibit H. The Committee decided by a vote of 14 to 4 to classify the product as a food preparation not elsewhere specified or included. See Exhibit I. It also agreed to study whether the Explanatory Notes to the Harmonized System should be amended to provide for classification of this and similar products in heading 2009 in the future.

Following the decision of the HSC, the United States considered whether to file a second reservation to the decision. Under the Convention, there is no prohibition against repeated reservations on the same issue. However, since the Committee had been provided with complete technical information by our Administration, we decided not to file a second reservation.

The Customs Service remained of the view that the product at issue was properly classifiable as orange juice under the Harmonized System and under the Harmonized Tariff Schedule of the United States. Thus we had a statutory obligation under the law of the United States to classify the product as orange juice. Accordingly, in ruling 088756 of April 8, 1991, attached as Exhibit J, the Customs Service decided that it would classify the product as orange juice under the HTSUS.

At the same time, we wished to follow the decision by the HSC because of our belief that international uniformity in classification is a desirable goal of the HS convention. It appeared that there was a procedure under the Trade Act of 1988 which, if employed, might enable Customs to legally classify the product at issue in heading 2106.

Pursuant to Section 1205 of the Trade Act, the Commission is charged with keeping the HTSUS under continuous review and, as circumstances warrant, to promote the uniform application of the Convention and particularly the annex thereto. Section 1205 of the Trade Act also authorizes the Commission to recommend to the President such modifications as are necessary or appropriate to promote the uniform application of the Convention by conforming the HTSUS to the CCC decision. In this case, an amendment to the HTSUS which would exclude the product at issue from heading 2009 would allow the Customs Service to classify the product in a residual heading of 2106.

Accordingly, in a letter dated April 4, 1991, attached as Exhibit K, the Customs Service requested the Commission to exercise its authority under section 1205 to conform to the HTSUS to the decision of the CCC. Our ruling of April 8 advised P&G of our request.

Following the issuance of the April 8, 1991, ruling, P&G requested reconsideration of the ruling with respect to the classification issue and also with respect to the decision to request a modification to the U.S. Tariff. See Exhibit L. In ruling decision 089369, dated May 28, 1991, the Customs Service reaffirmed its ruling of April 8, 1991, and its referral to the Commission. See Exhibit M.

The Classification Issue

The Customs Service views with respect to the proper classification of this merchandise under the HTSUS are set forth in considerable detail in our two previous rulings which are attached as Exhibits L and M. We therefore intend to merely set forth the principal contentions made by P&G and our views thereon.

Heading 20.09, HTSUS provides, in pertinent part, for fruit juices whether or not containing added sugar or other sweetening matter. The merchandise at issue is commercially known as frozen concentrated orange juice for manufacturing. It therefore is prima facie within the scope of heading 20.09.

The importer claimed that this product is not classifiable as orange juice but rather is classifiable in heading 2106 as a food preparation not elsewhere specified or included. It is clear that under Rule 1 of the General Rules of Interpretation to the Harmonized Tariff Schedule, if heading 2009 may be said to describe the merchandise, heading 2106 is inapplicable because the merchandise is elsewhere specified. Thus the pivotal question is whether the product is within the scope of heading 20.09.

The Terms of Heading 20.09

The importer contended that the terms of heading 20.09 restrict the additives to orange juice to sugar or other sweetening matter. Counsel argued that statutory language which expands a tariff provision to include named additives has long been interpreted in the United States to exclude other unnamed additives. For this proposition, counsel cited General Electric Company v. United States, 83 Cust Ct. 56, CD 4822 (1979) and Montgomery Ward & Co. v. United States, 74 Cust. Ct. 125, CD 4596 (1975). We could not subscribe to this view of the scope of the heading. Under this reasoning, products added to preserve the juice or to prevent fermentation such as sulphur dioxide or carbon dioxide or enzymes could not be added. Nor could salt, spices or flavoring substances be added. Nevertheless, the addition of all of these substances is explicitly permitted under the Explanatory Notes to heading 20.09.

Secondly, the decisions in General Electric and Montgomery Ward in no way suggest a different conclusion. The merchandise at issue in each case was tubeless clock radios. Customs had classified the merchandise under a provision for radio receivers in item 685.23, under the superceded TSUS. The court sustained the Customs classification, noting that the superior heading contained the phrase "whether or not incorporating clocks or

other timing apparatus". In reaching this conclusion, the court simply held that the phrase "whether or not" pertained to all of the different types of articles which were enumerated. We could not discern the relevance of the cases cited to the merchandise at issue. They provide no basis for limiting the scope of the term orange juice as urged by the importer.

The Explanatory Notes to Heading 20.09

P&G also relied upon its interpretation of the Explanatory Notes to heading 20.09. In a Federal Register Notice dated August 23, 1989, the Customs Service cited the following portion of the report of the Joint Committee on the Trade Act of 1988:

> The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized System. They provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system.
>
> The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the CCC's Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

54 Fed. Reg. at 35128.

The relevant portion of the Explanatory Notes to heading 20.09 provides as follows:

Provided they retain their original character, the fruit o vegetable juices of this heading may contain substances of the kinds listed below, whether these result from the manufacturing process or have been added separately:

(1) Sugar.

(2) Other sweetening agents, natural or synthetic, provided that the quantity added does not exceed that necessary for normal sweetening purposes and that the juices otherwise qualify for this heading, in particular as regards the balance of the different constituents (see Item (4) below).

(3) Products added to preserve the juice or to prevent fermentation (e.g., sulphur dioxide, carbon dioxide, enzymes).

(4) Standardizing agents (e.g., citric acid, tartaric acid) and products added to restore constituents destroyed or damaged during the manufacturing process (e.g., vitamins, colouring matter) or to fix the flavor (e.g. sorbitol added to powdered or crystalline citrus fruit juices). However, the heading **excludes** fruit juices in which one of the constituents (citric acid essential oil, extracted from the fruit, etc.) has been added in such quantity that the balance of the different constituents as found in the natural juice is clearly upset; in such case the product has lost its original character.

(Emphasis in original)

P&G claimed that the addition of calcium to the product upsets the balance of the constituents in the juice within the meaning of the Explanatory Note. The addition of the citric and malic acid was also claimed to have this effect.

The Customs Service observed that the Explanatory Notes to heading 20.09 provide examples of a change in the balance of the constituents. For example, where more water than is necessary to reconstitute the juice is added, a diluted product having the character of a beverage of heading 22.02 such as orangeade or orange drink generally results. Similarly, the addition of more carbon dioxide than is normally present in the juice generally creates a product which is carbonated fruit juice and is no longer commercially known as juice. Thus, where a substance has

been added to give the product the character of a product of another heading, the product is no longer classifiable in heading 20.09.

It was uncontroverted that there is more calcium in the product than normally present in orange juice. However, calcium is only naturally present in orange juice in trace amounts, (approximately .05 percent). An increase of a factor of thirteen yields a very small amount of calcium in the product. In addition, the added calcium is merely a nutritional supplement to the juice. While such a nutritional benefit may be desirable, we concluded that it does not render the product other than orange juice, just as the fortification of milk or breakfast cereals with vitamins does not alter their character.

The addition of citric and malic acid do not require a different result. The brix-acid ratio, the balance between the titratable acid content and the sugars, in the instant product is 19.3 which is consistent with U.S. Department of Agriculture standards for orange juice at retail. It also is within the limit provided for in the Florida statute.

Of equal significance, the citric and malic acid, in addition to making the calcium available nutritionally, act as a standardizing agent to balance the taste of the calcium. They serve to fix the flavor of the product so as to be indistinguishable from orange juice to which calcium has not been added. As the patent for the process makes clear, "the ratio of citric acid to malic acid is selected to provide the optimum flavor character in the juice"; that is, to mirror the particular type of juice desired. Standardizing agents are explicitly permitted by the Explanatory Notes to heading 20.09. We remain of the view that neither the role of the acid nor its amount change the classification of the instant product.

Food and Drug Administration Regulations

Counsel contended that the product is not orange juice under Food and Drug Administration regulations. Counsel added that this product is not orange juice under the "historic definition of the term by the Customs Service" which has always been in conformity with the FDA regulations. Counsel cited CSD 84-117 and Headquarters Ruling 077377, dated December 23, 1985.

Counsel was correct that in CSD 84-117 the Customs Service initially determined that a product consisting of 87 percent orange juice, 10.5 percent orange peel extract and 2.25 percent citric acid and less than one percent total of sodium benzoate was not classifiable as concentrated orange juice under item 165.29, TSUS. However, counsel was apparently unaware of the fact that this decision was subsequently reversed and revoked by the Customs Service. In a decision of October 7, 1987, published in the Federal Register (hereinafter the 1987 decision), the Customs Service held that the product was classifiable as concentrated orange juice under item 165.29, TSUS.

In the 1987 decision, Customs addressed the relevance of the FDA regulations to the classification issue.

> ...The commenter is correct that Customs did not use the FDA regulations to limit the provisions for citrus juice and control the classification of orange juice under the TSUS but had decided that the product could not be either commercially or commonly known as orange juice in the U.S. However, after careful analysis and review, Customs has concluded that notwithstanding the presence of additives to the orange juice concentrate based product, the **essential character** of the product is orange juice concentrate and this product is now covered by the eo nomine provision for other orange juice in item 165.29, TSUS.

52 Fed. Reg. 37443, 37444 (Emphasis supplied). It is the 1987 decision which clearly articulated Customs position concerning the scope of the term orange juice and the relevance of FDA regulations under the TSUS. Our decisions under the HTS are entirely consistent with the 1987 decision.

Significance of State Law

Counsel stated that the merchandise is not orange juice under section 601.9909 of the law of the State of Florida. We agree that under the cited section, the product may not be sold

as frozen concentrated orange juice, since all additives are prohibited. The existence of the strict Florida labelling requirement is not evidence of the meaning of the tariff term, since the question of the meaning of a term used in the tariff is a question of federal rather than state law. Moreover, since apparently the retail product is marketed as orange juice in the other forty-nine states, it seems that the overwhelming majority of states would consider the product to be orange juice.

Previous Customs Rulings

Counsel stated that under the current HTS, the Customs Service has "consistently held that additives far less significant than the calcium, citric acid and malic acid in this product are sufficiently significant to remove beverages from the tariff classifications that describe them". Reliance is placed on rulings involving flavored beer (084708), vitamin enriched water (086942) and flavored rum (085406).

The HTS does not impose any single standard in determining whether the addition of a substance is consequential for tariff classification purposes. Each product and each heading must be considered on its own, in light of the particular facts presented. Thus, reliance on decisions involving products of other headings is not appropriate. Even assuming, arguendo, that these decisions were relevant, they do not call for a different result in this case. In 084708, we concluded that the flavored beverage before us was not beer. We stated as follows:

> The beverage at issue is bottled and labelled as "french sparkler" in an effort to compete in the wine cooler market. It is distinct from beer. It does not have the taste, aroma, character or appearance of beer. It is neither commercially nor commonly known as beer. Its market focus is on the wine cooler market, not the beer market, as evidenced by its label, appearance and packaging.

In 086942, the product was a 3.3 fluid ounce bottle

containing 20 milligrams of niacin, 5 milligrams each of vitamin B-6 and vitamin B-1 and unspecified amounts of water, sucrose, sorbitol, citric acid, arginine, phosphoric acid, royal jelly, artificial flavors, sodium benzoate and sodium citrate. We concluded that the product was not classifiable as a water of heading 2202 because it was intended to be consumed in small quantities as a food or vitamin supplement and not as a beverage.

Finally, in 085406, the merchandise was rum which was blended with fruit juices, natural flavors, citric acid, sodium citrate, potassium sorbate and benzoate and sodium metibisulfite. We concluded that the addition of all of these substances produced a beverage based on rum, rather than rum itself.

Conclusion

For all of the reasons described above, the Customs Service believes that, one, the product at issue remains classifiable as orange juice in subheading 2009.11.00, HTSUS, and two, the decision of the HSC is at variance with our view of the proper interpretation of the existing text of the HTSUS.

Therefore, in view of the HSC decision, we request that the Commission recommend to the President that the HTSUS be modified to accord classification of this product in heading 2106 and, noting that section 1205 requires that the recommendation must be rate neutral, accord the duty rate applied to orange juice in heading 2009.

List of Exhibits

A. Part 177, Customs Regulations.

B. International Convention on the Harmonized Commodity Description and Coding System.

C. Letter of June 1, 1989, from the Customs Cooperation Council advising of receipt of inquiry from Procter and Gamble.

D. Decision of the Harmonized System Committee at its Fourth Session, October 1989.

E. Letter dated January 18, 1990, from Procter and Gamble to U.S. Customs seeking a ruling in accordance with the Fourth Session Decision.

F. Letter dated April 24, 1990, from U.S. Customs in reply to previous letter from Procter and Gamble.

G. Reservation by the United States to the HSC Decision.

H. U.S. Note to the Harmonized System Committee for Discussion at the Sixth Session.

I. Decision of the HSC at its Sixth Session.

J. U.S. Customs ruling 088756, dated April 8, 1991.

K. Letter of April 4, 1991, from Customs to the ITC requesting exercise of 1205 authority.

L. Letter of May 6, 1991, from Procter and Gamble requesting reconsideration of Customs Decisions.

M. U.S. Customs ruling 089369, dated May 28, 1991.

(b) *Decision of the Court of Appeals for the Federal Circuit.* Except as provided in paragraph (c) of this section, an entry covering merchandise which is the subject of a decision of the Court of Appeals for the Federal Circuit shall be reliquidated at the expiration of 90 days from the date of entry of decision by that court and only upon receipt of the judgment order from the U.S. Court of International Trade. However, no such entry shall be reliquidated pursuant to such order if a petition for certiorari is taken to the Supreme Court.

(c) *Waiver of right of appeal.* Upon receipt of a letter from the Assistant Attorney General, Civil Division, Department of Justice, signed by the Chief, Customs Section, advising that no appeal will be taken from a decision of the U.S. Court of International Trade or that it has been determined that no petition for certiorari shall be filed in the Supreme Court to review a decision of the Court of Appeals for the Federal Circuit, any entry or entries covered by such decision may be reliquidated pursuant to the judgment of the U.S. Court of International Trade prior to the expiration of the times specified in paragraphs (a) and (b) of this section.

(Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514)

[T.D. 70-181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

PART 177—ADMINISTRATIVE RULINGS

Sec.

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

Section 177.12 also issued under Pub. L. 100-690 (19 U.S.C. 1514 note).

§ 177.0 Scope.

This part relates to the issuance of rulings to importers and other interested persons by the United States Customs Service. It describes the situations in which a ruling may be requested, the procedures to be followed in requesting a ruling, the conditions under which a ruling will be issued, the effect of a ruling when it is issued, and the publication of rulings in the Customs Bulletin. The rulings issued under the provisions of this part will usually be prospective in application and, consequently, will usually not relate to specific matters or situations presently or previously under consideration by any Customs Service field office. Accordingly, the rulings requested under the provisions of this part should be distinguished from the administrative rulings, determinations, or decisions which may be requested under procedures set forth elsewhere in this chapter, including, but not limited to, those set forth in Part 12 (relating to submissions of proof of admissibility of articles detained under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)), Part 103 (relating to

disclosure of information in Customs files), Part 133 (relating to disputed claims of piratical copying of copyrighted matter), Subpart C of Part 152 (relating to determinations concerning the dutiable value of merchandise by Customs field officers), Part 153 (relating to enforcement of the Antidumping Act, 1921, as amended), Part 159 (insofar as it relates to countervailing duties), Part 171 (relating to fines, penalties, and forfeitures), Part 172 (relating to liquidated damages), Part 174 (relating to protests), and Part 175 (relating to petitions filed by American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930, as amended). Nor do the provisions of Part 177 apply to requests for decisions of an operational, administrative, or investigative nature which are properly within the cognizance of a Customs Headquarters Office other than the Office of Regulations and Rulings.

[T.D. 80-285, 45 FR 80103, Dec. 3, 1980, as amended by T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 89-74, 54 FR 31515, July 31, 1989]

Subpart A—General Ruling Procedure

§ 177.1 General ruling practice and definitions.

(a) *The issuance of rulings generally*—(1) *Prospective transactions.* It is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of that transaction prior to its consummation. For this reason, the Customs Service will give full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information. Generally, a ruling may be requested under the provisions of this part only with respect to prospective transactions—that is, transactions which are not already pending before a Customs Service office by reason of arrival, entry, or otherwise.

(2) *Current or completed transactions*—(i) *Current transactions.* A question arising in connection with a Customs transaction already before a Customs Service office will normally be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the Customs and related laws, or in the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that office may be requested to forward the question to the Headquarters Office for consideration, as more fully described in § 177.11.

(ii) *Completed transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed Customs transaction, may not be the subject of a ruling request.

(b) *Oral advice.* The Customs Service will not issue rulings in response to oral requests. Oral opinions or advice of Customs Service personnel are not binding on the Customs Service. However, oral inquiries may be made to Customs Service offices regarding existing rulings, the scope of such rulings, the types of transactions with respect to which the Customs Service will issue rulings, the scope of the rulings which may be issued, or the procedures to be followed in submitting ruling requests, as described in this part.

(c) *Who may request a ruling.* A ruling may be requested by any person who, as an importer or exporter of merchandise, or otherwise, has a direct and demonstrable interest in the question or questions presented in the ruling request, or by the authorized agent of such person. A "person" in this context includes an individual, corporation, partnership, association, or other entity or group.

(d) *Definitions.* (1) A "ruling" is a written statement issued by the Headquarters Office or the appropriate office of Customs as provided in this part that interprets and applies the provisions of the Customs and related

laws to a specific set of facts. A "ruling letter" is a ruling issued in response to a written request therefor and set forth in a letter addressed to the person making the request or his designee. A "published ruling" is a ruling which has been published in the Customs Bulletin.

(2) An "information letter" is a written statement issued by the Customs Service that does no more than call attention to a well-established interpretation or principle of Customs law, without applying it to a specific set of facts. An information letter may be issued in response to a request for a ruling when: (i) The request suggests that general information, rather than a ruling, is actually being sought, (ii) the request is incomplete or otherwise fails to meet the requirements set forth in this part, or (iii) the ruling requested cannot be issued for any other reason, and (iv) it is believed that general information may be of some benefit to the party making the request.

(3) A "Customs transaction" is an act or activity to which the Customs and related laws apply. A "prospective" Customs transaction is one that is contemplated or is currently being undertaken and has not resulted in any arrival or the filing of any entry or other document, or in any other act to bring the transaction, or any part of it, under the jurisdiction of any Customs Service office. A "current" Customs transaction is one which is presently under consideration by a field office (port, district, or region) of the Customs Service. A "completed" Customs transaction is one which has been acted upon by a Customs Service field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest, or other review, as provided in the applicable Customs laws and regulations. In a series of identical, recurring transactions, each transaction shall be considered an individual transaction for purposes of this part.

(4) An "authorized agent" is a person expressly authorized by a principal to act on his behalf. A ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before the Customs Service as an agent in connection with a ruling request may be required to present evidence of his authority to represent the principal. The foregoing requirements will not apply to an individual representing his full-time employer, or to a bona-fide officer, director, or other qualified representative of a corporation, association, or organized group.

(5) The term "Customs and related laws," as generally used in this part, includes any provision of the Tariff Act of 1930, as amended (including the Harmonized Tariff Schedule of the United States), or the Customs Regulations, or any provision contained in other legislation (including the navigation laws), regulations, treaties, orders, proclamations, or other agreements administered by the Customs Service.

(6) The term "Headquarters Office," as used herein, means the Office of Regulations and Rulings at Headquarters, United States Customs Service, Washington, D.C.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80104, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 89-1, 53 FR 51271, Dec. 21, 1988; T.D. 89-74, 54 FR 31515, July 31, 1989]

§ 177.2 Submission of ruling requests.

(a) *Form.* A request for a ruling should be in the form of a letter. Requests for Valuation and Carrier rulings should be addressed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, D.C. 20229. The Division and Branch in the Office of Regulations and Rulings to which the request should be directed may also be indicated, if known. Requests for tariff classification rulings should be addressed to the Regional Commissioner of Customs, New York Region, Attn: Classification Ruling Requests, New York, New York 10048, or to any Area or District office of the Customs Service.

(b) *Content*—(1) *Generally.* Each request for a ruling must contain a complete statement of all relevant facts relating to the transaction. Such facts

include the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any article involved in the transaction will arrive or be entered, or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the type of ruling requested.

(2) *Description of transaction*—(i) *Generally.* The Customs transaction to which the ruling request relates must be described in sufficient detail to permit the proper application of relevant Customs and related laws.

(ii) *Tariff classification rulings.* (A) If the transaction involves the importation of an article for which a ruling as to its proper classification under the provisions of the Harmonized Tariff Schedule of the United States is requested, the request for a ruling should include a full and complete description of the article and whenever germane to the proper classification of the article, information as to the article's chief use in the United States, its commercial, common, or technical designation, and, where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each. The ruling request should also note, whenever germane, the purchase price of the article, and its approximate selling price in the United States. Individual requests for rulings submitted to Area or District offices will be limited to five (5) merchandise items, all of which must be of the same class or kind.

(B) Rulings issued by the New York Region or by other Area or District offices are limited to prospective transactions. Only the Headquarters Office will prepare final decisions under § 177.11 (Requests for Advice by Field Officers), or § 174.23 (Further Review of Protests), § 177.10 (Change of Practice), decisions under Part 175 of this Chapter (petitions under Section 516, Tariff Act of 1930, as amended), decisions under § 177.12 (Inconsistent Customs decisions), and decisions under Policies and Procedures Manual Supplement 2126-01.

(C) The requesting party may send the request directly to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229. The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the New York Region and other Area and District Offices. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth in a ruling issued by the New York Region or other Area or District offices, he may petition the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229, for review of the ruling.

(iii) *Valuation rulings.* If the transaction involves the valuation of an article for Customs purposes, the request for a ruling should include all of the applicable information described in Subparts C and D of Part 152 of this chapter, and, insofar as is relevant, the information which would be required on an invoice as described in Subpart F of Part 141 of this chapter. The request should also describe the nature of the transaction (whether f.o.b./c.i.f., ex-factory, or some other arrangement), the relationship (if any) of the parties, whether the transaction was at arm's-length, whether there have been other sales of the same or similar merchandise in the country of exportation, whether an agency relationship exists, or any other information relevant to a determination under section 402 or 402a of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

(iv) *Carrier rulings.* If the transaction involves a vessel, the request for a ruling should include information relating to place of build and nationality of registration and, if to be used in waters under the jurisdiction of the United States, the exact place or places of intended use, if known. If the request for a ruling involves a determination as to whether or not the primary object of a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289 (see § 4.80a of this chapter), the request should completely identify the voyage, including the proposed time of arrival at and departure from every port on the itinerary and any coordination of the voyage with special

events at coastwise ports, and should be accompanied by samples, if available, of brochures, advertising, and other information that may be relevant to a determination of the primary object of the proposed voyage.

(3) *Samples.* Each request for a ruling regarding the status of an article under any Customs or related law affecting the importation or arrival of that article should be accompanied by photographs, drawings, or other pictorial representations of the article and, whenever possible, by a sample article, unless a precise description of the article is not essential to the ruling requested. Any article consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis. A sample submitted in connection with a request for a ruling becomes a part of the Customs Service file in the matter and will be retained until the ruling is issued or the ruling request is otherwise disposed of. If the return of the sample is desired, the ruling request should so state and should specify the desired means of return. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the ruling request.

(4) *Related documents.* If the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the ruling request become a part of the Customs Service file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the ruling request.

(5) *Prior or current transactions.* Each request for a ruling must state whether, to the knowledge of the person submitting the request, the same transaction, or one identical to it, has ever been considered, or is currently being considered by any Customs Service office or whether, to the knowledge of the person submitting the request, the issues involved have ever been considered, or are currently being considered, by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Where the transaction described in the ruling request is but one of a series of similar and related transactions, that fact must also be stated.

(6) *Statement of position.* If the request for a ruling asks that a particular determination or conclusion be reached in the ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party), must be identified clearly and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party) must be set forth.

(c) *Signing; instructions as to reply.* The request for a ruling must be signed by a person authorized to make the request, as described in § 177.1(c). A ruling requested by a principal or authorized agent may direct that the ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* The Customs Service will normally process requests for rulings in the order they are received and as expeditiously as possible. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given

consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram will be treated in the same manner as requests made by letter, but rulings will not ordinarily be issued by telegram. In no event can any assurance be given that a particular request for a ruling will be acted upon by the time requested. However, upon request and where a clear need is shown for such action, a collect telephone call will be made to advise that the ruling letter has been issued and is being mailed.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80104, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 85-39, 50 FR 9613, Mar. 11, 1985; T.D. 85-90, 50 FR 21430, May 24, 1985; T.D. 89-1, 53 FR 51271, Dec. 21, 1988; T.D. 89-74, 54 FR 31515, July 31, 1989]

§ 177.3 Nonconforming requests for rulings.

A person submitting a request for a ruling that does not comply with all of the provisions of this part will be so notified in writing, and the requirements that have not been met will be pointed out. Except in the case of ruling requests submitted to Area or District offices, such person will be given a period of thirty (30) days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the ruling request to the requirements referred to in the notice. The Customs Service file with respect to ruling requests which are not brought into compliance with the provisions of this part within the period of time allowed will be administratively closed and the request removed from active consideration until such time as the deficiencies cited in the notice are corrected. A request for a ruling that is removed from active consideration by reason of failing to comply with the provisions of this part may be treated as withdrawn. In the case of ruling requests made to Area or District offices, a failure to comply with the provisions of this part will result in the return of the ruling request with the notice specifying the deficiencies and such requests will not be considered as having been filed until such deficiencies are corrected.

[T.D. 89-74, 54 FR 31515, July 31, 1989]

§ 177.4 Oral discussion of issues.

