



June 6, 2002

**VIA ELECTRONIC AND
FACSIMILE COMMUNICATION**

The Honorable Phil Crane, Chairman
Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
Washington, D.C. 20515

Re: HR 4404, to provide duty-free treatment for certain log forwarders

Dear Mr. Chairman:

Pursuant to the Committee on Ways and Means Subcommittee on Trade Advisory No. TR-9 dated May 3, 2002, the following comments are respectfully submitted by Ponsse U.S.A., Inc. in support of H.R. 4404, a bill to grant permanent duty free status to crane equipped log forwarders.

Ponsse U.S.A., Inc. ("Ponsse") is an importer and re-seller of forest machines including the log forwarders of the type that are the subject of H.R. 4404. Ponsse also provides after-sales warranty and maintenance service for the machines it sells to customers throughout the United States.

Ponsse supports H.R. 4404 because the bill corrects a classification anomaly in the tariff schedule which imposes a prohibitive tariff rate on log forwarders while all other articles of a type used for agricultural or forestry purposes historically are imported duty free.

DESCRIPTION OF LOG FORWARDERS

The log forwarders in question are machines used in the forestry industry to facilitate the movement of cut and de-limbed logs from the cutting site in the forest to the side of a road where they can be loaded onto a conventional truck for transportation to a mill for further processing.

A log forwarder combines the features of a mobile crane with those of an agricultural tractor and a trailer. However, a log forwarder is specially designed to maneuver in rough forest terrain and it has limited range, its usefulness being confined to negotiating the short distance between the cutting site and the road where the logs will be loaded for transportation to a mill. A log forwarder is not suitable for over-the-road use or for the general transportation of goods. The engines in log forwarders imported by Ponsse are only approved by the EPA for off-road use.

Log forwarders are a relatively new article of commerce that represent a relatively recent advancement in both technology and forest management utilizing the cut-to-length method of

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harvesting. Most timber is harvested in the United States using the traditional method which involves use of separate machines to (a) cut down a tree, (b) de-limb it, (c) drag it to an area where it can be further cut, (d) cut it to specified size and then (e) load the timber onto an over-the-road truck for transport. The log forwarder works in tandem with a mobile tree harvester and together they perform all of the foregoing functions using two machines instead of up to five. Because the cut-to-length method reduces the number of machines in the forest, because the machines themselves employ oversize rubber tires (instead of tracks) and because the tree cuttings are left on the forest floor at the cutting site, this method is believed to be more environmentally friendly than the traditional method.

In appearance log forwarders consist of two sections, joined together by a flexible pivot joint. The front section resembles an agricultural tractor and contains the engine, an enclosed cab for the operator, and the hydraulics or other systems to power the crane. The rear section resembles an open trailer with bogie axles to allow for movement along uneven terrain, to which a heavy crane has been permanently mounted. In the models imported by Ponsse, a disengageable drive shaft extends back from the engine in the tractor to provide motive force to the rear axle of the trailer.

HISTORICAL DUTY FREE TARIFF TREATMENT

The purpose of the technical correction to the tariff schedule proposed in H.R. 4404 is to restore the duty free status of all agricultural implements that has been enacted historically by Congress.

Timber harvesting and logging have long been considered *bona fide* agricultural operations for purposes of United States tariff policy. *See, United States v. Norman G. Jensen, Inc.*, 64 CCPA 51 (C.A.D. 1183), 550 F.2d 662 (1977); *United States v. Border Brokerage Co., Inc.*, 1 Fed. Cir. (T) 58, 706 F.2d 1579 (1983).

At least as far back as the Tariff Act of 1922, the tariff contained a provision that granted duty free status to specified agricultural articles “and all other agricultural implements of any kind or description not specifically provided for” unless expressly listed for duty payment. (Tariff Act of 1922, Para. 1504) This provision was effectively carried forward in Schedule 16 of the Tariff Act of 1930, as Paragraph 1604. The general duty free status of agricultural goods was continued when the TSUS was implemented in 1962 under TSUS 666.00. This duty free treatment was specifically recognized in The Tariff Classification Study where it was stated: “From the legislative history of paragraph 1604, ‘Court Decisions,’ Congress intended to aid those engaged in agriculture by permitting the importation of agricultural implements free of duty.” Tariff Classification Study, Explanatory and Background Materials, Schedule 6, p. 647 (United States Tariff Commission 1960).

