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How E.T. Got through Customs: The Court of International Trade Holds Fantasy Toys Eligible for Duty-Free Status under the Generalized System of Preferences

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How E.T. Got Through Customs: The Court of International Trade Holds Fantasy Toys Eligible for Duty-Free Status Under the Generalized System of Preferences

E.T., the extraterrestrial character in the Stephen Spielberg movie of the same name,[1] recently appeared in a new role as the star of an international trade case. The plot involved the economic development of third world countries and the growing importance of the United States as the world's biggest consumer of stuffed toys. In order to advance both of these interests, the Court of International Trade (CIT) overruled previous trade cases and redefined a tariff classification in order to allow stuffed figures of E.T. to be imported into this country duty-free.

In *Kamar International Inc. v. United States*,[2] an American toy manufacturer, Kamar, attempted to import stuffed figures of E.T. into the United States from Taiwan without paying a duty.[3] Under the Generalized System of Preferences (GSP), selected items from developing countries are eligible to be imported duty-free.[4] The U.S. Customs Service refused to classify the E.T. toy as such an item, and Kamar appealed the customs classification to the Court of International Trade (CIT).

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[1] E.T. was a toddler-sized, wrinkled and wizened, pot-bellied alien who was accidentally left behind when his spaceship visited California. He was rescued and protected by a 10 year old boy with whom he formed a magical friendship. The film, *E.T.* (Universal Pictures 1982), has been called "the most popular movie in Hollywood history." *Spielberg's Creativity*, N.Y. Times, Dec. 25, 1982 at D1, col. 1.

[2] Kamar International Inc. v. United States, 8 I.T.R.D. (BNA) 1442 (Ct. Int'l Trade Oct. 16, 1986).

[3] Kamar was the only toy company licensed by Spielberg to manufacture stuffed Extra-Terrestrials, although it originally turned down the chance to market E.T. because in two dimensional photographs he didn't look "too hot." Fortunately for the company, an executive saw E.T. on film and decided the alien was worth a risk. The brown vinyl E.T. character tripled Kamar Industries' sales within six months of the movie's premiere. *E.T. and Friends Are Flying High*, Bus. Wk., Jan. 10, 1983, at 77. Due to the huge success of the stuffed toy, Kamar eventually opened 50 factories in Taiwan and stopped all other manufacturing in order to keep up with the demand for Extra-Terrestrials. *Makers of E.T. Deny Earthly Imposters*, N.Y. Times, Oct. 25, 1982, at D5, col. 4. Kamar took great pains to protect its license, and in October 1985 took out full page newspaper ads declaring that it did not intend to share its success: "So, if by chance you're toying with an idea similar to E.T. we urge you to remember those interesting gentlemen who wear black robes and decide other people's destinies. . . . Enough said?" *Id.* at D2, col. 1.

[4] *See infra* notes 11-21 and accompanying text.

Upon first glance, this case appears to be very simple and direct. The CIT acknowledged that there was only one issue to be resolved, "whether stuffed toys depicting the imaginary character E.T. which do not represent any person or thing known to be living on earth or elsewhere are 'toy figures of an animate object' within the meaning of item 737.30 TSUS [Tariff Schedules of the United States]."[5] Kamar claimed E.T. was an animate being, so stuffed E.T. toys should be classified under item 737.30 (toy figures of animate objects).[6] Items in this classification were eligible for GSP status.[7] But the U.S. Customs Service claimed that E.T. was not an animate being and placed the stuffed toys under item 737.95 (toys not specifically provided for),[8] with a tariff rate of 13.6% *ad valorem*.[9] Thus, the issue in this case was whether E.T. was entitled to duty-free customs treatment as a product from a beneficiary country under the GSP. In an amusing and imaginative opinion, the CIT ruled that E.T. is, in fact, an animate object, and toys created in his likeness are entitled to GSP status.[10]

The United Nations Conference on Trade and Development formulated the groundwork for the Generalized System of Preferences in 1964 in an effort to increase the wealth of developing countries through trade rather than through foreign aid.[11] As spokesperson for developing countries at the conference, Argentinian economist Raul Prebisch suggested that developed countries grant temporary, duty-free entry to products imported from developing nations.[12] This tariff preference would enhance those countries' ability to compete in the international market by lowering the product cost to consumers in developed countries.[13]

The United States was opposed to the GSP when first intro-

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[5] *Kamar*, 8 I.T.R.D. (BNA) at 1443.

