Bureau of Customs and Border Protection

General Notices

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(No. 4–2003)

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

SUMMARY: The copyrights, trademarks, and trade names recorded with the Bureau of Customs and Border Protection during the month of April 2003. The last notice was published in the CUSTOMS BULLETIN on May 7, 2003.

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Dated: May 9, 2003.

GEORGE FREDERICK MCCRAY, ESQ.
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:
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**SUBTOTAL RECORDATION TYPE**
129

**TOTAL RECORDATIONS ADDED THIS MONTH**
175
RECEIPT OF AN APPLICATION FOR
“LEVER-RULE” PROTECTION

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice of receipt of application for “Lever-Rule” protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Frito-Lay, Inc. (hereinafter referred to as “Frito-Lay”) seeking “Lever-Rule” protection.

FOR FURTHER INFORMATION CONTACT: Rachel S. Bae, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572–8875.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Frito-Lay, a wholly owned subsidiary of PepsiCo, Inc., seeking “Lever-Rule” protection. Protection is sought against importations of five certain products not authorized for sale in the United States. The products at issue are the following: CHEETOS cheese puffs (U.S. Patent & Trademark Office [USPTO] Registration No. 752,220; CBP Recordation No. TMK 01–00109), SABRITONES puffed wheat snacks (USPTO Registration No. 1,289,216; CBP Recordation No. TMK 01–00121), DORITOS corn chips (USPTO Registration No. 792,667; CBP Recordation No. 01–00116), SABRITAS potato chips (USPTO Registration No. 2,595,728; CBP Recordation No. TMK 02–00802), and CHURRUMAIS corn strips (USPTO Registration No. 1,469,275; CBP Recordation No. TMK 02–00227). Pursuant to 19 CFR 133.2(f), CBP will publish an additional notice in the CUSTOMS BULLETIN indicating if the specific snack food products will receive Lever-Rule protection in the event that CBP determines that the products are physically and materially different from the Frito-Lay products authorized for sale in the United States.

Dated: May 9, 2003.

GEORGE FREDERICK MCCRAY, ESQ.
Chief, Intellectual Property Rights Branch,
Office of Regulations and Rulings.
DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,

The following documents of the Bureau of Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the Customs Bulletin.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

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PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN WORKS TRUCKS AND TRANSAXLES THEREFOR


ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of certain works trucks and transaxles therefor under the Harmonized Tariff Schedule of the United States (“HTSUS”).

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 revoke two rulings and to revoke any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of certain works trucks and transaxles therefor. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before June 27, 2003.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.
FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 572–8776.

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 com-
pliance with Customs laws and regulations, the trade community needs
to be clearly and completely informed of its legal obligations. Accord-
ingly, the law imposes a greater obligation on Customs to provide the
public with improved information concerning the trade community’s respon-
sibilities and rights under the Customs and related laws. In addition, both
the trade and Customs share responsibility in carrying out import re-
quirements. 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 us-
ing reasonable care to enter, classify and value imported merchandise,
and provide any other information necessary to enable Customs to pro-
perly 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 revoke Headquarters Ruling
Letters (“HQs”) 954982 and 953670, dated November 17 and July 16,
1993, respectively. Those rulings are set forth as “Attachment A” and
“Attachment B”, respectively, to this document.

Although in this notice Customs is specifically referring to two rul-
ings, HQ 954982 and HQ 953670, this notice covers any rulings on simi-
lar merchandise that may exist but have not been specifically identified.
Customs has undertaken reasonable efforts to search existing data-
bases; no further 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 merchan-
dise subject to this notice, other than the referenced rulings (see above),
should advise Customs 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 Customs 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; Cus-
toms personnel applying a ruling of a third party to importations of the
same or similar merchandise, or the importer’s or Customs previous in-
terpretation of the HTSUS or other relevant statutes. Any person in-
volved 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 his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. §1625(c)(1), Customs intends to revoke HQs 954982 and 953670, as they pertain to the classification of certain works trucks and transaxles therefor, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 966332 (see “Attachment C” to this document).

Additionally, pursuant to 19 U.S.C. §1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.


JOHN ELKINS,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION,

CLA-2 CO:R:CM 954982 KCC
Category: Classification
Tariff No. 8708.40.10

MR. JOHN MATTSON
NORMAN G. JENSEN, INC.
3050 Metro Drive, Suite #300
Minneapolis, MN 55425

Re: HRL 953670 modified; transaxle; Workman 3000 Series Vehicles; 8704; motor vehicles for the transport of goods; EN 87.08; General EN (III) Parts and Accessories.