(a) *Generally.* A person submitting a request for a ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of a ruling letter.

(b) *Time, place, and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in a ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the ruling request is under consideration, additional conferences are necessary.

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for a ruling to provide for inclusion in the Customs Service file

in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the ruling request.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80105, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 89-74, 54 FR 31515, July 31, 1989]

§ 177.5 Change in status of transaction.

Each person submitting a request for a ruling in connection with a Customs transaction shall immediately advise Customs in writing of any change in the status of that transaction, as defined in § 177.1(d)(3). In particular, the Customs Service office to which the request was made must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of a Customs Service field office. In addition, any person engaged in a Customs transaction coming under the jurisdiction of a Customs Service field office and having previously requested a ruling with respect to that transaction shall advise the field office of that fact. The field office will normally withhold action with respect to any transaction for which a ruling has previously been requested pending the disposition of the ruling request.

[T.D. 80-285, 45 FR 80105, Dec. 3, 1980, as amended by T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 89-74, 54 FR 31516, July 31, 1989]

§ 177.6 Withdrawal of ruling requests.

Any request for a ruling may be withdrawn by the person submitting it at any time before the issuance of a ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs Service file and will not be returned. In addition, the Headquarters Office may forward to Customs Service field offices which have or may have jurisdiction over the transaction to which the ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs Service file.

[T.D. 80-285, 45 FR 80105, Dec. 3, 1980]

§ 177.7 Situations in which no ruling will be issued.

(a) *Generally.* No ruling letter will be issued in response to a request for a ruling which fails to comply with the provisions of this part. Moreover, no ruling letter will be issued with regard to transactions or questions which are essentially hypothetical in nature or in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so. No ruling letter will be issued in regard to a completed transaction.

(b) *Pending litigation in the United States Court of International Trade.* No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a ruling letter, provided neither the Customs Service nor any of its officers or agents is named as a defendant.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 177.8 Issuance of rulings.

(a) *Ruling letters*—(1) *Generally.* The Customs Service will endeavor to issue a ruling letter setting forth a determination with respect to a specifically described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the sound administration of the Customs and related laws to do so. Otherwise, a request for a ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no ruling can be issued.

(2) *Submission of ruling letters to field offices.* Any person engaging in a Customs transaction with respect to which a binding tariff classification ruling letter (including pre-entry classification decisions) has been issued

under this part shall ascertain that a copy of the ruling letter is attached to the documents filed with the appropriate Customs Service office in connection with that transaction, or shall otherwise indicate with the information filed for that transaction that a ruling has been received. Any person receiving a ruling setting forth the tariff classification of merchandise shall set forth such classification in the documents or information filed in connection with any subsequent entry of that merchandise; the failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. A ruling received after the filing of such documents or information shall immediately be brought to the attention of the appropriate Customs Service field office.

(3) *Disclosure of ruling letters.* The ruling letter shall be based on the information set forth in the ruling request. No part of the ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), unless, as provided in § 177.2(b)(7), the information claimed to be exempt from disclosure is clearly identified and the reasons for the exemption are set forth. Before the issuance of the ruling letter, the person submitting the ruling request, will be notified of any decision adverse to his claim for exemption from disclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the ruling request. All ruling letters issued by the Customs Service will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(b) *Other rulings.* The Headquarters Office may from time to time issue other rulings with respect to issues or transactions described or suggested by requests for rulings submitted under the provisions of this part, or with respect to issues or transactions otherwise brought to its attention. These rulings, which are statements of the official position of the Customs Service which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in § 177.10.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80105, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 89-74, 54 FR 31516, July 31, 1989]

§ 177.9 Effect of ruling letters; modification or revocation.

(a) *Effect of ruling letters generally.* A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. Generally, a ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date. See, however, paragraphs (d) and (e) (ruling letters which modify previous ruling letters or positions) and § 177.10(e) (ruling letters published in the *Customs Bulletin*).

(b) *Application of rulings to transactions*—(1) *Generally.* Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transac-

tion, and the satisfaction of any conditions on which the ruling was based. If, in the opinion of any Customs Service field office by whom the transaction is under consideration or review, the ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, as provided in § 177.11(b)(1)(i), prior to any final disposition with respect to the transaction by that office. Otherwise, if the transaction described in the ruling letter and the actual transaction are the same, and any and all conditions set forth in the ruling letter have been satisfied, the ruling will be applied to the transaction.

(2) *Tariff classification rulings.* Each ruling letter setting forth the proper classification of an article under the provisions of the Harmonized Tariff Schedule of the United States will be applied only with respect to transactions involving articles identical to the sample submitted with the ruling request or to articles whose description is identical to the description set forth in the ruling letter.

(3) *Valuation rulings.* Each ruling letter setting forth the proper valuation of an article under the provisions of section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a), will be applied only with respect to transactions involving the same merchandise and like facts.

(4) *Carrier rulings.* Each ruling letter setting forth the applicability of the navigation laws to a vessel will be applied only with respect to transactions involving operations identical to those set forth in the ruling letter. Each ruling letter setting forth a determination as to whether or not the primary object of a contemplated voyage is coastwise transportation in violation of 46 U.S.C. 289 will be binding on the United States Customs Service with respect to any transaction identical to the facts and circumstances described in the ruling request and undertaken in reliance on the ruling letter.

(c) *Reliance on ruling letters by others.* A ruling letter is subject to modification or revocation without notice to any person, except the person to whom the letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request a ruling under § 177.1(c) may request information as to whether a previously-issued ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, D.C. 20229, and either enclosing a copy of the ruling letter or furnishing other information sufficient to permit the ruling letter in question to be identified.

(d) *Modification or revocation of ruling letters*—(1) *Generally.* Any ruling letter found to be in error or not in accordance with the current views of the Customs Service may be modified or revoked. Modification or revocation of a ruling letter shall be effected by Customs Headquarters by giving notice to the person to whom the ruling letter was addressed and, where circumstances warrant, by the publication of a notice or other statement in the Customs Bulletin.

(2) *Effect of modification or revocation of ruling letters.* The modification or revocation of a ruling letter will not be applied retroactively with respect to the person to whom the ruling was issued, or to any person directly involved in the transaction to which that ruling related, *Provided:*

(i) The request for a ruling contained no misstatement or omission of material facts,

(ii) The facts subsequently developed are not materially different from the facts on which the ruling was based,

(iii) There has been no change in the applicable law,

(iv) The ruling was originally issued with respect to a prospective transaction, and

(v) All of the parties involved in the transaction acted in good faith in reliance upon the ruling and retroactive modification or revocation would be to their detriment.

Nothing in this paragraph will prohibit the retroactive modification or revocation of a ruling with respect to a transaction which was not prospective at the time the ruling was issued, inasmuch as such a transaction was not entered into in reliance on a ruling from the Customs Service.

(3) *Effective dates.* Generally, a ruling letter modifying or revoking an earlier ruling letter will be effective on the date it is issued. However, the Customs Service may, upon application or on its own initiative, delay the effective date of such a ruling for a period of up to 90 days from the date of issuance. Such a delay may be granted with respect to the party to whom the ruling letter was issued or to any other party, provided such party can demonstrate to the satisfaction of the Customs Service that they reasonably relied on the earlier ruling to their detriment. All parties applying for a delay will be issued a separate ruling letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, the Customs Service may decide to make its decision, with respect to a delay, applicable to all affected parties, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the Customs Bulletin and individual ruling letters will not be issued.

(e) *Ruling letters modifying past Customs treatment of transactions not covered by ruling letters*—(1) *General.* The Customs Service will from time to time issue a ruling letter covering a transaction or issue not previously the subject of a ruling letter and which has the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions of either the recipient of the ruling letter or other parties. Although such a ruling letter will generally be effective on the date it is issued, the Customs Service may, upon application by an affected party, delay the effective date of the ruling letter, and continue the treatment previously accorded the substantially identical transaction, for a period of up to 90 days from the date the ruling letter is issued.

(2) *Applications by affected parties.* In applying to the Customs Service for a delay in the effective date of a ruling letter described in paragraph (e)(1) of this section, an affected party must demonstrate to the satisfaction of the Customs Service that the treatment previously accorded by Customs to the substantially identical transactions was sufficiently consistent and continuous that such party reasonably relied thereon in arranging for future transactions. The evidence of past treatment by the Customs Service shall cover the 2-year period immediately prior to the date of the ruling letter, listing all substantially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by the Customs Service. The evidence of reliance shall include contracts, purchase orders, or other materials tending to establish that the future transactions were arranged based on the treatment previously accorded by the Customs Service.

(3) *Decision by Customs to grant delay.* The Customs Service will examine all factors relevant to the issue of reliance in determining whether, and for what period, to delay the effective date of a ruling letter described in paragraph (e)(1) of this section. In particular, the Customs Service will examine the past transactions on which reliance is claimed to determine whether there was an examination of the merchandise (where applicable) by the Customs Service or the extent to which those transactions were otherwise examined and analyzed by the Customs Service to determine the proper application of the Customs laws and regulations. In general, transactions involving small quantities or values, as well as informal entries and other entries or transactions which the Customs Service, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination and/or import specialist review, will be given diminished weight in establishing the required history of consistent and continuous Customs treatment. Unless a

notice covering all affected parties is published in the *Customs Bulletin*, each affected party applying for a delay in the effective date of the ruling letter will be advised in a separate ruling letter of the extent to which a delay in the effective date will be applied to their transactions.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80105, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 87-89, 52 FR 24446, July 1, 1987; T.D. 89-1, 53 FR 51271, Dec. 21, 1988; T.D. 89-74, 54 FR 31516, July 31, 1989]

§ 177.10 Publication of decisions.

(a) *Generally.* Within 120 days after issuing any precedential decision under the Tariff Act of 1930, as amended, relating to any Customs transaction (prospective, current, or completed), the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. For purposes of this paragraph a precedential decision includes any ruling letter, internal advice memorandum, or protest review decision. Disclosure is governed by 31 CFR Part 1, 19 CFR Part 103, and 19 CFR 177.8(a)(3).

(b) *Rulings regarding a rate of duty or charge.* Any ruling regarding a rate of duty or charge which is published in the Customs Bulletin will establish a uniform practice. A published ruling may result in a change of practice, it may limit the application of a court decision, it may otherwise modify an earlier ruling with respect to the classification or valuation of an article or any other action found to be in error or no longer in accordance with the current views of the Customs Service, or it may revoke a previously-published ruling or a previously-issued ruling letter.

(c) *Changes of practice or position.* (1) Before the publication of a ruling which has the effect of changing a practice and which results in the assessment of a higher rate of duty, notice that the practice (or prior ruling on which the practice is based) is under review will be published in the FEDERAL REGISTER and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the contemplated change of practice will result in the assessment of a lower rate of duty and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of domestic industry. No advance notice will be provided with respect to rulings which result in a change of practice but no change in the rate of duty.

(2) Before the publication of a ruling which has the effect of changing a position of the Customs Service and which results in a restriction or prohibition, notice that the position (or prior ruling on which the position is based) is under review will be published in the FEDERAL REGISTER and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the change of position will result in a holding that an activity is not restricted or prohibited and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of the general public.

(d) *Limiting rulings.* A published ruling may limit the application of a court decision to the specific article under litigation, or to an article of a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.

(e) *Effective dates.* Except as otherwise provided for in the ruling itself, all rulings published under the provisions of this part shall be applied immediately. If the ruling involves merchandise, it will be applicable to all unliquidated entries, except that a change of practice resulting in the assessment of a higher rate of duty or increased duties shall be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the 90th day after publication of the change in the FEDERAL REGISTER.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 78-394, 43 FR 49792, Oct. 25, 1978; T.D. 89-74, 54 FR 31517, July 31, 1989]

§ 177.11 Requests for advice by field offices.

(a) *Generally.* Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs Service field offices from the Headquarters Office at any time, whether the transaction is prospective, current, or completed. Advice as to the proper application of the Customs and related laws to a current transaction will be sought by a Customs Service field office whenever that office is requested to do so, pursuant to paragraph (b) of this section, by an importer or other person having an interest in the transaction. Advice or guidance will be furnished by the Headquarters Office as a means of assisting Customs personnel in the orderly processing of Customs transactions under consideration by them and to insure the consistent application of the Customs and related laws in the several Customs districts. Requests for advice received by the Headquarters Office will be processed as expeditiously as possible.

(b) *Certain current transactions*—(1) *When a ruling has been issued.* (i) *Requests by field offices.* If any Customs Service office has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction believes that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in paragraph (b)(3) of this section, request advice from the Headquarters Office as to the proper application of the ruling to the transaction. Such advice may not be requested for the purpose of seeking reconsideration of a ruling with which the importer or other person to whom the ruling letter was issued disagrees.

(2) *When no ruling has been issued.* Internal advice will be sought by a Customs Service field office with respect to a current transaction for which no ruling was requested or issued under the provisions of this part whenever a difference of opinion exists as to the interpretation or proper application of the Customs and related laws to the transaction, and the field office is requested to seek such advice by an importer or other person who would have been entitled, under § 177.1(c), to request a ruling with respect to the transaction, while prospective. The request must be submitted to the field office in writing and in accordance with the provisions of paragraph (b)(3) of this section.

(3) *Form of request by importers and others.* An importer or other person requesting that a Customs Service field office seek advice from the Headquarters Office must make such a request, in writing, to the field office having jurisdiction over the transaction in question. The request shall contain a complete statement setting forth a description of the transaction, the specific questions presented, the applicable law, and an argument for the conclusions advocated. The statement must also specify whether, to the knowledge of the person submitting the statement, the same transaction, or one identical to it, has ever been considered, or is currently being considered, by any Customs Service office. In addition, the statement should indicate at which port or ports of entry identical or substantially identical merchandise has been entered.

(4) *Review of requests by importers and others.* All requests submitted by importers and other persons under paragraph (b)(3) of this section, will be reviewed by the field office to which they are submitted. In the event a difference of opinion exists as to the description of the transaction or as to the point or points at issue,

the person submitting the request will be so advised in writing. If agreement cannot be reached, both the statements of the person submitting the request and the field office will be forwarded to the Headquarters Office for consideration.

(5) *Refusal by Headquarters Office to furnish advice.* The Headquarters Office may refuse to consider the questions presented to it in the form of a request for internal advice whenever (i) the Headquarters Office determines that the period of time necessary to give adequate consideration to the questions presented would result in a withholding of action with respect to the transaction, or in any other situation, that is inconsistent with the sound administration of the Customs and related laws, and (ii) the questions presented can subsequently be raised by the importer or other interested party in the form of a protest filed in accordance with the provisions of Part 174 of this chapter.

(6) *Effect of advice received from the Headquarters Office.* Advice furnished by the Headquarters Office in response to a request therefor represents the official position of the Customs Service as to the application of the Customs laws to the facts of a specific transaction. If the field office believes that the advice furnished by the Headquarters Office should be reconsidered, it shall promptly request such reconsideration. Otherwise, the advice furnished by the Headquarters Office will be applied by the field office in its disposition of the Customs transaction in question.

(7) *Publication.* Within 120 days after issuing an internal advice memorandum, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR Part 1 and 19 CFR Part 103.

(8) *Judicial review of importers' requests.* A refusal by the Headquarters Office to consider the questions raised by an importer in the form of a request for internal advice may be appealed to the Court of International Trade if the importer demonstrates to the Court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to the importation of the merchandise.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 78-394, 43 FR 49792, Oct. 25, 1978; T.D. 80-285, 45 FR 80106, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 85-90, 50 FR 21431, May 24, 1985; T.D. 89-74, 54 FR 31517, July 31, 1989]

§ 177.12 Inconsistent customs decisions.

(a) *Generally.* Certain decisions made by Customs officials at one field location which are inconsistent with decisions being made by Customs officials at another location may be brought to the attention of Customs Headquarters for resolution by a petition filed by an interested party. The types of decisions which may be the subject of such a petition, a description of the parties who qualify as interested parties, and the period of time in which the petition may be filed are set forth below.

(1) *Inconsistent decisions subject to petition.* The decisions which may be the subject of a petition include:

(i) Decisions described in section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), made with respect to the same, or substantially similar, merchandise; and

(ii) Repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry.

(2) *Interested Parties.* The following parties shall be considered interested parties entitled to file a petition under this section:

(i) Parties described in section 514(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(1)), as eligible to file a protest under section 514;

(ii) A port authority; and

(iii) An "interested party," as described in section 516(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

(3) *Time for filing.* In the case of decisions described in section 514(a) of the Tariff Act, the petition must be filed within the time prescribed by section 514(c)(2), for filing a protest with respect to the later (or latest) of the decisions which are the subject of the petition. In the case of repeated decisions to conduct intensified inspections or examinations of merchandise

at ports of entry, the petition must be filed within ninety (90) days of the later (or latest) such decision.

(b) *Petition*—(1) *Form.* The petition shall be in the form of a letter addressed to the Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229-0001. Three copies of the petition should be submitted, if possible.

(2) *Content.* The petition should contain a complete description of the inconsistent decisions complained of, including the ports of entry (or other Customs office) where the decisions were made, entry numbers, and the dates (or approximate dates) such decisions were made. The information set forth in the petition must be sufficient to demonstrate the inconsistency of the decisions described and that the merchandise, or circumstances in which the allegedly inconsistent decisions were made, were substantially similar. In the case of repeated decisions regarding the inspection or examination of merchandise, the decisions must be sufficient in number to demonstrate a pattern of inconsistency not attributable to random selection. Any information which the petitioner considers to be confidential business information should be so noted pursuant to § 177.2(b)(7) of this Subpart and a sanitized version of his petition should be submitted as well as the three copies requested in paragraph (b)(1) of this section. Petitions which do not contain information sufficient to permit the Customs Service to verify that the decisions described have occurred will not be considered properly filed and will be returned to the petitioner for additional information. Only one petition will be accepted by the Customs Service with respect to the decisions alleged to be inconsistent:

(i) *Tariff classification decision.* In the case of decisions involving the tariff classification of merchandise, the petition should also include, with respect to each of the decisions described, the information requested in § 177.2 (b)(1) and (b)(2)(ii) of this Subpart, including a sample (see § 177.2(b)(3)).

(ii) *Other subjects addressable by administrative rulings.* In the case of other decisions involving subjects which could be addressed under the administrative rulings procedure provided for in §§ 177.1 through 177.10 of this Subpart, the information contained in § 177.2 (b)(1), (b)(2)(iii) and/or (b)(2)(iv), as applicable, should be also furnished for each of the decisions addressed by the petition.

(c) *Publication and public comment.* Upon receipt of a properly filed petition, notice will be published in the FEDERAL REGISTER announcing the receipt of the petition and describing the decisions alleged to be inconsistent. Public comment on the petition will be permitted for a period of fifteen (15) days after publication. Public comment regarding the proper disposition of the petition shall be limited to that submitted in writing, either with the petition or in response to the FEDERAL REGISTER solicitation of public comment.

(d) *Determination of petition; distribution and publication.* Within fifteen (15) days after the close of the period for public comment referred to in paragraph (c) of this section, the Customs Service will issue a decision to the petitioner addressing the inconsistency complained of. That decision will either conform the inconsistent decisions to the current views of the Customs Service as to the proper tariff classification or other disposition of the subject of those decisions or explain why no inconsistency exists. Copies of the decisions to the petitioner will be transmitted directly to all ports (or other Customs offices) identified in the petition and will be distributed through the Customs Information Exchange or by other means to such other ports or offices as may be necessary to correct any inconsistency identified. A summary of the decision will also be published in the FEDERAL REGISTER and the weekly Customs Bulletin.

(e) *Effective date.* Unless otherwise specified in the decision, a decision issued in response to a petition filed under this section will be effective immediately and, where applicable, applied to all entries for which liquidation is not final.

(f) *Effect on other procedures.* The filing of a petition under this proce-

dure shall not preclude the petitioner or any other person entitled to do so from filing a protest or a domestic interested party petition regarding the same matter under the procedures set forth in sections 514, 515 and 516 of the Tariff Act of 1930, as amended and Parts 174 and 175 of this chapter, provided the applicable requirements set forth therein are complied with. However, the decision issued in response to the petition may serve as the basis for the disposition of any protest so filed, or as an information letter setting forth the position of the Customs Service pursuant to Subpart A of Part 175 of this chapter. The decision issued in response to a petition filed under this section is not itself a decision subject to protest under sections 514-515 of the Tariff Act and Part 174 of this Chapter.

[T.D. 89-74, 54 FR 31517, July 31, 1989]

Subpart B—Government Procurement; Country-of-Origin Determinations

AUTHORITY: R.S. 251, as amended (19 U.S.C. 66), sec. 624, 46 Stat. 759 (19 U.S.C. 1624); Pub. L. 96-39, 93 Stat. 144.

SOURCE: T.D. 83-13, 48 FR 1189, Jan. 11, 1983, unless otherwise noted.

§ 177.21 Applicability.

This subpart applies to the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement under Title III, "Trade Agreements Act of 1979," Pub. L. 96-39, 93 Stat. 144, for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products for eligible countries. This subpart is intended to be applied consistent with the Federal Procurement Regulations (41 CFR Part 1-6) and the Defense Acquisition Regulation (32 CFR Section VI).

§ 177.22 Definitions.

(a) *Country of origin.* For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term "instrumentality" shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(b) *Advisory ruling.* An advisory ruling is a non-binding, non-reviewable written statement issued by the Director, Entry Procedures and Penalties Division, Headquarters, U.S. Customs Service, which does no more than call attention to a well established interpretation or principal of law relating to the country of origin, without applying it to a particular set of facts. Customs will issue an advisory ruling in response to a request for a final determination if:

(1) The request suggests that general information, rather than a final determination, is actually being sought,

(2) The request is incomplete or otherwise fails to meet the requirements set forth in § 177.25(a), or

(3) The ruling requested cannot be issued for any other reason, and Customs believes that the general information supplied by an advisory ruling may be of some benefit to the party making the request. An advisory ruling is not a ruling issued prior to importation under 28 U.S.C. 1581(h).

(c) *Final determination.* A final determination is a binding judicially reviewable statement issued by the Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, in response to a written request submitted under the provisions of this subpart that interprets and applies the provisions of law and regulation relating to the country of origin to a specific set of facts. A final determination may be issued to a party-at-interest prior to actual entry of the merchandise.

(d) *Party-at-interest.* For purposes of this subpart the term party-at-interest means:

(1) A foreign manufacturer, producer, or exporter, or a United States importer of merchandise which is the

subject of a final determination under this subpart,

(2) A manufacturer, producer, or wholesaler in the United States of a like product,

(3) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, and

(4) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

§ 177.23 Who may request a country-of-origin advisory ruling or final determination.

A country-of-origin advisory ruling or final determination may be requested by:

(a) A foreign manufacturer, producer, or exporter, or a United States importer of merchandise,

(b) A manufacturer, producer, or wholesaler in the United States of a like product,

(c) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, or

(d) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

§ 177.24 By whom request is filed.

A request may be filed by an individual or organization listed in § 177.23 or by a duly authorized attorney or agent on behalf of the individual or organization. A request filed by a corporation shall be signed by a corporate officer, and a request filed by a partnership shall be signed by a partner.

§ 177.25 Form and content of request.

(a) A request for an advisory ruling shall be in writing and shall contain such information as will enable Customs to provide the requester with the applicable principle of law or well established interpretation relating to the particular country of origin.

(b) A request for a final determination shall be in writing and shall contain the following information:

(1) The name of the requester, the requester's principal place of business, and a statement that the requester is authorized to file the request under the provisions of § 177.24;

(2) A description of the existing article for which a country-of-origin determination is requested;

(3) The country or instrumentality an article is claimed to be the product of;

(4) Such further information as will enable Customs to determine if an article is a product of a specific country or instrumentality, and;

(5) If applicable, the specific procurement for which the final determination is requested.

§ 177.26 Where request filed.

The request shall be filed with the Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 177.27 Oral discussion of issues.

Any party authorized to request a ruling under the provisions of § 177.23 may request an opportunity for oral discussion of the issues presented in the request. The oral discussion of issues will be governed by the provisions of § 177.4.

§ 177.28 Issuance of advisory rulings and final determinations.

(a) Pursuant to a request for an advisory ruling which meets the requirements of this subpart, Customs will promptly issue an advisory ruling.

(b) Pursuant to a request for a final determination which meets the requirements of this subpart, Customs will promptly issue a final determination. If the request does not meet the requirements of this subpart Customs may decline to issue a final determination or may issue instead an advisory ruling.

(c) Requests for final determinations which include the information set forth in § 177.25(b)(5) (relating to a specific procurement) will be considered by Customs before all other re-

quests (advisory rulings and final determinations).

§ 177.29 Publication of notice of final determinations.

Notice of all final determinations shall be published in the FEDERAL REGISTER within 60 days of the date the final determination is issued.

§ 177.30 Review of final determinations.

Any party-at-interest listed in § 177.22(d) may seek judicial review of a final determination within 30 days after publication of such determination in the FEDERAL REGISTER, and may seek judicial review of a refusal to issue a final determination within 30 days after such refusal. The Court of International Trade shall have exclusive jurisdiction to review a final determination or a refusal to issue a final determination made under this subpart.

§ 177.31 Reexamination of final determinations.

A party-at-interest, other than the party-at-interest which requested and received the initial final determination, may ask Customs to consider the matter anew and issue, on an expedited basis, a new final determination. Such a request shall specifically identify the previous final determination. Upon receipt of such a request, Customs will issue a new final determination within five working days of receipt of the request unless (a) the previous final determination was the subject of a contested lawsuit timely filed in the Court of International Trade under 28 U.S.C. 1581(e) or, (b) the merchandise at issue in the initial final determination was tendered and deemed responsive to the request for proposals or an invitation for bids in a competitive procurement subject to the Buy American Act (41 U.S.C. 10a *et seq.*) and a contract under such procurement was let. Any new final determination issued under this section shall be published in accordance with § 177.29 and is reviewable under § 177.30.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Secs.