[6] *Id.* The rate of duty that would have applied to items in this category from noncommunist, non-GSP eligible countries was 11.2% *ad valorem*. *Id.*

[7] Tariff Schedules of the United States Annotated (1982), sch. 7, pt. 5, subpt. E [hereinafter TSUS].

[8] *Id.*

[9] An *ad valorem* tax is "a tax imposed on the value of property . . . laid in the form of a percentage on the value of the property." BLACK'S LAW DICTIONARY 48 (5th ed. 1979).

Items in the nonspecific category would normally be GSP-eligible and thus duty-free, but Taiwan and Korea had been taken off the list of beneficiary importing countries in this category. TSUS, *supra* note 7, General Headnote 3(c)(iii). *See infra* note 58 and accompanying text.

[10] *Kamar*, 8 I.T.R.D. (BNA) at 1443.

[11] Note, *Renewal of the GSP: an Explanation of the Program and Changes Made by the 1984 Legislation*, 18 VAND. J. TRANSNAT'L L. 625, 633 (1985).

[12] Statement by Mr. Raul Prebisch, Secretary-General of the United Nation's Conference on Trade and Development, 2 Trade & Dev. Pol. Statements 76, U.N. Doc. E/Conf. 46/141 (1964).

[13] The GSP scheme is beneficial to developed countries as well as developing countries since a decrease in importation costs will lower the price of the product to consumers. Note, *supra* note 11, at 633; *see supra* note 32 and accompanying text. In addition, strengthening the economies of developing nations by encouraging trade should provide a broader

duced, in part, because the General Agreement on Tariff and Trade (GATT)[14] was based upon the concept of nondiscrimination among member countries. According to the Most Favored Nation clause (MFN), tariff rates were to be the same for imports from any GATT member nation.[15] The MFN clause was obviously in direct conflict with the philosophy of the GSP.[16] GSP negotiations, which took place within the GATT in 1971, resolved the issue with the adoption of a ten year waiver of the MFN clause.[17] The waiver permitted, but did not require, member nations to implement GSP programs.

The GATT waiver, international developments during the 1970s,[18] and pressure from other developed countries resulted in the adoption of a GSP program by the United States in 1974.[19] Under this program, GSP status is restricted by both the designation of beneficiary developing countries (BDCs) and by the restriction of eligible products from those countries. Designation of BDCs and determination of eligible articles is a power granted to the President under the 1974 Trade Act,[20] but he is required to make these determinations based upon criteria established by Congress.[21]

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market for U.S. exports. *Id.*; *see also* Hackney and Shafer, *Protectionism and Developing Countries: The Impact on Trade and Debt*, 23 STAN. J. INT'L. L. 203, 206 (1987).

14 The GATT is a treaty among 120 nations that provides general rules of international trade among its members. Following World War II the treaty was drafted for the purpose of achieving multilateral, nondiscriminatory, reciprocal tariff reductions. There have been seven rounds of negotiations since the inception of the GATT in which multilevel tariff rates have been reduced and international trade rules have been promulgated. For an overview of the GATT and how it works, see E. MCGOVERN, INTERNATIONAL TRADE REGULATION 3-44 (1986); J. BARTON & B. FISHER, INTERNATIONAL TRADE AND INVESTMENT: REGULATING INTERNATIONAL BUSINESS 142-70 (1986).

15 General Agreement on Tariffs and Trade, Oct. 30, 1947, art. I, 61 Stat. pt. 5, A11, A12-13, 4 Treaties and Other Int'l Agreements of the United States 639, at 641-42, 55 U.N.T.S. 188, 196-98.