DEAR MR. MATTSON:

This is in response to your letter dated September 7, 1993, on behalf of the Toro Company, requesting modification of Headquarters Ruling Letter (HRL) 953670 dated July 16, 1993. That ruling provided the tariff classification of transaxles for the Workman 3000 Series Vehicles under the Harmonized Tariff Schedule of the United States.

Facts:

Based on the information in your letter of November 23, 1992, and the attached brochure, in HRL 953670, we classified transaxles for the Workman 3000 Series Vehicles under heading 8407, HTSUS, as a reciprocating piston engine of a kind used for the propulsion of vehicles of chapter 87, or under heading 8408, HTSUS, as compression-ignition internal combustion piston engine (diesel or semi-diesel). You now state that the facts in HRL 953670 are incorrect because, as imported, the transaxles do not contain engines.
The transaxes under consideration are for the Workman 3000 Series Vehicles which is a relatively small 4-wheel work vehicle with two front seats and an open cargo area for the transportation of merchandise. The vehicle can be used in a variety of settings (park and sports grounds, worksites, factories, agricultural fields, etc.). The Workman 3000 Series utilizes the Toro transaxle which is incorporated into one die cast aluminum housing. The unit has a 3-speed synchronmesh transmission for smooth, easy shifting and quiet operation, a high-low range that delivers six distinct work ratios, a manual difflock to kick in extra traction when required, high efficiency spiral bevel differential gears, and an integrated hydraulic strainer and pump. This component is directly coupled to an engine with an automotive type bell housing, and a clutch to complete an all-enclosed power train. The transaxle precisely delivers power to the rear wheels.

In the current situation, you state that the product to be imported is the transaxle without an engine.

**Issue:**

What is the classification of the transaxle designed for use in the Workman 3000 Series Vehicles under the HTSUS?

**Law and Analysis:**

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI’s). GRI 1, HTSUS, states in part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes.” In HRL 953670, we determined that the Workman 3000 Series Vehicles were classified under heading 8704, HTSUS, which provides for “Motor vehicles for the transport of goods.” We are still of this opinion. See, HRL 953670, pg. 2.

Without an engine, the transaxes are not classifiable as engines under headings 8407 or 8408, HTSUS. We are of the opinion that the transaxes in this case are classified under heading 8708, HTSUS, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705.” Explanatory Note (EN) 87.08 of the Harmonized Commodity Description and Coding System (HCDCS) (pg. 1432) states that “[t]his heading covers parts and accessories of the motor vehicles of headings 8707 to 8705, provided the parts and accessories fulfil both the following conditions:

(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles, and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Notes).

EN (III) Parts and Accessories (pg. 1410) states that the headings of Section XVII apply only to those parts or accessories which comply with all three of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section
(b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88
(c) They must not be more specifically included elsewhere in the Nomenclature.

Additionally, EN 87.08 lists exemplars that are classifiable under heading 8708, HTSUS, such as:

(D) Gear boxes of all types (mechanical, overdrive, preselector, electro-mechanical, automatic, etc.); torque converters; gear box casings; shafts (other than internal parts of engines or motors); gear pinions; direct-drive dog-clutches and selector rods, etc.

(F) Other transmission parts and components for example, propeller shafts, half-shafts; gears, gearing; plain shaft bearings; reduction gear assemblies; universal joints.

The ENs, although not dispositive, are to be looked to for the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The transaxes under consideration are not excluded by the Notes to Section XVII, HTSUS. Based on the information provided, we are of the opinion that the transaxes are solely or principally used with the Workman 3000 Series Vehicles, which are vehicles of heading 8704, HTSUS. Moreover, the transaxes are not more specifically provided for elsewhere in the HTSUS. Therefore, the transaxes under consideration are classified under subheading 8708.40.10, HTSUS, which provides for “Gear boxes” for the vehicles of subheading 8701.20, or heading 8702 or 8704.”
Holding:
The transaxles without engines for the Workman 3000 Series Vehicle are classified under subheading 8708.40.10, HTSUS, which provides for “Parts and accessories of motor vehicles of headings 8701 to 8705 *** Gear boxes *** For the vehicles of subheading 8701.20, or heading 8702 or 8704”, which is dutiable at the Column 1 rate of 3.1 percent ad valorem.
HRL 953670 is modified as set forth above.

JOHN DURANT,
Director,
Commercial Rulings Division.

[attachment B]

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION,
CLA-2 CO:R:C:M 953670 KCC
Category: Classification
Tariff No. 8407.31, 8407.32, 8407.33, and 8408.20.20

MR. JOHN MATTSON
NORMAN G. JENSEN, INC.
3050 Metro Drive, Suite #300
Minneapolis, MN 55425

Re: Transaxle; engine; transmission; clutch; Workman 3000 Series Vehicles; heading 8704; HRL 082797; EN 84.07; EN 84.08.

