

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 2-2002)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of February 2002. The last notice was published in the CUSTOMS BULLETIN on March 6, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: May 10, 2002.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0200012	20020205	20200205	ZENWORKS FOR DESKTOPS 3.0	NOVELL, INC.	N
COP0200013	20020205	20202005	JASMINE TEA YELLOW CAN DESIGN	FUJIAN TEA IMPORT & EXPORT CO.	N
COP0200014	20020205	20202005	JASMINE TEA DESIGN - JT.002	FUJIAN TEA IMPORT & EXPORT CO.	N
COP0200015	20020205	20202005	JASMINE TEA DESIGN - JT.001	FUJIAN TEA IMPORT & EXPORT CO.	N
COP0200016	20020206	20202006	RETTANGOLO CATALOG 2000	BULGARI S.P.A.	N
COP0200017	20020206	20202006	NETWARE 5.1	NOVELL, INC.	N
COP0200018	20020207	20210207	SMALL KING FROG	IMPORT RESOURCE GROUP INC.	N
COP0200019	20020207	20220207	BIONIC COMMANDO: ELITE FORCES	NINTENDO OF AMERICA/CAPCOM CO.	N
COP0200020	20020207	20220207	KIRBY 64: THE CRYSTAL SHARDS	NINTENDO OF AMERICA INC.	N
COP0200021	20020211	20210211	PIKACHU & PICHU	NINTENDO OF AMERICA INC.	N
COP0200022	20020211	20210211	LORD OF THE UNKNOWN TOMER	NINTENDO OF AMERICA INC.	N
COP0200023	20020211	20210211	PIKACHU & PICHU	NINTENDO OF AMERICA INC.	N
COP0200024	20020211	20210211	SPELL OF THE UNKNOWN (UNKNOWN)	NINTENDO OF AMERICA INC.	N
COP0200025	20020212	20210212	DIABLO II: LORD OF DESTRUCTION	VIAGRA BROTHERS AMERICA INC.	N
COP0200026	20020212	20210212	GLITTER WINDOWS 98	MICROSOFT CORPORATION	N
COP0200027	20020212	20220212	MICROSOFT WINDOWS 98	MICROSOFT CORPORATION	N
COP0200028	20020212	20220212	MICROSOFT WINDOWS NT WORKSTATION, VERSION 4.0	MICROSOFT CORPORATION	N
COP0200029	20020212	20220212	MICROSOFT WINDOWS NT SERVER, VERSION 4.0	MICROSOFT CORPORATION	N
COP0200030	20020212	20220212	MICROSOFT INTERNET EXPLORER, VERSION 4.0	MICROSOFT CORPORATION	N
COP0200031	20020212	20220212	POLITICIANS IN A SACK	PRO-MOTIONS NOVELTY COMPANY INC.	N
COP0200032	20020213	20220213	THE MOTHER-IN-LAW	PRO-MOTIONS NOVELTY COMPANY INC.	N
COP0200033	20020213	20220213	THE LEGEND OF ZELDA: ORACLE OF SEASONS	PRO-MOTIONS NOVELTY COMPANY INC.	N
COP0200034	20020214	20210809	THE LEGEND OF ZELDA: ORACLE OF AGES	PRO-MOTIONS NOVELTY COMPANY INC.	N
COP0200035	20020214	20210809	THE LEGEND OF ZELDA: ORACLE OF AGES	PRO-MOTIONS NOVELTY COMPANY INC.	N
COP0200036	20020220	20200220	NOVELL SMALL BUSINESS SUITE 5.1	NINTENDO OF AMERICA INC.	N
COP0200037	20020222	20200222	MANAGEWISE 2.7	NOVELL, INC.	N
COP0200038	20020222	20200222	TAE BO LIVE-ADVANCED VOLUME 12	NOVELL, INC.	N
COP0200039	20020222	20200222	TAE BO LIVE-BASIC VOLUME 12	NCP MARKETING GROUP INC.	N
COP0200040	20020222	20200222	TAE BO LIVE-ADVANCED VOLUME 9	NCP MARKETING GROUP INC.	N
COP0200041	20020222	20200222	TAE BO LIVE-BASIC VOLUME 9	NCP MARKETING GROUP INC.	N
COP0200042	20020222	20200222	TAE BO FOCUS SERIES-ABS & GLUTES	NCP MARKETING GROUP INC.	N
COP0200043	20020222	20210222	TAE BO II GET RIPPED 8-MINUTE WORKOUT	NCP MARKETING GROUP INC.	N
COP0200044	20020222	20210222	TAE BO II GET RIPPED BASIC WORKOUT (2 VOLUMES)	NCP MARKETING GROUP INC.	N
COP0200045	20020222	20210222	TAE BO II GET RIPPED BASIC WORKOUT (2 VOLUMES)	NCP MARKETING GROUP INC.	N
COP0200046	20020222	20210222	TAE BO LIVE-BASIC VOLUME 10	NCP MARKETING GROUP INC.	N
COP0200047	20020226	20200226	MONSTERS, INC	NCP MARKETING GROUP INC.	N
COP0200048	20020226	20200226	ZENWORKS FOR SERVERS 2.0	DISNEY ENTERPRISES, INC.	N
COP0200049	20020226	20210226	GAME BOY BOOT CODE	NOVELL INC.	N
COP0200050	20020226	20210226	GAME BOY ADVANCE BOOT CODE	NINTENDO OF AMERICA INC.	N
SUBTOTAL RECORDATION TYPE 39					
THK0200071	20020205	20060506	CUISENAIRE	A. DATIGER & COMPANY, INC.	N
THK0200072	20020205	20061015	PPC	JOHN HEZALINGUA ASSOCIATES INC.	N
THK0200073	20020205	20070318	LAUREN RALPH LAUREN	PRL USA HOLDINGS, INC.	N
THK0200074	20020205	20070708	POLO (POLO PLAYER SYMBOL) RALPH LAUREN	PRL USA HOLDINGS, INC.	N
THK0200075	20020205	20070201	POLO BY RALPH LAUREN	PRL USA HOLDINGS, INC.	N
THK0200076	20020205	20070401	POLO JEANS CO.	PRL USA HOLDINGS, INC.	N
THK0200077	20020205	20060528	RALPH LAUREN	PRL USA HOLDINGS, INC.	N

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN FEBRUARY 2002

05/07/02
16:20:20

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMN OR MSK	OWNER NAME	RES
TKM0200078	20020205	20070930	RL AND FLAG DESIGN	PRL USA HOLDINGS, INC.	N
TKM0200079	20020205	20090100	X-SPORTS AND DESIGN	X-SPORTS, INC.	N
TKM0200080	20020205	20090100	CHICO'S	CHICO'S CONCEPT, INC.	N
TKM0200081	20020205	20090100	SENSORY MARK - NO DRAWING	ELORG COMPANY LLC	N
TKM0200082	20020205	20110424	XEXPRESS	APPROPRIATE SOLUTIONS, INC.	N
TKM0200083	20020206	20110424	TAHITIEN NONI	MORINIDA, INC.	N
TKM0200084	20020206	20110116	CONCORD	MOVADO LLC.	N
TKM0200085	20020206	20040911	MOVADO	MOVADO LLC.	N
TKM0200086	20020206	20060204	CIRCLE DESIGN WITH SMALLER INTERNAL CIRCLE	MOVADO LLC.	N
TKM0200087	20020206	20110519	DELIRIUM	MOVADO LLC.	N
TKM0200088	20020206	20060204	CIRCLE DESIGN ON FACE OF WATCH	MOVADO LLC.	N
TKM0200089	20020207	20060624	CIRCLE DESIGN	MOVADO LLC.	N
TKM0200090	20020207	20070429	CARPE DIEM	MOVADO LLC.	N
TKM0200091	20020207	20080310	VECTOR	MOVADO LLC.	N
TKM0200092	20020207	20110605	AEZ	MOVADO LLC.	N
TKM0200093	20020207	20110814	KINETO	MOVADO LLC.	N
TKM0200094	20020207	20110526	QUICK-GRIP	MOVADO LLC.	N
TKM0200095	20020207	20070501	HENRI SELMER AND DESIGN	MOVADO LLC.	N
TKM0200096	20020207	20110105	DESIGN	MOVADO LLC.	N
TKM0200097	20020207	20110105	DESIGN	MOVADO LLC.	N
TKM0200098	20020207	20030427	BETTER SOUND THROUGH RESEARCH	MOVADO LLC.	N
TKM0200099	20020207	20150427	KONICA	MOVADO LLC.	N
TKM020100	20020207	20070714	KONICA	MOVADO LLC.	N
TKM020101	20020207	20041115	SUNBURST DESIGN	MOVADO LLC.	N
TKM020102	20020207	20050103	OBLIQUE SUNBURST DESIGN	MOVADO LLC.	N
TKM020103	20020207	20070204	SANDISK AND DESIGN	MOVADO LLC.	N
TKM020104	20020207	20070310	BUGLE BOY USA AND DESIGN	MOVADO LLC.	N
TKM020105	20020211	20061022	ATLANTA HAWKS AND DESIGN	MOVADO LLC.	N
TKM020106	20020211	20031123	BOSTON CELTICS AND DESIGN	MOVADO LLC.	N
TKM020107	20020211	20050815	CAVS AND DESIGN	MOVADO LLC.	N
TKM020108	20020211	20050711	DENVER NUGGETS AND DESIGN	MOVADO LLC.	N
TKM020109	20020211	20071209	DETROIT PISTONS AND DESIGN	MOVADO LLC.	N
TKM020110	20020211	20090427	WARRIORS AND DESIGN	MOVADO LLC.	N
TKM020111	20020211	20061029	ROCKETS AND DESIGN	MOVADO LLC.	N
TKM020112	20020212	20031130	PACERS AND DESIGN	MOVADO LLC.	N
TKM020113	20020212	20060421	MIAMI HEAT AND DESIGN	MOVADO LLC.	N
TKM020114	20020212	20060421	MILWAUKEE BUCKS AND DESIGN	MOVADO LLC.	N
TKM020115	20020212	20071216	MINNESOTA TIMBERWOLVES AND DESIGN	MOVADO LLC.	N
TKM020116	20020212	20071216	NETS AND DESIGN	MOVADO LLC.	N
TKM020117	20020212	20080804	76ERS AND DESIGN	MOVADO LLC.	N
TKM020118	20020212	20090316	PHOENIX SUNS AND DESIGN	MOVADO LLC.	N
TKM020119	20020212	20041108	BLAZERS	MOVADO LLC.	N
TKM020120	20020212	20030601	SACRAMENTO KINGS AND DESIGN	MOVADO LLC.	N
TKM020121	20020212	20060618	SACRAMENTO KINGS AND DESIGN	MOVADO LLC.	N
TKM020122	20020212	20060924	SEATTLE SONICS AND DESIGN	MOVADO LLC.	N
TKM020123	20020212	20080120	UTAH JAZZ AND DESIGN	MOVADO LLC.	N
TKM020124	20020212	20090406	WIZARDS AND DESIGN	MOVADO LLC.	N
TKM020125	20020213	20100429	EPSON	MOVADO LLC.	N
TKM020126	20020213	20091005	BEAR & DESIGN	MOVADO LLC.	N
TKM020127	20020213	20091012	BEAR & DESIGN	MOVADO LLC.	N
TKM020128	20020213	20090914	BEAR U.S.A., INC. & DESIGN	MOVADO LLC.	N