16 The MFN/GSP controversy continues to surface in criticisms of the effects the GSP has had on international trade. For arguments promoting the reimplementation of the MFN, see Balassa, *The Tokyo Round and the Developing Countries*, 14 J. WORLD TRADE L. 93 (1980); Nicolaides, *Preferences for Developing Countries: A Critique*, 19 J. WORLD TRADE L. 373 (1985).

17 GATT: Protocol on Reciprocal Tariff Concessions Among Developing Countries, Dec. 8, 1971, reproduced from GATT Doc. L/3643 in 11 INT'L LEGAL MATERIALS 737 (1972). *See also* Espiell, *The MFN Clause: Its Present Significance in GATT*, 5 J. WORLD TRADE L. 29 (1971); Espiell, *GATT: According Generalized Preferences*, 8 J. WORLD TRADE L. 341 (1974). This 10 year waiver is now permanent in Article 28 of the GATT. *See* MCGOVERN, *supra* note 14, at 277.

18 These international developments included U.S. fear of a "cartelization of world trade" which would hinder the universal free-flow of products, and the desire to make a substantial political statement of concern for the economies of developing countries. Note, *supra* note 11, at 632-33.

19 Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified at 19 U.S.C. §§ 2461-2465 (1982)).

20 *Id.*

21 Factors which the President must consider when determining whether a nation should be granted BDC status under the GSP include: (1) the desire of the country to be a BDC; (2) the economic stature of the country; (3) whether or not other developed nations have extended it GSP status; (4) the commitment of the country to reciprocate by provid-

GSP status is granted to various items via the TSUS. The TSUS separates imports into eight major categories, and each category is broken down into several hundred items. Each item is identified by an official citation number, given a general description, and assigned two tariff rates. Rate 1 applies to those importing countries that are considered MFN under the GATT, while the higher rate 2 designates the tariff for products from communist countries.[22] The GSP designation of each item is also included in the tables. An article is either ineligible for preferential treatment, eligible for GSP status if imported from *any* BDC, or eligible for GSP status if imported from selected BDCs.[23]

An importer who believes his products have been wrongly denied GSP status may pursue two options. One alternative is to petition the President's subcommittee on the GSP to add the specific item to the list of GSP-eligible products.[24] Any "interested party"[25] may file a petition, but it must contain very detailed information about the effect such a change in status would have on the economies of both the United States and the exporting country.[26] The most common reason for rejecting such petitions is the lack of sufficient documentation regarding these effects.[27]

For this reason many manufacturers may choose the alternate route of filing a claim with the CIT to protest a U.S. Customs decision denying GSP status.[28] Filing such a claim is appropriate in four circumstances, and one of these is that seen in the *Kamar* case: "Cus-

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ing the United States with access to its markets. Trade Act of 1974, 19 U.S.C. § 2462(c) (1982), *cited in* Note, *supra* note 11, at 638-39. Factors which will preclude a country from becoming a BDC under the GSP are: Communism, OPEC membership, or interests potentially harmful to the United States. *Id.* Other factors that may preclude the granting of BDC status are: nationalization or expropriation of United States property without consent, lackadaisical enforcement of drug trafficking laws, failure to enforce arbitration awards received by U.S. citizens, and aiding or abetting terrorism. The President may overlook this last set of factors if he determines that it would be in the best interest of the United States to designate the applicant nation a BDC. *Id.*

22 This bifurcation of U.S. tariff rates came into existence with the enactment of the Smoot-Hawley Tariff Act of 1930 that increased tariff rates for most communist countries. Tariff Act of 1930, ch. 497, 46 Stat. pt. 1, 590.

23 For a more detailed explanation of the tariff schedules see Feller, *An Introduction to Tariff Classification*, 8 L. & POL'Y INT'L BUS. 991 (1976).

24 15 C.F.R. § 2007.0(a)(1) (1985).

25 15 C.F.R. § 2007.0(c) (1985).

