

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON WAYS AND MEANS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES ON PROPOSED TARIFF LEGISLATION ¹

[**Date approved:** June 28, 2000]²

Bill No.: H.R. 3704; 106th Congress

Introduced by: Mr. Beccera

Similar and/or related³ bills: S. 2128, 106th Congress

Summary of the bill:⁴

The bill would amend the Harmonized Tariff Schedule of the United States to change the classification of certain toys.

Effective: The 15th day after the date of enactment.

Through: Permanent amendment to the HTS.

Retroactive effect: To January 1, 1998.

[The remainder of this memorandum is organized in five parts: (1) information about the bill's proponent(s) and the product which is the subject of this bill; (2) information about the bill's revenue effect; (3) contacts by Commission staff during preparation of this memorandum; (4) information about the domestic industry (if any); and (5) technical comments.]

¹ International trade analyst: Jennifer Rorke (202-205-3489); Attorney: Jan Summers (202-205-2605).

² Access to an electronic copy of this memorandum is available at <http://www.usitc.gov/billrpts.htm>. Access to a paper copy is available at the Commission's Law Library (202-205-3287) or at the Commission's Main Library (202-205-2630).

³ "Similar bills" are bills in the other House, in the current Congress, which address, at least in part, the substance of this bill. "Related bills" are bills in the **same** House, in the current Congress, but which are either earlier (or later) in time than the bill which is the subject of this memorandum.

⁴ The product nomenclature is as set forth in the bill. See technical comments for suggested changes (if any).

– THE PROPONENT AND THE IMPORTED PRODUCT –

The proponent firm/organization(s)			
Name of firm	Location contacted (city/state)	Date contacted	Response (Y/N) ⁵
Mattel Toys	El Segundo, CA	4/13/00	N

*Does the proponent plan **any** further processing or handling⁶ of the subject product after importation to its facilities in the United States (Y/N):*

If “Yes,” provide location of this facility if different from above (city/state):

If “No,” provide location of proponent’s headquarters or other principal facility if different from above (city/state): The majority of Mattel’s manufacturing facilities are in China.

The imported product	
Description and uses	Country(s) of origin
Dress-up sets and outfits are designed to enhance role play activity. They can be marketed year-round. As such, dress-up sets differ slightly, albeit often in name only, from costumes which tend to be marketed during specific holidays such as Halloween or Mardi Gras. Typically dress-up sets consist of a range of accessories, and may or may not contain a garment. Examples of dress-up sets include a cowboy outfit with a belt, straw hat, bandanna, and lasso; or a princess outfit with sequin dress, purse, jewelry, shoes, and crown. Dress-up sets tend to be marketed to children, and are typically of low-value (<i>i.e.</i> , flimsy and non-durable).	China Mexico

⁵ Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix C.

⁶ The phrase “further processing or handling” can include repackaging, storage or warehousing for resale, etc.

– EFFECT ON CUSTOMS REVENUE –

[*Note: This section is divided in two parts. The first table addresses the effect on customs revenue based on the duty rate for the HTS number set out in the bill. The second table addresses the effect on customs revenue based on the duty rate for the HTS number recommended by the Commission (if a different number has been recommended). Five-year estimates are given based on Congressional Budget Office “scoring” guidelines. If the indicated duty rate is subject to “staging” during the duty suspension period, the rate for each period is stated separately.*]

NOTE: For dress-up sets that are currently classified in HTS 9503.70 as a toy or HTS 9505.90.60 as a festive article, there will be no change in the existing free rate of duty. However, for those dress-up sets that incorporate textile garments that are well constructed (*i.e.*, not flimsy and constructed of durable material), and would have been previously classified as apparel in HTS Chapters 61 (knit apparel) and 62 (woven apparel), there could likely be a revenue loss as such products, under the proposed legislation, would likely be classified as toys in HTS Chapter 95. This could potentially eliminate any need for interpretation by U.S. Customs concerning whether items should be classified as textile garments because H.R. 3704 specifies that all dress-up sets, regardless of the quality of any garment included in the set, would be classified as a toy in HTS Chapter 95.