178.1 Purpose.

178.2 Listing of OMB control numbers.

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

§ 178.1 Purpose.

This part sets forth the control numbers assigned to information collections of the Customs Service by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. This part complies with the requirements of the Paperwork Reduction Act of 1980, and implements regulations promulgated by the Office of Management and Budget, (5 CFR 1320.7(f)(2), 1320.12(d) and 1320.13(j)) which require that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection.

[T.D. 85-53, 50 FR 11849, Mar. 26, 1985]

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
§§ 4.20, 4.23, and 4.24.	Certification of payment of tonnage tax.	1515-0113
§ 4.7a	Unique bill of lading identifier for inward manifests.	1515-0142
§ 4.97	Application for foreign vessel to engage in salvage operation/report of salvage operation.	515-0132
§ 4.98(i)	Users fees for Customs services.	1515-0154
§ 10.1	Declaration of foreign shipper that U.S. articles were exported and returned without having been advanced in value or improved in condition.	1515-0099
§ 10.8(e)	Declaration of person who performed repairs or alterations abroad on articles exported for that purpose.	1515-0137
§ 10.8a(b)(1)	Declaration by person abroad who received and is returning articles to the U.S. that do not conform to samples or specifications.	1515-0108

EXHIBIT B [facsimile]

INTERNATIONAL CONVENTION ON THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

(done at Brussels on 14 June 1983)

PREAMBLE

The Contracting Parties to this Convention, established under the auspices of the Customs Co-operation Council,

Desiring to facilitate international trade,

Desiring to facilitate the collection, comparison and analysis of statistics, in particular those on international trade,

Desiring to reduce the expense incurred by redescribing, reclassifying and recoding goods as they move from one classification system to another in the course of international trade and to facilitate the standardization of trade documentation and the transmission of data,

Considering that changes in technology and the patterns of international trade require extensive modifications to the Convention on Nomenclature for the Classification of Goods in Customs Tariffs, done at Brussels on 15 December 1950,

Considering also that the degree of detail required for Customs and statistical purposes by Governments and trade interests has increased far beyond that provided by the Nomenclature annexed to the above-mentioned Convention,

Considering the importance of accurate and comparable data for the purposes of international trade negotiations,

Considering that the Harmonized System is intended to be used for the purposes of freight tariffs and transport statistics of the various modes of transport,

Considering that the Harmonized System is intended to be incorporated into commercial commodity description and coding systems to the greatest extent possible,

Considering that the Harmonized System is intended to promote as close a correlation as possible between import and export trade statistics and production statistics,

Considering that a close correlation should be maintained between the Harmonized System and the Standard International Trade Classification (SITC) of the United Nations,

Considering the desirability of meeting the aforementioned needs through a combined tariff/statistical nomenclature, suitable for use by the various interests concerned with international trade,

Considering the importance of ensuring that the Harmonized System is kept up-to-date in the light of changes in technology or in patterns of international trade,

Having taken into consideration the work accomplished in this sphere by the Harmonized System Committee set up by the Customs Co-operation Council,

Considering that while the above-mentioned Nomenclature Convention has proved an effective instrument in the attainment of some of these objectives, the best way to achieve the desired results in this respect is to conclude a new international Convention,

Have agreed as follows :

Article 1

Definitions

For the purpose of this Convention :

(a) the "Harmonized Commodity Description and Coding System", hereinafter referred to as the "Harmonized System", means the Nomenclature comprising the headings and subheadings and their related numerical codes, the Section, Chapter and Subheading Notes and the General Rules for the interpretation of the Harmonized System, set out in the Annex to this Convention;

(b) "Customs tariff nomenclature" means the nomenclature established under the legislation of a Contracting Party for the purposes of levying duties of Customs on imported goods;

(c) "statistical nomenclatures" means goods nomenclatures established by a Contracting Party for the collection of data for import and export trade statistics;

(d) "combined tariff/statistical nomenclature" means a nomenclature, integrating Customs tariff and statistical nomenclatures, legally required by a Contracting Party for the declaration of goods at importation;

(e) "the Convention establishing the Council" means the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950;

(f) "the Council" means the Customs Co-operation Council referred to in paragraph (e) above;

(g) "the Secretary General" means the Secretary General of the Council;

(h) the term "ratification" means ratification, acceptance or approval.

Article 2

The Annex

The Annex to this Convention shall form an integral part thereof, and any reference to the Convention shall include a reference to the Annex.

Article 3

Obligations of Contracting Parties

1. Subject to the exceptions enumerated in Article 4 :

   (a) Each Contracting Party undertakes, except as provided in subparagraph (c) of this paragraph, that from the date on which this Convention enters into force in respect of it, its Customs tariff and statistical nomenclatures shall be in conformity with the Harmonized System. It thus undertakes that, in respect of its Customs tariff and statistical nomenclatures :

      (i) it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes;

      (ii) it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System; and

      (iii) it shall follow the numerical sequence of the Harmonized System;

   (b) Each Contracting Party shall also make publicly available its import and export trade statistics in conformity with the six-digit codes of the Harmonized System, or, on the initiative of the Contracting Party, beyond that level, to the extent that publication is not precluded for exceptional reasons such as commercial confidentiality or national security;

(c) Nothing in this Article shall require a Contracting Party to use the subheadings of the Harmonized System in its Customs tariff nomenclature provided that it meets the obligations at (a) (i), (a) (ii) and (a) (iii) above in a combined tariff/statistical nomenclature.

2. In complying with the undertakings at paragraph 1 (a) of this Article, each Contracting Party may make such textual adaptations as may be necessary to give effect to the Harmonized System in its domestic law.

3. Nothing in this Article shall prevent a Contracting Party from establishing, in its Customs tariff or statistical nomenclatures, subdivisions classifying goods beyond the level of the Harmonized System, provided that any such subdivision is added and coded at a level beyond that of the six-digit numerical code set out in the Annex to this Convention.

Article 4

Partial application by developing countries

1. Any developing country Contracting Party may delay its application of some or all of the subheadings of the Harmonized System for such period as may be necessary, having regard to its pattern of international trade or its administrative resources.

2. A developing country Contracting Party which elects to apply the Harmonized System partially under the provisions of this Article agrees to make its best efforts towards the application of the full six-digit Harmonized System within five years of the date on which this Convention enters into force in respect of it or within such further period as it may consider necessary having regard to the provisions of paragraph 1 of this Article.

3. A developing country Contracting Party which elects to apply the Harmonized System partially under the provisions of this Article shall apply all or none of the two-dash subheadings of any one one-dash subheading or all or none of the one-dash subheadings of any one heading. In such cases of partial application, the sixth digit or the fifth and sixth digits of that part of the Harmonized System code not applied shall be replaced by "0" or "00" respectively.

4. A developing country which elects to apply the Harmonized System partially under the provisions of this Article shall on becoming a Contracting Party notify the Secretary General of those subheadings which it will not apply on the date when this Convention enters into force in respect of it and shall also notify the Secretary General of those subheadings which it applies thereafter.

5. Any developing country which elects to apply the Harmonized System partially under the provisions of this Article may on becoming a Contracting Party notify the Secretary General that it formally undertakes to apply the full six-digit Harmonized System within three years of the date when this Convention enters into force in respect of it.

6. Any developing country Contracting Party which partially applies the Harmonized System under the provisions of this Article shall be relieved from its obligations under Article 3 in relation to the subheadings not applied.

Article 5

Technical assistance for developing countries

Developed country Contracting Parties shall furnish to developing countries that so request, technical assistance on mutually agreed terms in respect of, *inter alia*, training of personnel, transposing their existing nomenclatures to the Harmonized System and advice on keeping their systems so transposed up-to-date with amendments to the Harmonized System or on applying the provisions of this Convention.

Article 6

Harmonized System Committee

1. There shall be established under this Convention a Committee to be known as the Harmonized System Committee, composed of representatives from each of the Contracting Parties.

2. It shall normally meet at least twice each year.

3. Its meetings shall be convened by the Secretary General and, unless the Contracting Parties otherwise decide, shall be held at the Headquarters of the Council.

4. In the Harmonized System Committee each Contracting Party shall have the right to one vote; nevertheless, for the purposes of this Convention and without prejudice to any future Convention, where a Customs or Economic Union as well as one or more of its Member States are Contracting Parties such Contracting Parties shall together exercise only one vote. Similarly, where all the Member States of a Customs or Economic Union which is eligible to become a Contracting Party under the provisions of Article 11 (b) become Contracting Parties, they shall together exercise only one vote.

5. The Harmonized System Committee shall elect its own Chairman and one or more Vice-Chairmen.

6. It shall draw up its own Rules of Procedure by decision taken by not less than two-thirds of the votes attributed to its members. The Rules of Procedure so drawn up shall be approved by the Council.

7. It shall invite such intergovernmental or other international organizations as it may consider appropriate to participate as observers in its work.

8. It shall set up Sub-Committees or Working Parties as needed, having regard, in particular, to the provisions of paragraph 1 (a) of Article 7, and it shall determine the membership, voting rights and Rules of Procedure for such Sub-Committees or Working Parties.

Article 7

Functions of the Committee

1. The Harmonized System Committee, having regard to the provisions of Article 8, shall have the following functions:

   (a) to propose such amendments to this Convention as may be considered desirable, having regard, in particular, to the needs of users and to changes in technology or in patterns of international trade;

   (b) to prepare Explanatory Notes, Classification Opinions or other advice as guides to the interpretation of the Harmonized System;

   (c) to prepare recommendations to secure uniformity in the interpretation and application of the Harmonized System;

   (d) to collate and circulate information concerning the application of the Harmonized System;

   (e) on its own initiative or on request, to furnish information or guidance on any matters concerning the classification of goods in the Harmonized System to Contracting Parties, to Members of the Council and to such intergovernmental or other international organizations as the Committee may consider appropriate;

   (f) to present Reports to each Session of the Council concerning its activities, including proposed amendments, Explanatory Notes, Classification Opinions and other advice;

   (g) to exercise such other powers and functions in relation to the Harmonized System as the Council or the Contracting Parties may deem necessary.

2. Administrative decisions of the Harmonized System Committee having budgetary implications shall be subject to approval by the Council.

Article 8

Role of the Council

1. The Council shall examine proposals for amendment of this Convention, prepared by the Harmonized System Committee, and recommend them to the Contracting Parties under the procedure of Article 16 unless any Council Member which is a Contracting Party to this Convention requests that the proposals or any part thereof be referred to the Committee for re-examination.

2. The Explanatory Notes, Classification Opinions, other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation and application of the Harmonized System, prepared during a session of the Harmonized System Committee under the provisions of paragraph 1 of Article 7, shall be deemed to be approved by the Council if, not later than the end of the second month following the month during which that session was closed, no Contracting Party to this Convention has notified the Secretary General that it requests that such matter be referred to the Council.

3. Where a matter is referred to the Council under the provisions of paragraph 2 of this Article, the Council shall approve such Explanatory Notes, Classification Opinions, other advice or recommendations, unless any Council Member which is a Contracting Party to this Convention requests that they be referred in whole or part to the Committee for re-examination.

Article 9

Rates of Customs duty

The Contracting Parties do not assume by this Convention any obligation in relation to rates of Customs duty.

Article 10

Settlement of disputes

1. Any dispute between Contracting Parties concerning the interpretation or application of this Convention shall, so far as possible, be settled by negotiation between them.

2. Any dispute which is not so settled shall be referred by the Parties to the dispute to the Harmonized System Committee which shall thereupon consider the dispute and make recommendations for its settlement.

3. If the Harmonized System Committee is unable to settle the dispute, it shall refer the matter to the Council which shall make recommendations in conformity with Article III (e) of the Convention establishing the Council.

4. The Parties to the dispute may agree in advance to accept the recommendations of the Committee or the Council as binding.

Article 11

Eligibility to become a Contracting Party

The following are eligible to become Contracting Parties to this Convention :

(a) Member States of the Council;

(b) Customs or Economic Unions to which competence has been transferred to enter into treaties in respect of some or all of the matters governed by this Convention; and

(c) Any other State to which an invitation to that effect has been addressed by the Secretary General at the direction of the Council.

Article 12

Procedure for becoming a Contracting Party

1. Any eligible State or Customs or Economic Union may become a Contracting Party to this Convention :

   (a) by signing it without reservation of ratification;

   (b) by depositing an instrument of ratification after having signed the Convention subject to ratification; or

   (c) by acceding to it after the Convention has ceased to be open for signature.

2. This Convention shall be open for signature until 31 December 1986 at the Headquarters of the Council in Brussels by the States and Customs or Economic Unions referred to in Article 11. Thereafter, it shall be open for their accession.

3. The instruments of ratification or accession shall be deposited with the Secretary General.

Article 13

Entry into force

1. This Convention shall enter into force on the first of January which falls at least twelve months but not more than twenty-four months after a minimum of seventeen States or Customs or Economic Unions referred to in Article 11 above have signed it without reservation of ratification or have deposited their instruments of ratification or accession, but not before 1 January 1987.

2. For any State or Customs or Economic Union signing without reservation of ratification, ratifying or acceding to this Convention after the minimum number specified in paragraph 1 of this Article is reached, this Convention shall enter into force on the first of January which falls at least twelve months but not more than twenty-four months after it has signed the Convention without reservation of ratification or has deposited its instrument of ratification or accession, unless it specifies an earlier date. However, the date of entry into force under the provisions of this paragraph shall not be earlier than the date of entry into force provided for in paragraph 1 of this Article.

Article 14

Application by dependent territories

1. Any State may, at the time of becoming a Contracting Party to this Convention, or at any time thereafter, declare by notification given to the Secretary General that the Convention shall extend to all or any of the territories for whose international relations it is responsible, named in its notification. Such notification shall take effect on the first of January which falls at least twelve months but not more than twenty-four months after the date of the receipt thereof by the Secretary General, unless an earlier date is specified in the notification. However, this Convention shall not apply to such territories before it has entered into force for the State concerned.

2. This Convention shall cease to have effect for a named territory on the date when the Contracting Party ceases to be responsible for the international relations of that territory or on such earlier date as may be notified to the Secretary General under the procedure of Article 15.

Article 15

Denunciation

This Convention is of unlimited duration. Nevertheless any Contracting Party may denounce it and such denunciation shall take effect one year after the receipt of the instrument of denunciation by the Secretary General, unless a later date is specified therein.

Article 16

Amendment procedure

1. The Council may recommend amendments to this Convention to the Contracting Parties.

2. Any Contracting Party may notify the Secretary General of an objection to a recommended amendment and may subsequently withdraw such objection within the period specified in paragraph 3 of this Article.

3. Any recommended amendment shall be deemed to be accepted six months after the date of its notification by the Secretary General provided that there is no objection outstanding at the end of this period.

4. Accepted amendments shall enter into force for all Contracting Parties on one of the following dates :

   (a) where the recommended amendment is notified before 1 April, the date shall be the first of January of the second year following the date of such notification,

   or

   (b) where the recommended amendment is notified on or after 1 April, the date shall be the first of January of the third year following the date of such notification.

5. The statistical nomenclatures of each Contracting Party and its Customs tariff nomenclature or, in the case provided for under paragraph 1 (c) of Article 3, its combined tariff/statistical nomenclature, shall be brought into conformity with the amended Harmonized System on the date specified in paragraph 4 of this Article.

6. Any State or Customs or Economic Union signing without reservation of ratification, ratifying or acceding to this Convention shall be deemed to have accepted any amendments thereto which, at the date when it becomes a Contracting Party, have entered into force or have been accepted under the provisions of paragraph 3 of this Article.

Article 17

Rights of Contracting Parties in respect of the Harmonized System

On any matter affecting the Harmonized System, paragraph 4 of Article 6, Article 8 and paragraph 2 of Article 16 shall confer rights on a Contracting Party :

(a) in respect of all parts of the Harmonized System which it applies under the provisions of this Convention; or

(b) until the date when this Convention enters into force in respect of it in accordance with the provisions of Article 13, in respect of all parts of the Harmonized System which it is obligated to apply at that date under the provisions of this Convention; or

(c) in respect of all parts of the Harmonized System, provided that it has formally undertaken to apply the full six-digit Harmonized System within the period of three years referred to in paragraph 5 of Article 4 and until the expiration of that period.

Article 18

Reservations

No reservations to this Convention shall be permitted.

Article 19

Notifications by the Secretary General

The Secretary General shall notify Contracting Parties, other signatory States, Member States of the Council which are not Contracting Parties to this Convention, and the Secretary General of the United Nations, of the following :

(a) Notifications under Article 4;

(b) Signatures, ratifications and accessions as referred to in Article 12;

(c) The date on which the Convention shall enter into force in accordance with Article 13;

(d) Notifications under Article 14;

(e) Denunciations under Article 15;

(f) Amendments to the Convention recommended under Article 16;

(g) Objections in respect of recommended amendments under Article 16, and, where appropriate, their withdrawal; and

(h) Amendments accepted under Article 16, and the date of their entry into force.

Article 20

Registration with the United Nations

This Convention shall be registered with the Secretariat of the United Nations in accordance with the provisions of Article 102 of the Charter of the United Nations at the request of the Secretary General of the Council.

In witness thereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at Brussels on the 14th day of June 1983 in the English and French languages, both texts being equally authentic, in a single original which shall be deposited with the Secretary General of the Council who shall transmit certified copies thereof to all the States and Customs or Economic Unions referred to in Article 11.

PROTOCOL OF AMENDMENT TO THE INTERNATIONAL CONVENTION ON THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

(done at Brussels on 24 June 1986)

The Contracting Parties to the Convention establishing a Customs Co-operation Council signed in Brussels on 15 December 1950 and the European Economic Community,

Considering that it is desirable to bring the International Convention on the Harmonized Commodity Description and Coding System (done at Brussels on 14 June 1983) into force on 1 January 1988,

Considering that, unless Article 13 of the said Convention is amended, the entry into force of the Convention on that date will remain uncertain,

Have agreed as follows:

Article 1

Paragraph 1 of Article 13 of the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983 (hereinafter referred to as "the Convention") shall be replaced by the following text:

"1. This Convention shall enter into force on the earliest first of January which falls at least three months after a minimum of seventeen States or Customs or Economic Unions referred to in Article 11 above have signed it without reservation of ratification or have deposited their instruments of ratification or accession, but not before 1 January 1988."

Article 2

A. The present Protocol shall enter into force simultaneously with the Convention provided that a minimum of seventeen States or Customs or Economic referred to in Article 11 of the Convention have deposited their instruments of acceptance of the Protocol with the Secretary General of the Customs Co-operation Council. However, no State or Customs or Economic Union may deposit its instrument of acceptance of the present Protocol unless it has previously signed or signs at the same time the Convention without reservation of ratification or has previously deposited or deposits at the same time its instrument of ratification of, or of accession to, the Convention.

B. Any State or Customs or Economic Union becoming a Contracting Party to the Convention after the entry into force of the present Protocol under paragraph A above shall be a Contracting Party to the Convention as amended by the Protocol.

Exhibit C

CONSEIL DE COOPÉRATION DOUANIÈRE
CUSTOMS CO-OPERATION COUNCIL

(32 2) Telephone 513 99 00 - Fax 514 33 72 - Telex 61597 CUSCO B - Cable : CUSCOOPCO - Brussels

NOMENCLATURE AND CLASSIFICATION
DIRECTORATE

rue de l'Industrie, 26-38
B-1040 Bruxelles

89.N.297 - Na/Fl

Brussels, 1 June 1989.

Enclosures : two

Dear Mr. Giguere,

Subject : Classification of "frozen, concentrated orange juice"

The Procter and Gamble Company in Cincinnati has sought the Secretariat's opinion concerning the classification of "frozen, concentrated orange juice".

According to the information from the Company, the product in question is a frozen, concentrated orange juice, to which extra calcium has been added in an amount which is thirteen times that found in nature. The extra calcium would be added for nutritional purposes.

Based on the Explanatory Notes (page 154, third paragraph) and the text of heading 20.09, the Company takes the view that the product in question has lost its original character as an orange juice and should be regarded as a preparation which falls to be classified in subheading 2106.90, the provision for "other food preparations".

The Secretariat considers that there are two possible headings which merit consideration, i.e., headings 20.09 and 21.06, and that classification of the product would depend on whether or not the product has lost its original character as a fruit juice of heading 20.09.

./..

Mr. Paul G. Giguere
Director, International
Nomenclature Staff
Department of the Treasury
U.S. Customs Service
WASHINGTON, D.C.

U.S.A.

The Secretariat is uncertain whether the original character would be lost through the addition of trace constituents such as calcium. The Secretariat has therefore decided to bring this classification question to the attention of the Harmonized System Committee, for examination at its next session.

I enclose herewith copies of correspondence exchanged between the Secretariat and the Procter and Gamble Company.

I would be very grateful if you could send me your views on this classification question as soon as possible.

Yours sincerely,

H. ASAKURA
Director

CONSEIL DE COOPÉRATION DOUANIÈRE CUSTOMS CO-OPERATION COUNCIL

(32 2) Telephone 513 99 00 - Fax 514 33 72 - Telex 61597 CUSCO B - Cable : CUSCOOPCO - Brussels

NOMENCLATURE AND CLASSIFICATION DIRECTORATE

rue de l'Industrie, 26-38
B-1040 Bruxelles

89.N.296 - Na/Fl

Brussels, 1 June 1989.

Reference : Your letter of 15 May 1989

Dear Sir,

Subject : Classification of frozen, concentrated orange juice

In reply to your above-referenced letter, I would explain that the Customs Co-operation Council (CCC) is an intergovernmental organization and that the Council Secretariat does not furnish information about the classification of goods in the Harmonized System Nomenclature (HS) directly to private firms, but only through the interested Administration.

However, I believe that this question is sufficiently complex and important that it should be brought to the attention of the Harmonized System Committee, for examination at its next session (in October 1989).

In this connection, I would be very grateful if you could provide me with the following information as soon as possible :

1. the manufacturing process of the product in question
2. the detailed constituents of the product in question, as compared with those of natural orange juice.

Yours faithfully,

H. ASAKURA
Director

Mr. J.A. Burkham
Customs Administrator
THE PROCTER & GAMBLE COMPANY
2 Procter & Gamble Plaza
CINCINNATI, OHIO 45202-3314

U.S.A.

Exhibit D

1	2
35.302 35.634	Classification of frozen concentrated orange juice with added calcium.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee examined the classification of a frozen concentrated orange juice for manufacturing, to which thirteen times the amount of calcium found in natural concentrate plus half again as much of a combination of citric and malic acids had been added, on the basis of Doc. 35.634.

2. A number of delegates stated that it was quite clear that the addition of extra calcium and citric and malic acids upset the balance of the different constituents as found in natural juice and altered its colour and flavour. Furthermore these delegates noted that, at the time of importation, the product was not drinkable and was unfit for consumption since it had to be subjected to further complex processing after importation by the addition of essences, oils, etc. Thus, in the view of these delegates, this product could not be regarded as orange juice and should be classified as a food preparation not elsewhere specified or included in heading 21.06.

3. It was also stated that the additives to the juice of heading 20.09 permitted by the Explanatory Notes (third paragraph on page 154) should be interpreted restrictively.

4. Some of the delegates favouring classification in heading 21.06 cited the reference to concentrated fruit juice with added citric acid and other additives in Item (12) on page 161 of the Explanatory Notes as the basis for their classification of the product at issue in heading 21.06.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

5. On the other hand, several delegates were of the view that the addition of thirteen times more calcium than was found in natural juice would not alter the balance of the product to such an extent as to exclude it from heading 20.09. These delegates regarded the added calcium as a trace element (similar to the addition of vitamin D to milk) which should not affect its classification. Furthermore, these delegates contended that the addition of 50 % more citric and malic acid than that found in the natural juice should also not be considered to affect the classification of the product since the original character of orange juice could still be maintained in view of the varying acid content encountered in different types of oranges. These delegates stressed that Customs officers would not be able to judge, at the time of importation, whether or not citric and malic acids had been added, especially if the acid content was still within the normal range encountered in natural juice.

6. It was also stated that use of the criterion of whether the product, as presented, was drinkable would be misleading since the concentrated juice of heading 20.09 was generally not considered to be drinkable at the time of importation.

7. When a vote was taken on the question of whether or not the product could be classified in heading 20.09 on the basis of the present heading text and Explanatory Note, 4 delegates voted in favour of heading 20.09 and 14 delegates against. With respect to the appropriate classification of the product at issue, 16 delegates voted in favour of heading 21.06 and one in favour of heading 20.08.

8. The delegate who favoured heading 20.08 stated that this heading was more specific in its description than heading 21.06, and that the product could be regarded as an edible part of plants of heading 20.08, if one wished to be logically consistent with the decision taken by the Committee concerning the classification of "Müsli" breakfast cereals.

9. With respect to the measures to be taken to reflect the decision, various views were expressed. One view was that a reference to the Committee's decision in the Report would suffice. Another opinion was that a Classification Opinion or an amendment to the Explanatory Notes would be more appropriate.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

10. However, the Committee felt that additional information (including samples) would be needed for the examination of any amendment. In this connection, it was pointed out that information about the normal composition of, and range of additives in, natural juices and the percentage content of the various constituents would be useful; along with information regarding the commercial practises involved in the manufacture of concentrated juices.

11. The Committee finally agreed that a reference to the Committee's decision in the Report would suffice for the time being, but that a study concerning the possible amendment of the Explanatory Notes should be carried out by the Secretariat on the basis of further information to be supplied by administrations.

12. Accordingly, administrations were invited to submit information about concentrated juices and samples thereof to the Secretariat by the end of December 1989. At the same time, the Secretariat was requested to contact the producer for further information about the product at issue.

x

x x

Exhibit E

THE PROCTER & GAMBLE COMPANY

[illegible] DIVISION
[illegible]

January 18, 1990

Mr. John Durant
U.S. Customs Service
Office of Regulations & Rulings
Director, Commercial Rulings Division
1301 Constitution Ave., N.W.
Washington, DC 20229
(via facsimile) 202/377-9130

Dear Mr. Durant:

We have just received a copy of the final report of the 4th Session of the Harmonized System Committee (HSC) and, after reviewing it, feel that several points contained therein should be called to your attention.