26 A petition must contain information explaining the expected effect the GSP status would have on the petitioner's industry and his competition. It must list sources of competition and describe the markets involved. If available, the petition must also provide information on specific industry variables such as employment statistics, sales records, profit and cost analyses, production statistics, and a list of all known BDCs exporting the article in question. 15 C.F.R. § 2007.1(a)(4)(i)-(iii) (1985). *See* Note, *supra* note 11, at 643.

27 Note, *supra* note 11, at 643.

28 For a discussion of the advantages of the judicial system over executive challenges to resolve U.S. Customs disputes see Note, *The Very Specialized United States Generalized System of Preferences: An Examination of Renewal Changes and Analysis of Their Legal Effect*, 15 GA. J. INT'L & COMP. L. 39 (1985).

toms requires the merchandise to be entered under a non-GSP TSUS item number, and the importer believes the goods should be classified under a GSP-eligible item number."[29]

It is not uncommon for a conflict to arise when an article appears to be classifiable under more than one item number. The headnotes to the TSUS provide rules to govern which item number should be used in these situations. Headnote 10(c)[30] provides the most important of these rules, the rule of relative specificity.[31] This rule states that the provision which more specifically describes the article in question is the item number to be applied.[32]

In applying this rule to *Kamar*, it would seem that there is no question as to which is the more specific item number. "Toy figures of an animate object" is certainly more specific than "toys not specifically provided for." The Customs Service argued, however, that the more specific description did not apply to E.T. as fantasy figures were not animate objects. Therefore, the CIT had to determine whether or not "animate" was an apt description of E.T.

In *Kamar* the court first states that a tariff term is to be "construed in its commonly received and popular sense"[33] unless the intention of Congress is otherwise expressed.[34] The common meaning of "animate" was first applied by the CIT[35] in *H. Hudson Dobson v. United States* in which the court ruled that "an animate object is one representing animals or people, that is possessing animal life, [while] inanimate objects are those which are not endowed with animal life, such as benches, trees, fences, etc."[36]

An examination of CIT precedent reveals that the court has ruled several times on whether toys are representative of animate objects. In the 1952 *Hudson* decision, the merchandise in dispute was invoiced as "Dinky Toys."[37] These consisted of toy figures of motorcycles, trucks, and police cars that contained replicas of humans as the operators of the vehicles. The manufacturer claimed

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29 Nemmers & T. Rowland, *The U.S. Generalized System of Preferences: Too Much System, Too Little Preference*, 9 L. & POL'Y INT'L BUS. 855, 885 (1977).

30 TSUS, *supra* note 7, General Headnote 10(c).

31 Feller, *supra* note 23, at 1001.

32 TSUS, *supra* note 7, General Headnote 10(c).

33 Kamar International Inc. v. United States, 8 I.T.R.D. (BNA) 1442, 1443 (Ct. Int'l Trade Oct. 16, 1986).

34 *Id.* As discussed *infra* at notes 56-59 and accompanying text, Congress did express its intention otherwise. It specifically defined "inanimate" when it created a new tariff classification of toys in the 1983 act that authorized appropriations for the U. S. Customs Service. Pub. L. No. 97-446, § 113(a)(1), 96 Stat. 2329, 2334 (1983).

35 To avoid confusion, CIT as used in this article refers to both the CIT and its predecessor, the Customs Court. The Customs Court Act of 1980 expanded the jurisdiction and powers of the Customs Court and changed its name to the U.S. Court of International Trade. Customs Court Act, Pub. L. No. 96-417, § 1581, 94 Stat. 1727, 1728 (1980).

36 Dobson v. United States, 28 Cust. Ct. 290, 293 (1952).

37 *Id.* at 291.

that the toys were figures of animate objects and subject to a 25% *ad valorem* tax, while U.S. Customs had assigned them to the category of "toys not specifically provided for," and accordingly, assessed a 70% *ad valorem* tax.[38] In finding for Customs in this case, the court held items consisting partly of human figures and partly of inanimate objects, in a ratio of 1:1, were not representative of animate objects; thus, Dinky Toys were subject to duties at the higher rate.[39]

