

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 111th Congress ¹**

[Date approved: April 23, 2010]²

Bill No. and sponsor: S. 2235 (Mrs. Dianne Feinstein of California).

Proponent name,³ location: Leap Frog Enterprises, Inc., Emeryville, CA.

Other bills on product (111th Congress only): None.

Nature of bill: Extension of temporary duty suspension through December 31, 2011.⁴

Retroactive effect: None.

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

Educational devices (provided for in subheading 8543.70.96).

Check one: Same as that in bill as introduced.⁵
 Different from that in bill as introduced (see Technical comments section).

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

The subject goods are wireless, portable, hand-held devices designed for children between the ages of four and eight and operated using pre-programmed software that combines play and learning activities. Examples include an interactive talking book system, an educational game machine, and an educational trivia device/game. The proponent considers the subject goods to be “educational toys,” but for tariff purposes they are not treated as “toys” (articles chiefly designed for the amusement of children or adults). Most of these devices feature programming that combines games with built-in tutorials intended to teach children mathematics, reading skills, and basic science concepts, and thus the devices are reportedly not classified as toys, which would enter free of duty under HTS heading 9503. The devices of interest to the proponent generally feature a touch screen monitor and are battery operated. They are most commonly imported from China and Taiwan.

¹ Industry analyst preparing report: Mihir Torsekar (202-205-3350); Tariff Affairs contact: Jan Summers (202-205-2605).

² Access to an electronic copy of this memorandum is available at http://www.usitc.gov/tariff_affairs/congress_reports/.

³ The sponsor/proponent did not identify any additional beneficiaries of this bill. USITC staff identified four additional beneficiaries of this bill that were not identified by the sponsor/proponent, none of which submitted a written representation that it would benefit from this bill.

⁴ Heading 9902.85.43 had provided a temporary duty reduction from 2.6 percent ad valorem to 0.55 percent ad valorem, whereas this bill would suspend the general rate of duty. Heading 9902.85.43 expired on December 31, 2009.

⁵ See technical comments relating to the existing article description.

Estimated effect on customs revenue for the subject product classifiable in HTS subheading 8543.70.96:

	2010	2011	2012	2013	2014
Col. 1-General rate of duty	2.6%	2.6%	2.6%	2.6%	2.6%
Estimated value <i>dutiable</i> imports ^a	\$60,000,000	\$62,000,000	\$65,000,000	\$70,000,000	\$75,000,000
Customs revenue loss ^b	\$1,560,000	\$1,612,000	\$1,690,000	\$1,820,000	\$1,950,000

a/ Dutiable import estimates were based largely upon official government statistics on the utilization of HTS heading 9902.85.43, which provided a duty reduction to 0.55 percent ad valorem for “education devices” of HTS subheading 8543.70.96; however, the most recent full year data available are for 2008 and likely were at least somewhat higher than potential full year data for 2009. Data provided by the proponent and by firms marketing similar goods are believed to understate actual imports of all products for which Customs might allow entry under the chapter 99 heading.

b/ At the request of Congress, customs revenue loss is provided for 5 years, although the effective period of the proposed legislation may differ.

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

Name of firm/organization	Date contacted	Claim US makes same or competing product(s)?	Submission attached?	Opposition noted?
		(Yes/No)		
Leap Frog Enterprises, Inc. (Proponent) Jennifer Mulveny, 202-216-9307	03/03/2010	No	No	No
Hasbro, Inc. Barry O’Brien, 401-431-8697	03/04/2010	No	No	No
Mattel, Inc. Dianne Douglas, 310-252-2000	03/04/2010	No	No	No
Toy Industry Association, Inc. Joan Lawrence, 646-520-4844	03/03/2010	No	No	No
VTech Electronics North America, LLC Tom McClure, 847-400-3600	03/04/2010	No	No	No

Technical comments:⁶

The legal scope of the existing temporary provision and of the permanent HTS subheading referenced seems to be much broader. HTS subheading 8543.70.96 is a residual or “basket” provision for electrical machines and apparatus having individual functions and not enumerated elsewhere in the HTS. Neither the word “education” nor the word “device” has a defined meaning for tariff purposes, so that the article description in HTS heading 9902.85.43 appears to be broad. This heading does not contain an age range

⁶ 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.

or other criteria to limit the scope to items for young children of the general type of interest to the proponent, and the types of goods for which Customs officials actually allowed entry under the recent temporary duty provision cannot be determined from available data.

No copies of Customs rulings were supplied by the proponent to verify the classification of these goods, but the bill as drafted does not propose to alter the HTS subheading referenced in HTS heading 9902.85.43 because, although a range of goods was likely afforded duty-free entry under that heading, we have no precise information about them. However, given that HTS heading 8543 covers “electrical machines and apparatus, having individual functions” (so that a multi-function good would likely not be properly entered thereunder), it would seem that Customs would consider the nature and the technical and physical characteristics of each such device, rather than whether it is a toy or not, in determining the classification of the goods concerned and their eligibility for entry under the chapter 99 provision. Also, although the scope of heading 9902.85.43 is broad, it is not possible to suggest an alternative description that would attempt to describe the types of goods of interest to the proponent more narrowly because sufficient details have not been provided by the proponent.

111TH CONGRESS
1ST SESSION

S. 2235

To suspend temporarily the duty on certain educational toys or devices.

IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 2009

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

A BILL

To suspend temporarily the duty on certain educational toys or devices.

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 EDUCATIONAL TOYS OR DEVICES.**

4 (a) IN GENERAL.—Subheading 9902.85.43 of the
5 Harmonized Tariff Schedule of the United States (relating
6 to certain educational toys or devices) is amended—

7 (1) by striking “0.55%” and inserting “Free”;
8 and

9 (2) in the effective period column, by striking
10 “12/31/2009” and inserting “12/31/2011”.

1 (b) **EFFECTIVE DATE.**—The amendments made by
2 subsection (a) applies to goods entered, or withdrawn from
3 warehouse for consumption, on or after the 15th day after
4 the date of the enactment of this Act.

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