

March 27, 1998

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 LEGISLATION¹

Bill no., sponsor, and sponsor's state: H.R. 2151 (105th Congress), Representative Ackerman (NY).

Companion bill: S. 1012 (105th Congress), Senator D'Amato (NY).

Title as introduced: To amend the Harmonized Tariff Schedule of the United States to correct the tariff treatment of costumes.

Summary of bill:²

The bill would require that costumes and costume components be classified as wearing apparel in the Harmonized Tariff Schedule of the United States (HTS), and prohibit their treatment as articles of festive, carnival, or other entertainment use classifiable in chapter 95. Such goods would be treated as apparel classifiable in chapter 61 (knit apparel) or chapter 62 (woven apparel). The costumes currently classified in chapter 95 are free of duty and quota.

Effective date: 15th day after enactment

Retroactive effect: None.

Statement of purpose:

Representative Ackerman made no statement for the *Congressional Record* concerning H.R. 2151.

Background:

In a return to the holding set forth in *Traveler Trading Co. v. United States*, 23:2 Customs Bulletin 40 (issued on December 8, 1988, concerning the classification of Halloween-type costumes under the former Tariff Schedules of the United States), the U.S. Customs Service on November 15, 1994, issued Headquarters Ruling Letter (HQ) 957318 and agreed to classify costumes of a kind intended to be covered by H.R. 2151 as festive articles in HTS subheading 9505.90.60.³ According to the ruling, these costumes are of

¹ Industry analyst: Jozlyn Kalchthaler (205-3457); attorney: Jan Summers (205-2605).

² See appendix A for definitions of tariff and trade agreement terms.

³ U.S. Customs Service, "Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Textile Costumes" *Federal Register*, December 22, 1997 (62 F.R. 66891).

a flimsy nature and construction, lacking in durability, and are generally recognized as not being normal articles of apparel. Prior to the ruling, Customs interpreted note 1(e) to HTS chapter 95 dealing with “fancy dress of textiles, of chapter 61 or 62” as including “all” costumes of textile materials, regardless of quality, durability, or nature of the items.

Product description and uses:

Costumes: While the wording of the bill does not so differentiate, the costumes affected by the 1994 Customs ruling are light-weight, non-durable costumes usually worn in conjunction with the celebration of Halloween or for another such occasion. These costumes are distinguished by Customs from those treated as fancy dress; the non-durable costumes are currently being classified in the HTS as festive articles in chapter 95, while fancy dress is classified as apparel in chapters 61 and 62 and was not affected by the 1994 ruling.⁴ The flimsier costumes are typically made of man-made fibers and usually depict characters, creatures, or professional persons. To complete the desired look, these costumes often include accessories, such as plastic masks or headwear; the costumes are made in toddler, children’s, and adult sizes. The costumes are typically packaged in either a plastic bag or a cardboard box with the related accessories. By contrast, those costumes considered fancy dress 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.

Tariff treatment:⁵

<u>Product</u> ⁶	<u>HTS subheading</u>	<u>Col. 1-general rate of duty</u>
Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:		
Other: Other.....	9505.90.60	Free

Structure of domestic industry (including competing products):

Costumes: The U.S. market for all costumes, including both the flimsy, non-durable costumes covered by the bill as well as the costumes of fancy dress, totals about \$150 million, according to an

⁴ Note 1(e) to chapter 95 (part of the international-level Harmonized System nomenclature structure).

⁵ See appendix B for column 1-special and column 2 duty rates.

⁶ Apparel is classifiable in chapter 61 (if knitted or crocheted) or 62 (other apparel) and is further categorized by type of garment and by intended wearer. Apparel parts and accessories fall into the final heading in each chapter. It should be noted that any article of apparel could be used as or in a costume; thus, it is impossible to provide completely separate data for costumes. Headwear and footwear, as well as apparel of leather or composition leather, are classifiable in other chapters.

importer of costumes. Domestic production of costumes is dominated by one firm, which accounts for about 50 percent of production. The remaining production is shared among several smaller firms. U.S. imports account for a large part of the market for the flimsy, non-durable costumes; in 1996, imports of such costumes are estimated by trade sources to have totaled \$12-15 million. These costumes originate mainly in China and Taiwan.

