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June 6, 2002

VIA E-MAIL & FACSIMILE

U.S. House of Representatives
Ways & Means Committee - Subcommittee on Trade
1102 Longworth House Office Building
Washington, DC 20515

Attention: The Honorable Philip Crane

Re: Comments in Support of Passage of H.R. 4404 – A bill to amend the Harmonized Tariff Schedule of the United States to provide duty-free treatment for certain log forwarders used as motor vehicles for the transport of goods.

Our Reference: 02-7504-5(3)I

Dear Congressman Crane:

Pursuant to the press release dated May 3, 2002 (No. TR-9), on behalf of our client, Blondin, Inc., P.O. Box 1287, Indiana, PA 15701, and 7647 Third Street, Turner, OR 97392, we hereby submit the following comments in support of passage of H.R. 4404 (“A bill to amend the Harmonized Tariff Schedule of the United States to provide duty-free treatment for certain log forwarders used as motor vehicles for the transport of goods”) (Attached).

As outlined below, the underlying purpose of this bill is to clarify and to restore the *status quo* as to the treatment of these items as duty free. As a result, the bills will not create any appreciable revenue loss or attract controversy. Significantly, the bill is easily administrable. The bill will not operate retroactively.

BACKGROUND

Blondin (<http://www.rottneusa.com/>) is a small business, which exclusively sells and services forestry equipment made by Rottne Industrie AB (<http://www.rottne.com/>) and other manufacturers. Blondin employs 9 people in Pennsylvania and Oregon.

The log forwarders, as a class, generally consist of a tractor and a wheeled wagon-type machine (bogie) with grapple to gather, sort, load and unload the timber in the forest or on the tree farm. Examples of these machines are set forth below.



In clear-cut logging, and other less environmentally friendly logging methods, after a tree is felled, the tree-length timber is dragged or "skidded" out of the forest to the landing.^{1/} This process, known as "yarding", was historically accomplished by log skidders, and is a critical step in the harvesting of a timber crop. The U.S. Customs Service and the Courts have determined that log skidders are "tractors suitable for agricultural uses", which enter duty free. See e.g. Norman G. Jensen, Inc. v. United States, 76 Cust. Ct. 42, C.D. 4634, 408 F. Supp. 1379 (1976), aff'd, 64 C.C.P.A. 51, 550 F. 2d 662 (1977).

Log forwarders are relatively new forestry machines used in modern "cut-to-length" logging, the primary method of logging in the Northern Forest. In this logging method, trees are felled, de-limbed and cut to uniform (16 foot) lengths at the stump. (When log skidders are used, trees are maintained at their original random lengths until they reach the landing area.) The forwarders perform the yarding -- gathering the logs at the stump after felling, sorting and transporting them to an area known as the landing. This equipment allows selective harvesting and thinning rather than clear cutting. It also facilitates harvesting younger growth trees and

^{1/} At the landing, the timber is prepared for loading on trucks for transport out of the harvesting area.

minimizes landing areas, land compaction and other environmental damage. The U.S. Forestry Service is encouraging this type of environmentally friendly method of logging.

The log forwarders do not generally have safety features required even for limited on-road use. The suspension and design is such that it cannot be legally or practically be used outside a forest or tree farm. Any such use would likely violate U.S. Department of Transportation requirements and, reportedly, the laws of all states and municipalities. Furthermore, the nature of the tires and tracks used, as well as the suspension, maneuverability, and speed, render the machines unusable outside the harvesting area. When it is necessary to move the tractors and forwarders between logging sites, they are commonly loaded on a flat bed truck for transportation.

The forward tractive bases also serve as platforms of other items such as scarifiers, harvesters, de-limbers, etc., used in forestry. When imported in this form, the U.S. Customs Service (“Customs”) has agreed the items are properly classified HTSUS 8436, which provides for forestry machinery, and enter duty free.

Before 1994, Blondin and others imported log forwarders under duty free provisions of either HTSUS 8436.80.0020, which provides for other forestry machinery², or HTSUS 8701.90.10, tractors for agricultural use. European Customs and Revenue Canada have likewise classified nearly identical merchandise under these or equivalent provisions. See e.g., Revenue Canada Ruling H8701(PEC)X154732 (1992) (classifying the Rottne's as a tractor.)(attached).

The Courts have a long-standing policy and practice of implementing the Congressional intent with respect to merchandise for agricultural use. “[T]he Courts have always given agricultural free list provisions . . . a very broad and liberal construction so that the evident purpose of Congress especially to favor agriculture might be carried out.” United States v. S.S. Perry, 25 C.C.P.A. 282, 286 (1938) (citation omitted). United States v. Border Brokerage Co., Inc., 706 F.2d 1579, 1580-81 (Fed. Cir. 1983) (citing United States v. Norman G. Jensen, Inc., 550 F.2d 662, 668 (C.C.P.A. 1977)).