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN FEBRUARY 2002

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
THK0200129	20020213	20110220	BEAR U.S.A., INC.	BEAR U.S.A., INC.	N
THK0200130	20020213	20100922	BEAR MOUNTAIN	BEAR U.S.A., INC.	N
THK0200131	20020213	20080722	ATREMAX (STYLIZED)	BEAR U.S.A., INC.	N
THK0200132	20020213	20081020	BEAR MAX & DESIGN	BEAR U.S.A., INC.	N
THK0200133	20020213	20091020	BEAR BEAR	BEAR U.S.A., INC.	N
THK0200134	20020213	20091212	ATREMAX (STYLIZED)	BEAR U.S.A., INC.	N
THK0200135	20020213	20100714	MISCELLANEOUS DESIGN (TREE DESIGN)	COMPOSITE PANEL ASSOCIATION	N
THK0200136	20020213	20110713	HUSH PUPPIES	WOLVERINE WORLD WIDE, INC.	N
THK0200137	20020213	20110630	ABSOLUTE AND BOTTLE DESIGN	V&S VIN & SPIRIT AKTIEBOLAG	N
THK0200138	20020213	20110109	THE GOD BLESS AMERICA BEAR	ROBERT S. LECLAIR	N
THK0200139	20020213	20101023	KIEHL'S	L'OREAL USA CREATIVE, INC.	N
THK0200140	20020213	20100805	DESIGN ONLY	KANAN MUSIC CORPORATION	N
THK0200142	20020213	20100310	CIRCULAR LEAF DESIGN	KANAN MUSIC CORPORATION	N
THK0200143	20020213	20050829	DESIGN ONLY	KANAN MUSIC CORPORATION	N
THK0200144	20020213	20030817	DESIGN ONLY	KANAN MUSIC CORPORATION	N
THK0200145	20020213	20110821	GO FOR THE GOLD	KANAN MUSIC CORPORATION	N
THK0200146	20020214	20040117	PRADA	UNITED STATES OLYMPIC COMMITTEE	N
THK0200147	20020214	20050117	PRADA MILANO & TRIANGLE DESIGN	PRADA S.A.	N
THK0200148	20020214	20050117	PRADA	PRADA S.A.	N
THK0200149	20020214	20041227	PRADA & DESIGN	PRADA S.A.	N
THK0200150	20020214	20080602	PRADA	PRADA S.A.	N
THK0200151	20020214	20080602	PRADA	PRADA S.A.	N
THK0200152	20020214	20091228	PRADA & DESIGN	PRADA S.A.	N
THK0200153	20020214	20060220	PIONEER	PIONEER KABUSHIKI KAISHA	N
THK0200154	20020214	20101031	METABOLIFE 356 AND DESIGN (LABEL DESIGN)	METABOLIFE INTERNATIONAL, INC.	N
THK0200155	20020214	20101031	METABOLIFE 356 AND DESIGN (MEDALLION DESIGN)	METABOLIFE INTERNATIONAL, INC.	N
THK0200156	20020215	20100307	SONAKI	MOHAN NAINANI C/O SEGA EXPORTS	N
THK0200157	20020220	20101106	CRYSTAROME	TAKASAGO INTERNATIONAL CORP.	N
THK0200158	20020222	20091201	BARBIE	MATTEL, INCORPORATED	N
THK0200159	20020222	20110608	HUSH PUPPIES	WOLVERINE WORLD WIDE, INC.	N
THK0200160	20020222	20071212	DESIGN (SYMBOL OF EAGLE WITHIN A CIRCLE)	TAISHO PHARMACEUTICAL CO., LTD.	N
THK0200161	20020222	20051205	DESIGN (SYMBOL OF EAGLE WITHIN A CIRCLE)	TAISHO PHARMACEUTICAL CO., LTD.	N
THK0200162	20020222	20080531	LIPOVITAN	TAISHO PHARMACEUTICAL CO., LTD.	N
THK0200163	20020222	20040605	LIPOVITAN	TAISHO PHARMACEUTICAL CO., LTD.	N
THK0200164	20020225	20111110	CHANEL	CHANEL INC.	N
THK0200165	20020226	20110703	KAID	KAID INDUSTRIES INC.	N
THK0200166	20020226	20110828	OVAL DESIGN	KARSTEN MANUFACTURING CORP.	N
THK0200167	20020226	20110910	TRACE	WARNER-LAMBERT COMPANY	N
THK0200168	20020226	20110129	MASTROBERARDINO	AZIENDA VINICOLA MICHELE MASTROB	N
THK0200169	20020227	20110925	THE TINGLER	EVERTHINGFORLOVE.COM, INC.	N
THK0200170	20020227	20110213	ROXY	QUIKSILVER, INC.	N
THK0200171	20020227	20090622	ROXY	QUIKSILVER, INC.	N
THK0200172	20020227	20070722	DESIGN ONLY (TWO STYLIZED SNOW TOPPED MOUNTAINS	QUIKSILVER, INC.	N

SUBTOTAL RECORDATION TYPE 99

TOTAL RECORDATIONS ADDED THIS MONTH 138

COPYRIGHT, TRADEMARK, AND
TRADE NAME RECORDATIONS

(No. 3-2002)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of March 2002. The last notice was published in the CUSTOMS BULLETIN on March 6, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: May 10, 2002.

JOANNE ROMAN STUMP
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

REC. NUMBER	EFF. DT.	EXP. DT.	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES.
COP0200051	20020311	20210311	MATEL CATALOG 2001	MATEL, INC.	N
COP0200052	20020327	20220327	EASY SPELL/SPELL TIME	KODU ALAN	N
COP0200053	20020327	20220327	EASY SPELL/SPELL TIME	ROSE SLEIGERS	N
COP0200054	20020327	20220327	NORTH ATLANTIC OPERATING COMPANY, INC. DESIGN	NORTH ATLANTIC OPERATING CO. INC	N
SUBTOTAL RECORDATION TYPE					
4					
THK0200173	20020311	20100613	M AND DESIGN	MOVADO LLC.	N
THK0200174	20020315	20050527	DESIGN (HORSE, CARRIAGE AND TRAINER)	HERMES INTERNATIONAL	N
THK0200175	20020315	20031123	H (DESIGN)	HERMES INTERNATIONAL	N
THK0200176	20020315	20070909	HERMES-PARIS	HERMES INTERNATIONAL	N
THK0200177	20020319	20110501	DESIGN (HANDBAG)	HERMES INTERNATIONAL	N
THK0200178	20020320	20110309	HERMES	HERMES INTERNATIONAL	N
THK0200179	20020320	20090627	HERMES	HERMES INTERNATIONAL	N
THK0200180	20020320	20090801	HERMES	HERMES INTERNATIONAL	N
THK0200181	20020320	20090815	HERMES	HERMES INTERNATIONAL	N
THK0200182	20020320	20090718	HERMES	HERMES INTERNATIONAL	N
THK0200183	20020320	20110106	HERMES	HERMES INTERNATIONAL	N
THK0200184	20020320	20081221	HERMES	HERMES INTERNATIONAL	N
THK0200185	20020320	20081221	HERMES	HERMES INTERNATIONAL	N
THK0200186	20020320	20070604	HERMES	HERMES INTERNATIONAL	N
THK0200187	20020320	20081229	HERMES	HERMES INTERNATIONAL	N
THK0200188	20020320	20081229	HERMES	HERMES INTERNATIONAL	N
THK0200189	20020320	20051119	HERMES	FAUBOURG SAINT-HONORE PARIS	N
THK0200190	20020320	20051128	HERMES	FAUBOURG SAINT-HONORE PARIS	N
THK0200191	20020321	20051205	HERMES	FAUBOURG SAINT-HONORE PARIS	N
THK0200192	20020321	20070128	HERMES	FAUBOURG SAINT-HONORE PARIS	N
THK0200193	20020321	20051121	HERMES	FAUBOURG SAINT-HONORE PARIS	N
THK0200194	20020321	20031123	DESIGN (BOTTLE)	HERMES INTERNATIONAL	N
THK0200195	20020321	20091114	DESIGN (HANDBAG)	HERMES INTERNATIONAL	N
THK0200196	20020321	20110501	DESIGN (HANDBAG)	HERMES INTERNATIONAL	N
THK0200197	20020325	20110002	RED BULL	RED BULL GMBH	N
THK0200198	20020325	20090831	L.E.I. LIFE ENERGY INTELLIGENCE	R.S.V. SPORT, INC.	N
THK0200199	20020326	20100507	L.E.I. LIFE ENERGY INTELLIGENCE	R.S.V. SPORT, INC.	N
THK0200200	20020326	20100507	L.E.I. LIFE ENERGY INTELLIGENCE	R.S.V. SPORT, INC.	N
THK0200201	20020326	20101024	L.E.I. LIFE ENERGY INTELLIGENCE	R.S.V. SPORT, INC.	N
THK0200202	20020326	20041129	BUGABOO	COLUMBIA SPORTSWEAR COMPANY	N
THK0200203	20020326	20100530	BUGABOO	COLUMBIA SPORTSWEAR COMPANY	N
THK0200204	20020326	20110423	DESIGN	COLUMBIA SPORTSWEAR COMPANY	N
THK0200205	20020326	20110423	DESIGN	COLUMBIA SPORTSWEAR COMPANY	N
THK0200206	20020326	20070326	COLUMBIA	COLUMBIA SPORTSWEAR COMPANY	N
THK0200207	20020326	20060528	COLUMBIA	COLUMBIA SPORTSWEAR COMPANY	N
THK0200208	20020326	20110925	FLOW POINT	APPLIED PRECISIONS, L.L.C.	N
THK0200209	20020326	20021117	SAN ANTONIO SPURS AND DESIGN	SAN ANTONIO SPURS, L.L.C.	N
THK0200210	20020326	20110129	GUSANO ROJO MEZCAL LEGITIMO DE OAXACO & DESIGN	NACIONAL VINICOLA S.A.	N
THK0200211	20020326	20110918	VFT	CALLAWAY GOLF COMPANY	N
THK0200212	20020326	20110904	C & DESIGN	CALLAWAY GOLF COMPANY	N
THK0200213	20020326	20021020	OPRAH	HARPO PRODUCTIONS, INC.	N
THK0200214	20020327	20051003	CONVERT	COLUMBIA SPORTSWEAR COMPANY	N

