

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON FINANCE OF THE UNITED STATES  
SENATE ON PROPOSED TARIFF LEGISLATION <sup>1</sup>

[**Date approved:** June 12, 2000]<sup>2</sup>

**Bill No.:** S. 2128; 106<sup>th</sup> Congress

Introduced by: Mrs. Feinstein

Similar and/or related<sup>3</sup> bills: H.R. 3704, 106<sup>th</sup> Congress

Summary of the bill:<sup>4</sup>

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

Effective: On or 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.]*

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

<sup>2</sup> 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).

<sup>3</sup> "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.

<sup>4</sup> 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) <sup>5</sup>
Mattel Toys	El Segundo, CA	4/13/00	N

Does the proponent plan **any** further processing or handling<sup>6</sup> 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-playing 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 for children and are typically of low value, in that the materials used are flimsy and non-durable.	China Mexico

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

<sup>6</sup> 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: Dress-up sets now classified in chapter 95 would still enter free of duty. By contrast, for dress-up sets incorporating well-constructed textile garments, now classified as apparel in HTS chapters 61 (knitted or crocheted apparel) and 62 (other apparel), there would likely be a revenue loss if such products shift to the duty-free toy provisions of HTS chapter 95. Under the proposed legal note to chapter 95, sets of textile materials could no longer be classified as textile apparel articles; Customs would still need to determine if a set or outfit is marketed year-round for the amusement of children in role-playing. Industry sources have estimated that total imports of dress up-sets in 1999 were between \$5-10 million.

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

<b>HTS number used in the bill: 9503.70<sup>7</sup></b>					
	2001	2002	2003	2004	2005
General rate of duty <sup>8</sup> (AVE) <sup>9</sup>	Free	Free	Free	Free	Free
Estimated value <i>dutiable</i> imports	0	0	0	0	0
Customs revenue loss	0	0	0	0	0

<b>HTS number recommended by the Commission: n/a<sup>10</sup></b>					
	2001	2002	2003	2004	2005

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

<sup>8</sup> See appendix B for column 1-special and column 2 duty rates.

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

<sup>10</sup> If a different HTS number is recommended, see technical comments.

<b>HTS number recommended by the Commission: n/a <sup>10</sup></b>					
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 –

<b>Contacts with firms or organizations <i>other than the proponents</i></b>			
Name of firm	Location contacted (city/state)	Date contacted	Response (Y/N) <sup>11</sup>
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

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<sup>11</sup> 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:*

The proposed bill would add a U.S. legal note to chapter 95 of the HTS in an attempt to compel the reclassification of goods now treated by the international Harmonized System (HS) as apparel articles. The HS convention provides in Article 3.1(a)(ii) that countries “shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System...”, which has been taken to mean that a member cannot act at its national level to alter an international classification or legal rule. Thus, to the

extent that it would cause goods to move from chapter 61 or 62 into chapter 95, the proposed additional U.S. note would seem to be contrary to our legal obligations under the HS treaty. It would be appropriate to subdivide the existing 6-digit category in chapter 95—namely, subheading 9503.70 (our present rate line is an undivided international category with an internationally delineated scope)—but the United States could not properly expand the scope of subheading 9503.70 or of any other 4- or 6-digit HS provision. The appropriate course is to provide for the desired duty treatment in each place in the HS where the products of interest can be found, by adding 8-digit provisions with the desired free duty rate. Before that can be done, it would be necessary to identify the provisions in chapters 61 and 62 in which the apparel is currently classified, with input from the proponents and from Customs. It is impossible for the Commission to identify the types and quantities of goods that might be affected, so that the customs revenue impact cannot be predicted.

We would note as well that, for a textile article subject to quota, the mere reclassification of the good does not by itself remove it from the scope of the quota. We would note as well that, while the note contains language indicating that only those goods intended for children would be affected by its terms, the word “toys” in the HS is not limited in that way but includes goods intended for the amusement of adults as well.

*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:*<sup>12</sup>

n/a

*Other technical comments (if any):*

In recent years, the Customs Service has used the “flimsy, non-durable material” factor 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. As indicated above, products 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. The proposed bill does not use this standard, thereby attempting to alter Customs’ practice. Under the current HS chapter note 1(e), fancy dress of textiles [meaning “having the essential character of textiles”] is classified as a textile good, regardless of its intended wearer, but the garments made of the flimsy materials are not viewed by Customs as being “fancy dress.”

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<sup>12</sup> 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.