First, the decision by the HSC was unequivocal, unlike in the case of sports motor vehicles where the vote was only "indicative." It is stated in paragraph 7, Annex F/2 to Doc. 35.700 that "With respect to the appropriate classification of the product at issue, 16 delegates voted in favor of heading 21.06 and one in favor of heading 20.08."

Secondly, it is indicated in paragraph 9 that several options were considered in deciding how to "reflect the decision" of the HSC and among these were a Classification Opinion, amending the Explanatory Notes or mentioning it in the report. It is clear from this paragraph that the HSC has decided, and now the only question is how to reflect the decision. No thought is given to changing, amending or re-examining the issue.

Thirdly, the HSC has taken a final decision and in paragraphs 10, 11 and 12 indicate only that if the Explanatory Notes are to be amended additional information would be needed. They do not state that the Explanatory Notes are to be amended. We, of course, will furnish such information to the CCC as is requested in an effort to make the basis of the decision clearer and stronger.

Finally, the addition of calcium to OJFM has been compared to the addition of vitamin D to milk by both the CCC and U.S. Customs. The CCC has rejected this argument and we wish to emphasize that in the United States the product standards for milk permit the addition of vitamin D while still labeling the product unqualifiedly as milk whereas the FDA product standards for orange juice do not permit the addition of calcium without a specific qualification that an additional nutrient has been added. In fact, the state standards of Florida are such that if calcium is added the product may not be labeled juice but must be labeled a beverage. Therefore we think it totally inappropriate to compare our product, with its standards, to another product with entirely different standards.

Please let us know if you have any questions.

Yours truly,

J A Burkham

J. A. Burkham
513/983-1349

JAB:tlm/0103B

Exhibit F

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

APR 24 1990

CLA-2 CO:R:C:G
085079 als

Ms. J.A. Burkham
Customs Administrator
The Procter & Gamble Company
P.O.Box 599
Cincinnati, Ohio 45201

Dear Ms. Burkham:

This is in further reference to the request by your company for a ruling as to the tariff classification of orange juice with added calcium.

The Harmonized System Committee (Committee), as noted in the enclosed document which you submitted, voted to classify certain orange juice fortified with calcium in heading 21.06 of the Harmonized System. However, the United States filed a reservation to that decision, pursuant to Article 8 of the Harmonized System Convention, which prevents the decision from going into effect. The Committee will again consider the matter at its next meeting this coming fall.

In light of the pendency of this matter at the international level, we have concluded, in accord with the provisions of section 177.7(a), Customs Regulations (19 CFR 177.7(a)), that it would be contrary to the sound administration of the Customs and related laws to issue a ruling at this time. Therefore, we are closing the record.

Once the Committee has further considered this matter, we would be willing to once again entertain consideration of the proper tariff classification of orange juice fortified with calcium. If you wish to further pursue the matter at that time, a new request for consideration should then be submitted.

Sincerely,

Harvey B. Fox

Harvey B. Fox, Director
Office of Regulations and Rulings

Enclosure

Exhibit G

Mr. Kappler

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

DEC - 6 1989

INO-3-05-IN:IP:P WD

Dear Mr. Asakura:

This letter is in reference to your correspondence of October 31, 1989, regarding the action of the Harmonized System Committee (HSC) during their fourth session in voting to classify concentrated orange juice in heading 21.06.

We feel that the Committee took a final vote before having an opportunity to examine all of the information relevant to the classification of this product. In considering whether to issue a Classification Opinion or amend the Explanatory Notes to reflect the vote, the administrations have been asked to submit additional information on the normal composition and range of additives in natural juices, the percentage content of their various constituents, and information regarding the commercial practices involved in the manufacture of concentrated juices (Report - HSC 4/Annex F/2 to Doc. 35.700). Since this information is significant in determining the classification of this product, it should have been reviewed prior to taking a final vote.

Pursuant to Article 8, paragraphs 2 and 3, of the Convention on the Harmonized Commodity Description and Coding System, the United States requests that this issue be referred to the Council and that the Council refer the matter back to the HSC for re-examination. Noting that the HSC will meet again (in March 1990) before the Council meets in June, it is suggested also that the HSC reconsider the matter at their March meeting.

We will shortly submit a technical paper on this question.

Sincerely,

David B. Hawell

for James W. Shaver
Assistant Commissioner
International Affairs

'89 DEC 15 9:17

Mr. H. Asakura
Director, Nomenclature and
Classification Directorate
Customs Co-operation Council
Rue de l'Inustrie, 26-38
B-1040 Brussels, Belgium

Exhibit H

CONSEIL DE COOPÉRATION DOUANIÈRE CUSTOMS CO-OPERATION COUNCIL

HARMONIZED SYSTEM COMMITTEE
-
6th Session
-

36.122 E
O. Eng.
H9-3

Brussels, 20 August 1990.

CLASSIFICATION OF FROZEN CONCENTRATED ORANGE JUICE WITH ADDED CALCIUM (RESERVATION BY THE U.S. ADMINISTRATION)

(Item VI.5 on Agenda)

Reference documents :

35.502 (HSC/4)
35.634 (HSC/4)
35.700 Annex F/2 (HSC/4 Report)

1. At its Fourth Session the Harmonized System Committee examined the classification of frozen concentrated orange juice with added calcium and decided to classify the product in heading 21.06.

2. In a note of November 1989 the U.S. Administration requested this decision to be referred to the Council pursuant to Article 8.2 of the HS Convention. The U.S. note is reproduced below.

Note from the U.S. Administration

3. This letter is in reference to your correspondence of October 31, 1989, regarding the classification of frozen concentrated orange juice. During the 4th Session of the HSC meeting, the Committee voted to classify this product in heading 21.06.

File No. 2202

For reasons of economy, documents are printed in limited number. Delegates are kindly asked to bring their documents to meetings and not to request additional copies.

4. Pursuant to Article 8 of the Convention on the Harmonized Commodity Description and Coding System, the United States requests that this issue be referred to the Council. Since the Council will not meet before the next session of the Committee, the matter may be included on the agenda for the next session.

5. We feel that the Committee took a final vote before having an opportunity to examine all of the information relevant to the classification of this product. In considering whether to issue a Classification Opinion or amend the ENs to reflect the vote, Administrations have been asked to submit additional information on the normal composition and range of additives in natural juices, the percentage content of their various constituents, and information regarding the commercial practices involved in the manufacture of concentrated juices. (Report - HSC/4, Annex F/2 to Doc. 35.700). Since this information is significant in determining the classification of this product, it should have been reviewed prior to taking a final vote.

6. We will shortly submit a technical paper on this question."

7. The U.S. Administration has not yet submitted the promised technical paper.

8. The matter was referred to the Council at its 75th/76th Sessions, at which the Delegate of the United States asked that the question of the classification of frozen concentrated orange juice with added calcium in heading 21.06 be referred back to the Committee for re-examination under the provisions of Article 8.3 of the HS Convention. The Council agreed to this request.

9. Rule 20 of the Harmonized System Committee's Rules of Procedure requires the Administration which has requested a matter to be re-examined under Article 8.3 of the HS Convention to submit to the Secretary General "a note setting out its reasons for requesting the re-examination, together with its proposals for resolving the matter".

10. The Secretariat has not yet received such a note from the U.S. Administration. As soon as the Secretariat receives the required note, it will issue an additional document asking the Committee to re-examine the classification of frozen concentrated orange juice with added calcium.

CONSEIL DE COOPÉRATION DOUANIÈRE CUSTOMS CO-OPERATION COUNCIL

HARMONIZED SYSTEM COMMITTEE
-
6th Session
-

36.218 E

O. Eng.

H9-3

Brussels, 18 September 1990.

CLASSIFICATION OF FROZEN CONCENTRATED ORANGE JUICE WITH ADDED CALCIUM (RESERVATION BY THE U.S. ADMINISTRATION)

(Item VI.5 on Agenda)

Reference document : 36.122 (HSC/6)

1. Following the publication of Doc. 36.122, the Secretariat, on 22 August 1990, received comments from the U.S. Administration setting out its reasons for requesting a re-examination of the question of the classification of frozen concentrated orange juice with added calcium. The U.S. comments are set out in Annex I to this document.

2. During its Fourth Session the Committee instructed the Secretariat to contact the producer of the product at issue for further information about the product. Since this information is clearly relevant to the re-examination of the question at issue, an extract of the information furnished by the producer is reproduced at Annex II to this document. The entire submission of the producer (including patent information) will be available to delegates during the session.

3. The Canadian Administration has also submitted to the Secretariat information on the composition of various types of orange juice with a view to facilitating a study concerning the possible amendment of the Explanatory Notes (see paragraph 11 of Annex F/2 to Doc. 35.700). The Secretariat believes that the Canadian information would also be useful to the Committee in its examination of the classification of the product at issue. The information from Canada is set out at Annex III to this document.

File No. 2202

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4. Pursuant to the decision taken at the Council Sessions in June 1990, the Harmonized System Committee is invited to re-examine the classification of frozen concentrated orange juice with added calcium.

x

x x

United States comments on Classification of Orange Juice containing Added Calcium

At its fourth session, the Harmonized System Committee decided that certain concentrated orange juice containing added calcium, malic acid and citric acid was classifiable in heading 2106, by virtue of the existing Explanatory Notes to heading 2009, specifically, paragraph numbered (4) on page 154. This administration entered a reservation on that matter, because we felt the decision diverged from the intent and the letter of the Nomenclature.

It is our understanding that in its deliberations over draft Explanatory Notes to HS heading 20.09, the HSC was concerned that the heading in question be restricted to products that are actually produced, sold and consumed as juices, rather than beverages merely containing juice as an ingredient. Because of the increasing occurrence in the marketplace of juice-based beverages and beverage concentrates, it was essential that 20.09 be narrowly defined. The detailed Explanatory Notes for existing CCCN 20.07 were therefore generally retained. We agree in principle with the conclusion.

The current problem is the result of changes in the marketing of fruit juices. In this case, the addition of calcium is clearly intended to enhance the juice's attractiveness to the buyer but in our view does not change the essential character or taste of the product as a fruit juice. Unlike juice-based drinks, in which the real juice content is about 10 to 20% by volume, the product in question is still 100 percent orange juice. Similarly, the addition of citric and malic acids to the concentrate does not have the effect of making the product taste more tart (as with fruit-based beverages), but rather to restore the normal acidity sensation, which has been altered by the alkaline calcium hydroxide introduced during the concentration process. The end result is a product that is marked, sold and consumed as concentrated orange juice.

Under the circumstances, we are of the view that General Interpretive Rule 1 legally requires this product to fall in 2009 and that if the Explanatory Note in question requires a different result, it is overly restrictive. This administration considers that the paragraph numbered (4) on page 154 of the Explanatory Notes should exclude only juices where the balance of constituents is upset to such an extent that the product has lost its essential character.

A draft revision of the paragraph follows:

"(4) Standardizing agents (e.g., citric acid, tartaric acid) and products added to restore constituents destroyed or damaged during the manufacturing

process (e.g., vitamins, coloring matter), or to "fix" the flavor (e.g., sorbitol added to powdered or crystalline fruit juices). However, the heading **excludes** fruit juices in which one of its natural constituents (citric acid, essential oil extracted from the fruit, etc.) has been added in such quantity that the product has lost its essential character."

Technical Issues Pertaining to the Classification Question

The merchandise before the Committee is frozen concentrated orange juice for manufacturing (FCOJM) to which calcium and citric or malic acid have been added. In order to assess the significance of these substances, we offer the following information on the industrial production of orange juice from concentrate.

Frozen concentrated orange juice for manufacturing is, as its name conveys, not a retail product: rather it is the concentrate from which orange juice sold at retail is derived. In the United States the usual commercial practice is to ship the fruit juice in concentrated form to avoid the cost of shipping large volumes of water. A typical fruit juice concentrate for manufacturing will be six times the normal strength of the retail product.

According to the technical literature, the basic constituents of orange juice in descending order of importance by weight are sugars, water, pulp, acid, and essential oils. The sweetness is imparted by the sugars (artificial and natural), the orange flavor by the essential oils, and the tangy taste is imparted by the acids. The acid content consists of mostly citric and a small amount of malic acid. Of these constituents, the sugars and water make up 90% of the product. According to the technical literature, the recoverable orange oil in the single strength product is between 0.015% to 0.017% by volume.

In the United States, the regulatory standards for orange juice sold at retail recognize that sugar and acid must be in balance for a product to be considered orange juice. The sugar content of orange juice is expressed in terms of degrees brix, a measure of total soluble sugar. FCOJM is normally 65 degrees brix.

Two retail orange juice products are produced from FCOJM. The first is concentrated frozen orange juice which is diluted with three parts water prior to consumption. According to United States Food And Drug Administration standards, the brix

value for this product is not less than 41.8. The second product is "single strength" (full strength) orange juice. This product must have a brix of no less than 11.8.

The most meaningful standard for orange juice at retail is known as the brix/acid ratio. There is no governmentally established brix/acid ratio for FCOJM. However, there is such a ratio for the retail product. In our country, the ratio cannot be less than 12 nor more than 19.5. This range is indicative of the wide variance in the amount of sugar and acid in oranges, and the different taste preferences among American consumers. As the patent for the product makes clear, "the ratio of citric acid to malic acid is selected to provide optimum flavor character in the juice," that is, to mirror the particular type of juice desired.

Because these retail frozen orange juice products compete with more expensive fresh squeezed orange juice, every effort is made to make the frozen counterpart taste just like the fresh product. Accordingly, essential oils, orange pulp and water are added to FCOJM to produce a product that meets the specification of fresh orange juice. The amount of orange essence and orange oil depends upon the precise characteristics of the oranges used as well as the desired flavor to be produced.

In terms of these constituents, the product in question is well within the requirements in the United States for orange juice. The Brix/Acid ratio of the imported product based on the manufacturer's information of 73.5% sugars and 3.80 titratable acids is 19.3, and therefore within the range of orange juice sold at retail. Thus in terms of the constituents of orange juice, this product is orange juice as it is normally traded.

The question that remains is whether the addition of 0.65% calcium should remove this product from classification as orange juice. The FCOJM before the Committee will be used to produce a retail product sold in the United States as orange juice fortified with calcium. This product is marketed as a way to receive a nutritionally significant amount of calcium while drinking orange juice. It is sold in the United States at retail beside orange juice without added calcium. In 49 of the 50 States, the retail product is labelled "orange juice fortified with calcium."

<u>The terms of heading 20.09</u>

Heading 20.09 provides for fruit juices unfermented and not containing added spirit, whether or not containing added sugar or

other sweetening matter. It is clear that the heading for orange juice is more specific than the heading for food preparations not elsewhere specified or included. Thus if this product satisfies the terms of heading 20.09, it cannot be classified in heading 21.06.

The fact that the product is frozen and in the form of concentrate (and therefore not potable) do not exclude the product from being classifiable in heading 2009. Both subheading 2009.11 which provides for orange juice frozen and the Explanatory Notes make it clear that orange juice of 2009 may be concentrated and frozen. We believe that the product which is commercially traded as orange juice meets the terms of heading 20.09 and is precluded from classification in heading 2106.

Explanatory Notes to Heading 2009

It appears that the basis of the Committee's decision to classify the product in 2106 is the result of its interpretation of the Explanatory Notes to heading 20.09 which provide as follows:

> "Provided they retain their original character, the fruit or vegetable juices of this heading may contain substances of the kind listed below, whether or not these result from the manufacturing process or have been added separately.
>
> (4) Standardizing agents (e.g., citric acid, tartaric acid) and products added to restore constituents destroyed or damaged during the manufacturing process (e.g., vitamins, coloring matter) or to "fix" the flavor(e.g.,sorbitol added to powdered or crystalline citrus fruit juices). However, the heading excludes fruit juices in which one of the constituents (citric acid, essential oil extracted from the fruit, etc.) has been added in such quantity that the balance of the different constituents as found in the natural juice is clearly upset; in such case, the product has lost it original character."

The Explanatory Notes to heading 20.09 make clear that in determining whether a product is classifiable in 20.09, the test is whether it has the character of juice of 20.09 or whether it has the character of a product of another heading. The key to this determination appears to be whether the product is recognizable as juice or has such characteristics as to be a product of another heading. For example, the Explanatory Notes

state that where more water than is necessary to reconstitute the juice is added a diluted product having character of a beverage of 22.02 such as orangeade or orange drink results. Similarly, the addition of more carbon dioxide than is normally present in juice creates a product which is carbonated fruit juice and is no longer commercially known as juice.

As we have demonstrated above, the balance of the sugars, acid and essential oil in the product before us is within the range for orange juice products commercially. The addition of calcium should not be likened to the addition of the substances described in the EN., calcium is added to give the product a subsidiary nutritional benefit, not to create a commercially different beverage. As the first page of the patent states:

> Like milk, orange juice has a wholesome nutritional image. Also orange juice is generally considered to have an appealing taste. Accordingly, orange juice nutritionally supplemented with calcium could be viewed as an additional vehicle for achieving greater dietary calcium intake throughout life.

The addition of calcium is much more analogous to the addition of a vitamin D to milk or vitamins to packaged cereals. It merely enhances the nutritional value of the orange juice. In this regard, we note that it is unclear exactly how much of the nutritional daily requirement is represented by the calcium. In its original submission, the company indicated that it represented 20%. In its more recent submission, the indication is 12.4%. It does not create a commercially different product of another heading. The product remains commercially known as orange juice and is marketed as such.

Acid Content

In our view, the addition of citric of malic in the amount indicated should not change its classification. The total amount of acid present compared to the sugar content is within the range permitted for orange juice. Moreover, the purpose of the additional acids is to help the calcium dissolve and to mask any taste distortion that the added calcium might create. In no sense is the additional acid present for the creation of a beverage of a character or flavor different than juice. Rather, the purpose of the citric acid is to make certain that the product tastes exactly as it would had the calcium not been added.

When is the character altered by citric acid?

It is clear that the Explanatory Notes envision situations

in which the addition of citric acid changes the character of juice to that of another beverage. This seems apparent by the inclusionary Explanatory Note to heading 21.06 which states that the heading covers :

> "Preparations for the manufacture of lemonades or other beverages consisting of for example: ...Concentrated fruit juice with the addition of citric acid (in such proportion that the total acid content is appreciably greater than that of the natural juice), essential oils of fruit, synthetic sweetening agents, etc."

This Explanatory Note is intended to cover products such as beverage bases for the manufacture of the drinks of heading 22.02. In these preparations the proportion of citric acid to fruit juice is many times higher than that present in the normal juice. The Harmonized System Committee has considered the classification of these products during its previous sessions.

Based on the information now presented, it is clear that there is no appreciable difference between the amount of citric acid present in orange juice and the amount of citric acid present in the imported product. Therefore, the Explanatory Note language does not cover the product in question.

Conclusion

The product before the Committee has the basic composition or orange juice. It is commercially known as Frozen Concentrated Orange Juice for Manufacturing. It is used exclusively in the production of a retail product commercially known as orange juice. The product at issue is commercially traded and treated in the same manner as orange juice. The addition of calcium is merely a subsidiary nutritional enhancement. For these reasons, we believe that the product is classifiable in heading 20.09.

x

x x

Extract of the information supplied by the producer

This is in further response to your letter of 31 October 1989, and to Mr. Kappler's letter of 18 June 1990, requesting additional information concerning the product mentioned above. This also supplements the information contained in our letter of August 30, 1989, which was reproduced in document 35.634.

We wish to stress again that the product to be classified is one which contains almost 14 times the amount of calcium and almost 50 percent more citric and malic acids than found in commercial Frozen Concentrated Orange Juice for Manufacture (FCOJM). The imported product is not a consumer product, may not be made into a consumer product by the mere addition of water, and must be processed with materials which are different from those used when processing commercial FCOJM. The product differs significantly from commercial FCOJM in method of preparation, composition and nutritional value.

Dr. D. C. Heckert of our Food and Beverage Technology Division has reviewed your requests for additional information and the following technical data is based on his knowledge of the product, the patents applicable to its method of manufacture, and its composition and review of technical literature.

I. THE CALCIUM SUPPLEMENTATION PROCESS

The patented process for making the calcium fortified orange juice preparation requires running a strongly exothermic (heat generating) chemical reaction in FCOJM (65° Brix). As a result, great care must be taken so that the FCOJM is not adversely affected by this reaction process. Improper processing will cause chemical and/or thermal degradation of flavor components and nutrients, thereby generating significant taste, odor and color problems. The process is both difficult and unique and, as a result, we have received one national composition patent (No. 4,722,848, attached) and a process patent which was granted in April but has not yet been published.

A typical process is as follows: 100 parts of FCOJM are put into a large tank equipped for very efficient mixing and cooling. While agitation and cooling are in progress, one part by weight of citric acid and 19.3 parts of malic acid are added and allowed to dissolve. After dissolution of the acids is complete, 78.25 parts of a 16 percent slurry of calcium hydroxide (a strong caustic compound not found in orange juice) in water is added slowly under the surface near the point of most efficient mixing. The resulting chemical reaction will generate local heating, hence efficient cooling is critical. Further, if mixing is not efficient, the added calcium hydroxide will exhaust the acids present and begin to attack the juice itself. The desired result of the reaction between the calcium hydroxide and the citric and malic acids are the calcium salts of citric and malic acids and the reduction of the titratable acids. After the addition of the calcium hydroxide slurry is complete, another 900 parts of FCOJM is added to the mixing tank to complete the process. This is the product we will import and its composition, in terms of calcium, total acid, acid ratio and titratable acid is different from commercial FCOJM and is described in detail below.

II. COMPOSITION

The composition of natural orange juice can vary depending on the variety and ripeness of the orange. However, the commercial 65° Brix FCOJM we use varies little, due to the fact that only selected varieties of oranges are used and these, of course, are ripe. To the best of our knowledge the same is true of other commercial FCOJM. Therefore, when we refer to commercial FCOJM we are referring to these blends. The FCOJM we use has the averages shown on the attached table and because the product is relatively constant in values the amounts of calcium and citric and malic acids we add do not vary.

The composition of our calcium supplemented orange juice preparation falls well outside the range of orange juice composition found in nature and falls even farther outside the range of FCOJM. The composition of the calcium supplemented FCOJM and finished product made from it are sufficiently unique to receive a national patent for the product composition. In addition, this particular product composition has been recognized as nutritionally unique in multiple scientific publications and has received the endorsement of the American Medical Women's Association as a unique and extraordinarily effective source of calcium in the diet.

A. Calcium Content

The calcium level in typical single strength orange juice averages 9 mg/100g juice. The commercial FCOJM contains 0.045 to 0.055 percent calcium whereas our calcium supplemented orange juice preparation contains 0.69 to 0.70 percent calcium. This represents an average 13.9 times increase in calcium. Thus, our product, when processed into a single strength orange juice, would contain at least 124 mg of calcium per 100g of juice. Nutritionally, this translates into an increase from 0.9 percent to 12.4 percent of the recommended daily allowance for calcium per 100 grams of beverage.

B. Total Acid, Acid Composition, and Titratable Acid Content

The standard measures of acid composition used in analyzing citrus juices are total acid (that is, the sum of free acid and acid that naturally has been neutralized to form salts like potassium citrate and malate) and acid type (e.g., citric acid, malic acid). Commercial FCOJM has a total acid analysis which averages 4.86 percent, whereas the calcium supplemented orange juice preparation we will import contains an average of 6.91 percent of total citric and malic acids. This is a 42 percent increase over commercial FCOJM. Significantly, the malic acid analysis has risen from a range of 0.92 - 0.99 percent to 2.88 - 2.95 percent, almost a threefold increase. This corresponds to a malic acid analysis of 0.52 - 0.54 percent in single strength juice, a value that is 70 percent greater than the highest malic acid analysis found in any orange juice, U.S. or foreign, we have found reported in the technical literature.

The increase in malic acid dramatically changes the citric/malic ratio. This ratio affects the sourness character of FCOJM . In our product the citric acid/malic acid ratio is approximately 57/43 compared with an average citric acid/malic acid ratio of 80/20 in commercial FCOJM. This helps reduce the sharpness of the acidity and the undesirable flavor effects of the added calcium. This change in citric acid/malic acid ratio also significantly increases the physical stability of the product and helps prevent precipitation of calcium salts.

The total titratable (free) acid in our calcium supplemented juice preparation is an average 3.80 percent while the titratable acid found in commercial FCOJM is 4.27 percent. This reduction is accomplished by the neutralization of some of the natural acids and directly results in a significant reduction in perceived sourness and helps masks or cover the calcium taste effects.

III. TECHNICAL SUMMARY

In summary, the calcium supplemented juice preparation has a calcium content about fourteen times (13.9) that of commercial FCOJM and more than six times the highest amount we have found reported in technical literature, a level that very significantly affects the characteristics of the product and how it must be processed in order to make a consumer product. Further, it has a total malic acid analysis about three times normal and seventy percent higher than the highest reported value in the technical literature. It also has a total acid and citric acid/malic acid ratio far outside normal commercial ranges. Finally, a consumer product cannot be made with the same materials as those used when processing commercial FCOJM into consumer products.

IV. POST IMPORTATION PROCESSING

While the post-importation processing of a product should not govern its classification at the time of importation, we are submitting the following information regarding post-importation processing of the calcium supplemented orange juice preparation for the purpose of emphasizing its difference from commercial FCOJM.

The high levels of calcium added to the product contribute a somewhat sharp, bitter off-note which adversely affects product quality. To help counter this effect, the acidity/sourness of the product must be reduced. Part of this is done prior to importation as described above by the reduction of titratable acid content and the change in the citric acid/malic acid ratio. After importation we must add 175 percent of the orange essence normally added to FCOJM to achieve equivalent aroma intensity and acceptability. We also must add a unique orange oil blend not used in commercial FCOJM to bring the flavor characteristics back into the range of acceptable flavors.