A later case dealt with a company that attempted to pass a "Mechanical Walking Robot" through customs under the guise of an animate object in 1958.[40] Louis Marx and Co. claimed that their "synthetic man" was an image of an animate object and dutiable at 35% *ad valorem*, while Customs officials claimed the robot was a toy "not specifically provided for" and subject to the higher 50% *ad valorem* tax.[41] The CIT held that a robot was not an animate object, but merely an automaton, which "operates through scientific or mechanical media," and as such was ineligible for the lower tariff.[42]

Thirteen years later Louis Marx was back in the CIT again, this time claiming that watermelons, ears of corn, and bananas endowed with facial features and feet were representative of animate objects.[43] The only issue decided by the CIT was whether the "Mechanical Hopping Munchie Mellon Series" fell into the category of a toy figure of an animate object with a dutiable rate of 24% *ad valorem*, or as Customs argued, was a "toy not specifically provided for" and thus subject to the higher rate of 41% *ad valorem*.[44] Although the court found the toys quite entertaining and the vegetables capable of hopping on elongated feet in a "highly amusing manner,"[45] nevertheless it relegated the watermelons to the ranks of the "inanimate" by narrowing the definition of "animate" to include only those objects representing humans or animals.[46] In conclusion, the court stated, "the term 'figures of animate objects'. . . includes only those figures which represent living beings."[47]

The CIT strictly adhered to this definition several months later when asked to determine whether a "Swivel-O-Matic" astronaut was a figure of an animate object.[48] This particular astronaut possessed arms and legs and other human features, but the court focused on

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[38] *Id.* The tariff rates for each item in the TSUS are not constant from year to year, but are subject to adjustments by legislative or executive acts in response to economic, industrial, or political needs. *See* Feller, *supra* note 23, at 994.

[39] *Dobson*, 28 Cust. Ct. at 294.

[40] Louis Marx & Co. v. United States, 40 Cust. Ct. 610 (1958).

[41] *Id.* at 610.

[42] *Id.* at 611-12.

[43] Louis Marx and Co. v. United States, 66 Cust. Ct. 139 (1971).

[44] *Id.* at 140.

[45] *Id.*

[46] *Id.* at 142.

[47] *Id.*

[48] Lewis Galoob Co. v. United States, 66 Cust. Ct. 484 (1971).

the ability of the astronaut to turn his head in a full 360 degree circle, and on the fact that his chest could open, light up, and fire guns from within.[49] The court adopted the "animate" definition from *Marx* and held that since there is 'no human or other living being [with] a chest cavity which shoots guns' the toy in question was not a representation of an animate object.[50]

In *Kamar*, the Customs Department urged the court to apply the very limited meaning of the word "animate" that had evolved from this prior case law. They would define "animate" as an object representative of an actual species of animal or human known to exist on earth. Stating that such a narrow construction would lead to illogical distinctions, the CIT refused to hold to this precedental definition.[51] As an example they describe the dilemma that would face the Star Trek[52] crew if such a system was enforced as the SS Enterprise attempted to enter customs: Captain Kirk would be entitled to duty-free entry while Mr. Spock, a Vulcan, would be denied that privilege—an illogical result "when the only apparent differences between the two would be Mr. Spock's point[y] ears and total lack of human emotion."[53] The court instead adopted a broad definition of "animate," that encompasses "fictional creatures with human or

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[49] *Id.* at 486.

[50] *Id.*

[51] The only time the CIT had allowed a toy manufacturer to claim a lower tariff by reclassification to an "animate" category occurred in the case of "Mister Egg Head" in 1974. Exhibit Sales Inc. v. United States, 72 Cust. Ct. 119 (1974). Mr. Egg Head was not a stuffed toy but was made of metal. He was a small, egg-shaped fireman with an overgrown head, wheels for propulsion, and a tongue which stuck out of his mouth. *Id.* at 120. Customs claimed that Mr. Egg Head was a "toy . . . not specifically provided for" and subject to a tariff of 31% *ad valorem* under item 737.90 TSUS: "Humans do not have a semi-elliptical shape, nor do their heads connect directly to their bodies; the head of the human does not comprise one-half to two-thirds of the entire body, and the tongue does not permanently protrude; humans do not have wheels for propulsion. . . ." *Id.* at 121. The CIT did not accept this rationale, but admitted Mr. Egg Head into the category of "figures of animate objects . . . not stuffed . . . made almost wholly of metal" under item 737.35 TSUS with a tariff of 18.5% *ad valorem*. *Id.* at 120. It ruled that the toy was a caricature of a fireman and that a caricature can be a representative of an animate object. *Id.* at 121. The *Kamar* court did not refer to this case, although it would seem that E.T. might qualify as an animate object if viewed as a human caricature.