DEAR MR. MATTSON:
This is in response to your letter of November 23, 1992, which was resubmitted on January 22, 1993, with additional information, regarding the tariff classification of a transaxle for the Workman 3000 Series Vehicles under the Harmonized Tariff Schedule of the United States (HTSUS). Photographs, brochures and specifications were submitted for examination.

Facts:
The article under consideration is a transaxle for the Workman 3000 Series Vehicles. The Workman 3000 is a relatively small 4-wheel work vehicle that features two front seats and an open cargo area for the transport of merchandise. The vehicle can be used in a variety of settings (park and sports grounds, worksites, factories, agricultural fields, etc.) and it comes in a variety of models which are portrayed in the submitted brochure.
The Workman 3000 Series utilizes the Toro transaxle which is incorporated into one die cast aluminum housing. The unit has a 3-speed synchromesh transmission for smooth, easy shifting and quiet operation, a high-low range that delivers six distinct work ratios, a manual difflock to kick in extra traction when required, high efficiency spiral bevel differential gears, and an integrated hydraulic stabilizer and pump. This component is directly coupled to an engine with an automotive type bell housing, and a clutch to complete an all-enclosed power train.
The information submitted states that the Workman 3300-D has a Mitsubishi 21 h.p., liquid cooled diesel engine used in Toro Groundmaster and Reelmaster products, and the Workman 3200 has a Mitsubishi 27 h.p., liquid cooled gasoline engine used in mini-trucks. The Toro transaxle precisely delivers power to the rear wheels. The attached specification sheets offer data on the transaxle’s overall reduction ratios and ground speeds, the P.T.O. gear case assembly, the controls, the input-output shafts, the Bell housing(s)/clutch/fly-wheel, and L.C. gasoline housing, the external mounting bosses and mounting holes, the hydraulics and lubrication, optional ground speed sensing device, and the component materials (including the aluminum die cast transaxle housing, aluminum die cast P.T.O. gear case and heat treated steel shafts).
Issue:

What is the classification of the transaxle designed for use in the Workman 3000 Series Vehicles under the HTSUS?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI’s). GRI 1, HTSUS, states in part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes.” Before we can determine the classification of the transaxle, we must determine the classification of the Workman 3000 Series vehicles. The Workman 3000 Series vehicles are classified under heading 8704, HTSUS, which provides for “Motor vehicles for the transport of goods.” See, Headquarters Ruling Letter (HRL) 082797 dated July 14, 1989, which classified a Mitsubishi lightweight vehicle under heading 8704, HTSUS.

The Harmonized Commodity Description and Coding System (HCDCS) Explanatory Notes (ENs), although not dispositive, are to be looked to for the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). EN 84.07 and EN 84.08 (pgs. 1150 and 1151) state that engines of these headings may be equipped with fuel injection pumps, ignition parts, fuel or oil reservoirs, water radiators, oil coolers, water, oil or fuel pumps, blowers, air or oil filters, clutches or power drives, or starting devices (electric or other). Additionally, the engines may also be equipped with a flexible shaft and fitted with change speed gears.

In this case, the transaxle incorporates an engine, transmission and clutch in one housing. Based on the information presented and gathered by Customs, we are of the opinion that the transaxle is similar to the engines described in EN 84.07 and EN 84.08. EN 84.07 and EN 84.08 allow clutches, power drives and change speed gears to be attached to engines and remain classified as an engine. Therefore, the transaxle is classified as an engine under heading 8407, HTSUS, which provides for “Spark-ignition reciprocating or rotary internal combustion piston engines.” Reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87, or heading 8408, HTSUS, which provides for “Compression-ignition internal combustion piston engines (diesel or semi-diesel engines),”

Holding:

The transaxle with gasoline engine for the Workman 3000 Series Vehicles is classified as a reciprocating piston engine of a kind used for the propulsion of vehicles of chapter 87 under subheadings 8407.31, 8407.32, and 8407.33, HTSUS. Classification to the exact six-digit and eight-digit level is dependent upon the cylinder capacity of the engine.

The transaxle with diesel engine for the Workman 3000 Series Vehicles is classified as compression-ignition internal combustion piston engine (diesel or semi-diesel) under sub-heading 8408.20.20, HTSUS.

John Durant,
Director, Commercial Rulings Division.
MR. JOHN MATTSON
NORMAN G. JENSEN, INC.
3050 Metro Drive, Suite #300
Minneapolis, MN 55425

Re: Transaxle; Workman 3000 Series Vehicles; HQs 954982 and 953670 revoked.