V. LABELING OF CONSUMER PRODUCT

Finally, while we do not deem it material to the classification of the product in question, it should be pointed out that the consumer product may not be labeled simply "orange juice" in the United States. In one State the product must be labeled as an orange juice beverage while elsewhere as calcium fortified orange juice. Thus, our product may not move in the trade and commerce of the United States in the same manner as ordinary consumer orange juice does. The fact that the consumer product must be labeled as a beverage, not a juice, in one instance and as a calcium fortified juice in another instance, clearly demonstrates that the product is unique and very different from either concentrated or reconstituted juice.

Composition of Commercial Frozen Concentrated Orange Juice for Manufacture vs. Calcium Supplemented Juice Preparation

	Commercial FCOJM	Calcium Fortified Juice Preparation	
	Average % Values		% of Commercial
Calcium	0.05	0.695 (13.9 times)	1390
Total Acids (neutralized + free acids)			
citric acid	3.82	3.92	103
malic acid	0.96	2.92 (3 times)	305
Total	4.86	6.91 (1.4 times)	142
citric/malic ratio	80/20	57/43	
Titratable Acids (free acid only)			
citric acid	3.36	2.99 (0.89 times)	89
malic acid	0.84	0.74 (0.88 times)	88
Total	4.27	3.80 (0.89 times)	89

Information from Canada

1. At the last session (HSC/4, October 1989) the Committee decided that frozen concentrated orange juice to which thirteen times more calcium and 50% more citric acid and malic acid than was found in the natural juice was added affected the original character of the juice concentrate. As a result this product was classified in heading 21.06. It was further decided that the Secretariat study the possibility of amending the Explanatory Notes to heading 20.08 on the basis of information from Administrations on the normal range of the various constituents in natural juice.

2. We wish to ensure that the Secretariat is aware of the attached information on the variance of the composition of orange juice.

APFELSINENSAFT (ORANGENSAFT) FRISCH GEPRESST MUTTERSAFT

ORANGE JUICE FRESH

JUS D'ORANGES FRAIS

		PROTEIN	FAT	CARBOHYDRATES	TOTAL
ENERGY VALUE (AVERAGE) PER 100 G EDIBLE PORTION	KJOULE	11	7.0	182	200
	(KCAL)	2.6	1.7	44	48
AMOUNT OF DIGESTIBLE CONSTITUENTS PER 100 G	GRAM	0.55	0.16	10.90	
ENERGY VALUE (AVERAGE) OF THE DIGESTIBLE FRACTION PER 100 G EDIBLE PORTION	KJOULE	9.1	6.3	182	198
	(KCAL)	2.2	1.5	44	47

WASTE PERCENTAGE AVERAGE 0.00

CONSTITUENTS	DIM	AV	VARIATION	AVR	NUTR. DENS.	MOLPERC
WATER	GRAM	88.10	84.70 - 89.40	88.10	GRAM/MJ 445.27	
PROTEIN	GRAM	0.65	0.49 - 0.80	0.65	GRAM/MJ 3.29	
FAT	GRAM	0.18	0.08 - 0.22	0.18	GRAM/MJ 0.91	
AVAILABLE CARBOHYDR.	GRAM	10.90	- - -	10.90	GRAM/MJ 55.09	
MINERALS	GRAM	0.37	0.28 - 0.43	0.37	GRAM/MJ 1.87	
SODIUM	MILLI	1.00	0.50 - 1.60	1.00	MILLI/MJ 5.05	
POTASSIUM	MILLI	157.00	104.00 - 194.00	157.00	MILLI/MJ 793.50	
MAGNESIUM	MILLI	12.00	10.00 - 13.00	12.00	MILLI/MJ 60.65	
CALCIUM	MILLI	11.00	8.00 - 15.00	11.00	MILLI/MJ 55.60	
MANGANESE	MICRO	30.00	- - -	30.00	MICRO/MJ 151.62	
IRON	MILLI	0.20	0.10 - 0.35	0.20	MILLI/MJ 1.01	
COPPER	MICRO	80.00	- - -	80.00	MICRO/MJ 404.33	
ZINC	MICRO	42.00	30.00 - 60.00	42.00	MICRO/MJ 212.27	
NICKEL	MICRO	1.00	1.00 - 2.00	1.00	MICRO/MJ 5.05	
CHROMIUM	MICRO	1.00	0.60 - 1.00	1.00	MICRO/MJ 5.05	
MOLYBDENUM	MICRO	79.00	- - -	79.00	MICRO/MJ 399.28	
PHOSPHORUS	MILLI	15.00	10.00 - 19.00	15.00	MILLI/MJ 75.81	
CHLORIDE	MILLI	3.80	2.10 - 5.70	3.80	MILLI/MJ 19.21	
FLUORIDE	MICRO	0.90	0.00 - 3.60	0.90	MICRO/MJ 4.55	
IODIDE	MICRO	1.00	- - -	1.00	MICRO/MJ 5.05	
BORON	MILLI	0.10	- - -	0.10	MILLI/MJ 0.51	
SELENIUM	MICRO	6.00	- - -	6.00	MICRO/MJ 30.32	
SILICON	MILLI	1.00	- - -	1.00	MILLI/MJ 5.05	
CAROTENE	MICRO	70.00	20.00 - 120.00	70.00	MICRO/MJ 353.79	
VITAMIN B1	MICRO	95.00	80.00 - 120.00	95.00	MICRO/MJ 480.14	
VITAMIN B2	MICRO	30.00	28.00 - 32.00	30.00	MICRO/MJ 151.62	

Obst- und Beeren-Säfte · Juices from fruits and berries · Jus de fruits et de baies

CONSTITUENTS	DIM	AV	VARIATION	AVR	NUTR.	DENS.	REL
NICOTINAMIDE	MILLI	0.29	0.20 - 0.40	0.29	MILLI/MJ	1.47	
PANTOTHENIC ACID	MILLI	0.23	0.21 - 0.25	0.23	MILLI/MJ	1.16	
VITAMIN B6	MICRO	50.00	20.00 - 80.00	50.00	MICRO/MJ	252.71	
BIOTIN	MICRO	1.40	0.80 - 2.00	1.40	MICRO/MJ	7.08	
FOLIC ACID	MICRO	41.00	22.00 - 66.00	41.00	MICRO/MJ	207.22	
VITAMIN C	MILLI	54.00	42.00 - 69.00	54.00	MILLI/MJ	272.92	
VOLATILE ACID	MILLI	13.00	5.00 - 18.00	13.00	MILLI/MJ	65.70	
MALIC ACID	GRAM	0.17	0.13 - 0.20	0.17	GRAM/MJ	0.86	
CITRIC ACID	GRAM	1.09	0.96 - 1.33	1.09	GRAM/MJ	5.51	
GLUCOSE	GRAM	2.30	1.70 - 3.40	2.30	GRAM/MJ	11.62	
FRUCTOSE	GRAM	2.80	2.30 - 3.60	2.80	GRAM/MJ	14.15	
SUCROSE	GRAM	4.30	3.30 - 5.00	4.30	GRAM/MJ	21.73	
PECTIN	MILLI	86.00	57.00 - 120.00	86.00	MILLI/MJ	434.66	
INOSITOL	GRAM	0.19	0.18 - 0.20	0.19	GRAM/MJ	0.96	
CHOLINE	MILLI	7.20	- - -	7.20	MILLI/MJ	36.39	
EXTRACT	GRAM	11.90	10.60 - 13.30	11.90	GRAM/MJ	60.14	

APFELSINENSAFT
ORANGENSAFT
HANDELSWARE
UNGESÜSST

ORANGE JUICE
UNSWEETENED
COMMERCIAL PRODUCT

JUS D'ORANGES
SANS SUCRE
PRODUIT DE VENTE

		PROTEIN	FAT	CARBOHYDRATES	TOTAL
ENERGY VALUE (AVERAGE) PER 100 G EDIBLE PORTION	KJOULE	11	8.9	169	189
	(KCAL)	2.6	2.1	40	45
AMOUNT OF DIGESTIBLE CONSTITUENTS PER 100 G	GRAM	0.55	0.20	10.10	
ENERGY VALUE (AVERAGE) OF THE DIGESTIBLE FRACTION PER 100 G EDIBLE PORTION	KJOULE	9.1	8.1	169	186
	(KCAL)	2.2	1.9	40	43

WASTE PERCENTAGE AVERAGE 0.00

CONSTITUENTS	DIM	AV	VARIATION			AVR	NUTR. DENS.	MOLPER
WATER	GRAM	87.70	83.70	-	89.20	87.70	GRAM/MJ	470.95
PROTEIN	GRAM	0.65	0.44	-	1.00	0.65	GRAM/MJ	3.49
FAT	GRAM	0.23	0.06	-	0.83	0.23	GRAM/MJ	1.24
AVAILABLE CARBOHYDR.	GRAM	10.10	-	-	-	10.10	GRAM/MJ	54.24
MINERALS	GRAM	0.38	0.33	-	0.43	0.38	GRAM/MJ	2.04
SODIUM	MILLI	1.40	0.70	-	2.30	1.40	MILLI/MJ	7.52
POTASSIUM	MILLI	172.00	124.00	-	199.00	172.00	MILLI/MJ	923.64
MAGNESIUM	MILLI	12.00	7.00	-	16.00	12.00	MILLI/MJ	64.44
CALCIUM	MILLI	15.00	9.00	-	25.00	15.00	MILLI/MJ	80.55
MANGANESE	MICRO	30.00	-	-	-	30.00	MICRO/MJ	161.10
IRON	MILLI	0.27	0.11	-	0.49	0.27	MILLI/MJ	1.45
COBALT	MICRO	9.00	-	-	-	9.00	MICRO/MJ	48.33
COPPER	MICRO	37.00	16.00	-	95.00	37.00	MICRO/MJ	306.09
ZINC	MILLI	0.12	0.06	-	0.20	0.12	MILLI/MJ	0.64
CHROMIUM	MICRO	13.00	-	-	-	13.00	MICRO/MJ	69.81
PHOSPHORUS	MILLI	16.00	14.00	-	19.00	16.00	MILLI/MJ	85.92
BORON	MILLI	0.11	0.01	-	0.21	0.12	MILLI/MJ	0.62
CAROTENE	MICRO	74.00	16.00	-	120.00	74.00	MICRO/MJ	397.38
VITAMIN B1	MICRO	77.00	70.00	-	110.00	77.00	MICRO/MJ	413.49
VITAMIN B2	MICRO	21.00	13.00	-	32.00	21.00	MICRO/MJ	112.77
NICOTINAMIDE	MILLI	0.25	0.20	-	0.33	0.25	MILLI/MJ	1.34
PANTOTHENIC ACID	MILLI	0.16	-	-	-	0.16	MILLI/MJ	0.86
VITAMIN B6	MICRO	28.00	23.00	-	33.00	28.00	MICRO/MJ	150.36
BIOTIN	MICRO	0.80	-	-	-	0.80	MICRO/MJ	4.30
FOLIC ACID	MICRO	35.00	28.00	-	40.00	35.00	MICRO/MJ	187.95
VITAMIN C	MILLI	44.00	32.00	-	53.00	44.00	MILLI/MJ	236.28

CONSTITUENTS	DIM	AV	VARIATION	AVR	NUTR.	DENS.	MOLPERC
ALANINE	MILLI	8.50	1 - - -	8.50	1MILLI/MJ	45.63	
ARGININE	MILLI	72.10	- - -	72.10	MILLI/MJ	387.18	
ASPARTIC ACID	MILLI	29.00	- - -	29.00	MILLI/MJ	155.73	
GLUTAMIC ACID	MILLI	11.30	- - -	11.30	MILLI/MJ	60.68	
GLYCINE	MILLI	1.30	- - -	1.30	MILLI/MJ	6.98	
HISTIDINE	MILLI	1.20	- - -	1.20	MILLI/MJ	6.44	
ISOLEUCINE	MILLI	0.60	- - -	0.60	MILLI/MJ	3.22	
LEUCINE	MILLI	0.50	- - -	0.50	MILLI/MJ	2.69	
LYSINE	MILLI	3.10	- - -	3.10	MILLI/MJ	16.65	
METHIONINE	MILLI	0.30	- - -	0.30	MILLI/MJ	1.61	
PHENYLALANINE	MILLI	3.00	- - -	3.00	MILLI/MJ	16.11	
PROLINE	MILLI	79.00	- - -	79.00	MILLI/MJ	424.23	
SERINE	MILLI	12.90	- - -	12.90	MILLI/MJ	69.27	
THREONINE	MILLI	1.80	- - -	1.80	MILLI/MJ	9.67	
TYROSINE	MILLI	1.10	- - -	1.10	MILLI/MJ	5.91	
VALINE	MILLI	1.70	- - -	1.70	MILLI/MJ	9.13	
VOLATILE ACID	MILLI	21.00	10.00 - 30.00	21.00	MILLI/MJ	112.77	
MALIC ACID	GRAM	0.16	0.12 - 0.19	0.16	GRAM/MJ	0.86	
CITRIC ACID	GRAM	1.00	0.70 - 1.20	1.00	GRAM/MJ	5.37	
ISOCITRIC ACID	MILLI	8.80	4.40 - 17.60	8.80	MILLI/MJ	47.26	
GLUCOSE	GRAM	2.50	2.10 - 2.90	2.50	GRAM/MJ	13.43	
FRUCTOSE	GRAM	2.60	2.00 - 3.40	2.60	GRAM/MJ	13.96	
SUCROSE	GRAM	3.90	2.70 - 4.80	3.90	GRAM/MJ	20.94	
PECTIN	MILLI	54.00	28.00 - 83.00	54.00	MILLI/MJ	289.98	
EXTRACT	GRAM	12.30	10.80 - 14.30	12.30	GRAM/MJ	66.05	

APFELSINEN-DICKSAFT (ORANGENDICKSAFT, ORANGENKONZENTRAT)

ORANGE JUICE, CONCENTRATE

JUS CONCENTRÉ D'ORANGES

		PROTEIN	FAT	CARBOHYDRATES	TOTAL
ENERGY VALUE (AVERAGE) PER 100 G EDIBLE PORTION	KJOULE	39	57	890	986
	(KCAL)	9.4	14	213	236
AMOUNT OF DIGESTIBLE CONSTITUENTS PER 100 G	GRAM	2.02	1.31	53.20	
ENERGY VALUE (AVERAGE) OF THE DIGESTIBLE FRACTION PER 100 G EDIBLE PORTION	KJOULE	33	51	890	975
	(KCAL)	8.0	12	213	233

WASTE PERCENTAGE AVERAGE 0.00

CONSTITUENTS	DIM	AV	VARIATION			AVR	NUTR. DENS.		MOLPE
WATER	GRAM	36.80	34.50	-	38.10	36.80	GRAM/MJ	37.75	
PROTEIN	GRAM	2.38	2.05	-	2.71	2.38	GRAM/MJ	2.44	
FAT	GRAM	1.46	-	-	-	1.46	GRAM/MJ	1.50	
AVAILABLE CARBOHYDR.	GRAM	53.20	-	-	-	53.20	GRAM/MJ	54.57	
MINERALS	GRAM	2.23	1.31	-	2.94	2.23	GRAM/MJ	2.29	
SODIUM	MILLI	43.00	7.00	-	67.00	43.00	MILLI/MJ	44.11	
POTASSIUM	MILLI	674.00	633.00	-	873.00	674.00	MILLI/MJ	691.34	
MAGNESIUM	MILLI	83.00	28.00	-	137.00	83.00	MILLI/MJ	85.14	
CALCIUM	MILLI	34.00	17.00	-	50.00	34.00	MILLI/MJ	34.87	
CHLORIDE	MILLI	68.00	40.00	-	96.00	68.00	MILLI/MJ	69.75	
CAROTENE	MILLI	-	0.30	-	1.80				
VITAMIN C	MILLI	225.00	112.00	-	364.00	225.00	MILLI/MJ	230.79	
TOTAL ACIDS	GRAM	6.11	3.92	-	8.29	6.11	GRAM/MJ	6.27	
INVERT SUGAR	GRAM	32.30	28.50	-	36.10	32.30	GRAM/MJ	33.13	
SUCROSE	GRAM	14.80	8.78	-	20.90	14.80	GRAM/MJ	15.18	
EXTRACT	GRAM	63.30	60.90	-	65.60	63.30	GRAM/MJ	64.93	
INSOLUBLE RESIDUE	GRAM	1.29	0.81	-	1.76	1.29	GRAM/MJ	1.32	

Exhibit I

1	2
36.122 36.218	Classification of frozen concentrated orange juice with added calcium (Reservation by the US Administration).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Following the decision taken by the Council at its 75th/76th Sessions, the Committee re-examined the question of the classification of frozen concentrated orange juice with added calcium, on the basis of Docs. 36.122 and 36.218.

2. The U.S. Delegate expressed the following views in support of the classification of the product in heading 20.09 :

2.1. The product in question was produced, marketed and sold as orange juice. The product retained the original character of orange juice and was not distinguishable from normal types of orange juice.

2.2. The Explanatory Note to heading 20.09 could not be construed as prohibiting the addition of citric and malic acids to fruit juices. The information from the manufacturer showed that the balance of the constituents of the product was within the range of natural orange juice. Furthermore, the addition of calcium was made for a subsidiary nutritional purpose and could not be considered to affect the product's nature and commercial identity as orange juice.

2.3. The product was not intended to be used to manufacture an orange juice based beverage of Chapter 22, but rather to be processed to produce 100% orange juice of heading 20.09.

2.4. Whether the product was drinkable at the time of importation was irrelevant to its classification in view of the fact that concentrates of juice were also covered by heading 20.09 and were not normally drinkable in their imported condition.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

2.5. Since the product met the requirements of the legal text of heading 20.09, it could be classified in that heading without any problems. Even under the present Explanatory Note, the addition of certain substances was allowed, provided that the original character of the juice was maintained. However, if the Committee felt that the addition of a minor substance, such as calcium, was not allowed under the existing Explanatory Note, the problem lay in the Explanatory Note and not in the Nomenclature.

3. Another delegate stated that since the product had the same taste, flavour and texture as natural orange juice and thus the original character had not been lost, the product should be classified in heading 20.09.

4. Several delegates argued that classification should be determined primarily on the basis of the legal provisions. In their view if a product was specifically referred to in a heading text, the product should be classified in that heading, irrespective of the text of the relevant Explanatory Notes. In the case at hand, since the product had the character of orange juice and conformed to the terms of heading 20.09, it should be classified in that heading. If the Explanatory Notes were deemed too restrictive and discrepancies between the Nomenclature and the Explanatory Notes could be identified, the situation should be remedied by amending the Explanatory Notes.

5. Other delegates who favoured classification in heading 21.06 challenged the arguments mentioned above. They stated that consideration as to whether the product was drinkable at the time of importation was a minor issue. In their opinion, the major point was that, as a result of the addition of various substances, the balance of the constituents that existed in natural juices had been altered. In view of (1) the fact that 14 times more calcium and 70% more combined citric and malic acids had been added and (2) the processes necessary to render the concentrate drinkable, the product could no longer be regarded as orange juice concentrate within the meaning of heading 20.09. Under the present Explanatory Note to that heading, such a product was explicitly excluded. In this connection, they drew the Committee's attention to the examples of concentrated fruit juice preparations mentioned in the Explanatory Note to heading 21.06. They urged the Committee to re-confirm the decision taken at the Fourth Session.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

6. Several delegates expressed serious concerns about the observations in paragraph 4 above. They considered that such a departure from the Explanatory Notes was not appropriate. In their view, what was stated in the Explanatory Note to a heading reflected the intended scope of that heading and could not be ignored in determining the classification of products under that heading.

7. When a vote was taken as to whether or not the product in question should be classified in heading 20.09 under the existing Nomenclature, 4 delegates voted in favour of heading 20.09, whereas 14 delegates voted against that heading. As regards the appropriate classification of the product, when given the choice between heading 21.06 and any heading other than 20.09, the Committee decided in favour of heading 21.06 by a vote of 13 to 0.

8. The Committee then considered what measures should be taken in the future. Various opinions were again expressed.

9. One view was that the Committee should decide, at this session, whether the particular type of product in question should be regrouped in heading 20.09 in the future. On the basis of the Committee's decision, the Secretariat should then be instructed to initiate a study with a view to enabling this product to be classified in that heading.

10. Another view was that the Committee should not take a decision at the present session as to whether such a product should be transferred to heading 20.09 in the future. The Secretariat should first carry out a study on the possibility of widening the scope of heading 20.09, taking into account not only the product at issue, but also the current trade situation with respect to other newly developed juice products containing added substances. The Committee could then take a decision, at a future session, with respect to the scope of heading 20.09, on the basis of the Secretariat's study.

11. After a lengthy discussion, the Committee agreed to ask the Secretariat to initiate a study as described in paragraph 10 above (on the basis of information already provided and to be provided by administrations) on the possibility of amending the Explanatory Notes and/or the Nomenclature to reflect changes in the trade of fruit juice.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

12. In this regard, Mr. Asakura emphasized the need for information from administrations if the Secretariat was to successfully carry out the afore-mentioned study. He therefore urged delegates to provide information concerning the technical and commercial aspects of trade in fruit juices (e.g., composition, additives used, manufacturing processes, commercial practices), together with specific proposals for amendments to the Explanatory Notes and/or the Nomenclature.

x

x x

Exhibit J

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

APR - 8 1991

CO:R:I
088756 MBH

Ms. J.A. Burkham
Customs Administrator
The Procter and Gamble Company
P.O.Box 599
Cincinnati, Ohio 45201

Dear Ms. Burkham:

This is in response to most recent submissions of December 3, 1990, and December 17, 1990, requesting a ruling concerning the tariff classification of calcium enriched frozen orange juice concentrate for manufacture.

FACTS:

The merchandise at issue is frozen concentrated orange juice for manufacturing (FCOJM). In this instance, however, the FCOJM is supplemented with calcium for nutritional purposes. Specifically, 670 milligrams of calcium in the form of calcium hydroxide is to be added to 100 grams of 65 degree Brix FCOJM. Calcium amounts to approximately 6 tenths of one percent of the imported product by weight. Since calcium is present in trace amounts in oranges, this amount added represents thirteen times the amount normally found in the product.

In addition to the calcium added, citric and malic acid are added to the mixture. The reason for the addition of these acids is stated to be to counter the undesirable flavor effects of the added calcium, to increase the physical stability of the orange juice and to help prevent the precipitation of the calcium. Most of the additional acid added is neutralized. Thus in terms of the free acid present in the product, it is claimed that there is actually slightly less acid than is normally present in FCOJM to which calcium has not been added. A patent for the process of adding the calcium has been obtained.

After importation, the product is mixed with orange oil, orange essence, pulp and water to make orange juice at retail. In all but one state of the United States, the product is marketed at retail as 100 percent orange juice fortified with calcium.

The classification of this product under the Harmonized System has been the subject of two decisions of the Harmonized System Committee of the Customs Cooperation Council (CCC) in Brussels. At its fourth session in October 1989, the Committee determined that this product was classifiable in heading 2106 as a food preparation not elsewhere specified or included rather than in heading 2009 as orange juice. The United States was among those contracting parties which voted for classification in heading 20.09. Subsequent to the decision, the United States entered a reservation to the decision of the Harmonized System Committee, pursuant to Article 8 of the Harmonized System Convention. In accordance with Article 8, the CCC referred the question back to the Harmonized System Committee for reexamination at its sixth session in October 1990. At that session, the Committee reaffirmed its prior decision.

ISSUE:

Whether the addition of calcium to orange juice as a nutritional supplement is consistent with classification of the product as orange juice within the meaning of heading 20.09, Harmonized Tariff Schedule of the United States (HTSUS).

LAW AND ANALYSIS:

Heading 20.09, HTSUS provides in pertinent part for fruit juices whether or not containing added sugar or other sweetening matter. The merchandise at issue is commercially known as frozen concentrated orange juice for manufacturing. It therefore is **prima facie** within the scope of heading 20.09.

The importer claims that this product is not classifiable as orange juice but rather is classifiable in heading 2106 as a food preparation not elsewhere specified or included. It is clear that under Rule 1 of the General Rules of Interpretation to the Harmonized Tariff Schedule, if heading 2009 may be said to describe the merchandise, heading 2106 is inapplicable because the merchandise is elsewhere specified. Thus the pivotal question is whether the product is within the scope of heading 20.09.

The importer's position is based on his interpretation of the Explanatory Notes to heading 20.09. In a Federal Register Notice dated August 23, 1989, the Customs Service cited the following portion of the report of the Joint Committee on the Omnibus Trade and Competitiveness Act of 1988:

The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized system. They provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system.

The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the CCC's Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

54 Fed Register at 35128.

The relevant portion of the Explanatory Notes to heading 20.09 provides as follows:

Provided they retain their original character, the fruit or vegetable juices of this heading may contain substances of the kinds listed below, whether these result from the manufacturing process or have been added separately:

(1) Sugar.

(2) Other sweetening agents, natural or synthetic, provided that the quantity added does not exceed that necessary for normal sweetening purposes and that the juices otherwise qualify for this heading, in particular as regards the balance of the different constituents (see Item (4) below).

(3) Products added to preserve the juice or to prevent fermentation (e.g., sulphur dioxide, carbon dioxide, enzymes).

(4) Standardizing agents (e.g., citric acid, tartaric acid) and products added to restore constituents destroyed or damaged during the manufacturing process (e.g., vitamins, colouring matter) or to fix the flavor (e.g. sorbitol added to powdered or crystalline citrus fruit juices). However, the heading excludes fruit juices in which one of the constituents (citric acid essential oil, extracted from the fruit, etc.) has been added in such quantity that the balance of the different constituents as found in the natural juice is clearly upset; in such case the product has lost its original character.

