

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:** March 4, 2002]²

Bill No.: H.R. 3197; 107th Congress

Introduced by: Ms. LEE

Similar and/or related³ bills: None.

Summary of the bill.⁴

The bill would suspend temporarily the general rate of duty⁵ on--

electrical machines and apparatus principally designed for the education of children (provided for in subheading 8543.89.96).

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

Through: December 31, 2004.

Retroactive effect: None.

[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: John Kitzmiller (202-205-3387); 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).

⁵ See appendix A for definitions of tariff and trade agreement terms.

– THE PROPONENT AND THE IMPORTED PRODUCT –

The proponent firm/organization(s)			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No) ⁶
Leapfrog Enterprises, Inc.	Emeryville, CA	Feb. 15, 2002	Yes

*Does the proponent plan **any** further processing or handling⁷ of the subject product after importation to its facilities in the United States (Y/N):* Yes. Warehousing.

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

If “No,” provide location of proponent’s headquarters or other principal facility if different from above (city/state): n/a

The imported product	
Description and uses	Country(s) of origin
The subject goods are electrical/electronic machines designed for children’s education. Examples provided by interested companies include an interactive talking book system, an educational game machine, and an educational trivia device/game. The information provided by these firms is not specific, and no copies of Customs rulings were supplied. Thus, the basis on which Customs might determine that a particular product is “primarily educational” as opposed to one intended for amusement, and whether a product is a machine, cannot be discussed here. Further, heading 8543 covers “electrical machines and apparatus, having individual functions” (so that a multi-function good would likely not be properly entered thereunder). We note that Harmonized System note 5 to section XVI defines “machine” rather broadly, as “any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.” It may also be noted that note 1(p) to section XVI of the HTS excludes articles of chapter 95 (including toys, games and sports equipment) from that section, which includes chapter 85.	China (majority) Taiwan

⁶ Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix C.

⁷ 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.]

HTS number used in the bill: 8543.89.96 ⁸					
	2002	2003	2004	2005	2006
General rate of duty ⁹ (AVE) ¹⁰	2.6%	2.6%	2.6%	2.6%	2.6%
Estimated value <i>dutiable</i> imports	\$120 million ¹¹	\$145 million	\$175 million	\$210 million	\$250 million
Customs revenue loss	\$3,120,000	\$3,770,000	\$4,550,000	\$5,460,000	\$6,500,000

⁸ The HTS number is as set forth in the bill. See technical comments for suggested changes (if any). Note: The 8543.89.96 heading includes imports other than the subject product.

⁹ See appendix B for column 1-special and column 2 duty rates.

¹⁰ AVE is ad valorem equivalent expressed as percent. Staged rates may be found at: <http://dataweb.usitc.gov>

¹¹ Because subheading 8543.89.96 includes goods other than the subject product, official statistics are not used. Figures provided for dutiable value of imports and revenue loss are estimates provided by industry members.

HTS number recommended by the Commission to be added: n/a					
	2002	2003	2004	2005	2006
General rate of duty (AVE)					
Estimated value <i>dutiable</i> imports					
Customs revenue loss					

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

Contacts with firms or organizations <i>other than the proponents</i>			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No) ¹²
Mattel, Inc.	Washington, DC	Feb. 14, 2002	No
Toy Industry Association, Inc.	New York, NY	Feb. 14, 2002	No
Hasbro Incorporated	Pawtucket, RI	Feb. 15, 2002	No
VTECH Industries, LLC	Glenview, IL	Feb. 14, 2002	No

– 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.*]

¹² 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.

Statements concerning current U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None. ¹³			

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 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, as drafted, includes a reference to a residual or “basket” tariff provision for electrical machines and apparatus having individual functions and parts thereof. It is therefore suggested that, as a minimum, the expression “, and parts of the foregoing goods” be inserted in the proposed article description immediately after the word “children” to reflect the entry of some parts rather than finished goods. We would note that the proposed article description is quite broad and requires interpretation, so that its potential scope cannot be predicted.

Recommended changes to any CAS 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:*¹⁴ n/a

¹³ No domestic producers were identified. In addition, the Toy Industry Association stated that it was unaware of any domestic manufacturers.

¹⁴ 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.

Other technical comments (if any):

It is possible that Customs may decide that none of the goods of the type of interest to the proponents is in tariff terms a “machine.” The use of the word “equipment” instead of the word “machine” could be considered, should Customs so react; we would defer to their view. In addition, we would point out that the article description’s coverage of machines and apparatus for the education of children may describe goods might be too limiting, based upon Customs’ future application of this phrase. Customs might decide that a particular good was not primarily aimed at education but was instead aimed at amusement or at motor skills development. Such a good would potentially be excluded from the new provision. In addition, some products might not be classifiable in the referenced provision and would not receive the benefit of the duty suspension. For example, an electrical/electronic good found to have more than one function might fall in other provisions of chapter 85.

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. Eligible products of qualifying sub-Saharan African countries may qualify for duty-free entry under the African Growth and Opportunity Act (AGOA), under the terms of general note 16 to the tariff schedule, through September 30, 2008, as indicated by the symbol "D" in the special subcolumn and as set forth in subchapter XIX of chapter 98.

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. Eligible products of qualifying beneficiary countries may qualify for duty-free or reduced-duty entry under the Caribbean Basin Trade Partnership Act (CBTPA), under the terms of general note 17 to the tariff schedule, through September 30, 2008, as indicated by the symbol "R" in the special subcolumn and in subchapter XX of chapter 98.

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. 5/9/01

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.]

107TH CONGRESS
1ST SESSION

H. R. 3197

To suspend temporarily the duty on certain machines designed for children's education.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2001

Ms. LEE introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To suspend temporarily the duty on certain machines designed for children's education.

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. CERTAIN CHILDREN'S EDUCATIONAL DEVICES.**

4 (a) IN GENERAL.—Subchapter II of chapter 99 of
5 the Harmonized Tariff Schedule of the United States is
6 amended by inserting in numerical sequence the following
7 new heading:

“	9902.85.43	Electrical machines and apparatus principally designed for the education of children (provided for in subheading 8543.89.96)	Free	No change	No change	On or before 12/31/2004	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) applies to articles entered, or withdrawn
3 from warehouse for consumption, on or after the 15th day
4 after the date of enactment of this Act.

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