Industry has estimated that total imports of dress up-sets in 1999 was between \$5-10 million.

HTS numbers used in the bill: 9503.70.10 and 9503.70.20 ⁷					
	2001	2002	2003	2004	2005
General rate of duty ⁸ (AVE) ⁹	Free	Free	Free	Free	Free
Estimated value <i>dutiable</i> imports	0	0	0	0	0
Customs revenue loss	0	0	0	0	0

⁷ The HTS number is as set forth in the bill. See technical comments for suggested changes (if any).

⁸ See appendix B for column 1-special and column 2 duty rates.

⁹ AVE is ad valorem equivalent expressed as percent. Staged rates may be found at: <http://dataweb.usitc.gov>

HTS number recommended by the Commission: n/a ¹⁰					
	2001	2002	2003	2004	2005
General rate of duty (AVE)	n/a	n/a	n/a	n/a	n/a
Estimated value <i>dutiable</i> imports	n/a	n/a	n/a	n/a	n/a
Customs revenue loss	n/a	n/a	n/a	n/a	n/a

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

Contacts with firms or organizations <i>other than</i> the proponents			
Name of firm	Location contacted (city/state)	Date contacted	Response (Y/N) ¹¹
Jamie Lemm Department of Commerce	Washington, DC	4/6/00	N
Tom St. Maxens, President St. Maxens & Company and Mattel Representative	Washington, DC	4/6/00	N
David Miller, President Toy Manufacturers of America	New York, NY	4/6/00	N
Barry Levy, Corporate Counsel Toy Manufacturers of America	New York, NY	4/6/00	N
Alice Wong, National Import Specialist, U.S. Customs	New York, NY	4/6/00	N
Rubietoy Company	Long Island, NY	4/10/00	Y
Megan Jones, Rubietoy Rep. Adduci, Mastriani & Schaumberg	Washington, DC	4/11/00	Y
Learning Curve International	Chicago, IL	4/10/00	N
A Wish Come True	Bristol, PA	4/10/00	N
Fairy Finery	Golden Valley, MN	4/10/00	N

¹⁰ If a different HTS number is recommended, see technical comments.

¹¹ Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix D. Only statements submitted in connection with **this** bill will be included in the appendix.

– THE DOMESTIC INDUSTRY –

*[Note: This section is divided in two parts. The first part lists non-confidential written submissions received by the Commission which assert that **the imported product itself** is produced in the United States and freely offered for sale under standard commercial terms. The second part lists non-confidential written submissions received by the Commission which assert either that (1) the imported product will be produced in the United States in the future; or (2) another product which **may compete** with the imported product is (or will be) produced in the United States and freely offered for sale under standard commercial terms. All submissions received by the Commission in connection with this bill prior to approval of the report will be included in appendix D. The Commission cannot, in the context of this memorandum, make any statement concerning the validity of these claims.]*

Statements concerning current U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None.			

Statements concerning “future” or “competitive” U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None.			

– TECHNICAL COMMENTS –

*[The Commission notes that references to HTS numbers in temporary duty suspensions (i.e., proposed amendments to subchapter II of chapter 99 of the HTS) should be limited to **eight** rather than ten digits. Ten-digit numbers are established by the Committee for Statistical Annotation of Tariff Schedules pursuant to 19 U.S.C. 1484(f) and are not generally referenced in statutory enactments.]*

Recommended changes to the nomenclature in the bill:

None.

Recommended changes to any C.A.S. numbers in the bill (if given):

None.

Recommended changes to any Color Index names in the bill (if given):

None.

Basis for recommended changes to the HTS number used in the bill:¹²

n/a

Other technical comments (if any):

In recent years, U.S. Customs has used the “flimsy, non-durable” rule to determine whether a dress-up set or a costume that incorporates a garment should be classified in HTS Chapter 95 or in HTS Chapters 61 and 62. Products that are entered as a toy under HTS Chapter 95 are free of duty, whereas goods entered as apparel under HTS Chapters 61 (knit apparel) and 62 (woven apparel) are subject to both quota/visa and duty.