04/01/02 07:40:19 U.S. CUSTOMS SERVICE IPR RECORDATIONS ADDED IN MARCH 2002 PAGE 2
 DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0200215	20020327	20101230	DESIGN	COLUMBIA SPORTSWEAR COMPANY	N
TMK0200216	20020327	20100104	GRT	COLUMBIA SPORTSWEAR COMPANY	N
TMK0200217	20020327	20080317	SILENT RAIN	COLUMBIA SPORTSWEAR COMPANY	N
TMK0200218	20020327	20110817	SOREL	SOREL CORPORATION	N
TMK0200219	20020327	20110813	SUNCON	SUNCON TOYS INDUSTRY LIMITED	N
TMK0200220	20020327	20061224	DESIGN	SHEEHAN SALES ASSOCIATES, INC.	N
TMK0200221	20020327	20111123	SWIFT	SWIFT INSTRUMENTS, INC.	N
SUBTOTAL RECORDATION TYPE 49					
TOTAL RECORDATIONS ADDED THIS MONTH					53

COPYRIGHT, TRADEMARK, AND
TRADE NAME RECORDATIONS

(No. 4-2002)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of April 2002. The last notice was published in the CUSTOMS BULLETIN on March 6, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: May 10, 2002.

JOANNE ROMAN STUMP
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0200052	20020404	20220404	FRUITS	QSL CORPORATION	N
COP0200053	20020404	20220404	MARIO TENNIS	NINTENDO OF AMERICA INC.	N
COP0200054	20020404	20220404	WAVE-A-WORD PICTURE PUZZLES	LAKESHORE LEARNINGS MATERIALS	N
COP0200055	20020404	20220404	WAVE-RACE BLUE STORM	NINTENDO OF AMERICA INC.	N
COP0200056	20020408	20210408	PIKMIN	NINTENDO OF AMERICA INC.	N
COP0200057	20020408	20210408	LUIGI'S MANSION	NINTENDO OF AMERICA INC.	N
COP0200058	20020408	20210408	GROUPWISE 6.0	NOVELL INC	N
COP0200059	20020408	20200408	DEVIL DUCKIE	ACCOUNTRENTS	N
COP0200060	20020408	20200408	BEAN BAG BEAR WITH FABRIC PAWS	THE BOYDS COLLECTION, LTD.	N
COP0200061	20020408	20220408	BRAXTON B BEAR: STYLE 51081-08	THE BOYDS COLLECTION, LTD.	N
COP0200062	20020408	20220408	CRAXTON B BEAN: STYLE 510300-11	THE BOYDS COLLECTION, LTD.	N
COP0200063	20020408	20220408	MRS. T TRUMBULL: STYLE 91833	THE BOYDS COLLECTION, LTD.	N
COP0200064	20020408	20220408	TWIST FINAIL	MGS MARKETING INC.	N
COP0200065	20020408	20220408	DOG BUDDHA	ACCOUNTRENTS	N
COP0200066	20020408	20210408	CAT BUDDHA	ACCOUNTRENTS	N
COP0200067	20020408	20200408	BZS6905AM(BATU RADIANT STATION AMETHY/PERIDOT)	DIAMOND CHAMPION LTD.	N
COP0200068	20020408	20200408	ES6125 (CUTWORK DAYAK OVERLAY SILVER OVAL EARRING)	DIAMOND CHAMPION LTD.	N
COP0200069	20020408	20200408	BZS902Z PETITE BATU BRACELET	DIAMOND CHAMPION LTD.	N
COP0200070	20020408	20190408	EZS6013A BATU POLA DROP EARRING	DIAMOND CHAMPION LTD.	N
COP0200071	20020408	20190408	EZS6013B BATU POLA MUSEUM DROP EARRING WITH GOLD	DIAMOND CHAMPION LTD.	N
COP0200072	20020408	20190408	EZS6013C BATU POLA MUSEUM DROP EARRING WITH GOLD	DIAMOND CHAMPION LTD.	N
COP0200073	20020408	20190408	EZS6023C BATU POLA MUSEUM DROP EARRING WITH GOLD	DIAMOND CHAMPION LTD.	N
COP0200074	20020408	20190408	EZS6023D BATU POLA MUSEUM DROP EARRING WITH GOLD	DIAMOND CHAMPION LTD.	N
COP0200075	20020408	20190408	EZS6023E BATU POLA MUSEUM DROP EARRING WITH GOLD	DIAMOND CHAMPION LTD.	N
COP0200076	20020408	20190408	EZS6023F BATU POLA MUSEUM DROP EARRING WITH GOLD	DIAMOND CHAMPION LTD.	N
COP0200077	20020408	20200408	HZS6023CI (BATU POLA MUSEUM DROP EARRING WITH GOLD)	DIAMOND CHAMPION LTD.	N
COP0200078	20020408	20200408	NP8002Z BAROQUE PEARL CUTWORK ENHANCER WITH GOLD	DIAMOND CHAMPION LTD.	N
COP0200079	20020408	20190408	BB904C SMALL OVAL CHAIN BRACELET	DIAMOND CHAMPION LTD.	N
COP0200080	20020408	20190408	BS967C SMALL CHAIN BRACELET	DIAMOND CHAMPION LTD.	N
COP0200081	20020408	20190408	BS9660C (904 CHAIN BRACELET WITH CUTWORK OVERLAY)	DIAMOND CHAMPION LTD.	N
COP0200082	20020408	20200408	BZ9440C (MIXED MEDIA GOLD & SILVER ID BRACELET CH9404)	DIAMOND CHAMPION LTD.	N
COP0200083	20020408	20200408	EZ607M MEDIUM DIAMOND SHPAE CUTWORK EARRING WITH GOLD	DIAMOND CHAMPION LTD.	N
COP0200084	20020408	20200408	EZ615 SILVER CUTWORK WITH GOLD PLONG BUDDHA	DIAMOND CHAMPION LTD.	N
COP0200085	20020408	20190408	EZS6004 BUDHA BELLY EARRING	DIAMOND CHAMPION LTD.	N
COP0200086	20020408	20190408	HZ6010 PYRAMIDE SLIDE	DIAMOND CHAMPION LTD.	N
COP0200087	20020408	20190408	NB90400:16 MEDIUM OVAL CHAIN NECKLACE (16")	DIAMOND CHAMPION LTD.	N
COP0200088	20020408	20190408	NB9404C:16 OVAL CHAIN NECKLACE (16")	DIAMOND CHAMPION LTD.	N
COP0200089	20020408	20190408	NP861Z MULTI PEARL DROP CUTWORK CROSS ENHANCER WITH	DIAMOND CHAMPION LTD.	N
COP0200090	20020408	20190408	NP402Z MIXED MEDIA GOLD & SILVER LARGE SLIDE ENHANCER	DIAMOND CHAMPION LTD.	N
COP0200091	20020408	20200408	NP402Z MIXED MEDIA GOLD & SILVER LARGE SLIDE ENHANCER	DIAMOND CHAMPION LTD.	N
COP0200092	20020408	20200408	NP422Z SILVER CUTWORK WITH GOLD PLONG BUDDHA	DIAMOND CHAMPION LTD.	N
COP0200093	20020408	20190408	RZ801Z RONDELL CUTWORK STACK RING WITH GOLD PLONG	DIAMOND CHAMPION LTD.	N
COP0200094	20020408	20210408	MARIO TENNIS	NINTENDO OF AMERICA INC.	N
SUBTOTAL RECORDATION TYPE 40					
THK0200222	20020404	20070218	TARDAN	TARDAN HERMANOS SUCESORES, S.A.	N
THK0200223	20020404	20060521	PS	KABUSHIKI KAISHA SONY COMPUTER	N
THK0200224	20020404	20090216	PS	KABUSHIKI KAISHA SONY COMPUTER	N
THK0200225	20020404	20100418	PLAYSTATION	KABUSHIKI KAISHA SONY COMPUTER	N
THK0200226	20020404	20070812	PLAYSTATION	KABUSHIKI KAISHA SONY COMPUTER	N
THK0200227	20020404	20071215	CHURRUMAIS	RECOT, INC.	N