When the HTSUS was implemented in 1989, the old Section 666.00 of the TSUS was broken up so that the various statistical subheadings of the TSUS provision were given separate

6 digit subheadings under the HTSUS. All of the many new subheadings in the new structure of the HTS provided duty free status for agricultural articles. See "Conversion of the Tariff Schedule of the United States Annotated into the Nomenclature Structure of the Harmonized System," Annex II, p. 971 (USITC Publ. 1400, June 1983).

CURRENT ANOMALOUS TARIFF TREATMENT

Before the development of log forwarders, the principal means for the removal of harvested timber was a log skidder that dragged logs along the forest floor by use of a conveyor type cable. Like other forestry machinery, log skidders have duty free status under HTSUS 8701.90.10.01 which specifically describes log skidders.

There is no provision in the tariff that specifically describes log forwarders. For some time log forwarders achieved duty free status when they were classified as tractors and trailers which are duty free agricultural implements. However, in a review of classification of log forwarders, the U.S. Customs Service reversed the duty free tractor/trailer classification because the forwarder contains a tractor and a trailer that are both powered by an engine power drive.

Consequently, the U.S. Customs Service now classifies log forwarders, in the absence of any specific description, under Heading 8704 of the HTSUS which is a general default provision within Chapter 87 of the HTSUS that provides for "motor vehicles for the transport of goods." This heading carries an *ad valorem* duty rate of 25%. In short, log forwarders are subject to an extraordinarily high duty purely by the accident of the general laws of classification.

There is no evidence that Congress intended for this new article of commerce to be classified within Heading 8704 or to have a prohibitive duty rate assigned to it contrary to decades of duty free treatment. Indeed, there is persuasive evidence that the existing classification runs sharply against the current of United States tariff policy with respect to articles used for agricultural and forestry purposes. Most articles imported for agricultural purposes may be imported duty free. For example, agricultural tractors may be imported duty free under Heading 8701 of the HTSUS. The forest harvesters used with the log forwarders may be imported duty free under Heading 8436 of the HTSUS. Other forest machines may be imported duty free under Heading 8432 of the HTSUS. The classification of log forwarders within Heading 8704, if technically correct under the current tariff treatment, is nonetheless an anomaly, particularly with regard to the prohibitive tariff rate currently applicable.

REVENUE NEUTRALITY

There will be no direct loss of revenue of the United States as a result the specific duty free classification for log forwarders provided for in H.R. 4404. Although the inclusion of log forwarders in the same provisions as diesel trucks precludes any product specific data on log forwarder imports, it is a simple fact that the 25% *ad valorem* duty makes any import of log forwarders commercially unfeasible. Consequently, it is a reasonable conclusion, and we believe

an accurate one, that no imports of assembled log forwarder are currently occurring, and therefore, no duty is being realized from the current classification of log forwarders under HTSUS 8704.

Available data on imports from those countries in which log forwarders are manufactured for the U.S. market, i.e. Finland, Sweden and Canada, suggests that no imports of log forwarders occurred, or if they did, that duty payments were *de minimis*. (See Attachment A *infra*.) With one exception, all imports in 2000-2001 were from Canada, which presumably were duty free under NAFTA. The one exception was a shipment from Sweden in 2001 valued at \$220,674.00 in the classification for the lightest weight vehicles in this classification. There is no way of determining whether this value relates to the importation of a log forwarder. Nevertheless, even if this import value was derived from the import of a log forwarder, the duty payment on that value would be \$55,168.50, an amount significantly below the revenue scoring cap.

In sum, United States trade statistics indicate that, even though log forwarders are classified in the same provisions as diesel trucks, there have nevertheless been no significant dutiable imports from these countries under any of the subheadings in which a log forwarder would be classified. This is undoubtedly due to the prohibitive rate applicable to articles classified within Heading 8704, HTSUS.