Outfits (more than likely costumes for adults) classified as apparel by U.S. Customs are of greater sturdiness and quality. They may be used theatrically, or may be rented for repeated short-term use in view of their higher purchase cost. Otherwise, there is little difference between a dress-up set and a costume, except that a dress-up set is marketed year-round and costumes are marketed during specific occasions, such as Halloween or Mardi Gras. According to current U.S. Customs practice, a dress-up set for children is classified under HTS 9503.70 as a set if it consists of accessories, with little to no fabric material included. For example, a wizard dress-up set that includes a plastic hat, wand, and magic tricks would be entered under HTS 9505.70. If that set also includes a robe, and U.S. Customs decides that the garment is flimsy and non-durable, then the set would be classified in HTS 9505.90.60 as a festive article which is also free of duty. If the robe is made of fine material and durable in construction, it would instead be classified as apparel in Chapters 61 or 62 and subject to quota and duty. This same “flimsy, non-durable” criteria applies to costumes as well.

Most likely, H.R. 3704 would eliminate the “flimsy, non-durable” rule for dress-up sets, and, theoretically, establish the marketing period (*e.g.*, year-round versus specific occasions) as the sole classification criteria. This could result in a situation where the exact same wizard outfit/set could be classified in either HTS

¹² The Commission may express an opinion concerning the HTS classification of a product to facilitate the Committee’s consideration of the bill, but the Commission also notes that, by law, the U.S. Customs Service is the only agency authorized to issue a binding ruling on this question. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

Chapter 95 (free of duty) or HTS Chapters 61 and 62 (subject to quota and duty) depending on the time of year that the item is marketed and sold, *i.e.*, throughout the year or for special occasions only. National Import Specialists would potentially need to look at the importer of record to determine whether that outfit was marketed year-round as a dress-up set in a Toys-R-Us, or whether it was only sold as a Halloween costume in October, or Mardi Gras in February/March in a drugstore or other retail outlet. Another potential issue is whether marketing for multiple special occasions essentially meets the criteria for year-round marketing, and as a practical matter, would qualify all dress-up sets for duty-free treatment under HTS Chapter 95.

It is also important to note that an American manufacturer and importer of textile Halloween costumes has filed a formal complaint in the Court of International Trade challenging the Customs Service's classification of "flimsy" textile costumes as "festive articles" in HTS 9505.90.60, asserting that such costumes should instead be classified as apparel in Chapters 61 or 62 and subject to quota and duty. More than likely, a decision will not be made in this case until the end of year 2000 or beginning of 2001. The same company that has filed this complaint is also opposed to adoption of H.R. 3704. They believe the language is overly broad, and could have unintended, negative effects. If this bill is adopted, they express concern, for example, that a manufacturer of children's pajamas could add some beads and a purse, and claim they now have produced a dress-up set. According to this company, these pajamas, as part of a dress-up set and imported in HTS Chapter 95 as toy, would no longer be subject to the same flammability requirements that textile articles are, which could compromise child safety.

APPENDIX A

TARIFF AND TRADE AGREEMENT TERMS

In the **Harmonized Tariff Schedule of the United States** (HTS), chapters 1 through 97 cover all goods in trade and incorporate in the tariff nomenclature the internationally adopted Harmonized Commodity Description and Coding System through the 6-digit level of product description. Subordinate 8-digit product subdivisions, either enacted by Congress or proclaimed by the President, allow more narrowly applicable duty rates; 10-digit administrative statistical reporting numbers provide data of national interest. Chapters 98 and 99 contain special U.S. classifications and temporary rate provisions, respectively. The HTS replaced the **Tariff Schedules of the United States** (TSUS) effective January 1, 1989.

