ANNEXURE-V

HQ 961998 **May 07, 1999**

Type : Classification • HTSUS : 9018.19.55

Modified by: H304293 **Related:** 082973; 952720; 085366;

CLA-2 RR:CR:GC 961998 HMC

Port Director of Customs
1624 E. 7th Ave., Ste. 101
Tampa, FL 33605-3706

RE: "Dinamap Compact Monitor;" Other Electro-Diagnostic Apparatus, Patient Monitoring Systems

Dear Port Director:

This is in response to your request, dated March 10, 1998, forwarding a request by counsel for Johnson & Johnson Medical, Inc., concerning the classification of the Dinamap Compact Monitor under the Harmonized Tariff Schedule of the United States (HTSUS). We regret the delay in responding.

FACTS:

The Dinamap Compact Monitor (DCM) is an apparatus that measures and displays a patient's blood pressure, pulse, body temperature and pulse oximetry (SpO2). The DCM provides oscillometric measurements, including systolic, diastolic and mean arterial pressure and stores up to 100 readings within a 24 hour period. It has an alarm system that alerts the user when monitored functions fall outside set parameters. Merchandise literature shows a picture of the DCM as a rectangular apparatus with various attachments for taking blood pressure, pulse, body temperature and SpO2. The literature states that the DCM permits quick spot check of 4 vital signs with the press of one button, and that it has an integrated printer for documentation of readings. A technical specifications sheet shows that the DCM is imported with a cuff and that it has automatic, stat and manual modes.

The merchandise was entered under subheading 9018.19.95, HTSUS, as other electro-diagnostic apparatus. However, it is your view that, based on Headquarters Ruling Letter (HQ) 082973, dated October 4, 1989, the DCM is classifiable under subheading 9018.90.75, HTSUS, as other instruments and appliances, electro-medical instruments and appliances, other, other.

The 1997 HTSUS provisions under consideration are as follows:

9018 Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof: 9018.19 Other: Other: 9018.19.55 Patient monitoring systems

9018.90 Other instruments and appliances and parts and accessories thereof: Other: Electro-medical instruments and appliances and pats and accessories thereof: Other: 9018.90.75 Other

ISSUE:

Whether the DCM is classifiable as patient monitoring systems under subheading 9018.19.55, HTSUS, or as other electro-medical instruments and appliances under subheading 9018.90.75, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

There is no dispute that the DCM is described by heading 9018, HTSUS, which is a use provision. Additional U.S. Rule of Interpretation 1(a), HTSUS, states that in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

You cite HQ 082973, dated October 4, 1989, as the basis for classifying the DCM under subheading 9018.90.75, HTSUS, which provides for other electro-medical instruments and appliances. We note that HQ 082973 was revoked by HQ 952720, dated December 2, 1992. In HQ 952720 Customs determined that digital blood pressure apparatus were classifiable under subheading 9018.90.50, HTSUS, as sphygmomanometers. The National Commodity Specialist Division now considers the DCM is more specifically described by subheading 9018.19.55, HTSUS, which provides for electro-diagnostic apparatus. Accordingly, we must determine whether the DCM is an electro-diagnostic apparatus or a sphygmomanometer.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 9018, at page 1610, states that the instruments and appliances classified in heading 9018 may be equipped with optical devices; they may also make use of electricity, either as motive power or for transmission, or as a preventive, curative or diagnostic agent. Customs has determined that the term "electro" includes apparatus operated by or involving electricity. See HQ 085366, dated December 4, 1989. However, the term "diagnostic" has not been defined and neither the Chapter and Section Notes nor the ENs explain the meaning of the term "diagnostic." A tariff term that is not defined in the text of the HTSUS or the ENs is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA)Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

The term "diagnostic " is defined in Webster's II New Riverside University Dictionary 372 (1988) as "1. Of, relating to, or used in a diagnosis. 2. Serving to identify a disease." The same term is defined in Dorland's Illustrated Medical Dictionary 458 (28th ed.) as "pertaining to or subserving diagnosis." The term "diagnosis" is defined in Webster's as "1. Med.The act or process of identifying or determining the nature of a disease by way of examination." The term "diagnosis" is defined in Dorland's as the determination of the nature of a case of disease. 2. the art of distinguishing one disease from another."

The DCM is a monitoring device powered by electricity. It registers vital signs, including blood pressure, pulse, temperature and SpO2. The evidence presented shows that the subject merchandise is an electro-diagnostic apparatus used in the process of identifying or determining a disease by using various means of examination. The apparatus of HQ 952720 and HQ 082973 merely check blood pressure, and, as such, are much simpler in design than the DCM. Since the DCM is used in a professional setting to monitor various vital signs, not just blood pressure, it is Customs view that the DCM is not a sphygmomanometer as the instruments classified in HQ 952720 and HQ 082973. Thus, the DCM is classifiable as a patient monitoring system under subheading 9018.19.55, HTSUS.

HOLDING:

The "DCM" is classifiable under subheading 9018.19.55, HTSUS, as "Instruments and appliances used in the surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments...:Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof: Other: Other: Patient monitoring systems.

Please furnish counsel for the importer a copy of this decision as soon as possible. Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

John Durant, Director

Commercial Rulings Division