Outfits (more than likely costumes for adults) classified as apparel by 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 subheading 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 subheading 9503.70. 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 subheading 9505.90.60 as a festive article which is also free of duty. If the robe is made of higher quality or finer material and is 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” criterion applies to costumes as well.

The apparent intent of this bill is to eliminate the “flimsy, non-durable” standard for dress-up sets, and also to establish the article’s 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 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. Such a criterion seems inappropriate as the basis for tariff classification, because it does not relate to the article’s own physical characteristics in its condition as imported but instead may relate to packaging, advertising, or importer claims. Because importers of record are often customs brokers who do not know the circumstances of a transaction to purchase imported goods or the purpose to which they may be put, it is often difficult for such importers to be able to classify merchandise where nonphysical or non-value criteria appear—and thus the government may not have met its duty under the Customs Modernization Act to provide sufficient information to allow importer compliance. Moreover, Customs officials would potentially need to determine whether each set or outfit is marketed year-round in stores such as Toys-R-Us, or whether it is only sold as a Halloween costume in October, or Mardi Gras in February/March in various retail outlets. That process would seem to be burdensome and overly subjective, and would not likely lead to simple rules for consistent classification. Still another potential issue is whether marketing a set for multiple special occasions essentially meets the criteria for year-round marketing, and as a practical matter would qualify all similar dress-up sets for duty-free entry under HTS Chapter 95.

We 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 subheading 9505.90.60, asserting that such costumes should instead be classified as apparel in chapters 61 or 62 and subject to quota and duty. The Court’s decision may not be made prior to Congressional consideration of this bill, but could be expected in coming months.

As a drafting point, we note that the article descriptions in all three provisions created in the bill appear “flush” with the column line, suggesting that they should appear at the same indentation level in the HTS. This would not be consistent with the structure of the HTS, where the descriptions of subordinate 8-digit provisions should be indented more than those of the superior 6-digit subheading. If this bill were to be enacted, corresponding exclusion notes in chapters 61 and 62 would be useful to importers. It would also be preferable to have the description of new 9503.70.10 be written as “Dress-up sets and outfits of a type described in additional U.S. note 1 to this chapter” to simplify the description and make the criteria align.

## 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

# S. 2128

To amend the Harmonized Tariff Schedule of the United States to clarify the classification of certain toys.

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IN THE SENATE OF THE UNITED STATES

MARCH 1, 2000

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Harmonized Tariff Schedule of the United States to clarify the classification of 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. CLARIFICATION OF TARIFF TREATMENT OF**  
4 **CERTAIN TOYS.**

5 (a) AMENDMENT TO THE HARMONIZED TARIFF  
6 SCHEDULE.—Chapter 95 of the Harmonized Tariff  
7 Schedule of the United States is amended by inserting in  
8 numerical sequence the following new subheadings:

“	9503.70	Other toys, put up in sets or outfits, and parts and accessories thereof.			
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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	Free	70%	”.
9503.70.20	Other toys put up in sets or outfits, and parts and accessories thereof .....	Free	Free	70%	

1 (b) ADDITIONAL CLARIFICATION.—Chapter 95 of the  
2 Harmonized Tariff Schedule of the United States is  
3 amended by adding at the end the following additional  
4 U.S. note:

“Additional U.S. Note

“1. For purposes of this chapter, the term ‘fancy dress, of textiles, of chapters 61 and 62’ in note 1(e), does not include dress-up sets and outfits marketed year-round for the amusement of children in role play activity, whether or not of textile materials, and parts and accessories thereof, which are classifiable under subheading 9503.70.10 as ‘other toys put up in sets or outfits’.”.

5 **SEC. 2. EFFECTIVE DATE.**

6 (a) IN GENERAL.—The amendments made by section  
7 1 apply to articles entered, or withdrawn from warehouse  
8 for consumption, on or after the date of enactment of this  
9 Act.

10 (b) RELIQUIDATION.—Notwithstanding section 514  
11 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other  
12 provision of law, upon proper request filed with the Cus-  
13 toms Service on or before the 180th day after the date  
14 of enactment of this Act, any entry of an article described

1 in subheading 9503.70, 9503.70.10, or 9503.70.20 of the  
2 Harmonized Tariff Schedule of the United States (as  
3 added by section 1) that was made—

4 (1) after January 1, 1998; and

5 (2) before the date of enactment of this Act,

6 shall be liquidated or reliquidated as though such entry

7 or withdrawal occurred on such date of enactment.

○