In the most recent "animate" case to come before the CIT, the court refused to classify "Super Smurfs" as animate objects, and put them into the category of "toys not specifically provided for" (TSUS 737.95). The Smurfs were so categorized not because they are tiny blue creatures with pointy heads, but because each was packaged with, or attached to, its own plastic accessory (skateboards, cars, go-carts, etc.). In fact, the court did not address the question of whether Smurfs are animate objects because the U.S. Customs Service conceded that without their accessories the Smurfs would be classified as "animate." Wallace Berrie and Co. v. United States, No. 84-07-00937, slip op. (Ct. Int'l Trade Feb. 9, 1988).

[52] Star Trek was a science-fiction, action-adventure television serial in the 1960s. It featured a team of space explorers, consisting of several earthlings and one Vulcan, traveling on board a starship, with a mission "to go where no man has gone before."

[53] Kamar International Inc. v. United States, 8 I.T.R.D. (BNA) 1442, 1444 (Ct. Int'l Trade Oct. 16, 1986).

animal features and characteristics that represent purported life forms on other planets."[54] Under this liberal definition, E.T. was allowed to enter the United States as an animate, duty-free, stuffed toy.[55]

Near the end of the *Kamar* opinion the court explained that 1982 legislative action, extending the availability of the GSP status for stuffed toys, would probably change the outcome of the case if it were filed today.[56] This legislation, among other things, created a new tariff classification of stuffed toys that includes representatives of inanimate objects. The headnotes to the new classification in Schedule 7, Part 5, Subpart E define "inanimate":

> 3 . . . "toy figures of inanimate objects"
> are only imaginary creatures that either—
> (i) do not possess features of human or other earthly creatures; or
> (ii) possess both earthly and non-earthly features but are predominantly non-earthly in nature; or
> (iii) possess features which are a hybrid of features of more than one animate object.
> This definition does not cover toy figures of objects which are readily recognizable as vegetables, minerals, robots, or machines, whether or not such figures possess humanoid or earthly features.[57]

The MFN rate that Congress assigned to the inanimate category (10.9% *ad valorem*), was lower than the MFN rate for animate objects (17.5% *ad valorem*).[58] Furthermore, toys in the new inanimate category are entitled to GSP treatment from *any* BDC. Toys in the animate and nonspecific categories can lose their GSP status if their country of origin exports more than 50% of the items in that category during one year.[59] Thus, the new inanimate classification ap-

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[54] *Id.*

[55] *Id.*

[56] *Id.* The outcome of the case would be changed only in that toy figures of E.T. would be classified as inanimate objects. Under the new classification system, toys of inanimate objects are also eligible for GSP treatment. *See infra* notes 56-59 and accompanying text.

[57] Pub. L. No. 97-446, 113(a)(1), 96 Stat. 2329, 2334 (1983). A thorough search of congressional records and committee reports failed to divulge the legislative history for the portion of this bill that added the definition of "inanimate" to the headnotes and created a GSP preferred category for these toys. This part of the bill was inserted by a joint committee of representatives from both the House of Representatives and the Senate which was formed to iron out disagreements which had prevented the passage of the bill. In a telephone interview with Andrew Taylor of the Congressional Research Service, Mr. Taylor suggested that since legislative history does not have to be reported for committee meetings, he suspected that the amendment was inserted at the instigation of a toy lobbyist. Telephone interview with Andrew Taylor, Congressional Research Service, Washington, D.C. (Nov. 1987). Another possibility is that the recommendation came from the Office of the United States Trade Representative (USTR), which also received appropriations for 1983 from this bill. The USTR operates under the executive branch of the government and is responsible for making discretionary decisions regarding the GSP. *See* Note, *supra* note 11, at 636.