REC. NUMBER	EFF. DT.	EXP. DT.	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES.
TMK0200228	20020404	20110213	DESIGN	UNIQUE SPORTS PRODUCTS, INC.	N
TMK0200229	20020404	20061022	COMMAND AND CONQUER	ELECTRONICS ARTS INC.	N
TMK0200230	20020404	20101107	EA SPORTS	ELECTRONIC ARTS INC.	N
TMK0200231	20020404	20080908	WESTWOOD STUDIOS	WORLD WRESTLING FEDERATION ENTER	N
TMK0200232	20020404	20100704	SUNDAY NIGHT HEAT	SMITHKLINE BEECHAM CORPORATION	N
TMK0200233	20020404	20101230	AUGMENTIN	WORLD WRESTLING FEDERATION ENTER	N
TMK0200234	20020404	20110314	UNDERTAKER	WORLD WRESTLING FEDERATION ENTER	N
TMK0200235	20020404	20111204	THE ROCK	WORLD WRESTLING FEDERATION ENTER	N
TMK0200236	20020404	20110522	NO WAY OUT	MK DIAMOND PRODUCTS, INC.	N
TMK0200237	20020404	20101212	DESIGN	SMITHKLINE BEECHAM CORPORATION	N
TMK0200238	20020405	20040313	BACTROBAN	SMITHKLINE BEECHAM CORPORATION	N
TMK0200239	20020405	20040215	PAXIL	SMITHKLINE BEECHAM CORPORATION	N
TMK0200240	20020405	20050702	TIMENTIN	SMITHKLINE BEECHAM CORPORATION	N
TMK0200241	20020405	20030816	RELAFOX	SMITHKLINE BEECHAM CORPORATION	N
TMK0200242	20020405	20090420	AVANDIA	SB PHARMCO PUERTO RICO INC.	N
TMK0200243	20020405	20090928	FACTIVE	SMITHKLINE BEECHAM P.L.C.	N
TMK0200244	20020405	20060910	COKEG	SMITHKLINE BEECHAM P.L.C.	N
TMK0200245	20020405	20070114	HYCARFIN	SMITHKLINE BEECHAM BIOLOGICALS	N
TMK0200246	20020405	20070119	ENGEMIX	SMITHKLINE BEECHAM BIOLOGICALS	N
TMK0200247	20020405	20070132	ENGEMIX-B	SMITHKLINE BEECHAM BIOLOGICALS	N
TMK0200248	20020405	20020731	LYMERIX	PARFUMS CHRISTIAN DIOR	N
TMK0200249	20020405	20090810	LYMERIX	THE NATIONAL COLLEGIATE ATHLETIC	N
TMK0200250	20020405	20090420	TWINRIX	THE NATIONAL COLLEGIATE ATHLETIC	N
TMK0200251	20020408	20120115	DESIGN	THE NATIONAL COLLEGIATE ATHLETIC	N
TMK0200252	20020408	20080405	NCAA	CHARLOTTE PIPE AND FOUNDRY CO.	N
TMK0200253	20020408	20100321	NCAA	BANGKOK BANGKOK IMPORT & EXPORT	N
TMK0200254	20020408	20040222	DESIGN	POWERNAIL COMPANY	N
TMK0200255	20020408	20070107	DESIGN	MANHATTAN GROUP, LLC	N
TMK0200256	20020408	20110219	POSITIVE HOLDING POWER NO SPLITS NO SQUEAKS	BATH & BODY WORKS, INC.	N
TMK0200257	20020408	20100425	GROOVY GIRLS	NINTENDO OF AMERICA, INC.	N
TMK0200258	20020408	20111218	ART STUFF	CANADIAN STANDARDS ASSOCIATION	N
TMK0200259	20020408	20100905	POKEMON	CANADIAN STANDARDS ASSOCIATION	N
TMK0200260	20020408	20030904	CSA	CANADIAN STANDARDS ASSOCIATION	N
TMK0200261	20020408	20031016	CSA	CANADIAN STANDARDS ASSOCIATION	N
TMK0200262	20020408	20080419	CSA	CANADIAN STANDARDS ASSOCIATION	N
TMK0200263	20020408	20101016	CA	CANADIAN STANDARDS ASSOCIATION	N
TMK0200264	20020408	20110717	CSA CERTIFIED	CANADIAN STANDARDS ASSOCIATION	N
TMK0200265	20020408	20090102	CSA DESIGN CERTIFIED	CANADIAN STANDARDS ASSOCIATION	N
TMK0200266	20020409	20070805	MONDI	FENMI CHAMAA	N
TMK0200267	20020409	20070805	MONDI	FENMI CHAMAA	N
TMK0200268	20020409	20090109	MONDI	FENMI CHAMAA	N
TMK0200269	20020409	20100321	SODA	FORTUNE DYNAMIC INC.	N
TMK0200270	20020409	20110430	MARY KITCHEN	FORTUNE DYNAMIC INC.	N
TMK0200271	20020409	20090105	DELICIOUS	FORTUNE DYNAMIC INC.	N
TMK0200272	20020409	20020622	OSTER	SUNBEAM PRODUCTS, INC.	N
TMK0200273	20020419	20101024	REDKEN 5TH AVENUE NYC	L'OREAL USA CREATIVE, INC.	N
TMK0200274	20020419	20031023	REDKEN	L'OREAL USA CREATIVE, INC.	N
TMK0200275	20020419	20100821	C DIOR	CHRISTIAN DIOR COUTURE, S.A.	N
TMK0200276	20020419	20021020	LOCMAN DESIGN	LOCMAN S.P.A.	N

5/01/02 2:26:32 U.S. CUSTOMS SERVICE IPR RECORDATIONS ADDED IN APRIL 2004 PAGE 3
 DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMH OR MSK	OWNER NAME	RES
TMK0200277	20020422	2011009	STEELHEAD PLUS	CALLAWAY GOLF COMPANY	N
TMK0200278	20020422	20100418	POKEMON (STYLIZED)	NINTENDO OF AMERICA INC.	N
TMK0200279	20020423	20030601	WAVE RACE	NINTENDO OF AMERICA INC.	N
TMK0200280	20020423	20021222	LEGAND OF ZELDA A LINK TO THE PAST	NINTENDO OF AMERICA INC.	N
TMK0200281	20020423	20070701	EMME	EMME ASSOCIATES, INC.	N
TMK0200282	20020430	20110119	DIORESSENCE	PARFUMS CHRISTIAN DIOR, S.A.	N
SUBTOTAL RECORDATION TYPE				61	
TOTAL RECORDATIONS ADDED THIS MONTH			101		

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 15, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED MODIFICATION OF RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF CREAM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to the classification of cream.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of cream and revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before June 28, 2002.

ADDRESS: Written comments are to be addressed to: U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-927-1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of cream. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) E83139, dated June 25, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer’s failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY E83139, dated June 25, 1999, the classification of a product commonly referred to as Puck Cream Pure and Natural was determined to be in subheading 0402.99.7000, HTSUS, if the product was entered under quota, or 0402.99.9000, HTSUS, if entered outside the quota. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. Customs now believes the correct classification of Puck Cream Pure and Natural, which is a liquid cream that has not been concentrated nor sweetened, is subheading 0401.30.0500, HTSUS, if the product is entered under quota. If the quota rate is closed, the classification is in subheading 0401.30.2500, HTSUS. The classifications provided for two other products in NY E83139 are correct and are not affected by this action.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY E83139, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964777 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 10, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 25, 1999.
CLA-2-04:RR:NC:2:231 E83139
Category: Classification
Tariff No. 0402.99.7000, 0402.99.9000,
1901.90.4200, and 1901.90.4300

MR. BILL HELMS
SCHMIDT, PRITCHARD AND COMPANY, INC.
*9801 West Lawrence Avenue
Schiller Park, IL 60176*

Re: The tariff classification of Danish cream from Denmark.

DEAR MR. HELMS:

In your letter, dated June 2, 1999, you have requested a tariff classification ruling on behalf of your clients, MD Foods USA, Inc., Union, NJ and Ziyad Brothers, Cicero, IL.

The merchandise is described thus:

1. Item #91384, "Puck Cream With Strawberry," is strawberry flavored Danish cream. The ingredients are fresh cream, sugar, vegetable thickeners (E471 made from soybean oil, E401, and E410), natural strawberry flavoring, salt, and coloring (E110 and E129). The butterfat content is 23 percent. The product is solely preserved by sterilization. It is packed in cylindrical tins (with snap tops) that measure 2 15/16 inches in diameter and 2 inches in height. The net weight is 6 ounces (170 grams).

2. Item #91365, "Puck Cream With Honey," is honey flavored Danish cream. The ingredients are fresh cream, sugar, honey, vegetable thickeners (E471 made from soybean oil, E401, and E410), and salt. The butterfat content is 23 percent. The product is solely preserved by sterilization. It is packed in cylindrical tins (with snap tops) that measure 2 15/16 inches in diameter and 2 inches in height. The net weight is 6 ounces.

3. Item #91379, "Puck Cream Pure and Natural," is plain flavored Danish cream. The ingredients are fresh cream made from cow's milk, butterfat (minimum 23 percent), vegetable thickeners (soybean oil, sodium alginate, and locust bean gum), and salt. The product is solely preserved by sterilization. It is packed in cylindrical tins (with snap tops) that measure 2 15/16 inches in diameter and 2 inches in height. The net weight is 6 ounces.

If entered under quota, the applicable tariff provision for "Puck Cream With Honey" (item #91365) and "Puck Cream Pure and Natural" (item #91379) will be 0402.99.7000, Harmonized Tariff Schedule of the United States (HTS), which provides for milk and cream, concentrated or containing added sugar or other sweetening matter, other, other, other, described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 17.5 percent ad valorem.

If entered outside the quota, the applicable tariff provision for "Puck Cream With Honey" (item #91365) and "Puck Cream Pure and Natural" (item #91379) will be 0402.99.9000, HTS, which provides for milk and cream, concentrated or containing added sugar or other sweetening matter, other, other, other, other. The rate of duty will be 47.7 cents per kilogram, plus 15.3 percent ad valorem. In addition, products classified in subheading 0402.99.9000, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.04.50-9904.05.01.

If entered under quota, the applicable tariff provision for "Puck Cream With Strawberry" (item #91384) will be 1901.90.4200, HTS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa * * * not elsewhere specified or included * * * other, dairy products described in additional U.S. note 1 to chapter 4, dairy preparations containing over 10 percent by weight of milk solids, described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 16 percent ad valorem.

