



HQ H302977

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CATEGORY: Classification

TARIFF NO.: 8703.21.00

Center Director, Automotive and Aerospace C.E.E.
U.S. Customs and Border Protection
40 South Gay Street
Baltimore, MD 21202

Re: Application for Further Review of Protest No. 1303-18-100126; Classification of the Subaru Sambar Van and Suzuki Every

Dear Center Director:

The following is our decision on the Application for Further Review (AFR) of Protest No. 1303-18-100126, which was filed on May 22, 2018, on behalf of Duncan Automotive, Inc. (protestant). The Protest and AFR pertain to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) by U.S. Customs and Border Protection (CBP) of the Subaru Sambar Van and Suzuki Every.¹

FACTS:

Two motor vehicles are subject to this Protest and AFR: a 1992 Subaru Sambar Van and 1990 Suzuki Every.

I. 1992 Subaru Sambar Van

The 1992 Subaru Sambar is a “microvan” originally produced for the Japanese market. The Sambar measures approximately 129.7 inches in length and is powered by a gasoline engine with 660 cc of displacement. The microvan can seat a driver and passenger in the front row. The second row includes two passenger seats with permanent anchor points. The protestant’s

¹ We note that the protestant also requested further review regarding the classification of a Nissan S-Cargo delivery van and certain “kei-class” minitrucks, namely: the Daihatsu Hijet; Honda Acty; Mazda Porter Cab; Mazda Scrum Truck; Mitsubishi Minicab; Subaru Sambar Truck; Suzuki Carry; and Toyota TownAce. We addressed the classification of the Nissan S-Cargo in Headquarters Ruling Letter (HQ) H318061 (dated May 23, 2023), and we will address the classification of the kei-class minitrucks under separate cover.

submitted photographs indicate that there is no barrier between the second-row passenger area and the rear cargo area. In fact, the second-row seats reduce the Sambar's overall cargo space. The Sambar's feature set includes air conditioning and cupholders for the second-row passengers, sliding doors with windows on the side panels, a sunroof, and a rear liftgate with a window.

II. 1990 Suzuki Every

The 1990 Suzuki Every is another "microvan" originally produced for the Japanese market. The Every measures approximately 130 inches in length and features a gasoline engine with 650 cc of displacement. The Every is designed to seat a driver and passenger in the front and up to three passengers in the second row. The second row of the Every features a bench seat with permanent anchor points and no separation between the passenger area and the rear cargo space. Like the Subaru Sambar, the Every's second-row passenger area limits the overall cargo space of the vehicle. The Every features sliding doors with windows on the side panels, a rear lift-up door with a window, and passenger amenities such as air conditioning and carpeting throughout.

The protestant entered the subject merchandise between October 17, 2016, and October 31, 2017, under heading 8703, HTSUS, which includes "motor vehicles principally designed for the transport of persons." CBP liquidated the merchandise between January 5, 2018, and August 3, 2018, under heading 8704, HTSUS, which provides for, "Motor vehicles for the transport of goods."

ISSUE:

Whether the subject Subaru Sambar Van and Suzuki Every are classified under heading 8703, HTSUS, as "motor vehicles principally designed for the transport of persons," or under heading 8704, HTSUS, as "[m]otor vehicles for the transport of goods."

LAW AND ANALYSIS:

A decision on classification and the rate and amount of duties chargeable is a protestable matter under 19 U.S.C. § 1514(a)(2). The subject protest was timely filed on May 22, 2018, within 180 days of liquidation, pursuant to 19 U.S.C § 1514(c)(3). Further review of Protest No. 1303-18-100126 is properly accorded to the protestant pursuant to 19 C.F.R. § 174.24(a) because the decision against which the protest was filed is alleged to be inconsistent with a ruling of the Commissioner of CBP or his designee, or with a decision made by CBP with respect to the same or substantially similar merchandise. Specifically, the protestant argues that the decision to liquidate the subject merchandise under heading 8704, HTSUS, contradicts prior rulings involving the classification of certain passenger vehicles.²

² These rulings include HQ 083628 (June 6, 1989) (Volkswagen Vanagon); HQ 083433 (Dec. 18, 1989) (Ford Aerostar minivan); HQ 086170 (Mar. 22, 1990) (Volkswagen T-4 vehicle); HQ 955607 (Apr. 15, 1994) (Volkswagen EuroVan camper); and HQ 956049 (July 26, 1994) ("four-door motor vehicle with seating for six or seven passengers").