[58] Tariff Schedules of the United States Annotated (1984), sch. 7, pt 5, subpt. E, items 737.47 and 737.30.

[59] Both the Republics of Korea and Taiwan have become ineligible countries from

pears to be the most preferential of categories for stuffed toys.

Tariff rates and GSP preferences for toys are important economic issues as the United States is currently "the world's largest single country market" of dolls and stuffed toys.[60] Statistics show that the toy market is experiencing a shift in both the production and consumption aspects of the business. First, U.S. consumption of dolls and stuffed toys has experienced a huge growth spurt over the last ten years.[61] As the consumption of dolls and stuffed toys has risen, so has the percentage of stuffed toys in this classification. Stuffed toys valued at over ten cents per inch of height[62] account for the largest part of this increased consumption.[63] Therefore, the fastest growing segment of the doll and stuffed animal industry is composed of stuffed animals produced in foreign markets and imported to keep pace with a rising U.S. consumption.[64]

The passage of the GSP in 1974 launched the movement towards foreign production of stuffed animals, since stuffed toys that represent animate objects were immediately eligible for duty-free treatment.[65] With the advent of the GSP, many domestic toy firms began shifting their total production to foreign labor markets in order to take advantage of both the GSP preferences[66] and the economically advantageous wage rates.[67]

The manufacture of stuffed animals is highly suited to the cheap, unskilled labor markets currently found in many Asian countries such as Taiwan and South Korea.[68] In addition, small stuffed ani-

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which to import stuffed toys under the GSP for this reason. *Summary of Trade and Tariff Information: Dolls and Stuffed Animals*, USITC Pub. No. 841 (1980) at 4, 13 [hereinafter *Summary (1980)*].

[60] *Id.* at v.

[61] In 1975, Americans spent $291 million on dolls and stuffed toys. *Id.* By 1979 this figure had climbed to $351.2 million, and in 1983, the last year for which figures were available, the total spent on these items was $516.7 million. *Summary of Trade and Tariff Information: Dolls and Stuffed Animals*, USITC Pub. No. 841, 2d supp. (1985), app. B, table 1, at 12 [hereinafter *Summary (1985)*].

[62] TSUS Item No. 737.30. This is the category in which Kamar claimed E.T. dolls belonged.

[63] During the 1981-83 period alone stuffed toy imports rose 70%. *Summary (1985)*, *supra* note 61, at 2. In 1975, imported stuffed toys accounted for $7.5 million. *Summary (1980)*, *supra* note 59, app. C, table 3, at 26. This figure increased to $78 million in 1981 and to $122.6 million in 1983. *Summary (1985)*, *supra* note 61, app. B, table 2, at 13.

[64] In 1979 the ratio of imported stuffed toys to domestic consumption was calculated to be 69%. This figure climbed to 80% in 1981. *Summary of Trade and Tariff Information: Dolls and Stuffed Animals*, USITC Pub. No. 841, supp. (1982), at 2-3.

[65] *Summary (1980)*, *supra* note 59, at 13.

[66] *Id.* at 6.

[67] *Id.* at 8.

[68] The operation of stuffed animal production is not one that lends itself to automated assembly lines as it is highly labor intensive:

> Pieces must be hand-cut and sewn to produce toy skins. The skin is sewn inside out, leaving a small opening which allows the skin to be reversed and the filler material blown in. Prior to stuffing, the eyes and other features are added so that once stuffed and closed the toy is essentially complete.

mals and action adventure dolls are fairly cheap to ship to the United States from Asian countries.[69]