Private-sector views:

From January 21 to February 10, 1998, the Commission staff contacted 3 producers and 16 importers of costumes.⁷ California Costume Collections, Inc., Rubie's Costume Co., Disguise Inc., Oriental Trading Company, Inc., The Paper Magic Group, Eckerd Corp., and the National Retail Federation have submitted letters to the Commission concerning their products and views.

U.S. consumption:⁸

	<u>1994</u>	<u>1995</u>	<u>1996</u>
	----- (million dollars) -----		
U.S. production.....	(1)	(1)	(1)
U.S. imports.....	(1)	(1)	12-15
U.S. exports.....	(1)	(1)	(1)
Apparent U.S. consumption.....	(1)	(1)	(1)

Principal import sources: China and Taiwan.

Principal export markets: None known.

¹Data are not available.

⁷ The producers contacted were: Marc Beige, Rubie's Costume Co., Inc., Richmond Hill, NY; Rick Lieberman, California Costumes, Compton, CA; and Phillip Bruno, Disguise Inc., San Diego, CA. The importers contacted were: Robert Kamin, Forum Novelties, Inc., Oceanside, NY; Anne McNearny, Nantucket Distributing, South Yarmouth, MA; Linda, Bradlees Stores, Inc., Braintree, MA; Steve Jenaro, CVS Pharmacy, Woonsocket, RI; Kurt Bruder, Jack Eckerd Corp., Clearwater, FL; Ken August, Fun World, Inc., Carle Place, NY; Customer Service, FSI, North Tonawanda, NY; Peter Oxar, Spencer Gifts, Pleasantville, NJ; Raymond Dickler, Unique Gifts, Philadelphia, PA; Priscilla Rogers, The Paper Magic Group, Scranton, PA; Mr. Bogie, Walgreen Co., Deerfield, IL; Toni Dembsky-Brandel, Target Stores, Minneapolis, MN; Dave Brenneman, Oriental Trading Co., Inc., Omaha, NE; Carol Rathgeber, Wal Mart Stores, Inc., Betonville, AR; Trisha Shelton, Direct Source International, Cincinnati, OH; and Franco American Novelty Co., Inc, Glendale, NY.

⁸ Estimated by USITC staff based on information from producers and importers. Domestic producers were unable to supply figures for U.S. production of flimsy, non-durable costumes.

Effect on customs revenue:

The flimsier costumes covered by the 1994 ruling and treated as goods of chapter 95 currently enter free of duty. Because the bill would cause these goods to be classifiable throughout HTS chapters 61 and 62 at various rates of duty, the average rate of duty for imports under those chapters for 1996 (the latest year for which information is available) has been used here. Information supplied by an importer leads us to assume that imports of these articles total as much as \$15 million a year.

Future (1998-1999) effect:	Annual import value.... Not available
	1998 rate of duty..... Free until effective date
	1998 duties collected.....Not available ⁹
	1999 rate of duty.....15.3-19.0 ad valorem
	1999 duties collected.....\$2.6 million
	Total revenue gain....\$2.6 million
Retroactive effect:	None.

Technical comments:

Some difficulties are presented by the bill as drafted. First, its scope is not limited to goods of textile materials, so that “costumes” that do not have the essential character of textiles (for example, those made of paper or of plastics) would also apparently need to be classified as apparel of chapters 61 and 62--which would not be proper under the Harmonized System. Note 1(e) provides only that fancy dress of textiles is to be excluded from heading 9505. If such non-textile goods are removed from this duty-free provision, there would be questions with respect to U.S. concession obligations regarding duty rate treatment.

The Explanatory Notes to chapter 95 of the Harmonized System state in relevant part that heading 9505 covers--

Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches..., and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61 or 62**.

This language suggests a distinction between fancy dress itself, which is to be treated as apparel, and what might be deemed accessories--articles that are not worn as clothing or attire. Moreover, all fancy dress of textile materials would appear to be treated identically, regardless of its durability, weight, cost or design. Thus, the intent of the HS at the international level would seem to be that all goods worn as attire and made of textile materials be classifiable with other apparel.