More recently, the Federal Circuit stated in *Ford Motor Co. v. United States* that “heading 8703 is an *eo nomine* provision for which consideration of use is appropriate because HTSUS Heading 8703 inherently suggests looking to intended use.”⁵ We thus consider *Marubeni* and *Ford* together as standing for the principle that a motor vehicle of heading 8703, HTSUS, must be designed “more” for the transport of persons than goods; “if they are equally designed for the transport of persons and goods, [such vehicles] will fall under heading 8704, HTSUS.”⁶

With further regard to this inquiry, CBP has previously noted the following:

The determination whether a vehicle is primarily for the transport of goods or persons is a fact-intensive issue that relies heavily on the presence or absence of certain features in a vehicle. This analysis has been consistently applied in prior CBP rulings spanning a wide range of vehicles. HQ H268649 (Aug. 14, 2016) (Muck-Truck Pedestrian Dumper); NY N304428 (May 29, 2019) (1994 Land Rover Defender); NY N287720 (June 30, 2017) (electric trucks); NY N285120 (April 11, 2017) (EV2plus+ Mini Car, and an EV4plus+ Mini Car); NY L85735 (June 29, 2005) (golf-cart style "dumper" vehicle). Additionally, we are mindful that the courts have instructed us that if a vehicle is equally designed for transport of both passengers and goods, it cannot be classified under heading 8703, HTSUS. *Marubeni*, 35 F.3d at 534. Finally, we also consider intended use of the vehicle when determining whether it should be classified in heading 8703, HTSUS.⁷

We additionally emphasize that this inquiry is subject to the facts *as they are described to CBP*. As such, the determination reached in one inquiry may not necessarily apply to another transaction, thus the specific facts supporting the structural and auxiliary features exhibited by a motor vehicle will govern the disposition of the merchandise.⁸ The ENs to headings 8703 and 8704, HTSUS, offer some guidance as to the structural and auxiliary features that are generally applicable to vehicles classified under the respective headings.

The EN to heading 8703, HTSUS, provides in pertinent part:

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are principally designed for the transport

⁵ See *Ford Motor Co. v. United States*, 926 F.3d 741, 753 (Fed. Cir. 2019).

⁶ See HQ H318061, *supra* note 1.

⁷ *Id.*

⁸ “Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based.” See 19 C.F.R. § 177.9(b).

of persons rather than for the transport of goods (heading 87.04). These features are especially helpful in determining the classification of motor vehicles which generally have a gross vehicle weight rating of less than 5 [tons] and which have a single enclosed interior space comprising an area for the driver and passengers and another area that may be used for the transport of both persons and goods. Included in this category of motor vehicles are those commonly known as "multipurpose" vehicles (e.g., van-type vehicles, sports utility vehicles, certain pick-up type vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of permanent seats with safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) for each person or the presence of permanent anchor points and fittings for installing seats and safety equipment in the rear area behind the area for the driver and front passengers; such seats may be fixed, fold-away, removable from anchor points or collapsible;
- (b) Presence of rear windows along the two side panels;
- (c) Presence of sliding, swing-out or lift-up door or doors, with windows, on the side panels or in the rear;
- (d) Absence of a permanent panel or barrier between the area for the driver and front passengers and the rear area that may be used for the transport of both persons and goods; [and]
- (e) Presence of comfort features and interior finish and fittings throughout the vehicle interior that are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

The EN to heading 8704, HTSUS, provides in pertinent part:

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (heading 87.03). These features are especially helpful in determining the classification of motor vehicles, generally vehicles having a gross vehicle weight rating of less than 5 [tons], which have either a separate closed rear area or an open rear platform normally used for the transport of goods, but may have rear bench-type seats that are without safety seat belts, anchor points or passenger amenities and that fold flat against the sides to permit full use of the rear platform for the transport of goods. Included in this category of motor vehicles are those commonly known as "multipurpose" vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front passengers. Such seats are normally fold-away or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (pick-up vehicles) for the transport of goods;
- (b) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);
- (c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);
- (d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area; [and]
- (e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

The facts demonstrate that the Subaru Sambar Van and Suzuki Every are both “principally designed for the transport of persons” and are thus properly classified under heading 8703, HTSUS, by application of GRI 1. In the main, the Sambar and Every include design features that are largely characteristic of those found in passenger vehicles. For example, the Sambar’s second-row features passenger seats with permanent anchor points. While the Every’s second-row includes “bench-type” seating, this vehicle does include the permanent anchor points indicative of an intended design for carrying passengers. The cabins in both vehicles lack a barrier separating the second-row from the cargo area, and in both cases, the passenger space is prioritized over cargo room. The presence of sliding doors with windows on the Sambar and Every weighs in favor of a finding that the vehicles are primarily for moving passengers around. Finally, the inclusion of comfort features such as air conditioning, second-row cupholders in the case of the Sambar, and carpeting throughout in the case of the Every, point to passenger-centric design choices that emphasize comfort. Taking these facts together, we find that the Subaru Sambar Van and Suzuki Every are both classified under heading 8703, HTSUS, as motor vehicles principally for the transport of persons.

HOLDING:

By application of GRIs 1 and 6, the subject Subaru Sambar Van and Suzuki Every are classified under heading 8703, HTSUS, specifically subheading 8703.21.00, HTSUS, which provides for, “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with spark-ignition internal combustion reciprocating piston engine: Of a cylinder capacity not exceeding 1,000 cc.” The general column one rate of duty is 2.5 percent ad valorem.

This ruling does not address the applicability of any additional duties that may apply to the goods discussed herein. Likewise, duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov.

You are instructed to GRANT IN PART the Protest.

Sixty days from the date of the decision, the Office of Trade, Regulations and Rulings, will make the decision available to CBP personnel, and to the public on the CBP website at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

for Yuliya A. Gulis, Director
Commercial and Trade Facilitation Division