(Emphasis in original)

The importer claims that the addition of calcium to the product upsets the balance of the constituents in the juice within the meaning of the Explanatory Note. The addition of the citric and malic acid is also claimed to have this effect.

The Explanatory Notes to heading 20.09 provide examples of a change in the balance of the constituents. For example, where more water than is necessary to reconstitute the juice is added, a diluted product having the character of a beverage of heading 22.02 such as orangeade or orange drink generally results. Similarly, the addition of more carbon dioxide than is normally present in the juice generally creates a product which is carbonated fruit juice and is no longer commercially known as juice. Thus where a substance has been added to give the product the character of a product of another heading, the product is no longer classifiable in heading 20.09.

The addition of citric and malic acid do not have an effect comparable to the foregoing examples. The brix-acid ratio, the balance between the titratable acid content and the sugars in the instant product is 19.3 which is consistent with U.S. Department of Agriculture standards for orange juice at retail. Of equal significance, the citric and malic acid added to the product in addition to making the calcium available nutritionally, act as a standardizing agent to balance the taste of the calcium that is, in order to fix the flavor of the product to be indistinguishable from orange juice to which calcium has not been added. As the patent for the process makes clear, "the ratio of citric acid to malic acid is selected to provide the optimum flavor character in the juice" that is, to mirror the particular type of juice desired. Accordingly, neither the role of the acid nor its amount change the classification of the instant product.

It is clear that there is more calcium than normally present in orange juice. However, calcium is only naturally present in orange juice in trace amounts, (approximately .05%). An increase of a factor of thirteen yields a very small amount of calcium in the product. In addition, the added calcium is merely

a nutritional supplement to the juice. In terms of the effect on the character of the juice, the addition of calcium is ***de minimis***.

HOLDING:

The instant merchandise is classifiable under the provision for fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter: orange juice: frozen, in subheading 2009.11.00, Harmonized Tariff Schedule of the United States, dutiable at the rate of 9.25 cents per liter.

In view of the decision of the Harmonized System Committee on this issue and in the interest of uniformity of application of the Harmonized System, the Custom Service has requested the International Trade Commission pursuant to section 1205 of the Omnibus Trade Act of 1988 to make such changes in the Harmonized Tariff Schedule of the United States as may be necessary or appropriate to promote uniformity of application by conforming the HTS to the CCC decision. Should those changes be made, you may wish to resubmit your request for ruling.

Sincerely,

Harvey B. Fox
Director
Office of Regulations and Rulings

Exhibit K

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

April 4, 1991

CO:R:I MBH

Dear Chairman Brunsdale:

As you know, pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the International Trade Commission is charged with keeping the Harmonized Tariff Schedule of the United States (HTSUS) under continuous review and, as circumstances warrant, to promote the uniform application of the Harmonized System Convention and particularly the annex thereto. The purpose of this letter is to bring to your attention a matter which we believe warrants the exercise of this authority.

At its fourth session in October 1989, the Harmonized System Committee of the Customs Cooperation Council (CCC) examined the classification of certain orange juice which was fortified with calcium. After discussion, the Committee voted to classify the product as a food preparation not elsewhere specified or included in heading 21.06 rather than as orange juice of heading 20.09. The United States entered a reservation to this decision, pursuant to Article 8 of the Harmonized System Convention, setting forth its view that the addition of calcium to the product did not change the classification of the product under the Harmonized System, citing the General Rules of Interpretation to the system and the heading text.

In accordance with Article 8 of the Convention, the Customs Cooperation Council referred the question back to the Harmonized System Committee for reexamination at its sixth session in November 1990. The United States presented at considerable length the basis for its view that the addition of calcium did not alter the classification of the product. After discussion, however, the Committee affirmed its previous decision that the product was not classified as orange juice.

The United States Customs Service continues to be of the opinion that the product that was the subject of these decisions is properly classifiable as orange juice

under the Harmonized System and under the Harmonized Tariff Schedule of the United States. However, in the interest of uniformity of application of the Harmonized System Convention, the Customs Service would like to be able to classify the product under the U.S. tariff in accordance with the HSC decision. Accordingly, we request that the Commission recommend to the President such modifications as are necessary or appropriate to promote the uniform application of the Harmonized System Convention by conforming the HTSUS to the CCC decision.

Your attention to this matter is appreciated.

Sincerely,

Carol Hallett
Commissioner

The Honorable
Anne E. Brunsdale
Acting Chairman
United States International Trade Commission
Washington, D.C. 20436

Exhibit L

SANDLER, TRAVIS & ROSENBERG, P.A.

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JOHN LEWIS
CHANDRI NAVARRO
TRADE ADVISORS

STANLEY I. DEUTSCH*
OF COUNSEL

*NOT ADMITTED IN FL

May 6, 1991

RECEIVED
OFC OF THE SECRETARY
U.S. INT'L TRADE COMMISSION
'91 MAY 10 [illegible]

VIA FEDERAL EXPRESS

Commissioner Carol Hallett
United States Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Calcium Fortified Orange Juice Preparation
Your Reference: 088756

Dear Commissioner Hallett:

On behalf of our client, The Procter & Gamble Company, we wish to thank you for meeting with us in Washington on Wednesday to consider various issues arising from the ruling issued by the Customs Service on April 8, 1991.

We have respectfully requested that the Customs Service reconsider that decision and take the following actions:

1. Issue a new decision holding the calcium fortified frozen orange juice preparation is classifiable as a food preparation under Heading 21.06 of the Harmonized Tariff Schedules, and

2. Advise the International Trade Commission that it need not proceed to recommend modification of the Tariff Schedules under Section 1205 because the Customs Service has issued a classification decision which is consistent with the international interpretation of the Harmonized Code.

We believe that the Customs classification ruling is inconsistent with the facts: the calcium, citric acid and malic acid components create a new patented product which is not considered as orange juice under Customs Service rulings under both the current Harmonized Tariff Schedule and the predecessor

Schedules; CCC Rulings under the Harmonized System, FDA standards, Department of Agriculture standards, Commodity Future Trading standards, etc. It is not orange juice by common or commercial meaning, by composition or by physiological effect.

We also believe the International Trade Commission may not properly modify the statutory Harmonized Tariff Schedules to reverse the Customs decision issued on April 8, 1991. Both Customs and the ITC are required by law to classify the product in accordance with "sound nomenclature principles". This requires Customs to elect between Headings 20.09 and 21.06. If "sound nomenclature principles" require classification under Heading 20.09, neither Customs nor the ITC are authorized to break out a new provision for this article from Heading 21.06. Such a conclusion by Customs establishes that the 1205 apparatus is not available for amendment of the statute: 1205 expressly prohibits any change which is not consistent with "sound nomenclature principles". 19 U.S.C. § 3005(d)(1)(B).

Concern has been expressed that the statute does not provide the degree of tariff protection which the domestic industry desired. While we do not believe that is so, we also believe that the role of Customs remains limited to interpreting the law as written, not as it might have been written. The tariff rate was set by Congress and can be raised by Congress.

The enclosed memorandum sets forth our position in more detail.

We appreciate the opportunity which you have extended to us and we are most hopeful that after consideration of our submissions that the Customs Service will adopt the course we have requested.

Sincerely yours,

SANDLER, TRAVIS & ROSENBERG, P.A.

By: _____
Gilbert Lee Sandler

GLS/vjc
81100CC1
Enclosure

cc: √Sam Banks, Assistant Commissioner
Office of Commercial Operations

Harvey Fox, Director
Office of Regulations & Rulings

Myles Harmon, Esq.

SANDLER, TRAVIS & ROSENBERG, P.A.
ATTORNEYS AT LAW

MEMORANDUM

REPLY TO:

This memorandum is filed in support of our request for reversal of Headquarters Ruling 088756 MBH of April 8, 1991. The ruling holds that certain "calcium enriched frozen orange juice concentrate for manufacture" is classifiable for tariff purposes under Heading 20.09, but that the International Trade Commission should recommend reclassification of the product under Tariff Heading 21.06.

We request that the Customs Service take the following actions:

1. Issue a new decision holding that the calcium fortified frozen orange juice concentrate is classifiable as a "food preparation" under Heading 21.06 of the Harmonized Tariff Schedules, and

2. Advise the International Trade Commission that it need not proceed to recommend modification of the Tariff Schedules because the United States Customs Service has issued a classification decision consistent with the international interpretation of the Harmonized Code.

The remainder of this memorandum will set forth the basis upon which we request reversal of the decision.

The Classification Decision

The decision rests upon two factual determinations. First, it held that "the merchandise at issue is commercially known as frozen concentrated orange juice for manufacturing ["FCOJM"]. It therefore is prima facie within the scope of the Heading 20.09."

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(page 2). No authority is cited for this finding. In fact, by definition, it is in conflict with FDA standards, USDA standards and Commodity Futures Market standards.

Second, it was held that "the added calcium is merely a nutritional supplement to the juice. In terms of the effect on the character of the juice, the addition of calcium is de minimis". (pages 4-5). This conclusion was reached without discussion of the scientific and commercial information which demonstrates that the patented process by which calcium, citric acid and malic acid are introduced to create a new patented product have the substantial impact of creating a product different than orange juice by definition, composition and physiological effect.

The decision cites no U.S. legal authority to support its findings. The decision cites no prior U.S. Customs decision, Court decision, legislative history or other authoritative pronouncement. Instead, it rests entirely upon an interpretation of the Explanatory Notes adopted by the CCC, as part of the Harmonized Code and as previously adopted under the Brussels Nomenclature.

In spite of the fact that the CCC Nomenclature Committee has issued two decisions holding that the processing and composition of this product are sufficient to remove it from the "orange juice" classification and place it into the "food preparation" classification, this ruling reaches the opposite conclusion: "The addition of citric and malic acid do not have an effect comparable

to the foregoing [Explanatory Notes] examples. * * * Accordingly, neither the role of the acid or its amount change the classification of the instant product." (page 4)

The CCC decision rests upon the clear and plain language of the Explanatory Notes themselves, limiting "orange juice" to products which "retain their original character" and excluding any product in which the "balance of the different constituents as found in the natural juice is clearly upset". The U.S. Customs decision rest upon a different test which was fashioned by extracting principles from the examples to the Explanatory Notes.

We submit that as a matter of law, the decision is completely inconsistent with precedents under the United States law, none of which are addressed in the decision. Finally, we submit that any quarrel that the United States Customs Service has with the official interpretation of the CCC Explanatory Notes is a matter to be addressed at the CCC and not through the Customs Service ruling process.

The Product

The product to be imported has been subjected to a patented process which blends a unique combination of three components into the concentrate: calcium hydroxide (a material which is not found in orange juice) and citric acid and malic acid (such that the final product has 50% more total acids and fourteen times the quantity of calcium). The process causes a chemical reaction

between the calcium hydroxide and other components, resulting in formation of a mixture known as calcium citrate malate, which also is not found in orange juice. By composition it is not orange juice.

It's physiological effects are different than orange juice. Rather than contain trace amounts of calcium, it contains 20% of the U.S. daily recommended allowances for calcium. Scientific studies submitted to the Customs Service establish that the new relationship between the malic acid, calcium and orange juice components of the product give it unique characteristics of calcium absorption and iron absorption. As a result, it has substantially increased health and nutritional benefits and is bought and sold with entirely distinct and different health and nutritional needs in mind. This is a new and different product than orange juice.

The April 8, 1991 decision dismisses the patents on the manufacturing process and on the product itself as "de minimis", relying instead upon the taste of the retail product created after importation. There is no foundation in fact for that conclusion and it should be reversed.

The Classification Law

There are at least eight legal bases which establish that the product is not "orange juice" for tariff purposes. There is no articulated legal standard for concluding otherwise.

First, the heading itself establishes the types of acceptable

additives to "orange juice" under the Tariff Schedules: "sugar or other sweetening matter". Statutory language which expands a tariff provision to include named additives has long been interpreted in the United States to exclude other unnamed additives. General Electric Company v. United States, 83 Cust. Ct. 56, CD-4822 (1979) and Montgomery Ward & Co. Inc. v. United States, 74 Cust. Ct. CD-4596 (1975). The plain language of the statutory provision excludes orange juice fortified with calcium.

Second, the product is not "orange juice" under Food and Drug Administration Regulations. 21 CFR §§ 146.145 and 145.153.

Third, the product is not frozen concentrated orange juice for manufacture under United States Department of Agriculture Regulations of 7 CFR § 52.1551, et. seq.

Fourth, the product is not orange juice for purpose of the Commodities Futures Market. See the enclosed letter from Cargill and By Laws and Rules, Citrus Association of the New York Cotton Exchange, Inc.

Fifth, the product is not orange juice under Florida State law which requires that it be designated as a "beverage" and not as "orange juice". Florida Statute 601.9909.

Sixth, the product is not "orange juice" under the historic interpretation of that term by the Customs Service as it appeared in the Tariff Schedules. "Orange juice" has always been defined in conformity with the Food and Drug Administration Regulations. See,

CSD 84-117 and Headquarters Ruling 077377 of December 23, 1985. Since it is established that the subject product is not "orange juice" under the Food and Drug Administration standards, it must be concluded that historically it would not have been classified as "orange juice" in the United States.

Seventh, under the current Harmonized Tariff Schedules, the United States Customs Service has consistently held that additives far less significant than the calcium, citric acid and malic acid in this product are sufficiently significant to remove beverages from the tariff classifications which describe them. Flavored beer is not classifiable as "beer made from malt" in Heading 22.03. (Headquarters Ruling 084708 of July 21, 1989). Vitamin enriched water is not classifiable as water or other non-alcoholic beverages in Heading 22.02. (Headquarters Ruling 086942 of November 14, 1990). Rum with added flavoring is not classifiable as rum under Subheading 2208.40.00. (Headquarters Ruling 085406 of March 2, 1990). The minimal standard for additives applied by the Customs Service for other products is far exceeded by the scope of the patented process and the resulting new health and nutritional benefits of the additives in this product. Clearly the decision by Customs to treat the calcium, citric acid and malic acid as de minimis is completely inconsistent with the most recent precedents of the United States Customs Service.

Eighth, the product is not orange juice under the Explanatory

Notes to Heading 20.09. The Explanatory Notes limit juices with additives to those products in which the additives permit the juices to "retain their original character". The Explanatory Notes also state that the "original character" is lost where the "balance of the different constituents as found in the natural juice is clearly upset".

The addition of large quantities of calcium, citric acid and malic acid causes a significant chemical reaction to occur in the juice, resulting in a change in chemical composition and causing the product to lose its original character. The balance of the different constituents has been clearly altered. The dramatic increases in calcium content (from about a percent of the U.S. recommended daily allowance to 20%) far exceeds the minimal change permitted by the Explanatory Notes. The limits are also exceeded by the change in the citric acid/malic acid ratio of 80/20 in commercial FCOJM to a ratio of approximately 57/43 found in the calcium fortified product. Thus, the product has not retained its original character because the calcium, citric acid and malic acid have been added in such quantities that the balance of the different constituents as found in the natural juice is clearly upset.

The product does not fall within the common or commercial meaning of "orange juice", the legal standard or the past practices for interpreting either the Harmonized Tariff Schedules or our

predecessor statute. Consistent with sound nomenclature principles, the product is properly classifiable for tariff purposes as a "food preparation" under Heading 21.06.

The 1205/1206 Procedure

The decision holds that the principles of classification, as interpreted under the Explanatory Notes of the CCC, require classification under Heading 20.09. However, it thereafter concludes that the ITC should use its authority under Section 1205 of the Omnibus Trade Act of 1988 to change the Tariff Schedules "in view of the decision of the Harmonized System Committee on this issue and in the interest of uniformity of application of the Harmonized System." (page 5) It is stated that this change "may be necessary or appropriate to promote uniformity of application by conforming the HTS to the CCC decision." (page 5)

On its face, the conclusion is legally deficient. It violates the statutory restriction against use of 1205/1206 for purposes inconsistent with "sound nomenclature principles" or not ensuring rate neutrality 19 U.S.C. § 3005(a)(1)(B) and (C).

The decision invokes the 1205/1206 authority based upon only two predicates: 1) the inconsistency of the decision of the Harmonized System Committee with the decision of the Customs Service, and 2) the interest in uniformity of application of the Harmonized System. These findings satisfy one of the five purposes for which the 1205/1206 procedure was created: "to promote the

uniform application of the Convention and particularly the Annex thereto". 19 U.S.C. § 3005(a)(2). However, they do not address the requirements that any 1205/1206 recommendation must be consistent with nomenclature principles, and must be rate neutral. These requirements cannot be met.

The violation of "sound nomenclature principles" is certainly a matter of record and should be conceded by Customs. If Customs -- in defiance of two CCC rulings and the clear language of the Explanatory Notes, and without recitation of a single historic precedent under United States law -- ruled nonetheless that this product falls under Heading 20.09, it obviously has concluded that "sound nomenclature principles" dictate its conclusion. These circumstances leave no possibility for a good faith assertion by the United States Customs Service that the same "sound nomenclature principles" will be served by shifting classification of the product into Heading 21.06, the Heading rejected by Customs on April 8, 1991.

This obvious impediment to the 1205/1206 process was, in substance, conceded by the writer of the April 8, 1991 decision, at a meeting in Washington, D.C. on May 1, 1991. In discussing this issue, Myles Harmon specifically stated that the process was being invoked to promote consistency, but that he continues to disagree with the reasoning and conclusion of the CCC Nomenclature Committee. It is clear that the United States Customs Service, to

the extent that it adheres to the April 8, 1991 decision -- is of the opinion that any classification under 21.06 is inconsistent with sound nomenclature principles.

The Congress did not give blanket authority to the ITC and the President to move products around under the Tariff Schedules in order to assess them at the rates of duty perceived by the Customs Service to be the correct ones. It did not delegate blanket authority to correct every inconsistency. It instead gave a very limited delegation of authority to make adjustments in the Tariff Schedules to make the U.S. consistent with sound nomenclature principles.

Further, any invocation of 1205/1206 would violate the requirement that the provision be used only to ensure substantial rate neutrality. The recommendation by Customs would cause merchandise which signatories to the Harmonized Code regard as assessable with duty under Heading 21.06 to be subjected to a new and higher rate of duty under a breakout of Heading 21.06. This shift is not rate neutral, it is a substantial rate increase.

Consequently the recommended action would violate two of the expressed provisions of the statute. Customs should not make such a recommendation; the International Trade Commission should not act favorably on such a recommendation; the President should not issue a proclamation in response to any such recommendation.

Trade and Tariff Policy Considerations

We have no doubt that Customs is keenly interested in implementing the Harmonized Tariff Schedules in a manner which is consistent with the international interpretation and application of the Harmonized System. We cannot help but puzzle over the current situation where despite that strong inclination, the Customs Service has elected to issue an inconsistent ruling based upon a completely subjective interpretation of the Explanatory Notes and without recitation of a single precedent under United States law.

Our surmise is that the Customs Service is concerned that the Harmonized System has failed to give the degree of tariff protection to which the domestic orange juice industry claims it is entitled. Our surmise is not entirely speculative; it is based at least in part upon publicity regarding the tariff rate implications of this classification issue from the Florida citrus industry and reported communications on tariff implications from U.S. Trade Representative Carla Hills. Under the circumstances, it is appropriate to address the tariff rate impact as an issue.

Matters of tariff rates are highly sensitive. The rates set forth in Headings 20.09 and 21.06 are bound rates under the GATT. Any increase in those rates subjects the United States to potential retaliation by our trading partners. Accordingly, the rates should not be adjusted upwards unless the ramifications are fully explored, and United States law completely satisfied. In this

case, the issues certainly have not been completely explored, and our laws have not been complied with.

We do not believe that this product was intended by Congress to be subjected to the high tariff provided for orange juice. The product itself is different than the orange juice which is subject to that provision. More significantly, had the Congress wished to free the U.S. law from the clear implication of the Explanatory Notes it could have done so. At the time the Harmonized Code was considered, the Explanatory Notes which require limiting orange juice to the basic, unadulterated product, were well-known and well-established. No known objection was raised to that provision despite the fact, as early as 1983, Florida Citrus Mutual quoted from other portions of the Explanatory Notes in comments filed with the International Trade Commission on the draft Harmonized Code Provisions. E.g., Brief of Florida Citrus Mutual dated April 22, 1983 (U.S.I.T.C. Investigation 332-131), at page 3.

The Harmonized Tariff System as adopted in the United States simply does not provide for this calcium fortified orange juice preparation under the "orange juice" provision. If it is the desire of the domestic orange juice industry to raise the rate of duty on this product, it may do so by seeking an amendment of the statute by the Congress. If it takes exception to the Explanatory Notes or their interpretation (or if Customs takes such exception) -- the U.S. government may seek a change in Brussels.

Customs, is a leading law enforcement agency of the United States Government and not an agency with responsibility for creating trade policy or establishing tariff rates. Accordingly, it should interpret and enforce the law as written and not be influenced by domestic industry claims that it is entitled to assessment of a higher tariff rate on a particular imported product. To the extent that the United States Customs Service or any of its officials are of the opinion that the alleged failure of the Congress to provide a higher duty rate on this product is a mistake which ought to be corrected, we can only comment that satisfaction should be taken in the advice given long ago by President Abraham Lincoln:

> The best way to get a bad law repealed is to enforce it strictly.

CONCLUSION

We urge that the Customs Service enforce the law strictly and correctly. This can only be accomplished by issuing a new decision reversing the decision of April 8, 1991, ruling that the product to be imported is properly classified under Heading 21.06 and advising the United States International Trade Commission that it need take no action on the 1205/1206 request because the Customs Service has now issued a ruling consistent with the Harmonized Code.

GLS/vjc
8110GM

Exhibit M

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

MAY 28 1991

REFER TO

HQ 089369

CLA-2 CO:R 089369 MBH

CATEGORY: Classification

TARIFF NO. 2009.11.00

Gilbert Lee Sandler, Esq.
Sandler, Travis & Rosenberg, P.A.
5200 Blue Lagoon Drive
Miami, Florida 33126-2022

RE: HTSUSA classification of orange juice with calcium

Dear Mr. Sandler:

This refers to your letter of May 6, 1991, to Commissioner Hallett following your meeting with her on the above captioned classification issue on May 1, 1991. The Commissioner has instructed me to respond to your request.

You request that the Customs Service reconsider its ruling 088756, of April 8, 1991, holding that certain calcium enriched orange juice concentrated for manufacture is classified as orange juice under the Harmonized Tariff Schedule of the United States (HTSUS). You also request that the Customs Service advise the International Trade Commission that it need not proceed to recommend a modification to the HTS pursuant to section 1205 of the Trade Act of 1988.

FACTS:

The facts as set forth in Headquarters Ruling 088756 are restated here for ease of reference. The merchandise at issue is frozen concentrated orange juice for manufacturing (FCOJM). In this instance, however, the FCOJM is supplemented with calcium for nutritional purposes. Specifically, 670 milligrams of calcium in the form of calcium hydroxide is to be added to 100 grams of 65 degree Brix FCOJM. Calcium amounts to approximately 6 tenths of one percent of the imported product by weight. Since calcium is present in trace amounts in oranges, this amount added represents thirteen times the amount normally found in the product.

In addition to the calcium added, citric and malic acid are added to the mixture. The reason for the addition of these acids is stated to be to counter the undesirable flavor effects of the added calcium, to increase the physical stability of the orange juice and to help prevent the precipitation of the calcium. Most of the additional acid added is neutralized. Thus in terms of the free acid present in the product, it is claimed that there is actually slightly less acid than is normally present in FCOJM to which calcium has not been added. A patent for the process of adding the calcium has been obtained.

After importation, the product is mixed with orange oil, orange essence, pulp and water and packaged for retail sale. In all but one state of the United States, the product is marketed at retail as 100 percent orange juice fortified with calcium.

The classification of this product under the Harmonized System has been the subject of two decisions of the Harmonized System Committee of the Customs Cooperation Council (CCC) in Brussels. At its fourth session in October 1989, the Committee determined that this product was classifiable in heading 2106 as a food preparation not elsewhere specified or included rather than in heading 2009 as orange juice. The United States was among those contracting parties which voted for classification in heading 20.09. Subsequent to the decision, the United States entered a reservation to the decision of the Harmonized System Committee, pursuant to Article 8 of the Harmonized System Convention. In accordance with Article 8, the CCC referred the question back to the Harmonized System Committee for reexamination at its sixth session in October 1990. At that session, the Committee reaffirmed its prior decision.

In a decision dated April 8, 1991, the Customs Service determined that the instant merchandise is classifiable under the provision for fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter: orange juice: frozen, in subheading 2009.11.00, Harmonized Tariff Schedule of the United States, dutiable at the rate of 9.25 cents per liter.

In view of the decision of the Harmonized System Committee on this issue and in the interest of uniformity of application of the Harmonized System, the Custom Service requested the International Trade Commission pursuant to section 1205 of the Omnibus Trade Act of 1988 to make such changes in the Harmonized Tariff Schedule of the United States as may be necessary or appropriate to promote uniformity of application by conforming the HTS to the CCC decision.

ISSUE:

Whether Headquarters Ruling Letter 088756 correctly held that the instant product is classifiable as orange juice under the Harmonized Tariff Schedule of the United States.

Whether the referral of this matter to the ITC was appropriate under section 1205 of the Trade Act of 1988.

LAW AND ANALYSIS:

The Classification Issue

In taking issue with the decision by the Customs Service counsel advances a number of arguments which are claimed to demonstrate that the instant product is not orange juice. First it is stated that the terms of heading 20.09 restrict the additives to orange juice to sugar or other sweetening matter. Counsel states that statutory language which expands a tariff provision to include named additives has long been interpreted in the United States to exclude other unnamed additives. For this proposition, counsel cites General Electric Company v. United States, 83 Cust Ct. 56 CD 4822 (1979) and Montgomery Ward & Co. v. United States, 74 Cust. Ct. CD 4596 (1975). We cannot agree with this view of the scope of the heading. Under this reasoning, products added to preserve the juice or to prevent fermentation such as sulphur dioxide or carbon dioxide or enzymes could not be added. Nor could salt, spices or flavoring substances be added. Nevertheless, the addition of all of these substances is explicitly permitted under the Explanatory Notes to heading 20.09.