Duty rates in the **general** subcolumn of HTS column 1 are normal trade relations rates, many of which have been eliminated or are being reduced as concessions resulting from the Uruguay Round of Multilateral Trade Negotiations. Column 1-general duty rates apply to all countries except those listed in HTS general note 3(b) (Afghanistan, Cuba, Laos, North Korea, and Vietnam) plus Serbia and Montenegro, which are subject to the statutory rates set forth in **column 2**. Specified goods from designated general-rate countries may be eligible for reduced rates of duty or for duty-free entry under one or more preferential tariff programs. Such tariff treatment is set forth in the **special** subcolumn of HTS rate of duty column 1 or in the general notes. If eligibility for special tariff rates is not claimed or established, goods are dutiable at column 1-general rates. The HTS does not enumerate those countries as to which a total or partial embargo has been declared.

The **Generalized System of Preferences** (GSP) affords nonreciprocal tariff preferences to developing countries to aid their economic development and to diversify and expand their production and exports. The U.S. GSP, enacted in title V of the Trade Act of 1974 for 10 years and extended several times thereafter, applies to merchandise imported on or after January 1, 1976 and before the close of September 30, 2001. Indicated by the symbol "A", "A*", or "A+" in the special subcolumn, the GSP provides duty-free entry to eligible articles the product of and imported directly from designated beneficiary developing countries, as set forth in general note 4 to the HTS.

The **Caribbean Basin Economic Recovery Act** (CBERA) affords nonreciprocal tariff preferences to developing countries in the Caribbean Basin area to aid their economic development and to diversify and expand their production and exports. The CBERA, enacted in title II of Public Law 98-67, implemented by Presidential Proclamation 5133 of November 30, 1983, and amended by the Customs and Trade Act of 1990, applies to merchandise entered, or withdrawn from warehouse for consumption, on or after January 1, 1984. Indicated by the symbol "E" or "E*" in the special subcolumn, the CBERA provides duty-free entry to eligible articles, and reduced-duty treatment to certain other articles, which are the product of and imported directly from designated countries, as set forth in general note 7 to the HTS.

Free rates of duty in the special subcolumn followed by the symbol "IL" are applicable to products of Israel under the **United States-Israel Free Trade Area Implementation Act** of 1985 (IFTA), as provided in general note 8 to the HTS.

Preferential nonreciprocal duty-free or reduced-duty treatment in the special subcolumn followed by the symbol "J" or "J*" in parentheses is afforded to eligible articles the product of designated beneficiary countries under the **Andean Trade Preference Act** (ATPA), enacted as title II of Public Law 102-182 and implemented by Presidential Proclamation 6455 of July 2, 1992 (effective July 22, 1992), as set forth in general note 11 to the HTS.

Preferential free rates of duty in the special subcolumn followed by the symbol "CA" are applicable to eligible goods of Canada, and rates followed by the symbol "MX" are applicable to eligible goods of Mexico, under the **North American Free Trade Agreement**, as provided in general note 12 to the HTS and implemented effective January 1, 1994 by Presidential Proclamation 6641 of December 15, 1993. Goods must originate in the NAFTA region under rules set forth in general note 12(t) and meet other requirements of the note and applicable regulations.

Other special tariff treatment applies to particular **products of insular possessions** (general note 3(a)(iv)), **products of the West Bank and Gaza Strip** (general note 3(a)(v)), goods covered by the **Automotive Products Trade Act (APTA)** (general note 5) and the **Agreement on Trade in Civil Aircraft (ATCA)** (general note 6), **articles imported from freely associated states** (general note 10), **pharmaceutical products** (general note 13), and **intermediate chemicals for dyes** (general note 14).