“Congress has traditionally accorded agricultural equipment preferential treatment. It has long been established that “the tariff provisions for agricultural implements should be liberally construed so that the evident intent of Congress to

² Explanatory Note 84.36₂ at 1317 (“This heading covers machinery...which is of the type used on farms...in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like.”)

benefit agriculture [can] be effected.” F.W. Myers & Co., v. United States, 59 Cust. Ct. 445, 450 (1967) see United States v. American Express Co., 12 Cust. Appls. 483, 486 (1925).”

Allis-Chalmers Corp. v. United States, 7 C.I.T. 108 (Ct. Int’l Trade 1984).

Nevertheless, beginning in 1994, Customs began to restrictively view the relevant HTSUS provisions. In 1994, Customs reclassified the log forwarders under HTSUS 8704.22.50 or 8704.23.0000, which provides for "Motor vehicles for the transport of goods: . . . Other, with compression-ignition internal combustion piston engine (diesel or semi- diesel): G.V.W. exceeding 5 metric tons but not exceeding 20 metric tons: . . . Other" dutiable at 25% ad valorem. This provision normally covers items such as delivery trucks and other commercial-type road-capable motor vehicles (tractor/trailers, *etc.*). See International Spring Mfg. Co. v. United States, 85 Cust. Ct. 5, C.D. 4862, 496 F. Supp. 279 (1980), aff'd, 68 CCPA 13, C.A.D. 1257, 641, F.2d 875 (1981).³

Blondin legally challenged Customs’ position and, after several years, Customs changed its position and agreed the merchandise was properly duty free. On February 14, 2001, Customs issued a notice modifying an inconsistent ruling issued in 1998 to re-establish the duty free treatment of the log forwarders and ultimately agreed to a stipulated court judgment, which was entered on April 2, 2001. The Judgment that provided Blondin’s log forwarders were properly classified under duty-free provisions.⁴ However, despite the complete absence of comments opposing the classification of these items as duty free, on August 1, Customs again changed its position and proposed to withdraw the revocation or modifications of inconsistent rulings. While leaving the stipulated court judgment intact, on August 21, 2001, Customs ultimately published its position that the log forwarders tractive bases were motor vehicles for the transportation of goods. That position was finalized on November 26, 2001.

³ “This heading covers in particular: ordinary lorries and vans...delivery trucks and vans of all kinds, removal vans, lorries with automatic discharging devices...tankers...refrigerated or insulated lorries; multi-floored lorries...dropframe heavy-duty lorries...lorries specially constructed for the transport of fresh concrete...refuse collectors...dumpers...shuttle cars...self-loading vehicles...road-rail lorries...[and] motor vehicle chassis, fitted with an engine and cab” Explanatory Note 87.04₁₋₂ at 1547-48.

⁴ Customs stipulated that the Rottne log forwarders were to be classified as tractors suitable for agricultural use under HTSUS subheading 8701.90.10, and the bogie wagon with a hydraulic grip and related parts properly classifiable as a self-loading trailer or semitrailer suitable for agricultural use under heading 8716.20.00. Both provisions are duty free.

Customs' actions with respect to Blondin demonstrates that an importer's challenge and victory over a U.S. Customs' position is never final. Despite an agreement before the United States Court of International Trade, Customs subsequently refused to classify these items under the duty-free provisions for agricultural articles. As a result, the only remedy available to Blondin and others is a congressional amendment to clarify these provisions.

Lack of Controversy

We understand that the Committee's goal is to include in the final consolidated legislation only those provisions that are "non-controversial." We also understand that the Committee has solicited the views of various governmental agencies, including the U.S. Customs Service. It is likely Customs would object to this legislation overturning its most recent position on this issue. However, in light of the fact that Customs previously agreed to duty-free classification of this product and later reversed itself, we urge the Committee to give no weight to any opposition, which may be expressed by Customs. The Committee should not allow the Customs Service to block Blondin's and others' only remaining mechanism for settling the classification of these items by perpetuating a position through objecting to this legislation.

We are unaware of any other opposition to the proposed legislation. In fact, in response to a Freedom of Information Act Request, U.S. Customs indicated that it did not receive any comments in opposition when it solicited comments on its proposal to modify or revoke the inconsistent ruling that imposed duty and to allow duty free treatment of log forwarders.