Secondly, the decisions in General Electric and Montgomery Ward in no way suggest a different conclusion. The merchandise at issue in each case was tubeless clock radios. Customs had classified the merchandise under a provision for radio receivers in item 685.23, TSUS. The court sustained the Customs classification, noting that the superior heading contained the phrase "whether or not incorporating clocks or other timing apparatus". In reaching this conclusion, the court simply held that the phrase "whether or not" pertained to all of the different types of articles which were enumerated. We are unable to discern the relevance of the cases cited to the merchandise at issue. They provide no basis for limiting the scope of the term orange juice as counsel suggests.

Counsel contends that the product is not orange juice under Food and Drug Administration regulations. Counsel states that this product is not orange juice under the "historic definition of the term by the Customs Service" which is always been in conformity with the FDA regulations. Counsel cites CSD 84-117 and Headquarters Ruling 077377 dated December 23, 1985.

Counsel is correct that in CSD 84-117 the Customs Service initially determined that a product consisting of 87 percent orange juice, 10.5 percent orange peel extract and 2.25 percent citric acid and less than one percent total of sodium benzoate was not classifiable as concentrated orange juice under item 165.29 TSUS. However, counsel is apparently unaware of the fact that this decision was subsequently reversed and revoked by the Customs Service. In a decision of October 7, 1987, published in the Federal Register, (hereafter the 1987 decision) the Customs Service held that the product was classifiable as concentrated orange juice under item 165.29 TSUS.

In the 1987 decision, Customs addressed the relevance of the FDA regulations to the classification issue.

> ...The commenter is correct that Customs did not use the FDA regulations to limit the provisions for citrus juice and control the classification of orange juice under the TSUS but had decided that the product could

> not be either commercially or commonly known as orange juice in the U.S. However, after careful analysis and review, Customs has concluded that notwithstanding the presence of additives to the orange juice concentrate based product, the essential character of the product is orange juice concentrate and this product is now covered by the eo nomine provision for other orange juice in item 165.29, TSUS.

52 Fed. Register 37443, 37444 (Emphasis supplied). It is the 1987 decision which clearly articulated Customs position concerning the scope of the term orange juice and the relevance of FDA regulations under the TSUS. Our decision of April 8 under the HTS is entirely consistent with the 1987 decision.

Counsel states that the merchandise is not orange juice under section 601.9909 of the law of the State of Florida. We agree that under the cited section, the product may not be sold as frozen concentrated orange juice, since all additives are prohibited. The existence of the strict Florida labelling requirement is not evidence of the meaning of the tariff term, since the question of the meaning of a term used in the tariff is a question of federal rather than state law. Moreover, since apparently the retail product is marketed as orange juice in the other forty-nine states, it seems that the overwhelming majority of states would consider the product to be orange juice.

Counsel states that under the current Harmonized Tariff Schedule, the Customs Service has "consistently held that additives far less significant than the calcium, citric acid and malic acid in this product are sufficiently significant to remove beverages from the tariff classifications that describe them". Reliance is placed on a decisions involving flavored beer (084708), vitamin enriched water (086942) and flavored rum (085406).

The Harmonized Tariff Schedule does not impose any single standard in determining whether the addition of a substance is consequential for tariff classification purposes. Each product

and each heading must be considered on its own, in light of the particular facts presented. Thus reliance on decisions involving products of other headings is not appropriate. Even assuming arguendo that these decisions were relevant, they do not call for a different result in this case. In 084708, we concluded that the flavored beverage before us was not beer. We stated as follows:

> The beverage at issue is bottled and labelled as "french sparkler" in an effort to compete in the wine cooler market. It is distinct from beer. It does not have the taste, aroma, character of appearance of beer. It is neither commercially nor commonly known as beer. Its market focus is on the wine cooler market, not the beer market, as evidenced by its label, appearance and packaging.

In 086942, the product was a 3.3 fluid ounce bottle containing 20 milligrams of niacin, 5 milligrams each of vitamin B-6 and vitamin B-1 and unspecified amounts of water, sucrose, sorbitol, citric acid, arginine, phosphoric acid, royal jelly, artificial flavors, sodium benzoate and sodium citrate. We concluded that the product was not classifiable as a water of heading 2202 because it was intended to be consumed in small quantities as a food or vitamin supplement and not as a beverage.

Finally, in 085406, the merchandise was rum which was blended with fruit juices, natural flavors, citric acid, sodium citrate, potassium sorbate and benzoate and sodium metibisulfite. We concluded that the addition of all of these substances produced a beverage based on rum, rather than rum itself.

In conclusion, all of the above cases involve products quite different from the merchandise before us. In each case, the product was commercially distinct from the product specified by the original heading under consideration. Moreover, the additions were more significant in relation to the product than those present here.

Lastly, counsel restates the view that the Explanatory Notes to Heading 20.09 require that the instant product be regarded as outside the scope of the heading because of the added calcium and the citric and malic acid. As we stated previously,

it is clear that there is more calcium than normally present in orange juice. However, calcium is only naturally present in orange juice in trace amounts, (approximately .05%). An increase of a factor of thirteen yields a very small amount of calcium in the product. In addition, the added calcium is merely as a nutritional supplement to the juice. While such a nutritional benefit may be desirable, it does not render the product other than orange juice, just as the fortification of milk or breakfast cereals with vitamins does not alter their character.

The addition of citric and malic acid do not require a different result. The brix-acid ratio, the balance between the titratable acid content and the sugars in the instant product is 19.3 which is consistent with U.S. Department of Agriculture standards for orange juice at retail. It also is within the limit provided for in the Florida statute cited by counsel previously. Of equal significance, the citric and malic acid (in addition to making the calcium available nutritionally), act as a standardizing agent to balance the taste of the calcium. They serve to fix the flavor of the product to be indistinguishable from orange juice to which calcium has not been added. As the patent for the process makes clear, "the ratio of citric acid to malic acid is selected to provide the optimum flavor character in the juice"; that is, to mirror the particular type of juice desired. Standardizing agents are explicitly permitted by the Explanatory Notes to heading 20.09. We remain of the view that neither the role of the acid nor its amount change the classification of the instant product.

In sum, having carefully considered counsel's submission on the classification of the product, we find no basis to change our conclusion that the instant product is orange juice for tariff purposes.

Referral to the International Trade Commission

In its previous decision, the Custom Service stated that it had requested the International Trade Commission pursuant to section 1205 of the Omnibus Trade Act of 1988 to make such changes in the Harmonized Tariff Schedule of the United States as may be necessary or appropriate to promote uniformity of application by conforming the HTS to the CCC decision. Counsel contends that referral of this matter to the ITC is not

appropriate. Counsel concedes that the interest in uniformity of application of the Harmonized System is one of the purposes upon which ITC recommendations may be based. Counsel reasons that Customs cannot express disagreement with the decision by the Harmonized System Committee and at the same time suggest that the tariff be amended to conform to the decision. Such an action would not be in accordance with sound nomenclature principles as stated in the Trade Act of 1988. Counsel also states that such an action would not assure rate neutrality. Finally, the importer suggests that the Customs Service action is motivated by trade interests that are not the proper concern of the Customs Service.

Section 1205 of the Trade Act appears to provide precisely for the remedy sought here: to amend the tariff to permit the classification of the product in accordance with the decision by the Harmonized System Committee. The decision to refer the matter to the ITC was made because of our interest in the uniform application of the Harmonized System. The final recommendation by the ITC to amend the tariff if one is made at all, must be in accordance with sound nomenclature principles and assure rate neutrality. Since no such recommendation has been made, it is premature and highly speculative to take a view on the legality of any such recommendation. Counsel's concerns in this regard are best addressed in the context of the public comment period which would follow any ITC proposal.

HOLDING:

Headquarters Ruling 088756 classifying the instant merchandise as orange juice and referring the matter to the ITC is affirmed.

Sincerely,

for Samuel H. Banks
Assistant Commissioner
Office of Commercial Operations

APPENDIX F
FEDERAL REGISTER NOTICE EXTENDING TIME PERIOD FOR SUBMISSION OF WRITTEN COMMENTS

Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Argentina and Mexico of steel wire rope, provided for in subheading 7312.10.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). [2]

Background

The Commission instituted these investigations effective April 18, 1991, following a preliminary determination by the Department of Commerce that imports of steel wire rope from Argentina and Mexico were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 1, 1991 (56 FR 20024). The hearing was held in Washington, DC, on July 9, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on August 15, 1991. The views of the Commission are contained in USITC Publication 2410 (August 1991), entitled "Steel Wire Rope from Argentina and Mexico: Determinations of the Commission in Investigations Nos. 731-TA-476 and 479 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: August 15, 1991.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR. Doc. 91-19977 Filed 8-20-91; 8:45 am]

BILLING CODE 7020-02-M

[2] The imported steel wire rope covered by these investigations consists of ropes, cables and cordage, of iron or steel, other than stranded wire, not fitted with fittings or made into articles, and not made of stainless steel or brass plated wire. Such steel wire rope was previously provided for in item 642.16 of the former Tariff Schedules of the United States (TSUS).

[Investigation No. 731-TA-524 (Preliminary)]

Steel Wire Rope From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of steel wire rope, provided for in subheading 7312.10.90 of the Harmonized Tariff Schedule of the United States, that are allegedly sold in the United States at less than fair value (LTFV).[2]

Background

On June 28, 1991, a petition was filed with the Commission and the Department of Commerce by The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of steel wire rope from Canada. Accordingly, effective June 28, 1991, the Commission instituted preliminary antidumping investigation No. 731-TA-524.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of July 5, 1991 (56 FR 30765). The conference was held in Washington, DC, on July 18, 1991, and all persons who timely requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 12, 1991. The views of the Commission are contained in USITC Publication 2409 (August 1991), entitled "Steel Wire Rope from Canada: Determination of the Commission in Investigation No. 731-TA-524 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: August 12, 1991.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 91-19978 Filed 8-20-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] The imported steel wire rope covered by this investigation consists of ropes, cables and cordage, of iron or steel, other than stranded wire, not fitted with fittings or made into articles, and not made of stainless steel or brass plated wire. Such steel wire rope was previously provided for in item 642.16 of the former Tariff Schedules of the United States (TSUS).

[Investigation No. 1205-2]

Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: United States International Trade Commission.

ACTION: Notice of expansion of scope of investigation and extension of time to submit written comments.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (telephone 202-205-2592), or Dave Beck, Supervisory Nomenclature Analyst (202-205-2604), U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: On May 24, 1991, the Commission instituted investigation No. 1205-2, Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Notice of the investigation was published in the Federal Register of June 5, 1991 (56 FR 25692). Section 1205 directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System) and the Protocol thereto, are recommended by the Customs Cooperation Council (CCC) for adoption, and (2) as other circumstances warrant.

As instituted, investigation No. 1205-2 addresses proposed modifications to the HTS to reflect decisions of the Harmonized System Committee of the Customs Cooperation Council, with respect to two product groups—extracted oleoresins and orange juice with added calcium. However, in developing recommendations to modify the Harmonized Tariff Schedule of the United States (HTS) with respect to

orange juice, the Commission is considering whether such modifications should apply also to fruit juices other than orange juice and to vegetable juices, whether concentrated, non-concentrated, or reconstituted. Since the Federal Register notice of June 5, 1991, did not address the question of these latter juices, the Commission is of the opinion that producers or importers of such juices might not have had sufficient notice or opportunity to provide comment. Therefore, the time period for written comments is being extended through this notice.

The following draft modifications to the HTS are being considered by the Commission for submission to the President:

Recommended Modifications to the Harmonized Tariff Schedule of the United States

1. Subheadings 3301.30, 3301.30.10, 3301.30.50, and 3301.90.00 are deleted and the following inserted in lieu thereof:

"3301.30.00; Resinoids, Free, Free
3301.90.10; Other, Extracted oleoresins, 6%, Free (A, CA, E, IL), 25%
3301.90.50; Other, Free, 20%"

2. Section IV is amended by inserting new additional U.S. Note 2, as follows:

"2. For the purposes of headings 2106 and 2202, references to "*modified fruit or modified vegetable juices*" means fruit or vegetable juice (other than preparations) which—

(a) In the case of fruit juices, have been modified by the addition of constituents not usually found in natural juice (other than sugar or other sweetening matter, preservatives, anti-fermentation agents or standardizing agents);

(b) In the case of vegetable juices, have been modified by the addition of constituents not usually found in the natural juice (other than sugar or other sweetening matter, preservatives, anti-fermentation agents, standardizing agents, sodium chloride, spices or flavoring substances); or

(c) Contain one or more naturally occurring constituents in such quantity that the balance of constituents as found in the natural juice is clearly upset.

3. Heading 2009 is amended by inserting the expression "not modified," after the expression "fruit juices (including grape must) and vegetable juices.".

4. Chapter 21 is amended by inserting new additional U.S. Note 1, as follows:

"1. For the purpose of subheadings 2106.90.16 and 2106.90.19:

(a) The term "*liter*" in the "Rates of Duty" column of the provisions applicable to fruit juices means liter of natural unconcentrated fruit juice or liter of reconstituted fruit juice;

(b) The term "*reconstituted fruit juice*" means the product which can be obtained by mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secretary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States; and

(c) The term "*Brix value*" means the refractometric sucrose value of the juice, adjusted to compensate for the effect of any added sweetening materials, and thereafter corrected for acid.

(d) In determining the number of liters of reconstituted fruit juice which can be obtained from a concentrate, the degree of concentration shall be calculated on a volume basis to the nearest 0.5 degree, as determined by the ratio of the Brix value of the imported concentrated juice to that of the reconstituted juice, corrected for differences of specific gravity of the juices. Any juice having a degree of concentration of less than 1.5 (as determined before correction to the nearest 0.5 degree) shall be regarded as a natural concentrated juice.

(e) In determining the degree of concentration of mixed fruit juices, the mixture shall be considered as being wholly of the component juice having the lowest Brix value."

5. The text of heading 2106 is deleted and the following text is substituted in lieu thereof: "Food preparations not elsewhere specified or included; modified fruit or modified vegetable juices, concentrated.

6. Subheading 2106.90 is amended by inserting the following new subheadings, with the superior heading at the same level of indentation as the article description in subheading 2106.90.15:

"; Modified fruit or modified vegetable juices, concentrated:
2106.90.16; Orange juice, 9.25¢/liter, Free (E) 5.5¢/liter (CA), 18¢/liter
2106.90.19; Other, The rate applicable to the natural juice in heading 2009, The rate applicable to the natural juice in heading 2009, The rate applicable to the natural juice in heading 2009"

Any staged reductions of a special rate of duty set forth in subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before January 1, 1992, and are scheduled to take effect on or after January 1, 1992, shall apply to the corresponding special rate of duty in subheading 2106.90.16.

7. Subheading 2202.90 is amended by inserting the following new subheadings, with the superior heading at the same level of indentation as the article description in subheading 2202.90.90:

"; Modified fruit or modified vegetable juices, not concentrated:
2202.90.30; Orange juice: Not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree), 5.3¢/liter, Free (E) 3.1¢/liter (CA), 18¢/liter
2202.90.35; Other, 9.25¢/liter, Free (E) 5.5¢/liter (CA), 18¢/liter
2202.90.39; Other, The rate applicable to the natural juice in heading 2009, The rate applicable to the natural juice in heading 2009, The rate applicable to the natural juice in heading 2009"

Any staged reductions of a special rate of duty set forth in subheading 2009.19.20 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before January 1, 1992, and are scheduled to take effect on or after January 1, 1992, shall apply to the corresponding special rate of duty in subheading 2202.90.30.

Any staged reductions of a special rate of duty set forth in subheading 2009.19.40 of the Harmonized Tariff Schedule of the United State that were proclaimed by the President before January 1, 1992, and are scheduled to take effect on or after January 1, 1992, shall apply to the corresponding special rate of duty in subheading 2202.90.35.

Written Submissions

Interested parties (including other Federal agencies) are invited to submit written statements concerning the proposed modifications to the HTS outlined above. Such statements must be submitted by no later than September 25, 1991, in order to be considered by the Commission. Commercial or financial information that 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 persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: August 15, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-19976 Filed 8-20-91; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

August 15, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

APPENDIX G
POSTHEARING SUBMISSION FROM THE U.S. CUSTOMS SERVICE

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C.

SEP 24 1991

CO:R:I MBH

Secretary
United States
International Trade Commission
500 E Street, S.W.
Washington, D.C.

Dear Sir:

This is in response to a Notice in the Federal Register dated August 21, 1991, with respect to Commission Investigation 1205-2, Proposed Modifications to the Harmonized Tariff Schedule of the United States. The Customs Service comments shall be limited to the proposed text regarding the classification of certain juices.

The proposed modification to the HTSUS with respect to certain juices is in response to a recent decision of the Harmonized System Committee concerning orange juice with calcium. It is proposed to create a new legal note and new subdivisions for "modified fruit or vegetable juices". We have some brief observations to make with respect to the proposed legal note and the new subdivisions.

The Harmonized System Committee decision was limited to juice which had been nutritionally fortified by the addition of calcium. The Committee decided that such nutritional fortification removed the product from the scope of the term orange juice for purposes of heading 20.09 and rendered the product classifiable in heading 21.06 as a food preparation not elsewhere specified or included. In our judgment the decision of the Committee should be seen as being limited to the classification consequences of a nutritional supplement. It therefore seems unnecessary to transfer any other products into heading 21.06. For that reason, we suggest that rather than referring to modified fruit or vegetable juices, that reference be made to nutritionally supplemented or fortified juices, a term that would appear to be commonly understood.

The second comment we offer is that the proposal defines the products in the new category in terms of their being other than preparations. The Harmonized System Committee found that they were classifiable as preparations. We can appreciate the need to create separate categories for nutritionally fortified juices on the one hand and other preparations on the other. We believe that such a distinction could be effected simply by creating the subdivision for nutritionally fortified beverages and having the other preparations fall in their respective basket categories. In such a case, if properly drafted, only those products regarded as nutritionally fortified juices would be considered classified in the new category. To do otherwise might create uncertainty as to the proper classification within heading 2106 of nutritionally fortified juices.

Sincerely,

Myles Harmon
Director, International
Nomenclature Staff

APPENDIX H
PREHEARING SUBMISSION FROM FLORIDA CITRUS MUTUAL AND OTHERS

BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of Proposed Modifications to the Harmonized Tariff Schedule of the United States Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988	Inv. No. 1205-2

BRIEF IN SUPPORT OF MODIFICATIONS TO THE TARIFF SCHEDULE CONCERNING CERTAIN FORTIFIED JUICE PRODUCTS

FLORIDA CITRUS MUTUAL
CALIFORNIA CITRUS MUTUAL
FLORIDA CITRUS PROCESSORS ASSOCIATION
STATE OF FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
STATE OF FLORIDA DEPARTMENT OF CITRUS

Bobby F. McKown
Executive Vice President
FLORIDA CITRUS MUTUAL
P.O. Box 89
Lakeland, FL 33802

James H. Lundquist
Matthew T. McGrath
Peter A. Martin
Of Counsel

BARNES, RICHARDSON & COLBURN
1819 H Street, N.W.
Washington, D.C. 20006
Tel. (202) 457-0300

Date: July 8, 1991

BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of Proposed Modifications to the Harmonized Tariff Schedule of the United States Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988	Inv. No. 1205-2

BRIEF IN SUPPORT OF MODIFICATIONS TO THE TARIFF SCHEDULE CONCERNING CERTAIN FORTIFIED JUICE PRODUCTS

This brief presents the views of Florida Citrus Mutual (FCM), California Citrus Mutual, the Florida Citrus Processors Association, the State of Florida Department of Agriculture and Consumer Services and the State of Florida Department of Citrus, concerning proposed modifications to the Harmonized Tariff Schedule (HTS) pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (the Act).[1] FCM is a voluntary cooperative association whose membership consists of the vast majority of U.S. growers of oranges for processing into concentrated and single strength orange juice. Its members account for from 80 to 90 percent of the United States growers of citrus fruit for processing into citrus juices.

At the Customs Cooperation Council's Harmonized System Committee meeting in November, 1990, it was decided (contrary to the U.S. position) that concentrated orange juice to which more

[1]On June 5, 1991 the Commission solicited public comment through a Federal Register notice. (56 Fed. Reg. 25692).

than the naturally occurring amount of calcium was added should be classified under the Harmonized Schedule as a fruit drink, under Heading 21.06, rather than as orange juice, under Heading 20.09. This decision was reached through a legally incorrect use of the Explanatory Note to heading 20.09. FCM and its co-petitioners strongly support the position taken by the U.S. Customs Service under which calcium-fortified juice is classified as orange juice based on its essential character and classified under heading 2009. We also support Customs' decision to continue to classify this product as orange juice under heading 2009, pending the receipt of advice from the Commission on the appropriate tariff nomenclature changes to implement the HSC decision.

The above-referenced organizations recognize that a much needed amendment to the relevant Explanatory Note will have to be accomplished at the international level before calcium-fortified orange juice and orange juice with nutritional and other additives can be properly classified under heading 2009 in light of the HSC decision. This brief is limited to a discussion of modifications to heading 2106 of the U.S. Tariff Schedule which will conform to the HSC ruling while achieving the statutory requisites of: substantial rate neutrality, consistent commodity classification based on sound nomenclature principles, adherence to the Convention, maintenance of existing conditions of competition for the affected U.S. industry, labor or trade,

administrative enforcement priorities and protection of national economic interests of the United States.

The following amendment to heading 2106 is suggested by FCM and its co-petitioners (suggested new nomenclature and headings are shown in bold typeface):

Food preparations not elsewhere specified or included:

* * *

Other:

* * *

Other:

* * *

Other:

* * *

Other:

Subject to quotas established pursuant to Section 22 of the Agricultural Adjustment Act, as amended . . . . . .

* * *

Fortified Citrus Juices or Citrus Juices With Additives, Regardless of Nature, Type or Extent, not Classifiable in Heading 2009:

Orange juice:

2106.90.55	**Frozen . . . . . .**	**9.25cents/liter**
	Other:	
2106.90.57	**Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree)**	**5.3cents/liter**
2106.90.59	**Other . . . . . .**	**9.25cents/liter**

* * *

I. Law and Analysis

Section 1205 of the Act requires the Commission to submit recommendations under this section to the President in the form of a report including a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The President may proclaim modifications, based on the recommendations by the Commission under Section 1205, to the Harmonized Tariff Schedule if the President determines that the modifications: (1) are in conformity with the United States obligations under the Convention; and (2) do not run counter to the national economic interest of the United States. All of these statutory imperatives will be satisfied if the HS is amended to specifically provide for "orange juice with additives of any nature, type or extent" at the eight digit level under heading 2106.

According to language contained in the legislative history of the Act, "the ITC is ... expected to play a lead role in formulating United States positions for, and representing the United States in, the CCC's Harmonized System Committee, particularly with regard to assuring that the Convention recognizes the needs of the U.S. business community for a nomenclature that reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices." Omnibus Trade and Competitiveness Act

of 1988, House Report 100-576, 100th Cong., 2d Sess., p. 549 (April 20, 1988).

As discussed in Section II of this brief, the Commission can fulfill its statutory responsibility towards the U.S. business community by recommending a modification to heading 2106 of the HS that would capture orange juice with any type of nutritional additive and standardizing agents, including calcium-fortified orange juice, and place those products at the same duty rate as orange juice classified under heading 2009. Such a classification is consistent with sound principles of commodity identification, i.e., general rule of interpretation 1 and essential character. Classification of this product under a new breakout in heading 2106 at a higher rate of duty than that otherwise applicable to the heading also recognizes the ease with which modern producing methods could be used to effectively circumvent the long-standing bound tariff rate applicable to certain citrus juice products. Finally, current trading patterns described below clearly evidence the likelihood of an adverse impact upon the national economic interests of the United States if the proposed amendment is not adopted.

The statute places several limitations upon the Commission's authority to recommend modifications to the Harmonized Tariff Schedule. All modifications proposed by the Commission under Section 1205 must meet the following requirements:

(1) The modification must --
(A) be consistent with the Convention or any amendment thereto recommended for adoption;
(B) be consistent with sound nomenclature principles; and
(C) ensure substantial rate neutrality.
(2) Any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.
(3) The modification must not alter existing conditions of competition for the affected United States industry, labor, or trade.

Language in the legislative history of the Act provides a further indication that Congress intended its assent to the HTS to engender substantial rate neutrality. "The conferees believe that the HTS fairly reflects existing tariff and quota treatment and that the conversion is essentially revenue-neutral." Omnibus Trade and Competitiveness Act of 1988, House Report 100-576, 100th Cong., 2d Sess., p. 548 (April 20, 1988). Any unintended reduction in the tariff rate applied to calcium-fortified orange juice arising from the adoption of the HTS should be corrected through amendments to the HS proposed under Section 1205 of the Act.[2]

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[2]In a letter submitted to the Commission on July 1, 1991, counsel for Procter and Gamble Company argues that calcium-fortified orange juice is subject to a maximum 10% duty rate under heading 2106. GATT Article 11 (sic), Paragraph 1(a), is cited as authority for the proposition that the duty rate from heading 2009 may not be carried over into heading 2106. This argument is irrelevant to the Commission's Section 1205 review. While GATT Article II, Par. 1(a), requires MFN treatment to be extended to all contracting parties, that provision does not require any specific rate to be applied to new articles of commerce for which a contracting party established an unique classification at the eight digit level. The Commission is free to recommend that the rate of duty applicable to orange juice under heading 2009 be applied to calcium-fortified juice classified under heading 2106. In fact, this recommendation is necessary in order to attain the twin statutory mandates of rate

The Commission should give substantial weight to the opinions of the U.S. Customs Service concerning the interpretation of the HTS. Congress has designated U.S. Customs as the lead agency in both the interpretation of the statute and the representation of U.S. views on commodity classification at the international level.