Although no importer is paying 25% duty on log forwarder imports, log forwarders are currently being imported in "parts" and assembled in the United States for sale. These imports are occurring through the lawful practice of "tariff engineering." If the front (tractor) section and rear section (trailer with mounted crane) are imported separately, Customs classifies each section as a "part" of a motor vehicle within Heading 8708, HTSUS. The applicable sub-heading for "parts" has a 2.5% *ad valorem* duty rate. However, the importer must pay separate shipping, forwarding, customs brokerage, and insurance fees for each section and must then assemble the separate sections before it can deliver the log forwarder to its customer. This process is inefficient, results in delay in delivery to the customer, and increases the importer's costs. Since many purchasers of log forwarders are independent owner/operators who lease their machines to logging companies, the inherent inefficiency in the import process and the increased costs to the importer are passed along to downstream participants in the logging industry, including logging companies, lumber and paper mills, and ultimately, to users of paper and wood products.

In addition to parts of log forwarders and other vehicles for the transport of goods, the applicable parts provision in Heading 8708 HTSUS pulls in parts from Headings 8701 through 8705, which include tractor parts, motor vehicle parts, truck parts and parts for certain special purpose vehicles. Consequently, it is impossible to estimate the revenue impact from H.R. 4404 from the current practice of importing log forwarders in sections and paying 2.5% *ad valorem* under Heading 8708.

RETROACTIVITY

There will be no retroactive effect to this legislation. It will apply to importations of log forwarders on or after the effective date of the comprehensive legislation as specified therein.

NON-CONTROVERSIAL

H.R. 4404 is non-controversial in that it is merely restoring the duty free status for this category of product that Congress has bestowed historically. Because the current classification of log forwarders in a provision that also includes diesel trucks has occurred merely by default of general classification law, it is clear that Congress never intended to render tariff protection to any domestic industry that produces log forwarders. Any suggestion of such protection is rebutted by the fact no other similar agricultural or forestry implement falls in a dutiable category. As a relatively new article of commerce, log forwarders are defaulted into classification in Heading 8704, HTSUS only because there is no specific provision in the tariff for such specialized articles. H.R. 4404 merely provides a technical correction to the existing tariff to classify log forwarders under a specific description, at a duty rate consistent with historical Congressional treatment, and outside of the high duty rate classification intended to protect industries other than manufacturers of agricultural or forestry machinery.

EASE OF ADMINISTRATION

Log forwarders described in H.R. 4404 are easily identifiable articles of commerce and will not present the Customs Service with any special problems or difficulties in classification.

CONCLUSION

For the foregoing reasons, Ponsse U.S.A., Inc. respectfully submits that H.R. 4404 should be included in the miscellaneous trade bill for technical correction to the tariff schedule. If the Committee would like additional information on these points, the following individuals may be contacted: Joel R. Junker, Joel R. Junker, P.C., 206.621.7878, jrjunker@aol.com; Michael G. Hodes, Hodes Keating & Pilon, 312.553.1440, mhodes@hkp-customs.com; or Ruth Nelson, Ponsse U.S.A., Inc., 715.369.4833, ruth.nelson@ponsse.com

Very truly yours,



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ATTACHMENT A

IMPORT VALUE DATA

Log forwarders are classified, according to weight in metric tons, in 8704.22.50 HTSUSA. The applicable subheading classifications for Ponsse's forwarders are 8704.22.5040, 8704.22.5060 and 8704.22.5080. These classifications are all eligible for NAFTA duty preferences. Presumably imports from Canada qualify for NAFTA preferences and no duty is paid on these. Since forwarders are classified in the same heading that applies to diesel trucks, it is not possible to distinguish between forwarders and trucks classified within the same subheading. However, U.S. import trade statistics indicate that the following values and quantities were imported under the relevant tariff subheadings for 2000 and 2001:

8704.22.5040-exceeding 9 metric tons but not exceeding 12 metric tons

	2000	2001
CANADA	\$8,292,919.00	\$5,663,804.00
FINLAND	\$0.00	\$0.00
SWEDEN	\$0.00	\$220,674.00

8704.22.5060-exceeding 12 metric tons but not exceeding 15 metric tons

	2000	2001
CANADA	\$38,697,020.00	\$18,471,909.00
FINLAND	\$0.00	\$0.00
SWEDEN	\$0.00	\$0.00

8704.22.5080-exceeding 15 metric tons but not exceeding 20 metric tons

	2000	2001
CANADA	\$13,657,019.00	\$14,860,240.00
FINLAND	\$0.00	\$0.00
SWEDEN	\$0.00	\$0.00

(Source: USA Trade Online Import Statistics)