Second, the United States is not authorized by the HS Convention of the World Customs Organization to add unilaterally a new note 11 to chapter 61 or a new note 10 to 62, as such notes would appear at the international level; nor may we unilaterally amend note 1(e) to Chapter 95. The language labelled as “Notes” in the tariff schedule comprises part of the HS Convention, and must be included in our tariff exactly as written and numbered in the convention. If we wish to include language for purposes of clarification--but not of changes in 4- or 6-digit classification of goods or in the scope or coverage of notes or headings--we must do so in the form of “Additional U.S. Notes” to chapters 61 and 62. A new such note in chapter 61 should be

⁹ This figure cannot be computed until the effective date of a classification change, if any, becomes known.

designated as 2, while a new note in chapter 62 should be designated as 3. In Chapter 95, there are currently no such U.S. notes, so any new provision would need to be preceded by a new side heading “Additional U.S. Notes” and designated as 1. Such a new note could indicate that the language of note 1(e) is intended to include costumes of a type worn on Halloween or similar occasions. In the alternative, or in addition to enacting new provisions only in our tariff schedule, it would be possible for the United States to seek multilateral changes in the international HS nomenclature structure to clarify the classification of such flimsy Halloween-type costumes, so that all parties to the convention would be obliged to include the provisions in their national tariffs.

The HS Convention intends to achieve consistent classification of each class of goods in all the member countries, and thus member countries generally act carefully with respect to domestic tariff provisions that attempt to provide for the classification of particular merchandise. There are no international-level classification opinions of the WCO concerning the Harmonized System¹⁰ that specify the classification of non-durable, Halloween-type costumes--only the language in the legal note and the non-binding explanatory notes that “fancy dress of textiles” (with the term “of” meaning “having the essential character of”) is excluded from chapter 95. The United States could also seek such a classification opinion before enacting provisions that attempt to constrain the scope of international-level provisions such as note 1(e) to chapter 95 or heading 9505.

Last, we suggest that the phrase “pieces or components” be replaced in any event with “parts” in order to be consistent with the language of headings 6117 and 6217, which expressly cover “parts of garments”.

Consideration of international obligations

As noted above, the bill as drafted could present problems with respect to U.S. obligations under both the HS Convention and duty rate concessions given under the General Agreement on Tariffs and Trade.

¹⁰ One of the attachments to this memorandum is a portion of a document issued with respect to the Customs Cooperation Council’s predecessor nomenclature, known as the CCCN. The Council is now commonly referred to as the World Customs Organization.

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 most-favored-nation (MFN) 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 enumerated in HTS general note 3(b) (Afghanistan, Cuba, Laos, North Korea, and Vietnam), which are subject to the statutory rates set forth in **column 2**. Specified goods from designated MFN-eligible 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 June 30, 1998. 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 or 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. 8/12/97

APPENDIX B

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

(Appendix not included in the electronic version of this report.)

APPENDIX C

OTHER ATTACHMENTS

(Appendix not included in the electronic version of this report.)

105TH CONGRESS
1ST SESSION

H. R. 2151

To amend the Harmonized Tariff Schedule of the United States to correct the tariff treatment of costumes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1997

Mr. ACKERMAN 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 to correct the tariff treatment of costumes.

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. COSTUMES AND PIECES OR COMPONENTS**

4 **THEREOF.**

5 (a) KNITTED OR CROCHETED ARTICLES OF APPAREL
6 AND ACCESSORIES.—The notes to chapter 61 of the Har-
7 monized Tariff Schedule of the United States are amended
8 by adding at the end the following new note:

9 “11. This chapter covers costumes and pieces or compo-
10 nents thereof.”.

1 (b) ARTICLES OF APPAREL AND ACCESSORIES THAT
2 ARE NOT KNITTED OR CROCHETED.—The notes to chap-
3 ter 62 of the Harmonized Tariff Schedule of the United
4 States are amended by adding at the end the following
5 new note:

6 “10. This chapter covers costumes and pieces or compo-
7 nents thereof.”.

8 (c) TOYS, GAMES, ETC.—Note 1(e) to chapter 95 of
9 the Harmonized Tariff Schedule of the United States is
10 amended by striking “or fancy dress,” and inserting “,
11 fancy dress, or costumes and pieces or components there-
12 of,”.

13 **SEC. 2. EFFECTIVE DATE.**

14 The amendments made by this Act shall apply to arti-
15 cles entered, or withdrawn from warehouse for consump-
16 tion, on or after the 15th day after the date of enactment
17 of this Act.

○