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.


Joanne Roman Stump
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:
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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.


JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

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SUBTOTAL RECORDATION TYPE 49

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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.

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**SUBTOTAL RECORDATION TYPE** 40

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SUBTOTAL RECORDATION TYPE 61

TOTAL RECORDATIONS ADDED THIS MONTH 101
DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,


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) ES8139, 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.


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

[Attachments]
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 25 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 ** or 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. SWIERFUSKI,
Director,
National Commodity Specialist Division.
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. Austrians:

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 1/16 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:
* * * * * * * * * *
0401.30.0500 Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions
0401.30.2500 Other

(1) See Subheadings 9904.04.01–9904.04.08

0402 Milk and cream, concentrated or containing added sugar or other sweetening matter:

0402.91 Not containing added sugar or other sweetening matter:
* * * * * * * * * *
0402.91.1000 Described in additional U.S. note 11 to this chapter and entered pursuant to its provisions:
0402.91.7000 In airtight containers

(1) See subheadings 9904.05.02–9904.05.19

0402.99 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) 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.

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**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.


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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
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 mudguard 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 semitrailers; 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,
CLA-2-87.RR.NC.MM:101 G84149
Category: Classification
Tariff No. 8716.80.5090

MR. BOB KING
CUSTOMS MANAGER
MEIER, 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,

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, tricycle, 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. SWIERFUSKI,
Director,
National Commodity Specialist Division.
[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
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 Huffy 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 30 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 212-637-7005.

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

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE.
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. SWIERUSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
New York, NY, February 20, 2001
Category: Classification
Tariff No. 8716.80.5090

MR. ARLEN T. EPSTEIN
TOMPRINS & 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. SWIERUSKI,
Director,
National Commodity Specialist Division.
[ATTACHMENT G]

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

Category: Classification
Tariff No. 3919.90.5060, 6307.90.9989, 8204.11.0060, 8716.90.5030, 8716.90.5060

MR. JOSEPH R. HOFFACKER—BCTC
BARTHOLOMEW 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 5.5% 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 DeSorucey at 212-637-7035.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.
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 (GRI). 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 GRI 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:  

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<tr>
<th>Heading</th>
<th>Description</th>
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<tr>
<td>8716</td>
<td>Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:</td>
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<tr>
<td>8716.80</td>
<td>Other vehicles:</td>
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<tr>
<td>8716.80.50</td>
<td>Other.</td>
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<tr>
<td>9501</td>
<td>Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:</td>
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<tr>
<td>9501.00.40</td>
<td>Other.</td>
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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 though 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.’” *Karo-wear, 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. To 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
MELFER, 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 (GRI). 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:

<table>
<thead>
<tr>
<th>Heading</th>
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</tr>
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<tr>
<td>8716</td>
<td>Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:</td>
</tr>
<tr>
<td>8716.80</td>
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<tr>
<td>9501</td>
<td>Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls’ carriages and dolls’ strollers; parts and accessories thereof:</td>
</tr>
</tbody>
</table>
| 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)(2) 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 though 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 F3d 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 F3d 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.’” Harware, 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 use. 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 ex 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 (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 the wheeled toys to 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); doll’s carriages and doll’s 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 REVOKE... JOHN DURANT, Director, Commercial Rulings Division.
Re: Revocation of NY G83804; Ninja Children’s Mini-Scooter.

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.”

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 (GRI). 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 GRI 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 25, 1989).

The HTSUS provisions under consideration are as follows:

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* * * * * * *
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 should be specially designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though 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 to be used as a toy’ or as ‘particularly and specially constructed for play’.” Hardware, 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, the foot-propelled 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 (Ct.Cl. 1981). The change from the Tariff Schedule 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 continuance of the classification of the foot-propelled 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. NC05102E2), 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. 8501.00.40

MR. RON REUBEN
DANZAS A & EI 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 (GRI). 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 GRI 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 though 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 Fed 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 Fed 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 Maruben Amercica 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 Maruben 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 G86641, 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 (GRI). 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 GRI's 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 wheeled toys that are used 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 9501 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 though 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.’” Karcherware, Inc. v. United States, 564 F. 24 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 (TSSUS), 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 *ex officio* 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 REVOLED.

**John Durant,**

Director,

Commercial Rulings Division.
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 (GRI). 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 GRI 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: |

* * * * * * * * *
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 though 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 (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 REVOLED.

**John Durant,**

**Director,**

**Commercial Rulings Division.**
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. SS102, 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 (GRI). 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 GRI 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:

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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)(2) 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 though 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.’” *Kareware, 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 use. 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 (CCCA 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 ex 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 the wheeled toy to 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.
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 (GRI). 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 GRI 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:

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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 provide 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.