Concentration of foreign production on smaller, action-adventure dolls fits neatly into the practice of U.S. toy manufacturers to produce, and retailers to offer, a "dual line" of toys. The more stable prong of this dual line is the staple doll or toy "which produces relatively constant high-profit sales without relying on advertising or extensive new product introductions."[70] An example of this type of toy would be a baby doll or a Teddy bear. "Fad or TV toy[s]"[71] make up the other line of toys. These toys are heavily advertised and if successful will be in high demand for a relatively short period of time. They are often replicas of television or movie personalities or licensed characters.[72] According to the United States International Trade Commission (USITC), the toy industry's success from licensing the Star Wars characters stimulated an interest in space-oriented creatures, a trend they saw as continuing into the future and potentially gaining strength with each new crop of science fiction movies.[73] This prediction has proved to be an understatement due to the amazing success of fantasy films and their stuffed toy spin-offs. E.T., Gremlins, and Ewoks may be better known to today's child than are the Barbie dolls and G.I. Joes of yesterday.

Because the developing countries designated to benefit from the GSP specialize in this type of toy,[74] charging a duty to import stuffed fantasy figures such as E.T. would deprive these countries of preferential treatment when exporting potential "giants" of the toy world. Kamar's challenge of E.T.'s customs classification can thus be seen as

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Id. at 2.

[69] Transportation costs are based on the space used rather than on the weight of the freight, and these toys lend themselves to being packed tightly in high volume for container shipment. *See id.* at 8.

[70] *Id.*

[71] *See id.*

[72] *Id.* In 1983, BUSINESS WEEK reported that the licensing of characters in the toy industry had grown from a $6.6 billion industry to a $20.6 billion industry in the period 1978-82. It suggests that E.T. would do well to waddle into Steven Spielberg's office and demand a percentage of the "out-of-this-world profits" which the producer has collected from the licensing of E.T. "for everything from video games to pajamas." *E.T. and Friends Are Flying High*," BUS. WK., Jan. 10, 1983, at 77.

[73] *Summary (1980), supra* note 59, at 8.

[74] An informal survey at a representative toy store revealed nine stuffed fantasy figures which did not resemble any known being on earth. Every one of these toys is manufactured in Asia: Alf, Chubbles, Puffalumps, and the StayPuft Marshmallow Man are all manufactured in China but marketed in the United States by Coleco, Animal Fair, Fisher-Price, and Kenner, respectively. Furflings and the Sesame Street characters Oscar the Grouch and the Cookie Monster are manufactured in South Korea but sold in the United States by Axlon and Ideal. Mattel markets Popples after they are imported from Taiwan, and World of Wonder imports Teddy Ruxpin's friends Tweeg, Bounder, and Grubbles from Taiwan, South Korea, China, and Hong Kong. My Monster Pets are manufactured in South Korea and China and distributed in this country by AmToy.

a test case for all stuffed imaginary beings that are exported to the United States from GSP countries.

By ruling that E.T. was an animate object, the CIT placed him, and all other "imaginary character[s] . . . which do not represent any person[s] or thing[s] known to be living on earth or elsewhere"[75] into the most economically preferential category available for stuffed toys, and into the only category for which GSP status was available for fantasy toys in 1982. In so doing, the court granted E.T. the no-duty status he would have had if his date of attempted entry had been after the effective date of the 1983 legislation.

Although it might have appeared that the CIT was both overruling precedent and disregarding legislative intent when they ruled that the definition of "animate" included imaginary extraterrestrials, it is important to note that this case is the only one to deal with the "animate" question since the origin of the GSP. Preferential treatment to be accorded developing countries had not been a factor in previous decisions. Broadening the definition of "animate" actually gave E.T. the preferential treatment Congress intended for non-earthly, fantasy creatures imported from GSP-designated beneficiary countries to have, and altering the definition should have no bearing upon future cases since the legislature has now provided an explicit definition of "inanimate." Surely the court's departure from an established definition was warranted in this case—besides, who acquainted with E.T. could possibly believe him to be "inanimate"?

PATTI L. HOLT

[75] Kamar International Inc. v. United States, 8 I.T.R.D. (BNA) 1442, 1444 (Ct. Int'l Trade Oct. 16, 1986).