If entered outside the quota, the applicable tariff provision for "Puck Cream With Strawberry" (item #91384) will be 1901.90.4300, HTS, and will be dutiable at US \$1.065 per kilogram, plus 14 percent ad valorem. In addition, products classified in subheading 1901.90.4300, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.04.50-9904.05.01, HTS.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (212) 637-7064.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964777ptl
Category: Classification
Tariff No. 0401.30.0500/0401.30.2500

MS. LARA AUSTRINS
RODRIGUEZ, O'DONNELL, FUERST, GONZALEZ & WILLIAMS
20 North Wacker Drive
Suite 1416
Chicago, IL 60606

Re: Puck Cream Pure and Natural; Modification of NY E83139.

DEAR MS. AUSTRINS:

This is in response to your letter of January 4, 2001, on behalf of Ziyad Brothers Importing, requesting reconsideration of NY E83139, dated June 25, 1999, insofar as it related to the classification of Puck Cream Pure and Natural, under the Harmonized Tariff Schedule of the United States (HTSUS). NY E83139 was issued to Schmidt, Pritchard and Company, Inc., on behalf of both Ziyad Brothers and MD Foods, USA, Inc., and classified three products. The classification of the other two products has not been questioned and is not affected by this ruling. A copy of this ruling is being provided to Schmidt, Pritchard and Company.

Facts:

Puck Cream Pure and Natural is described as plain flavored Danish cream. It contains fresh cream from cow's milk, butterfat (minimum 23 percent), vegetable thickeners (soybean oil, sodium alginate, and locust bean gum), and salt. The product is solely preserved by sterilization. It is packed in cylindrical tins (with snap tops) that measure 2 15/16 inches in diameter and 2 inches in height. The net weight is 6 ounces.

In your request for reconsideration, you point out that the Puck Cream Pure and Natural does not contain any added sugar or other sweetening matter. Because of this, you state that the Puck Cream Pure and Natural should not be classified in subheading 0402.99.7000 or 0402.99.9000, HTSUS, but rather should be classified in subheading 0402.91.1000 or 0402.91.7000, HTSUS, depending on whether it is entered under quota or not.

We have reviewed your letter and agree that the classification provided for Puck Cream Pure and Natural in NY E 83139 is incorrect. However, for the reasons stated below, we do not agree that the product is classified in the subheading you have suggested. As discussed below, the correct classification of Puck Cream Pure and Natural is subheading 0401.30.0500, HTSUS, or 0401.30.2500, HTSUS, depending on whether the product is imported within the quota.

Issue:

What is the classification of Puck Cream Pure and Natural?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter:
0401.30	Of a fat content, by weight, exceeding 6 percent: Of a fat content, by weight, not exceeding 45 percent:
*	*
0401.30.0500	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions
0401.30.2500	Other ¹ (¹ See Subheadings 9904.04.01–9904.04.08)
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter:
	Other
0402.91	Not containing added sugar or other sweetening matter: Described in additional U.S. note 11 to this chapter and entered pursuant to its provisions:
0402.91.1000	In airtight containers
	Other
0402.91.7000	In airtight containers ¹ (¹ See subheadings 9904.05.02–9904.05.19)
0402.99	Other:
	Other:
0402.99.7000	Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions
0402.99.9000	Other ² (² See subheadings 9904.04.50–9904.05.01)

The classification of Puck Cream Pure and Natural, an all-liquid cream, will be under GRI 1, with consideration given to the direction provided in the EN to heading 0401.

The EN to heading 04.01 states:

This heading covers milk (as defined in Note 1 to this Chapter) and cream, whether or not pasteurized, sterilized or otherwise preserved, homogenised or peptonised; but it **excludes** milk and cream which have been concentrated or which contain added sugar or other sweetening matter (**heading 04.02**) and curdled, fermented or acidified milk and cream (**heading 04.03**).

The EN to heading 04.02 states:

This heading covers milk (as defined in Note 1 to this Chapter) and cream, concentrated (for example, evaporated) or containing added sugar or other sweetening matter, whether liquid, paste or solid (in blocks, powder or granules) and whether or not preserved or reconstituted.

Heading 0401 provides for all liquid cream which is not concentrated or which does not contain added sugar or other sweetening matter. Heading 0402 provides for cream that is concentrated (for example evaporated) or which contains added sugar or other sweetening matter.

In rulings on a variety of cream products, Customs has held that cream that is neither concentrated, nor sweetened, and that has a fat content exceeding 6 percent by weight, but not exceeding 45 percent, is classifiable in subheading 0401.30.0500, if entered under quota, or 0401.30.2500, if entered outside the quota.

In NY 813695, dated August 30, 1995, “Balade Low Fat Whipping Cream” is cream containing butterfat (20 percent minimum), non-fat milk solids (8 percent), and carrageen (0.015 percent) was classified in subheadings 0401.30.0500/0401.30.2500, HTSUS.

In NY C81266, dated October 31, 1997, “Danish Dairy Cream” composed of 99 percent pasteurized cow’s cream and one percent vegetable thickening agents E471 (monoglycerides and diglycerides of edible fatty acids), E403 (sodium alginate), and E410 (locust bean gum) was classified in subheadings 0401.30.0500/0401.30.2500, HTSUS.

In NY C82114, dated December 8, 1997, “Elle and Vire Special Cream for Fast Sauces—20 Percent” was classified in subheadings 0401.30.0500/0401.30.2500, HTSUS. The “20 Percent” indicated the fat content by weight. The ingredients were 63 percent cream (made from cow’s milk), 35.7 percent skim milk, 0.5 percent monoglycerides and diglycerides, 0.3 percent sodium alginate, 0.3 percent xanthan gum, and 0.2 percent carotene.

In NY E85271, dated July 30, 1999, a coffee cream, is a milk product which has cream, vitamin fortification, with a milk fat content of 12 percent or 10 percent was classified in subheadings 0401.30.0500/0401.30.2500, HTSUS.

In all these, and other uncited rulings, Customs has consistently held that cream which is not concentrated and does not contain added sugar or other sweetening matter is classifiable in heading 0401, HTSUS.

Accordingly, the classification you have requested, 0402, HTSUS, which covers cream that is either concentrated or contains added sugar or other sweetening matter is inappropriate because of the composition of Puck Cream Pure and Natural. Because Puck Cream Pure and Natural is neither concentrated nor contains added sugar or other sweetening matter, the original classification provided by Customs in NY E83139 in subheadings 0402.99.70/0402.99.90, HTSUS, is incorrect. The correct classification of Puck Cream Pure and Natural is subheading 0401.30.0500, HTSUS, or 0401.30.2500, HTSUS, depending on whether it is entered under quota or not.

Holding:

Puck Cream Pure and Natural, containing fresh cream from cow's milk, butterfat (minimum 23 percent), vegetable thickeners (soybean oil, sodium alginate, and locust bean gum), and salt, is classified in tariff rate quota subheading 0401.30.0500, HTSUS. If the tariff rate quota has closed, the product is classified in subheading 0401.30.2500, HTSUS.

NY E83139, dated June 25, 1999, is modified in accordance with this letter insofar as it relates to the classification of Puck Cream Pure and Natural.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION AND MODIFICATION OF RULINGS
LETTERS AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF FOOT-PROPELLED SCOOTERS
AND A SCOOTER REPAIR KIT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation and modification of ruling letters and revocation of treatment relating to tariff classification of foot-propelled scooters and a scooter repair kit.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking seven ruling letters and modifying another pertaining to the tariff classification of foot-propelled scooters and a scooter repair kit under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before June 28, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 927-1638. After June 8, 2002, please call (202) 572-8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke seven ruling letters and modify another pertaining to the tariff classification of foot-propelled scooters and a scooter repair kit. Although in this notice Customs is specifically referring to eight rulings (NY G86035, NY G84149, NY G83804, NY G80928, NY G86641, NY G87032, NY G87262 and NY G83603) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the eight identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transac-

tions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY G86035, dated January 5, 2001, NY G84149, dated November 9, 2001, NY G83804, dated November 3, 2000, NY G80928, dated August 15, 2000, NY G86641, dated February 6, 2001, NY G87032, dated February 20, 2001, NY G87262, dated February 27, 2001, Customs classified certain foot-propelled scooters in subheading 8716.80.50, HTSUS, as other vehicles not mechanically propelled. These rulings are set forth as attachments A through G. It is now Customs position that the scooters subject to the seven rulings are provided for *eo nomine* in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other." Explanatory Note 95.01 describes foot-propelled scooters and states that scooters are among the toys provided for in that heading. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo. Nothing in heading 9501 requires sole use by children. These uses do not exclude the instant scooters from classification in heading 9501. Accordingly, those scooters are classifiable according to General Rule of Interpretation (GRI) 1 in subheading 9501.00.40, HTSUS.

Customs notes that the Harmonized System Committee of the World Customs Organization recently decided that substantially similar two- or three-wheeled scooters, similar to the instant scooters, with adjustable steering columns, small solid front and rear wheels and usually a foot brake on the rear wheel, were classifiable according to GRI 1 under heading 9501, HTSUS.

In NY G83603, dated November 9, 2000, set forth as attachment H, Customs individually classified articles of a scooter repair kit in various provisions. The polyurethane wheels, foam handles and grip tape were classified in subheading 8716.90.50, HTSUS, which provides for parts of articles of heading 8716, HTSUS. As we no longer believe that the aforementioned scooters are classifiable in heading 8716, HTSUS, parts of those scooters are not classifiable in heading 8716, HTSUS. The polyurethane wheels, foam handles and grip tape should be classified in subheading 9501.00.40, HTSUS, as parts of wheeled toys designed to be ridden by children.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G86035, NY G84149, NY G83804, NY G80928, NY G886641, NY G87032 and NY G87262, and to modify NY G83603 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 965510 (Attachment I), HQ 965511 (Attachment J), HQ 965512 (Attachment K), HQ 965513 (Attachment L), HQ 965514 (Attachment M), HQ 965515 (Attachment N), HQ 965516 (Attachment O) and HQ 965517 (Attachment P), respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: May 15, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 5, 2001.
CLA-2-87:RR:NC:MM:101 G86035
Category: Classification
Tariff No. 8716.80.5090

MR. PHILIP W. MASON
SECRETARY TREASURER
TRADERS CUSTOMS BROKERAGE LTD.
75 The East Mall
Suite 205
Toronto, Ontario, Canada M8Z 5W3

Re: The tariff classification of a *Scooter Model MW 1050* from Hong Kong.