Finally, given the longstanding interpretation of Congress' intent to broadly construe the agricultural duty free provisions, this legislation simply reinforces that interpretation and clarifies Congress' intent as to these items.

Revenue Loss

The purpose and effect of the bill is to restore the *status quo* and thus has no appreciable revenue effect. We believe, and the United States Customs Service agreed before the United States Court of International Trade, that Customs' classification of log forwarders under the provision imposing 25% duty is incorrect. Thus, any revenues collected by Customs under the current provisions were wrongfully collected. As a result, any assertion of a revenue impact should be disregarded.

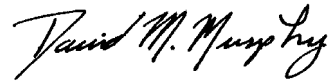
Ease of Administration

An essential effect of this legislation will be to ease administration. As demonstrated by the background discussion above, U.S. Customs' shifting position muddled the interpretation of the existing tariff provisions. This bill will clarify the meaning of Congress and allow for a clear administration of the Harmonized Tariff Schedules.

If you have any questions or need additional information, please feel free to contact us.

Very truly yours,

GRUNFELD, DESIDERIO, LEBOWITZ,
SILVERMAN & KLESTADT LLP

A handwritten signature in black ink that reads "David M. Murphy". The signature is written in a cursive, flowing style.

David M. Murphy

185576.1

107th CONGRESS
2d Session
H. R. 4404

To amend the Harmonized Tariff Schedule of the United States to provide duty-free treatment for certain log forwarders used as motor vehicles for the transport of goods.

IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 2002

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

A BILL

To amend the Harmonized Tariff Schedule of the United States to provide duty-free treatment for certain log forwarders used as motor vehicles for the transport of goods.

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

SECTION 1. LOG FORWARDERS.

(a) IN GENERAL- Chapter 87 of the Harmonized Tariff Schedule of the United States is amended--

(1) by striking subheading 8704.90.00 and inserting in numerical sequence the following new subheadings, with the article description for such subheadings having the same degree of indentation as the article description for subheading 8704.32.00:

8704.90.10 Log forwarders with cranes, designed for off-highway use	Free	Free
8704.90.90 Other	25%	Free (A+, B, CA, D, E, IL, J) See 9906.87.01-9906.87.02 (MX) 20% (JO) 25%

and

(2) by inserting in numerical sequence the following new subheading, with the article description for subheading 8708.99.51 having the same degree of indentation as the superior text to subheading 8708.99.52:

8708.99.51 Parts of log forwarders	Free	Free
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(b) STAGED RATE REDUCTIONS- Any staged reduction of a rate of duty proclaimed by the President before the date of the enactment of this Act, that--

(1) would take effect on or after such date of enactment; and
(2) would, but for the amendment made by subsection (a)(1), apply to subheading 8704.90.00 of the Harmonized Tariff Schedule of the United States, applies to the corresponding rate of duty set forth in subheading 8704.90.90 of such Schedule (as added by subsection (a)(1)).

(c) CONFORMING AMENDMENT- The superior text to subheading 9906.87.01 of the Harmonized Tariff Schedule of the United States is amended by striking ` 8704.90.00' and inserting `8704.90.90'.

(d) EFFECTIVE DATE- The amendments made by subsections (a) and (c) shall apply with respect to the goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.



P.O. Box 3080
Stn. Parklane Centre
Halifax, N.S.
B3J 3G6

Your file Votre référence

Our file Notre référence

May 10, 1995

H8701(PEC)X154732

Livingston Customs Consulting
PO Box 752, Central RPO
Halifax, NS
B3J 2V3

**ATTENTION: D.A.Cooper,Sr.
Manager-Atlantic**

Dear : David

**RE: Request for National Customs Ruling of classification for Rottne
SMV Rapid Tractor Unit w/170 hp Diesel Engine and Rottne
Rapid Tractor Unit w/120 hp Diesel Engine**

This refers to your letter dated April 24,1995 on the above noted matter.

The following classification opinion is based on information you have provided to
Canada Customs.

PRODUCT:

NCR/TRS NUMBER:

Rottne SMV Rapid Tractor Unit w/170 hp
Diesel Engine and Rottne Rapid Tractor
Unit w/120 hp Diesel Engine

118351

EXPORTER/MANUFACTURER

CLASSIFICATION

Rottne Industry AB

8701.90.19.91

GST RATE/CODE

7

TARIFF TREATMENT

RATE OF DUTY

02 (Most Favored Nation)
09 (General Preferential)
10 (United States)
11 (Mexico)
12 (Mexico-U.S. (MUST))

Free
Free
Free
Free
Free

Canada

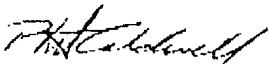
Various Tariff Treatments have been indicated above with corresponding rates of duty. It will be necessary for specific criteria and documentation requirements to be met in order for the goods to be eligible for any of the preferred rates. When these requirements have not been met, the higher rate of duty under the Most Favored Nation Tariff (02) will apply. If you are not certain as to the applicable Tariff Treatment, it is suggested you contact this office for assistance.