DEAR MR. MATTSON:

This is in regard to Headquarters Ruling Letters ("HQs") 954982 and 953670, dated November 17 and July 16, 1993, respectively, issued to you on behalf of the Toro Company, regarding the tariff classification of a transaxle for the Workman 3000 Series Vehicles (hereinafter "Workman 3000") under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered the classification determinations made in those rulings and determined that they are incorrect. This letter sets forth the correct classification of both the Workman 3000 and the transaxles therefor.

Facts:

We described the transaxles in HQ 953670 as follows:

The article under consideration is a transaxle for the Workman 3000 Series Vehicles. The Workman 3000 is a relatively small 4-wheel work vehicle that features two front seats and an open cargo area for the transport of merchandise. The vehicle can be used in a variety of settings (park and sports grounds, work sites, factories, agricultural fields, etc.) and it comes in a variety of models which are portrayed in the submitted brochure.

The Workman 3000 Series utilizes the Toro transaxle which is incorporated into one die cast aluminum housing. The unit has a 3-speed synchronesh transmission for smooth, easy shifting and quiet operation, a high-low range that delivers six distinct work ratios, a manual difflock to kick in extra traction when required, high efficiency spiral bevel differential gears, and an integrated hydraulic strainer and pump. This component is directly coupled to an engine with an automotive type bell housing, and a clutch to complete an all-enclosed power train.

We issued HQ 954982 to modify HQ 953670. Thus, both rulings were issued based on the same operative facts.

Issue:

What is the classification of the transaxle designed for use in the Workman 3000 Series Vehicles under the HTSUS?

Law and Analysis:

Central to the classification of the transaxles is the classification of the Workman 3000 itself. We stated in HQ 953670 that:

Before we can determine the classification of the transaxle, we must determine the classification of the Workman 3000 Series vehicles. The Workman 3000 Series vehicles are classified under heading 8704, HTSUS, which provides for “Motor vehicles for the transport of goods. *** See, Headquarters Ruling Letter (HRL) 082797 dated July 14, 1989, which classified a Mitsubishi lightweight vehicle under heading 8704, HTSUS.

It is this determination that we have reconsidered and now find to be erroneous. The correct analysis and classification are set forth below.

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRI). GRI 1, HTSUS, states in part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]”
The HTSUS provisions under consideration are as follows:

8704  Motor vehicles for the transport of goods:
     Other, with spark-ignition internal combustion piston engine:
8704.31.00  G.V.W. not exceeding 5 metric tons

8709  Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles:
8709.90.00  Parts.

The classification of the transaxle must be determined with due consideration of the classification of the Workman 3000 Series vehicles. As detailed in the "facts" section above, the Workman 3000 Series vehicles are subject of ruling HQ 954892 which, in reference to HQ 953670, dated July 16, 1993, classified the Workman 3000 under heading 8704, HTSUS, which provides for “motor vehicles for the transport of goods[.]” However, in a recent request for reconsideration, several rulings concerning the classification of articles substantially similar to the Workman 3000 and classify those articles as works trucks under heading 8709, HTSUS were identified.

The rulings cited are as follows:

In HQ 965246, dated November 6, 2001, after considering and distinguishing the characteristics of articles classifiable under heading 8704 and 8709, HTSUS, we classified a “MicroTruk” under heading 8709, HTSUS as a works truck. In so doing, we emphasized “certain design features” that are common to such articles:

Among these are their construction and special design features which make them unsuitable for the transport of goods by road or other public ways; their top speed when laden is generally not more than 30 to 35 km/h; their turning radius is approximately equal to the length of the vehicle itself; vehicles of heading 8709 do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which to stand. HQ 965246 at page 3.

In New York Ruling Letter (“NY”) G87244, dated February 27, 2001, we classified a John Deere 1800 Utility vehicle under heading 8709, HTSUS, as a works truck. In so classifying the article we emphasized its design features and characteristics as follows:

It is a four-wheel, self-propelled utility vehicle and is used to haul materials in factories and warehouses and on golf courses, sports fields and nurseries. It has a 4-cycle, gasoline, 18 horsepower engine that can attain a maximum speed of 11.5 mph. The vehicle has a two-speed transaxle and large-diameter tires for traction. The vehicle has an open operator’s platform and comes with a cargo box capable of hauling materials up to 1500 lbs. The tailgate can be removed and the sides lowered to provide a flatbed surface. The vehicle’s turning radius (120.5 inches) is approximately equal to its length (102 inches). You state that the vehicle does have attachments. It has a sun canopy kit to shield the operator from inclement weather. It also has an auxiliary hydraulics kit to power attachments and a Cushman TD1500 Top Dresser. The Cushman Core Harvester and a cradle attachment can also be adapted to the John Deere 1800 Utility Vehicle. NY G87244 at 1.