DEAR MR. MASON:

In your letter dated December 28, 2000 you requested a tariff classification ruling.

You submitted a sample of a Scooter Model MW 1050. You indicate that the scooters are usually made from aluminum, but a few models are made from stainless steel. A mechanism near the front wheel allows the scooter to be folded for carrying or storage. The wheels are about 100 mm (4 inches) in diameter and are made from a tough, resilient plastic, with ball or roller bearings, and resemble those used on skateboards. The height of the handlebars is adjustable to suit both children and adults. On this model there is a mud-guard which can be depressed to act as a brake. The typical weight carrying capacity is 80 kg (176 lbs.). Typical sizes are: Platform length 50 to 70 cm; handlebar height from 40 to 75 cm.

The applicable subheading for the *Scooter Model MW 1050* will be 8716.80.5090, Harmonized Tariff Schedule of the United States (HTS), which provides for Trailers and semi-trailers; other vehicles not mechanically propelled; and parts thereof: Other vehicles:

Other * * * Other: Other. The rate of duty will be 3.2% ad valorem. This duty rate will remain unchanged in the year 2001.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 9, 2000.
CLA-2-87:RR:NC:MM:101 G84149
Category: Classification
Tariff No. 8716.80.5090

MR. BOB KING
CUSTOMS MANAGER
MELJER, INC.
*2929 Walker, N.W.,
Grand Rapids, MI 49544-9428*

Re: The tariff classification of a *Power Edge Streetboard* from Taiwan.

DEAR MR. KING:

In your letter dated October 31, 2000 you requested a tariff classification ruling.

You submitted a sample of the Power Edge Streetboard (UPC #7-13733-46924)—a scooter that you state is designed to be ridden by children and teenagers. The board has two plastic wheels connected to a 19.5 inch long board made of aluminum alloy with an adjustable handle bar and foot brake. You state that the handlebar may be raised to a height of approximately 24 inches from its base. It has two removable foam padded grips. Pushing with one leg propels the scooter and the rear foot brake operates by applying pressure to the back wheel. The Streetboard can be folded and the grips removed for storage in the carry bag that accompanies the scooter.

The applicable subheading for the Power Edge Streetboard will be **8716.80.5090**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Trailers and semi-trailers; other vehicles not mechanically propelled; and parts thereof: Other vehicles: Other * * * Other: Other*. The rate of duty will be 3.2% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 3, 2000.
CLA-2-87:RR:NC:MM:101 G83804
Category: Classification
Tariff No. 8716.80.5090

MR. PAUL LEITNER
CONTINENTAL AGENCY, INC.
CUSTOMHOUSE BROKERS
535 Brea Canyon Rd.,
Walnut, CA 91789

Re: The tariff classification of *Ninja Children's Mini-Scooter* from Taiwan.

DEAR MR. LEITNER:

In your letter dated October 2, 2000 you requested a tariff classification ruling on behalf of your client Zenital Inc.

You submitted a sample as well as advertising literature of the "Ninja Children's Mini-Scooter." You state that the scooter is designed and marketed for use by children. The scooter is made of an unspecified metal alloy. It has two 100-mm PU wheels. The handlebars fold and are adjustable in height. The scooter also has an alloy fender that is also used as the brake. The scooter is foldable for ease in transport. Its folded size is 23.6" x 4.3" x 6.3". It weighs 6.2 lbs.

You state that Zenital's scooter is designed and marketed for use by children and that the packaging expressly identifies it as a "Children's Mini-Scooter". You therefore suggest that the scooter is properly classified under HTS 9501.00.4000, which provides for *Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); * * *: Wheeled toys designed to be ridden by children and parts and accessories thereof; Other*. The duty rate is Free.

Even though you indicate that the "Ninja Children's Mini-Scooter" is designed and marketed for use by children it is similar in design and construction to other imported scooters that are not designed to be limited to the use by children. We, therefore do not concur with your claim that the "Ninja Children's Mini-Scooter" is properly classified under HTS 9501.00.4000.

The applicable subheading for the "Ninja Children's Mini-Scooter" will be **8716.80.5090**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Trailers and semi-trailers; other vehicles not mechanically propelled; and parts thereof; Other vehicles: Other * * * Other: Other*. The rate of duty will be 3.2% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 15, 2000.

CLA-2-87:RR:NC:MM:101
Category: Classification
Tariff No. 8716.80.5090

MR. RON REUBEN
TECHNICAL ADVISOR
DANZAS AEI CUSTOMS BROKERAGE SERVICES
5510 West 102nd Street
Los Angeles, CA 90045

Re: The tariff classification of a "Micro Scooter" from China.

DEAR MR. REUBEN:

In your letter dated July 25, 2000 you requested a tariff classification ruling on behalf of your client Huffly Bicycles, Inc.

You submitted a sample of the "Micro Scooter" that has the following features:

The scooter consists of an aluminum platform on which an individual can stand to operate the vehicle by using a leg to push on the ground below. The platform is 20 inches (50 cm) long by 4 inches (10 cm) wide, with a retractable, two position steering column.

The retractable steering column measures 18 inches (45 cm) at its shortest. Its full extension measures an additional 13 inches (33 cm). The desired extension is locked into place by a locking lever located on the column.

The steering column is welded to a two-position swivel that is mounted on the platform. One position locks the steering column into a ready-to-use position, perpendicular to the platform. The other position locks the steering column into a snug, carrying or storage position parallel to the platform. A lever is used to change positions.

The scooter has two hard plastic wheels, both with a 4-inch (10-cm) diameter. The rear wheel is welded to the rear of the platform and the front wheel is welded to the steering column. The rear wheel is protected by a 2-inch by 5-inch fender. The fender also provides some braking ability when the user presses the fender directly onto the rear wheel.

The scooter weighs 6.5 lbs.

For storage compactness, the two steering handles can be removed by pushing the buttons in the eyeholes on the top of the steering column.

You state that the importer believes that the Micro Scooter can be classified HTS 9501.00.4000, which provides for *Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls strollers; parts and accessories thereof: Wheeled toys designed to be ridden by children and parts and accessories thereof: Other*.

We disagree with your proposed classification. HTS Heading 9501 covers "Wheeled Toys Designed To Be Ridden by Children". For goods to fall within this heading, the wheeled product must be designed for exclusive use by children. Usually size makes that determination simple. However, in the case of a scooter, which is open in its design, the determination becomes a little more difficult. In the case of the instant product, it is of sturdy construction and is capable of holding up to two hundred fifty pounds. The fact that the product is small is a design feature to make it more portable when not in use. It is clear from the marketing that the instant scooter is not designed for use exclusively by children. Therefore, it can not be classified within heading 9501.

The applicable subheading for the "Micro Scooter" will be **8716.80.5090**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Trailers and semi-trailers; other vehicles not mechanically propelled; and parts thereof: Other vehicles: Other * * ** Other: Other. The rate of duty will be 3.2% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions

regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 6, 2001.
CLA-2-87:RR:NC:MM:101 G86641
Category: Classification
Tariff No. 8716.80.5090

MR. MILTON WEINBERG
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278

Re: The tariff classification of the "I-Go" Scooter from China.

DEAR MR. WEINBERG:

In your letter dated January 10, 2001 you requested a tariff classification ruling on behalf of your client Trentech LLC.

You submitted a sample of the "I-Go" Scooter. You state that the scooter can be folded when not in use. The scooter consists of an aluminum platform on which the individual stands to operate by using a leg to push on the ground. The movement of the individual's leg pushing against the pavement propels the scooter. You state that the scooter is designed to support up to 175 lbs. in weight. The retractable steering column can be locked in various heights to make allowance for the size of the operator. The scooter has two hard plastic wheels that are both the same diameter.

You state that because " * * * its principle use is for the amusement of children" this scooter should be classified as a child's scooter under HTS 9501.00.4000, which provides for Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls strollers; parts and accessories thereof: Wheeled toys designed to be ridden by children and parts and accessories thereof: Other.

We disagree with your proposed classification. HTS Heading 9501 covers "Wheeled Toys Designed To Be Ridden by Children". For goods to fall within this heading, the wheeled product must be designed for exclusive use by children. Usually size makes that determination simple. However, in the case of a scooter, which is open in its design, the determination becomes a little more difficult. In the case of the instant product, it is of sturdy construction and is capable of holding up to *175 pounds*. The fact that the product is small is a design feature to make it more portable when not in use. It is clear from the marketing that the instant scooter is not designed for use exclusively by children. The "I-Go" Scooter is *not*, by its own admission, a *toy* for children's use. According to the Assembly Manual it warns, "This is not a toy, children have to be under the supervision of adult (sic) for using the scooter." In fact, we have information that adults up to 65 years of age as well as children use scooters of this type. Therefore, it can not be classified within heading 9501.

The applicable subheading for the "I-Go" Scooter will be 8716.80.5090, Harmonized Tariff Schedule of the United States (HTS), which provides for Trailers and semi-trailers; other vehicles not mechanically propelled; and parts thereof: Other vehicles: Other * * *

Other: Other. The rate of duty will be 3.2% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions

regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 20, 2001.
CLA-2-87:RR:NC:MM:101 G87032
Category: Classification
Tariff No. 8716.80.5090

MR. ARLEN T. EPSTEIN
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036-8901

Re: The tariff classification of the “Zinger” Scooter from China.

DEAR MR. EPSTEIN:

In your letter dated February 6, 2001 you requested a tariff classification ruling on behalf of your client, E & B Giftware, Inc.

You submitted a sample of the “Zinger” Scooter. The scooter is a foldable two-wheeled scooter that measures approximately 25 inches in length; has polyurethane wheels measuring approximately 3.8 inches in diameter; and an adjustable handlebar with a locking lever that extends to a height of approximately 32 inches. The handlebar features removable snap-in padded handles that are attached to the frame by a cord. The scooter’s platform measures approximately 16 inches in length by 4 inches in width. The scooter has a friction-operated foot brake that is engaged when the rider pushes down on a metal cover over the rear wheel with his/her foot. There is a stick on label affixed to the underside of the platform that states that the maximum user’s weight is 100 kg. (approximately 220 lbs.).