In addition to any duty payable, goods imported into Canada are normally subject to a Federal Goods and Service Tax under the Excise Tax Act. This tax is calculated on the value for tax of the goods, i.e., the value of the goods in Canadian Funds plus the amount of duty, plus any Excise Tax and/or any SIMA assessment amounts. The Federal G.S.T. rate/code applicable is shown above.

To ensure the benefits of this NCR at time of importation, please indicate that you are in possession of the ruling by attaching a copy or by quoting the above NCR Number in the "Description" field of the Canada Customs Coding Form B3 or the input ruling reference number field (K160) if you are a CADEX participant.

This National Customs Ruling is considered binding for all future importations of the subject goods until modified or revoked. Should you disagree with the ruling, you should import the goods in accordance with the terms of the ruling and then subsequently file an appeal under the regular provision of the Customs Act.

Yours truly,


P.E. Caldwell
Tariff and Values Administrator
Trade Administration Services
Atlantic Region
Phone: (902) 426-6539

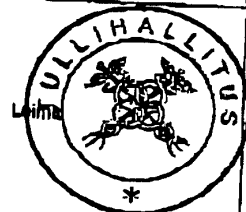
EUROOPAN YHTEISÖ - SITOVA TARIIFI TIETO

35 17 769 4690

7 KANNU

002

HALTIJAN KAPPALE	1 Toimivaltainen viranomainen <input type="checkbox"/> TULLIHALLITUS PL 512 00101 HELSINKI SUOMI	2 STT-vire	STT	
	3 Halija (nimi ja osoite) Ponsse Oyj 74200 VIEREMÄ SUOMI	luottamuksellinen	4 Voimassaoloajan alkamispäivä 1999.06.08	
	Tärkei huomautus Tämä STT on voimassa kuusi vuotta voimassa- lojan alkamispäivästä alkaen rajoittamatta rauvo- n nro 2913/92 12 artiklan 4 ja 5 kohdan säännö- sten soveltamista.		5 Hakemuksen päivämäärä ja viite 1999.02.08 29/01/99	
	Arnutut tiedot tallennetaan Euroopan yhteisöje- n komission esetuksen (ETY) nro 2454/93 sa- vattamista varten.	6 Tavaroiden luokittelu tullinimikkeistöön 1999.06.08 1999.06.08		
7 Tavarain kuvaus Metsätraktorit, tyyppi: Caribou S10, Bizon S15 ja Buffalo S16 ovat puun kuormaukseen ja lyhytmatkaiseen kuljetukseen käytettäviä traktoreita. Traktoreita ei ole tarkoitettu maantiekuljetuksiin. - Traktori muodostuu etuosasta ja kuormatilasta. Etuosassa on ohjattavat pyörät sekä moottori ja hytillä varustettu ohjaamo. Kuormatila on teräsrunkoinen ja siinä on neljä pyörää sekä teräskehikko. Kuormatila on kiinnitetty runkonivelellä etuosan. Traktoriin kuuluu lisäksi ohjaamosta säädettävä kuormaa- - Metsätraktori muodostaa toiminnallisen yksikön, luonteenantavana osana traktori. - Traktorin kokonaisp: tuus on 8,8-9,8 m, leveys 2,6-2,9 m, korkeus 3,6 m ja paino 11 900-15 700 kg.				
8 Kauppanimiä ja lisätietoja Metsätraktori	luottamuksellinen			
9 Tavaroiden luokittelu perusteet Yhdistötyn nimikkeistöä yleiset tulkintasäännöt 1 ja 6. Nimikkeen 8701 teksti ja sen alanimikkeiden tekstit.				
10. Tämä GTT on annettu hakijan toimittaman se- ven alustalon perusteella:				
Kuvaus <input type="checkbox"/> Esiteitä <input type="checkbox"/> Viilokuvia <input type="checkbox"/> Näytteitä <input type="checkbox"/> Muita <input type="checkbox"/>				
Päikka Helsinki	Allekirjoitus <i>Heikki Ojanen</i>			
Päivämäärä 1999.06.08				
Tullilomake nro 645a -95 (lira nro 1)				



OY EDIJA AB, HELSINKI, FINLAND 1999
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