We reached similar conclusions, i.e., we classified vehicles similar to the Workman 3000 under heading 8709, HTSUS, in several other rulings: NY C83109, dated January 29, 1998, in which the John Deere Gator Utility vehicle was so classified; HQ 966303, dated May 13, 1997, in which the Club Car utility vehicle was so classified; HQ 954173, dated September 22, 1993, in which the Mule utility vehicle was so classified.

We also considered the determinations made in HQs 082797, dated July 14, 1989, and 086305, dated January 24, 1990, both of which concerned the classification of the Mighty Mite line of lightweight work vehicles under heading 8704, HTSUS. HQ 086305 modified HQ 082797 as it pertained to the Mighty Mit model equipped with a dumper. We have examined those files, the images and literature contained therein and conclude that the articles therein in question were, given the evidence presented, properly classified. That is, the Mighty Mite, because of several design features that do not comport with those described in the ENs to heading 8709, HTSUS, set forth below, are readily distinguishable from the Workman 3000 articles before us.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while
neither legally binding nor dispositive, provide a guiding commentary on the scope of each 
heading, and are generally indicative of the proper interpretation of the HTSUS. Customs 
believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 
(August 23, 1989).
The ENs to heading 8709, HTSUS, provide, in pertinent part, as follows:

This heading covers a group of self-propelled vehicles of the types used in factories, 
warehouses, dock areas or airports for the short distance transport of various loads 
(goods or containers) or, on railway station platforms, to haul small trailers.
Such vehicles are of many types and sizes. They may be driven either by an electric 
motor with current supplied by accumulators or by an internal combustion piston 
engine or other engine.
The main features common to the vehicles of this heading which generally distin-
guish them from the vehicles of heading 87.01, 87.03 or 87.04 may be summarised as 
follows:

(1) Their construction and, as a rule, their special design features, make them 
unsuitable for the transport of passengers or for the transport of goods by road or 
other public ways.
(2) Their top speed when laden is generally not more than 30 to 35 km/h.
(3) Their turning radius is approximately equal to the length of the vehicle it-
self.

Vehicles of this heading do not usually have a closed driving cab[.]

WORKS TRUCKS

Works trucks are self-propelled trucks for the transport of goods which are fitted 
with, for example, a platform or container (sometimes designed for elevating) on 
which the goods are loaded.

The evidence provided establishes that the Workman 3000 is a small, 4-wheeled, self-
propelled work vehicle with two front seats and an open cargo area in the rear designed for 
the short distance transport of merchandise. The turning radius is less than the length of 
the vehicle, its top speed without load is less than 25 miles per hour, and none of the models 
are equipped with lifting or handling equipment. The vehicles are marketed to be used for 
landscaping, facility maintenance, agricultural and warehouse use. Given the apparent 
descriptive similarity of the Workman 3000 to other works trucks classified under heading 
8704, HTSUS (which were subject of the prior rulings discussed at length above), we 
compared the image of the Workman 3000 with the images of those vehicles provided on 
their respective websites. We conclude following this visual comparison that the Workman 
3000 is substantially similar in form and intended use to those vehicles.

Based upon the holdings of the rulings cited above and the satisfaction of the criteria set 
forth in the ENs, we conclude that the Workman 3000 is properly classified under heading 
8709, HTSUS, as a works truck. Accordingly, those rulings that classify the Workman 
3000 under headings other than 8709, HTSUS, are being revoked.
The ENs to heading 8709, HTSUS, provide, pertaining to the classification of parts, the 
following:

This heading also covers parts of the vehicles specified in the heading, provided the 
parts fulfill both the following conditions:

(i) They must be identifiable as being suitable for use solely or principally with 
such vehicles; and

(ii) They must not be excluded from this heading by the provisions of the Notes 
to Section XVII (see the corresponding General Explanatory Note).

Parts of this heading include:

(6) Axles.

The evidence presented is that the transaxles at issue are designed and manufactured 
solely for use in the Workman 3000. Thus, they are classifiable as parts of a works truck 
der under heading 8709, HTSUS.
Holding:

The transaxle for the Workman 3000 Series Vehicles is classified under subheading 8708.90.00, HTSUS, which provides for, inter alia, parts of works trucks.

Effect on Other Rulings:

HQs 954982 and 953670 are REVOKED.

Myles B. Harmon,
Director,
Commercial Rulings Division.