You state that you believe that the “Zinger” scooter is designed for use by children and is unsuitable for use by adults. You submit that the instant scooter is eo nomine provided for and classifiable within subheading 9501.00.4000 HTSUSA, which provides for wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); parts and accessories thereof: other—with a free rate of duty.

We disagree with your proposed classification. A child, for classification purposes, cannot exceed the age of 12. The instant product (“Zinger” scooter) is designed for individuals age 7 and up. It is not limited to children but is designed for a child, youth, and adult. Therefore, the “Zinger” scooter cannot be classified in 9501.

The applicable subheading for the “Zinger” Scooter will be 8716.80.5090, Harmonized Tariff Schedule of the United States (HTS), which provides for Trailers and semi-trailers; other vehicles not mechanically propelled; and parts thereof: Other vehicles: Other * * * Other: Other. The rate of duty will be 3.2% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 27, 2001.
CLA-2-87:RR:NC:MM:101 G87262
Category: Classification
Tariff No. 8716.80.5090

MS. ANNIE CHIK
UNIPAC SHIPPING, INC.
153-04 Rockaway Blvd. 2nd floor
Jamaica, NY 11434

Re: The tariff classification of a "Promotion" Scooter from China.

DEAR MS. CHIK:

In your letter dated February 14, 2001 you requested a tariff classification ruling on behalf of your client, Better Built Product, Inc.

You submitted descriptive literature on Item No. S8102 "Promotion" Scooter. The literature states that scooter has an adjustable handle—3 sizes. The deck is constructed of aluminum alloy/steel base. The deck size is 4 inches wide x 15 inches in length. The base has a non-slip sand grip. The wheels' size are 100-mm x 24-mm and made of "injection PVC." The scooter's height is 89 mm.

You state that you have confirmed with a Commodity Team at U.S. Customs that the correct HTS number is 9501.00.4000 which provides for Wheeled toys designed to be ridden by children (for example. Tricycles, scooters, pedal cars); * * *; parts and accessories thereof: Wheeled toys designed to be ridden by children and parts and accessories thereof: Other. We disagree with your proposed classification.

A child, for classification purposes cannot exceed the age of 12. The instant product is designed for individuals age 7 plus. It is not limited to children, but is designed for a child, youth, and adult. This scooter is, therefore, not classified under 9501.

The applicable subheading for the "Promotion" Scooter will be 8716.80.5090 Harmonized Tariff Schedule of the United States (HTS), which provides for Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other * * * Other: Other. The rate of duty will be 3.2% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY
 U.S. CUSTOMS SERVICE,
 New York, NY, November 9, 2000.
 CLA-2-87:RR:NC:MM:101 G83603
 Category: Classification
 Tariff No. 3919.90.5060, 6307.90.9989,
 8204.11.0060, 8716.90.5030, 8716.90.5060

MR. JOSEPH R. HOFFACKER—BTCI
 BARTHCO TRADE CONSULTANTS, INC.,
 7575 Holstein Avenue
 Philadelphia, PA 19153

Re: The tariff classification of a *Scooter Hop-Up Repair Kit* from China.

DEAR MR. HOFFACKER:

In your letter dated October 13, 2000 you requested a tariff classification ruling on behalf of your client K.B. Toys.

You submitted a sample of a Scooter Hop-Up Repair Kit. The kit is used to repair foot-operated, two-wheeled scooters. The kit contains the following items:

- 2 – 100 mm Polyurethane hand poured wheels 87A,
- 4 – ABEC Speed Bearings (they are built into the wheels),
- 2 – Foam Handles,
- Grip Tape (provides an abrasive surface to the floorboard of the scooter),
- Stickers 8.5" x 11" sheet of 6 to 10 stickers (decorative self-adhesive plastic stickers),
- 2 – Allen wrenches,
- 1 – shoulder strap.

You state that all of the items will be imported in one retail package.

The applicable subheading for the *Sticker Sheet* will be **3919.90.5060**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: Other: Other * * * Other*. The rate of duty will be 5.8% *ad valorem*.

The applicable subheading for the *Shoulder Strap* will be **6307.90.9989**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Other made up articles, including dress patterns: Other: Other * * * Other: Other*. The rate of duty will be 7% *ad valorem*.

The applicable subheading for the *Allen Wrenches* will be **8204.11.0060**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Hand-operated spanners and wrenches * * *; socket wrenches, with or without handles, drives or extensions; base metal parts thereof: Hand-operated spanners and wrenches; and parts thereof: Nonadjustable, and parts thereof * * * Other (including parts)*. The rate of duty will be 9% *ad valorem*.

The applicable subheading for the *100 mm Polyurethane Wheels* will be **8716.90.5030**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Parts: Other * * * Wheels*. The rate of duty will be 3.1% *ad valorem*.

The applicable subheading for the *Foam Handles* and the *Grip Tape* will be **8716.90.5060**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Parts: Other * * * Other*. The rate of duty will be 3.1% *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
 Director,
 National Commodity Specialist Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965510 DBS
Category: Classification
Tariff No. 9501.00.40

MR. PHILIP W. MASON
TRADERS CUSTOMS BROKERAGE, LTD.
75 The East Mall, Suite 205
Toronto, Ontario, Canada M8Z 5W3

Re: Modification of NY G86035; Scooter Model MW 1050.

DEAR MR. MASON:

In NY G86035, issued to you on January 5, 2001, the Director, National Commodity Specialist Division, New York, classified the Scooter Model MW 1050 in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Facts:

The Scooter Model 1050 is a foot-propelled scooter made from aluminum or stainless steel. It has a mechanism near the front wheel that allows it to be folded for carry or storage. The wheels are approximately 4 inches in diameter and are made from tough, resilient plastic, with ball or roller bearings, resembling those used on skateboards. The height of the adjustable steering column ranges from 40 to 75 cm (15.7 to 29.5 in.) The weight carrying capacity is 80 kg (176 lbs.). The platform length ranges from 50 to 70 cm (19.7 to 27.6 in.)

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
*	* * * * *
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Scooter Model MW 1050 was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are “usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels through a chain or rod, or, as in the case of certain scooters, by direct pressure of the child’s foot against the ground.” EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term “toy” is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word “designed,” found in many phrases throughout the HTSUS, is “ambiguous, being susceptible of interpretation as ‘intended’ or as ‘particularly and specially constructed.’” *Karoware, Inc., v. United States*, 564 F.2d 77, 82 (CCPA 1977). It is well established that whether an article is “specifically designed” or “specially constructed” for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. See *Pacific Trail Sportswear v. United States*, 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons within the weight carrying capacity (176 lbs.). Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends’ houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. “When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement.” *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental

to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, “one must look at both the structural and auxiliary design features, as neither by itself is determinative.” That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, “tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute.” *United States v. Standard Surplus Sales, Inc.*, 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: “Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof.” provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today’s foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930’s and 1950’s, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

Scooter Model 1050 is classified in subheading 9501.00.40, HTSUS, which provides for “Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other.”

Effect on Other Rulings:

NY G86035, dated January 5, 2001, is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965511 DBS
Category: Classification
Tariff No. 9501.00.40

MR. BOB KING
MEIJER, INC.
2929 Walker, N.W.
Grand Rapids, MI 49544-9428

Re: Revocation of NY G84149; Power Edge Streetboard.

DEAR MR. KING:

In NY G84149, issued to you on November 9, 2000, the Director, National Commodity Specialist Division, New York, classified the Power Edge Streetboard in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Facts:

The Power Edge Streetboard (UPC #7-13733-46924) is a foot-propelled scooter that you stated was designed to be ridden by children and teenagers. The board has two plastic wheels connected to a 19.5 inch (49.5 cm) long board made of aluminum alloy with an adjustable handle bar and foot brake. You state that the handlebar may be raised to a height of approximately 24 (61 cm) inches from its base. It has two removable foam padded grips. The Streetboard can be folded and the grips removed for storage in the carry bag that accompanies the scooter.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
*	*
*	*
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Power Edge Streetboard was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are “usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels through a chain or rod, or, as in the case of certain scooters, by direct pressure of the child’s foot against the ground.” EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term “toy” is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word “designed,” found in many phrases throughout the HTSUS, is “ambiguous, being susceptible of interpretation as ‘intended’ or as ‘particularly and specially constructed.’” *Karoware, Inc., v. United States*, 564 F.2d 77, 82 (CCPA 1977). It is well established that whether an article is “specifically designed” or “specially constructed” for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. See *Pacific Trail Sportswear v. United States*, 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends’ houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. “When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement.” *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, “one must look at both the structural and auxiliary design features, as neither by itself is determinative.” That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, “tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute.” *United States v. Standard Surplus Sales, Inc.*, 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: “Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof.” provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today’s foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930’s and 1950’s, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The Power Edge Streetboard is classified in subheading 9501.00.40, HTSUS, which provides for “Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other.”

Effect on Other Rulings:

NY G84149, dated November 9, 2000, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965512 DBS
Category: Classification
Tariff No. 9501.00.40

MR. PAUL LEITNER
CONTINENTAL AGENCY, INC.
535 Brea Canyon Rd.
Walnut, CA 91789

Re: Revocation of NY G83804; Ninja Children’s Mini-Scooter.

DEAR MR. LEITNER:

In NY G83804, issued to you on behalf of Zenital, Inc., on November 3, 2000, the Director, National Commodity Specialist Division, New York, classified the Ninja Children’s Mini-Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Facts:

You submitted a sample as well as advertising literature of the “Ninja Children’s Mini-Scooter.” You stated that the scooter is designed and marketed for use by children. The scooter is made of an unspecified metal alloy. It has two 100-mm PU wheels. The handlebars fold and are adjustable in height. The scooter also has an alloy fender that is also used as the brake. The scooter is foldable for ease in transport. Its folded size is 23.6” x 4.3” x 6.3”. It weighs 6.2 lbs. You stated that Zenital’s scooter is designed and marketed for use by children and that the packaging expressly identifies it as a “Children’s Mini-Scooter”. In NY G83804, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- 8716** Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
 - 8716.80 Other vehicles:
 - 8716.80.50 Other.
- * * * * *

- 9501** Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
 Wheeled toys designed to be ridden by children and parts and accessories thereof:
 9501.00.40 Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Ninja Children's Mini-Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels through a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72-73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc. v. United States*, 564 F.2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. See *Pacific Trail Sportswear v. United States*, 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, “one must look at both the structural and auxiliary design features, as neither by itself is determinative.” That is, even if an object has a primary or principal design, it is not automatically controlling. See, e.g., *Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, “tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute.” *United States v. Standard Surplus Sales, Inc.*, 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: “Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof.” provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today’s foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930’s and 1950’s, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The “Ninja Children’s Mini-Scooter” is classified in subheading 9501.00.40, HTSUS, which provides for “Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other.”