The **General Agreement on Tariffs and Trade 1994** (GATT 1994), pursuant to the Agreement Establishing the World Trade Organization, is based upon the earlier GATT 1947 (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786) as the primary multilateral system of disciplines and principles governing international trade. Signatories' obligations under both the 1994 and 1947 agreements focus upon most-favored-nation treatment, the maintenance of scheduled concession rates of duty, and national treatment for imported products; the GATT also provides the legal framework for customs valuation standards, "escape clause" (emergency) actions, antidumping and countervailing duties, dispute settlement, and other measures. The results of the Uruguay Round of multilateral tariff negotiations are set forth by way of separate schedules of concessions for each participating contracting party, with the U.S. schedule designated as Schedule XX. Pursuant to the **Agreement on Textiles and Clothing (ATC)** of the GATT 1994, member countries are phasing out restrictions on imports under the prior "Arrangement Regarding International Trade in Textiles" (known as the **Multifiber Arrangement (MFA)**). Under the MFA, which was a departure from GATT 1947 provisions, importing and exporting countries negotiated bilateral agreements limiting textile and apparel shipments, and importing countries could take unilateral action in the absence or violation of an agreement. Quantitative limits had been established on imported textiles and apparel of cotton, other vegetable fibers, wool, man-made fibers or silk blends in an effort to prevent or limit market disruption in the importing countries. The ATC establishes notification and safeguard procedures, along with other rules concerning the customs treatment of textile and apparel shipments, and calls for the eventual complete integration of this sector into the GATT 1994 over a ten-year period, or by Jan. 1, 2005.

Rev. 1/4/00

APPENDIX B

**SELECTED PORTIONS OF THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

[Note: Appendix may not be included in the electronic version of this memorandum.]

APPENDIX C

STATEMENTS SUBMITTED BY THE PROPONENTS

[Note: Appendix C may not be included in the electronic version of this memorandum posted on the Commission's web site if an electronic copy of the statement was not received by the Commission.]

APPENDIX D

STATEMENTS SUBMITTED BY OTHER FIRMS/ORGANIZATIONS

[Note: Appendix D may not be included in the electronic version of this memorandum posted on the Commission's web site if an electronic copy of the statement was not received by the Commission.]

106TH CONGRESS
2D SESSION

H. R. 3704

To amend the Harmonized Tariff Schedule of the United States with respect to certain toys.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 29, 2000

Mr. BECERRA 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 with respect to certain toys.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. AMENDMENTS TO THE HARMONIZED TARIFF**

4 **SCHEDULE OF THE UNITED STATES.**

5 (a) RECLASSIFICATION.—Chapter 95 of the Har-
6 monized Tariff Schedule of the United States is amended
7 by striking subheading 9503.70.00 and inserting in nu-
8 merical sequence the following new subheadings and supe-
9 rior text thereto, with such text having the same degree
10 of indentation as subheading 9503.60:

9503.70	Other toys, put up in sets or outfits, and parts and accessories thereof.			
9503.70.10	Dress-up sets and outfits, marketed year-round for role-play activity, whether or not of textile materials, and parts and accessories thereof.	Free		70%
9503.70.20	Other toys put up in sets or outfits, and parts and accessories thereof.	Free		70%

1 (b) HEADNOTE.—The headnotes to chapter 95 are
2 amended by adding at the end the following additional
3 U.S. Note:

4 Additional U.S. Notes:

5 “1. For purposes of this chapter, the term ‘fancy dress,
6 of textiles, of chapters 61 and 62’ in Note 1(e) does
7 not include dress-up sets and outfits marketed year-
8 round for the amusement of children in role play ac-
9 tivity, whether of not of textile materials, and parts
10 and accessories thereof, which are classifiable in sub-
11 heading 9503.70.10 as ‘other toys put up in sets or
12 outfits’.”.

13 (c) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendments made by
15 this section apply to articles entered, or withdrawn
16 from warehouse for consumption, on or after the
17 15th day after the date of the enactment of this Act.

18 (2) RETROACTIVE APPLICATION.—Notwith-
19 standing section 514 of the Tariff Act of 1930 (19
20 U.S.C. 1514) or any other provision of law, upon
21 proper request filed with the Customs Service on or

1 before the date that is 180 days after the date of the
2 enactment of this Act, any entry or withdrawal from
3 warehouse for consumption of any article—

4 (A) that was made on or after January 1,
5 1998, and before the 15th day after the date of
6 the enactment of this Act, and

7 (B) with respect to which there would have
8 been no duty or a lesser duty if the amend-
9 ments made by this section applied to such
10 entry or withdrawal,

11 shall be liquidated or reliquidated as though such
12 amendments applied to such entry or withdrawal.

○