> The Customs Service will be responsible for interpreting and applying the HTS, and will continue to take a lead role in the CCC's Harmonized System Committee, particularly with respect to issues regarding the United States interpretation and application of the HTS to particular products.

Omnibus Trade and Competitiveness Act of 1988, House Report 100-576, 100th Cong., 2d Sess., p. 549 (April 20, 1988). Absent significant opposition from the U.S. business community or a seriously negative impact on the national economic interests of the United States, the Commission should recommend amendments to the President which are in line with the position taken by the Customs Service.

(A) <u>The HSC Decision Is Legally Incorrect</u>

The HSC decision is legally insupportable because it ignores the Harmonized Tariff System's General Rules of Interpretation, and relies instead on an ambiguous provision in the Explanatory Notes. Classification questions are governed in the first instance by the General Rules of Interpretation; the Explanatory Notes are merely advisory and are not legally binding.

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neutrality and protection for the U.S. business community.

> The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the CCC's Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus, while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

Omnibus Trade and Competitiveness Act of 1988, House Report 100-576, 100th Cong., 2d Sess., p. 549 (April 20, 1988)(Emphasis added). General Interpretive Rule 1 provides that classification should be determined according to the terms of the Headings (and any relevant section or chapter notes). Calcium-fortified frozen orange juice clearly falls under the eo nomine provision for "fruit juice" in Heading 20.09. (Orange juice is specially provided for under subheadings 2009.11 and 2009.19.)

While Rule 1 is sufficient to settle this classification question, a review of the other applicable Rules confirms the classification of calcium-fortified orange juice under Heading 20.09. Rule 2(b) states that any reference in a heading to a material or substance is to be taken to include a reference to mixtures or combinations of that material or substance. Thus, the addition of another substance such as calcium does not necessarily remove orange juice from the "fruit juices" classification. Rule 2(b) further instructs that the classification of goods consisting of more than one material or substance shall be in accordance with Rule 3.

Rule 3(a), which provides that the heading which provides the most specific description shall be preferred to others providing a more general description, again points towards classification under Heading 20.09. "Fruit juice" is certainly a more specific description of calcium-fortified frozen orange juice than "food preparations not elsewhere specified or included" or any other basket category for food products.

Rule 3(b) further confirms that Heading 20.09 is the correct classification for calcium-fortified frozen orange juice. This rule provides that mixtures which cannot be classified by reference to Rule 3(a) are to be classified according to the material or component which gives them their "essential character." Unquestionably, orange juice that has been fortified with calcium retains it essential character as a "fruit juice."

(B) The HSC Decision Is Based On Factual Mistakes

The HSC decision is based on factual error. At least some of the delegates opposing classification under Heading 20.09 did so in part because they felt that the product could not be regarded as orange juice concentrate in view of the "processes necessary to render the concentrate drinkable." Annex F/5 to Doc. 36.300 E (HSC/6/Nov.90) at paragraph 5. Implicit in this position is the misapprehension that other concentrated frozen orange juice (without added calcium) is drinkable at the time of importation. In fact, most concentrated frozen orange juice requires further processing after importation before it becomes drinkable.

HSC delegates who opposed classification under heading 20.09 noted that "14 times more calcium" have been added to calcium-fortified orange juice. The impact of the fortifying activity on the juice's "original character" has been, we believe, greatly overestimated. Given that calcium is present in only small trace amounts in orange juice, the addition of "14 times" more calcium is not really that significant. It is estimated that the calcium that is added to fortified juice accounts for approximately one tenth of one percent, by weight, of the juice's content. By contrast, in T.D. 87-126, where it was determined that an orange juice concentrate-based product should be classified as concentrated orange juice (and not as other edible preparations not specifically provided for), the product consisted of 87 percent orange juice concentrate, 10.5 percent orange peel extract, 2.25 percent citric acid, and less than one percent sodium benzoate. Surely, a juice to which only a higher percentage than the normal amount of calcium has been added cannot be treated differently than that in T.D. 87-126.[3]

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[3] In light of the significant number and nature of changes in nomenclature from the TSUS to the HTS, decisions by the Customs Service and the courts interpreting nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTS. Nevertheless, on a case-by-case basis prior decisions should be considered instructive in interpreting the HTS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS.

Omnibus Trade and Competitiveness Act of 1988, House Report 100-

Any suggestion that the product at issue not be treated as orange juice opens a pandora's box of manipulative possibilities. If juice with added calcium which does not affect the product's essential characteristics and impacts its marketability only slightly, if at all, is considered so altered that it is no longer orange juice, then any number of minor additives which affect the "natural" balance of constituents would have the same effect.

II. The HSC Classification of Calcium-Fortified Orange Juice, Absent an Adjustment of the Applicable Duty-Rate, would Engender Serious Adverse Economic Consequences for the U.S. Citrus Industry

The U.S. orange juice-producing industry would be threatened with serious injury if Customs were to adopt the HSC classification decision without continuing to apply the duty-rate applicable to orange juice. Calcium-fortified orange juice is sold in the United States as orange juice, and viewed as such by the American consumer; it competes directly with unfortified juice, and is perceived as only as juice having an amount of additional calcium (for those who so desire such nutritional benefit). Its reclassification as a non-juice fruit drink at a much lower rate of duty would have a substantial impact on the wholesale price of orange juice and, derivatively, on revenues to growers of oranges for processing who realize the residual returns from sales of the bulk concentrate product. While current imports of calcium-fortified frozen orange juice are

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576, 100th Cong., 2d Sess., p. 549-50 (April 20, 1988) (Emphasis added).

relatively modest, this would change very quickly if the product were to be reclassified at such a low rate of duty.

Reclassification would come at a time when the U.S. industry already finds itself under increasing pressure from foreign orange juice imports. In recent years, foreign production of citrus has risen substantially and has outstripped any growth in consumption. For example, from 1982/83 through 1988/89, the tonnage of fruit processed in Brazil (the world's largest exporter of orange juice) rose by 52 percent, at least partly in speculation of future market shifts following previous freezes which temporarily affected Florida's crop. Brazil's output is expected to continue to grow considerably during the 1990s as new groves begin to reach their maximum yields. U.S. imports of orange juice have grown even faster than the increase in Brazilian production: between 1980/81 and 1988/89 imports grew by over 140 percent. These increases, together with forecasts for bumper crops in both the United States and Brazil, have depressed, and will continue to influence, prices and returns to U.S. growers.

There are many examples in the recent history of trade in orange juice of attempts to avoid the customs duties on the product through manipulative reclassification or abuse of foreign trade zone benefits. For example, in C.S.D. 84-117 (which was revoked by T.D. 87-126), Customs was persuaded that a product that consisted largely of orange juice should be classified under the provision for "other edible preparations not specifically

provided for," at a considerably lower rate of duty. In T.D. 87-126, it was recognized that notwithstanding the presence of additives, the essential character of the product remained orange juice concentrate. The case of U.S. v. Loesche, 12 CIT ___, 688 F. Supp. 649 (1988), arose from a situation in which the defendant entered foreign orange juice concentrate from a foreign trade zone, claiming (falsely) that the product had been modified in the zone and that it was an orange beverage.

There have also been instances of apparent unintentional efforts to manipulate orange juice to seek classification at lower rates for juices, even when such treatment was not legally permissible. In the application for foreign trade subzone status by Weslaco, Texas, authorization was sought for one potential subzone operator to reconstitute imported concentrate in the zone and claim classification at a lower rate of duty for non-concentrated juice, even though such juice must clearly be classified under the same provision as for concentrate.

Reclassification of calcium-fortified frozen orange juice would also invite attempts to evade the antidumping duty order that is in place covering frozen concentrated orange juice from Brazil. 52 Fed. Reg. 8324 (March 17, 1987). Reclassification of the calcium-fortified product as "food preparations not elsewhere specified or included" or under some other basket category would encourage importers from Brazil to attempt to avoid the antidumping order by merely adding calcium to their juice before importation. Even if the addition of calcium might prevent the

marketing of the product as juice under Florida state standards of identity (which are generally stricter than the applicable F.D.A. standards), the product could still be entered through one of the many non-Florida bulk processing facilities, such as Wilmington or Newark, rendering the protection of the antidumping order a nullity.

There is a great deal at stake in avoiding further damage to the U.S. industry. Approximately 250,000 people are directly employed in the domestic citrus industry. In Florida alone, 70,000 persons are employed in production, and about 74,000 persons are indirectly employed. At the grove level in Florida, total capital investment is conservatively estimated at about $7 billion -- an amount which has been increased in recent years as growers have re-located many groves to more southern locations in Florida in order to avoid the damaging impact of more frequent freezes. Therefore, any change in policy such as this can have a substantial impact on an important, unsubsidized sector of American agriculture.

III. Conclusion

The HSC decision rests on a questionable interpretation of the Explanatory Note, and completely ignores the content of the nomenclature and the principles of tariff classification which govern the Harmonized System. Moreover, adoption of the HSC decision without a concomitant modification to the U.S. tariff schedule would undermine the integrity of the U.S. tariff on

orange juice, and wreak havoc on the domestic industry. The Commission should recommend to the President that changes to the HTSUS discussed in this brief be implemented before the U.S. fully accedes to the HSC opinion concerning the classification of calcium-fortified orange juice.

Respectfully submitted,

Bobby F. McKown
Executive Vice President
FLORIDA CITRUS MUTUAL

James H. Lundquist
Matthew T. McGrath
Peter A. Martin
Counsel to
FLORIDA CITRUS MUTUAL

Date: July 8, 1991

APPENDIX I
POSTHEARING SUBMISSION FROM FLORIDA CITRUS MUTUAL AND OTHERS

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September 25, 1991

'91 SEP 25 A11:41

U.S. INTERNATIONAL TRADE COMMISSION
OFFICE OF THE SECRETARY
RECEIVED

Mr. Kenneth R. Mason
Secretary
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Re: Proposed Modifications to the Harmonized Tariff Schedule of the United States, Investigation Number 1205-2

Dear Mr. Secretary:

This letter presents additional views of Florida Citrus Mutual (FCM), California Citrus Mutual, the Florida Citrus Processors Association, the State of Florida Department of Agriculture and Consumer Services and the State of Florida Department of Citrus, concerning proposed modifications to the Harmonized Tariff Schedule of the United States (HTSUS) pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (the Act). FCM is a voluntary cooperative association whose membership consists of the vast majority of U.S. growers of oranges for processing into concentrated and single strength orange juice. Its members account for from 80 to 90 percent of the United States growers of citrus fruit for processing into citrus juices.

On May 24, 1991, the U.S. International Trade Commission instituted investigation number 1205-2, Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. On June 5, 1991 the Commission solicited public comment on issues involved in this investigation through a Federal Register notice. (56 Fed. Reg. 25692). The deadline for filing comments relating to the subject matter covered by investigation number 1205-2 was

extended until September 25, 1991 in a subsequent notice published on August 21, 1991. (56 Fed. Reg. 41566).

In accordance with the instructions contained in the ITC's Federal Register notice of June 5, 1991, prehearing comments were filed on behalf of FCM on July 8, 1991. Representatives of FCM also testified during the public hearing which took place at the ITC on July 15, 1991. FCM reaffirms herein the views expressed to the Commission in the prehearing submission and through the testimony given during the public hearing. Comments contained in this submission address the proposed technical arrangement of subheadings 2106 and 2102 of the HTSUS, and the accompanying U.S. Notes, contained in the ITC's Federal Register notice of August 21, 1991.

In general, FCM supports the proposed nomenclature drafted by the Commission. We add the following comments:

(1) Proposed additional U.S. Note 2(a) to Section IV, HTSUS, contains language which should be clarified by the Commission in order to avoid any future misunderstandings with regard to the proper interpretation of the scope of subheadings 2106 and 2202. The language in question provides in pertinent part that:

> For the purposes of headings 2106 and 2202, references to "modified fruit or modified vegetable juices" means fruit or vegetable juices (other than preparations) which --
>
> (a) in the case of fruit juices, have been modified by the addition of constituents not usually found in natural juice (other than sugar or other sweetening matter, preservatives, antifermentation agents or standardizing agents);

Currently, heading 2009 of the HTSUS provides for "Fruit juices ... and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter." FCM understands that the language in proposed additional U.S. Note 2(a) is not intended to exclude fruit juices to which sugar or other sweetening matter has been added from the scope of subheadings 2106 and 2202, provided that such products are otherwise considered to be modified through the addition of constituents not usually found in natural juice, and to the extent that those juices do not constitute preparations. The Commission should confirm FCM's understanding of the scope of subheadings 2106 and 2202 by clarifying the fact that proposed additional U.S. Note

2(a) is not to be read restrictively with regard to modified fruit juices to which sugar and other sweetening matter has been added.

(2) The ITC should also make clear that fruit juice to which spirit has been added is excluded from classification under either subheading 2106 or subheading 2202.

(3) FCM's final comment relates to the rate of duty appearing under the special column for products covered by the U.S./Canada Free Trade Agreement. The notice indicates that a 5.5 cent per liter duty applies to subheadings 2106.90.16 and 2202.90.35, while a 3.1 cents per liter duty exists for subheading 2202.90.30. The 1991 HTSUS shows (for Canada) a 6.4 cents per liter rate of duty for concentrated juice and for reconstituted juice under subheadings 2009.11.00 and 2009.19.40, respectively, and a 3.7 cents per liter duty rate for unconcentrated orange juice under subheading 2009.19.20, HTSUS. If the discrepancy between the existing and proposed duty rates for these products under the special column do not relate to phased reductions under the U.S./ Canada Free Trade Agreement, FCM requests that the proposed language be amended to conform with the duty rates already established for concentrated, reconstituted and unconcentrated orange juice under heading 2009 of the HTSUS.

Respectfully submitted,

Bobby F. McKown
Executive Vice President
FLORIDA CITRUS MUTUAL

James H. Lundquist
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Counsel to
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APPENDIX J
PREHEARING SUBMISSION FROM THE PROCTER & GAMBLE COMPANY

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* (NOT ADMITTED IN FL)

July 1, 1991

Secretary
United States International Trade Commission
500 E Street S.W.
Washington, D.C. 20436

Attention: Kenneth R. Mason

Comment on Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (Investigation No. 1205-2)

Dear Sir:

This letter is submitted on behalf of our client, the Procter and Gamble Company, and in response to a notice published in the Federal Register on June 5, 1991 at 56 Fed. Reg. 25692, soliciting comments on Investigation No. 1205-2, Proposed Modifications to the Harmonized Tariff Schedule of the United States. For the reasons set forth below, Procter and Gamble submits that the United States International Trade Commission ("the Commission") should invoke section 1205 of the Omnibus Trade and Competitiveness Act of 1988, as codified in 19 U.S.C. 3005, and recommend to the President that

the Harmonized Tariff Schedule be modified by classifying calcium fortified orange juice preparation as a food preparation in heading 2106. Procter and Gamble further requests that the preparation be subject to duty at the current rate of 10 percent ad valorem assessed on products classifiable as "food preparations not elsewhere specified or included, other, other" in subheading 2106.90.60, which is a bound rate under the General Agreement of Tariffs and Trade ("GATT").

DESCRIPTION OF THE PRODUCT

The merchandise in question is a calcium supplemented frozen concentrated orange juice preparation. It has been subjected to a patented process which blends a unique combination of three components into the concentrate: calcium hydroxide (a material which is not found in orange juice) and citric acid and malic acid (such that the final product has 50 percent more total acids and fourteen times the quantity of calcium). The process causes a chemical reaction between the calcium hydroxide and other components, resulting in formation of a mixture known as calcium citrate malate, which also is not found in orange juice. Unlike orange juice which contains only trace amounts of calcium, calcium fortified orange juice preparation contains 20 percent of the U.S. daily recommended allowances for calcium.

RECOMMENDATION

We request that the Commission recommend and the President proclaim a modification to the Harmonized Tariff Schedule for calcium fortified orange juice preparation under heading 2106. We believe that this modification is necessary "to promote the uniform application of the Convention and particularly the Annex thereto" in accordance with 19 U.S.C. § 3005(a)(2). Uniform application of the Convention and the Annex would be immediately and properly promoted by a Commission recommendation that calcium fortified orange juice preparation is classifiable under the provision for **"Food preparations not elsewhere specified or included: Other: Other"** under subheading 2106.90.60 with duty at the rate of 10 percent ad valorem.

We further submit that placement of this product in heading 2106 is "consistent with sound nomenclature principles", another requirement necessary to invoke the 1205 procedure. (19 U.S.C. § 3005(d)(1)(B)). he Harmonized System Committee of the Customs Cooperation Council has twice examined the classification of the calcium-fortified orange juice preparation, and issued two decisions holding that the processing and composition of this product are sufficient to remove it from the "orange juice" classification in heading 2009 and place it into the provision for "food preparations" in heading 2106. The U.S. Customs Service

decision that frozen orange juice concentrate with added calcium is classifiable as an orange juice in heading 2009 is, therefore, demonstrably inconsistent with sound nomenclature principles.

Consistency with sound nomenclature principles also requires that the new provision must provide for duty at the rate provided in heading 2106 and not heading 2009. If the Commission invokes Section 1205 and recommends to the President creating a new eight digit tariff line under section 2106, the new subheading may not carry over the duty rate from heading 2009, because the tariff rate of 10 percent under the provision for "Food preparations not elsewhere specified or included other: other: other: other" in subheading 2106.90.60 HTSUS, is a bound rate under GATT. Tariff binding is a principal obligation under GATT which requires a nation to limit the tariff on a particular product to the maximum listed on such nation's GATT Schedule. GATT Article 11, Paragraph 1(a).

CONCLUSION

We believe the Commission should make a prompt recommendation under section 1205 to create a new eight digit tariff rate line for calcium fortified orange juice preparation, and that it should recommend the bound rate of 10 percent for subheading 2106.90.60. These actions are required to promote uniform world wide application of the Harmonized Code, to be consistent with sound

nomenclature principles, and to comply with our obligations under GATT.

Procter and Gamble appreciates this opportunity to express its views on the proposed modification to the Harmonized Tariff Schedule for calcium fortified orange juice preparation. It is hoped that this submission will be given full consideration before the Commission proceeds with its efforts to recommend to the President a modification to the Harmonized Tariff Schedule under heading 2106.

Respectfully submitted,

SANDLER, TRAVIS & ROSENBERG, P.A.

By: _____
Gilbert Lee Sandler

GLS:DLW:vjc/jsm
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APPENDIX K
PREHEARING SUBMISSION FROM TROPICANA PRODUCTS, INC.

Before the

UNITED STATES INTERNATIONAL TRADE COMMISSION

Comments of

TROPICANA PRODUCTS, INC.

CONCERNING PROPOSED MODIFICATIONS OF THE HARMONIZED TARIFF SCHEDULES OF THE UNITED STATES, Inv. No. 1205-2

July 8, 1991

Steven B. Gold, Esq.
Nancy R. Levenson, Esq.
Tropicana Products, Inc.
1001 Thirteenth Ave., East
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(813)747-4461

These comments are submitted by Tropicana Products, Inc., headquartered in Bradenton, Florida. Tropicana is the largest domestic processor of orange juice in the United States. Tropicana appreciates the opportunity to comment on the proper classification of calcium fortified orange juice under the Harmonized Tariff Schedule (HTS) of the United States.

Procter and Gamble (P&G) sells a product called Citrus Hill Plus Calcium. As indicated by the attached labels and advertisement, that product is labelled "100% orange juice fortified with calcium" or "calcium fortified 100% orange juice." To Tropicana's knowledge, there are no imports of calcium fortified orange juice at present. Rather, P&G imports frozen concentrated orange juice for manufacturing (FCOJM) and a small amount of calcium in the United States to make its retail product. The amount of calcium added is small. According to a P&G submission to the Harmonized System Committee (HSC) of the Customs Cooperation Council, the added calcium in one serving of its single-strength orange juice is equivalent, on a unit volume basis, to that found in milk -- and the amount of calcium present represents 20 percent of the recommended daily allowance (RDA) of calcium. Given that the RDA for calcium is one gram, a six-ounce serving of orange juice fortified with calcium contains, by weight, 0.1176 percent calcium. Thus, the orange juice content is more than 99.88 percent of the juice's total weight.

Given these facts, and after extensive scrutiny of the HTS, the U.S. Customs Service properly classified proposed imports of calcium fortified orange juice as "fruit juice" under HTS heading 2009. P&G, however, has sought and obtained a ruling from the HSC that the product in question, because it contains more than 13 times the amount of calcium found in natural orange juice concentrate, plus one-half as much of

a combination of citric and malic acids, should be classified under HTS 2106, "food preparations not elsewhere specified or included." Tropicana believes that the Customs Service's interpretation of the HTS is correct and that the HSC interpretation of item 2009 is so narrow and so wrong as to undermine that body's credibility. Although Customs is not legally obligated to follow the HSC interpretation, we understand that for reasons of comity Customs would like to adopt the HSC's ruling. Tropicana continues to believe that calcium fortified orange juice should be classified under HTS 2009, and that a simple clarification of the Explanatory Notes to that heading should allow the HSC to classify CFOJ as juice. In the meantime, however, the Commission has the authority under section 1205 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. 3005, to recommend a change in the HTS that will allow the Customs Service to follow the interpretation of the HSC but at the same time maintain the integrity of the orange juice tariff.

As the Commission can undoubtedly divine, the motivation for P&G's request to classify CFOJ as a "food preparation not elsewhere specified" is not to relabel its product to more accurately describe its contents but to circumvent the tariff on orange juice. P&G would rather pay the 10 percent tariff for food preparations under HTS 2106 than the much higher (on an ad valorem basis) 9.25 cents per liter tariff that applies to imports of frozen orange juice under item 2009.11. Allowing such circumvention of the tariff would not only adversely affect growers, it would hurt other processors such as Tropicana, whose orange juice products sit side-by-side with P&G's juices on supermarket shelves. In the price sensitive orange juice market, a tariff break of the magnitude sought by P&G would provide that company with in effect a subsidy from other U.S. processors who would be required to pay the higher tariff.

Although the Commission cannot force P&G to relabel its Citrus Hill product a "food preparation" rather than a juice to go along with the tariff classification P&G seeks, the Commission can recommend that the President create a new eight-digit tariff line under heading 2106 for calcium fortified orange juice with a tariff rate of 9.25 cents per liter. By creating such a new line, while maintaining the orange juice tariff rate, the Customs Service could adopt the HSC ruling while preserving the integrity of the orange juice tariff.

APPENDIX L
POSTHEARING SUBMISSION FROM TROPICANA PRODUCTS, INC.

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July 22, 1991

DELIVERY BY HAND

Kenneth R. Mason
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Washington, D.C. 20436

Re: Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitivenes Act of 1988 (Investigation No. 1205-2)

Dear Mr. Mason:

On behalf of our client, Tropicana Products, Inc., we are submitting this letter to set forth our position on a question raised by Commissioner Rohr at the hearing in the above-captioned investigation on Monday, July 15, 1991. At the hearing, we stated that the amendment to HTS heading 2106 proposed by the Florida Department of Citrus and Florida Citrus Mutual would not violate U.S. obligations under the GATT. We are submitting this letter to supplement our response at the hearing.

Nothing in the GATT would prohibit the President from carrying over the duty rate on orange juice to a new tariff category for calcium fortified orange juice under heading 2106. The ruling of the HSC regarding calcium-fortified orange juice contemplates a change in tariff nomenclature for the product, not a change in the tariff rate. Thus, to comply with the HSC's ruling, the U.S. need not alter the current rate of duty on calcium-fortified orange juice. Moreover, as a prominent scholar on the GATT has written:

> Changes of nomenclature, for example, are necessary to keep tariff administration up to date with changes in technology and commercial practice. So long as nothing more than nomenclature is changed, the substance of the international agreement that the binding represents is not undercut. Similarly, changes in nomenclature that tend to standardize usage among countries, such as the adoption of the so-called Brussels nomenclature, should be welcomed insofar as the effect is not to increase protection.

Kenneth W. Dam, The GATT: Law and the International Economic Organization 34 (1971) (emphasis added).

Compliance with the ruling of the HSC would require nothing more than a change in nomenclature; items bound under heading 2106 would not be affected by the creation of a new item under the heading. Indeed, since calcium-fortified orange juice is a product that was not in existence when the U.S. made the binding on item 2106, no product covered by the binding would be affected by the creation of a new category under item 2106 at a different rate of duty. Moreover, the creation of a new category under heading 2106 for calcium-fortified orange juice would not increase the tariff protection on the product, because it would still be dutiable at the same rate as when it was classified under heading 2009.

Finally, if the U.S. creates a separate tariff category for calcium-fortified orange juice, the appropriate tariff rate for the product will be subject to international negotiation. Reduction of the tariff rate for calcium-fortified orange juice could not be accomplished absent a break-out of a separate tariff category for the product. Opponents of the present tariff rate for calcium-fortified orange juice may now pursue the possibility of effecting tariff rate change using GATT-sanctioned negotiating procedures. These opponents should not expect tariff rate benefit by virtue of a nomenclature recommendation by the HSC. A decision by the HSC cannot be interpreted or implemented in a way that would nullify or impair tariff concessions achieved by the U.S. in international negotiations.

In conclusion, the Commission should recommend that the President create a new tariff category for calcium-fortified orange juice under heading 2106, but preserve the present tariff rate for the product. Adoption of this proposal would not violate U.S. obligations under the GATT, since the revision to the HTSUS would involve only nomenclature, not tariff rates, and the binding on products currently classifiable under heading 2106 would not be affected by the change in tariff nomenclature.

Respectfully submitted,

Paul Rosenthal by 545

PAUL C. ROSENTHAL

Counsel to Tropicana Products, Inc.