Effect on Other Rulings:

NY G83804, dated November 3, 2000, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT L]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965513 DBS
Category: Classification
Tariff No. 9501.00.40

MR. RON REUBEN
DANZAS AEI CUSTOMS BROKERAGE SERVICES
5510 West 102nd St.
Los Angeles, CA 90045

Re: Revocation of G80928; "Micro Scooter".

DEAR MR. REUBEN:

In NY G80928, issued to you on behalf of Huffy Bicycles, Inc., on August 15, 2000, the Director, National Commodity Specialist Division, New York, classified the "Micro Scooter" in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Facts:

The "Micro Scooter" is a foot-propelled scooter that consists of an aluminum platform 20 inches (50.8 cm) long by 4 inches (10 cm) wide, with a retractable, two position steering column measuring from 18 inches (45.7 cm) to 31 inches (78.7 cm). The desired extension is locked into place by a locking lever located on the column. The steering column is welded to a two-position swivel that is mounted on the platform. One position locks the steering column into a ready-to-use position, perpendicular to the platform. The other position locks the steering column into a snug, carrying or storage position parallel to the platform. A lever is used to change positions.

The scooter has two hard plastic wheels, both with a 4-inch diameter. The rear wheel is welded to the rear of the platform and the front wheel is welded to the steering column. The rear wheel is protected by a 2-inch by 5-inch fender. The fender also provides some braking ability when the user presses the fender directly onto the rear wheel. The scooter weighs 6.5 lbs. For storage compactness, the two steering handles can be removed by pushing the buttons in the eyeholes on the top of the steering column. The weight carrying capacity of this scooter is 250 lbs. (113 kg).

In NY G80928, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
*	*
*	*
*	*
*	*
*	*
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Micro Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels through a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72-73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F.2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. See *Pacific Trail Sportswear v. United States*, 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons within the weight carrying capacity (250 lbs.). Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only

to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. “When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement.” *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, “one must look at both the structural and auxiliary design features, as neither by itself is determinative.” That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, “tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute.” *United States v. Standard Surplus Sales, Inc.*, 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: “Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof.” provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today’s foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930’s and 1950’s, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The “Micro Scooter” is classified in subheading 9501.00.40, HTSUS, which provides for “Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other.”

Effect on Other Rulings:

NY G80928, dated August 15, 2000, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT M]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965514 DBS
Category: Classification
Tariff No. 9501.00.40

MR. MILTON WEINBERG
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278

Re: Revocation of NY G86641; "I-Go" Scooter.

DEAR MR. WEINBERG:

In NY G86641, issued to you on behalf of Trentech, LLC, on February 6, 2001, the Director, National Commodity Specialist Division, New York, classified the "I-Go" Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Facts:

The "I-Go" Scooter is a foot-propelled scooter consisting of an aluminum platform, retractable steering column that can be locked in various heights to make allowance for the size of the operator, two hard plastic wheels and is designed to support up to 175 lbs. (79 kg) in weight. The scooter can be folded when not in use. In NY G86641, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.

*	*	*	*	*	*	*
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:					
	Wheeled toys designed to be ridden by children and parts and accessories thereof:					
9501.00.40	Other.					

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "I-Go" Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels through a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72-73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F.2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. See *Pacific Trail Sportswear v. United States*, 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons within the weight carrying capacity (175 lbs.). Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian pur-

pose, or the utility purpose is incidental to the amusement.” *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, “one must look at both the structural and auxiliary design features, as neither by itself is determinative.” That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, “tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute.” *United States v. Standard Surplus Sales, Inc.*, 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: “Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof.” provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today’s foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930’s and 1950’s, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The “I-Go” Scooter is classified in subheading 9501.00.40, HTSUS, which provides for “Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other.”

Effect on Other Rulings:

NY G86641, dated February 6, 2001, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT N]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965515 DBS
Category: Classification
Tariff No. 9501.00.40

MR. ARLEN T. EPSTEIN
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036-8901

Re: Revocation of NY G87032; "Zinger" Scooter.

DEAR MR. EPSTEIN:

In NY G87032, issued to you on behalf of your client, E & B Giftware, Inc., on February 20, 2001, the Director, National Commodity Specialist Division, New York, classified the "Zinger" Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Facts:

The "Zinger" Scooter is a foot-propelled scooter with a platform measuring approximately 16 inches (40.6 cm) in length by 4 inches (10 cm) in width. It has polyurethane wheels measuring approximately 4 inches (100 mm) in diameter, and an adjustable handlebar with a locking lever that extends to a height of approximately 32 inches (81.2 cm). The handlebar features removable snap-in padded handles that are attached to the frame by a cord. The scooter has a friction-operated foot brake that is engaged when the rider pushes down on a metal cover over the rear wheel with his/her foot. The maximum user's weight capacity is approximately 220 lbs.

You state that you believe that the "Zinger" scooter is designed for use by children ages 7 and up, and is unsuitable for use by adults. In NY G87032, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
*	* * * * *

- 9501** Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
 Wheeled toys designed to be ridden by children and parts and accessories thereof:
 9501.00.40 Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "Zinger" Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels through a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72-73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F.2d 77, 82 (CCPA 1977). It is well established that whether an article is "specially designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. See *Pacific Trail Sportswear v. United States*, 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons within the weight carrying capacity (220 lbs.). Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian pur-

pose, or the utility purpose is incidental to the amusement.” *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, “one must look at both the structural and auxiliary design features, as neither by itself is determinative.” That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, “tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute.” *United States v. Standard Surplus Sales, Inc.*, 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: “Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof.” provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today’s foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930’s and 1950’s, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The “Zinger” Scooter is classified in subheading 9501.00.40, HTSUS, which provides for “Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other.”

Effect on Other Rulings:

NY G87032, dated February 20, 2001, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT O]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965516 DBS
Category: Classification
Tariff No. 9501.00.40

MS. ANNIE CHIK
UNIPAC SHIPPING, INC.
153-04 Rockaway Blvd., 2d Floor
Jamaica, NY 11434

Re: Revocation of NY G87262; "Promotion" Scooter.

DEAR MS. CHIK:

In NY G87262, issued to you on behalf of Better Built Product, Inc., on February 27, 2001, the Director, National Commodity Specialist Division, New York, classified the "Promotion" Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Facts:

"Promotion" Scooter, item No. S8102, is a foot-propelled scooter that has an adjustable handle. The platform is constructed of aluminum alloy/steel base. The platform measures approximately 15 inches (38 cm) in length. The base has a non-slip sand grip. The wheels are 100 mm and made of "injection PVC." The scooter is approximately 35 inches (89 cm) tall. The instant product is designed for individuals age 7 plus. In NY G87262, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
*	* * * * *
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "Promotion" Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels through a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72-73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F.2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. See *Pacific Trail Sportswear v. United States*, 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, “one must look at both the structural and auxiliary design features, as neither by itself is determinative.” That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, “tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute.” *United States v. Standard Surplus Sales, Inc.*, 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: “Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof.” provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today’s foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930’s and 1950’s, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The “Promotion” Scooter is classified in subheading 9501.00.40, HTSUS, which provides for “Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other.”

Effect on Other Rulings:

NY G87262, February 27, 2001, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965517 DBS
Category: Classification
Tariff No. 9501.00.40

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: Modification of NY G83603; Scooter Hop-Up Repair Kit.

DEAR MR. HOFFACKER:

In NY G83603, issued to you on behalf of K.B. Toys, on November 9, 2000, the Director, National Commodity Specialist Division, New York, classified the items in the Scooter Hop-Up Repair Kit in various subheadings of the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered the classification of certain articles and now believe the ruling, in part, to be incorrect.

Facts:

Scooter Hop-Up Repair Kit is used to upgrade two-wheeled, foot-propelled scooters. It consists of 2 100mm polyurethane hand poured wheels, 4 ABEC speed bearings built into the wheels, 2 foam handles, grip tape, which provides an abrasive surface to the platform of a scooter, a sheet of decorative stickers, 2 Allen wrenches and a shoulder strap, for carrying the scooter. The NY ruling classified the wheels, foam handles and grip tape under subheading 8716.90.50, HTSUS, which provides for parts of trailers, semi-trailers and other vehicles not mechanically propelled.

Issue:

Whether certain parts of foot-propelled scooters are classifiable as parts of wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
*	*
*	*
*	*
*	*
*	*
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

Customs has reconsidered the classification of numerous two-wheeled, foot-propelled scooters that had been classified in subheading 8716.80.50, HTSUS, as other vehicles not mechanically propelled. We found, in HQ 965510, 965511, 965512, 965513, 965514, 965515 and 965516, of this date, that these scooters are properly classified in subheading 9501.00.40, HTSUS, as they are provided for *eo nomine* in heading 9501, HTSUS. As the scooters are now classified as scooters, replacement parts for scooters should be classified accordingly. See General EN to Chapter 95, HTSUS. Therefore, the wheels, the foam handles and the grip tape classified in NY G83603 as parts of other vehicles not mechanically propelled can no longer be classified in heading 8716, HTSUS. Rather, they are classifiable as parts of the goods of heading 9501, HTSUS.

Holding:

The wheels, foam handles and grip tape of the Scooter Hop-Up Repair Kit are each classified in subheading 9501.00.40, HTSUS, which provides for “Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other.”

Effect on Other Rulings:

NY G83603, dated November 9, 2000, is hereby MODIFIED with respect to the classification of the wheels, foam handles and grip tape as set forth herein.

JOHN DURANT,
Director,
Commercial Rulings Division.