MEMORANDUM ON PROPOSED TARIFF LEGISLATION of the 109th Congress

[Date approved: September 23, 2005]

Bill No. and sponsor: H.R. 2289 (Ms. Harman)

Proponent name, location: Mattel, Inc.
El Segundo, CA 90245-5012

Other bills on product (109th Congress only): S. 1070.


Retroactive effect: None.

Suggested article description(s) for enactment (including appropriate HTS subheading(s)):

Cases or containers for transporting, storing or protecting toys or other articles provided for in headings 9502 through 9504, inclusive (provided for in subheading 4202.12.80).

Check one: Same as that in bill as introduced.

X Different from that in bill as introduced (see Technical comments section).

Product information, including uses/applications and source(s) of imports:

The subject articles are cases or containers having an outer surface of plastics. These cases and containers reportedly are specifically designed for transporting, storing and protecting particular games or toys; contain permanent or durable internal fittings shaped to hold the toys; and are frequently imported separately from the toys for which they are intended. The subject articles are manufactured in several colors and are often thematically decorated; they may or may not have printed information or tags on them indicating the names of the toys for which they are designed. Trade sources indicate that such articles are imported from China and Indonesia.

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1 Industry analyst preparing report: Andrea Boron (202-205-3433); Tariff Affairs contact: Jan Summers (202-205-2605).

Estimated effect on customs revenue:

Data from other possible importers are not available, and it is not possible to estimate the quantity of goods that might meet the terms of the proposed duty suspension, whether or not it is changed as shown on page 1. Total dutiable imports under this subheading exceeded $469.4 million in 2004, for a 30.8 percent increase over dutiable imports in 2003, with approximately $357 million coming from China (a 39 percent increase over 2003) and $801,000 from Indonesia (a 56 percent decline from 2003).

<table>
<thead>
<tr>
<th>HTS subheading: 4202.12.80</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Col. 1-General rate of duty</td>
<td>17.6%</td>
<td>17.6%</td>
<td>17.6%</td>
<td>17.6%</td>
<td>17.6%</td>
</tr>
<tr>
<td>Estimated value dutiable imports</td>
<td>$380,000</td>
<td>$380,000</td>
<td>$380,000</td>
<td>$380,000</td>
<td>$380,000</td>
</tr>
<tr>
<td>Customs revenue loss</td>
<td>$66,880</td>
<td>$66,880</td>
<td>$66,880</td>
<td>$66,880</td>
<td>$66,880</td>
</tr>
</tbody>
</table>

Source of estimated dutiable import data: proponent’s estimates.

Contacts with domestic firms/organizations (including the proponent):

<table>
<thead>
<tr>
<th>Name of firm/organization</th>
<th>Date contacted</th>
<th>US production of same or competitive product claimed?</th>
<th>Submission attached?</th>
<th>Opposition noted?</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. Maxens &amp; Company (for Mattel, Inc.)  Mr. Thomas St. Maxens  202-966-9000</td>
<td>8/02/2005</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Flexible Packaging Association  Ms. Marla Donahue  410-694-0800</td>
<td>8/08/2005</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Toy Industry Association  Mr. Gary Klein  202-207-3600</td>
<td>8/18/2005</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Travel Goods Association  Mr. Nate Herman  703-797-9062</td>
<td>8/08/2005</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
Technical comments:

It is suggested that the description be worded “…headings 9502 through 9504, inclusive” to avoid confusion. In addition to this very minor problem, however, we note that the proposed description covers a potentially wide range of goods and may be burdensome for Customs officials to administer, because it can be quite difficult to determine if a given case or container that is imported separately from the toy it is designed to hold is in fact “specially designed” to do so–especially with the huge universe of toys being imported in any year. Moreover, Customs may have difficulty making determinations about how a particular container that is not imported with a toy might be “intended” to be used or how it will be “marketed.” Drafting the new heading as an “actual use” heading that would require Customs’ verification would seem to be the easiest way to reduce this ambiguity, so that the importer would need to prove within 3 years of the date of entry the association of the imported cases or containers with the related toys. The proposed article description on page 1 of this report has been written to impose this requirement.

A second alternative, which seems to be the narrowest and clearest alternative, might be to name the precise types of toys for which each covered imported case or container is designed and/or to require the importer to provide supporting information to enable Customs to make that finding. As a third option, the provision could merely require that an importer claiming the advantages of the duty suspension must satisfy Customs concerning the precise toy for which each good is intended, or could require that the cases or containers appear on the same Customs entry document as the toys for which they are intended (which would limit the use of the provision to importers that could organize such filings). However, the importers of the cases or containers may not be the firms that import and package the toys concerned, which could bar unrelated importers from using it.

Last, we note as well that the actual revenue loss that might result from enactment of this provision–however it is drafted–could be much higher given that information on any additional shipments that might be imported cannot be precisely determined. Other importers may certainly be encouraged to attempt to import goods under such a suspension, given the relatively high existing general duty and the fact that Chinese goods–which now make up the bulk of dutiable imports–are not eligible for special tariff treatment under the permanent tariff classification.

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3 The Commission may express an opinion on the HTS classification of a product to facilitate consideration of the bill. However, by law, only the U.S. Customs Service is authorized to issue a binding ruling on this matter. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.