

HQ H220856

January 30, 2013

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CATEGORY: Classification

TARIFF NO.: 8704.31.00

Port Director
U.S. Customs and Border Protection
Baltimore Field Office
217 East Redwood Street, 12th Floor
Baltimore, MD 21202

ATTN: Thomas Heffernan
Assistant Director, Trade Operations

RE: Internal Advice; Classification of cargo vehicles

Dear Port Director,

This is in regard to a request for Internal Advice, forwarded to this office on June 8, 2012, by the Baltimore Field Office, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of Ford Transit Connect Motor Vehicles.

During a review of a Customs Entry by Ford Motor Company, Inc., Import Specialists in the Port of Baltimore, Maryland, became aware that certain Ford Transit Connect vans, imported from Turkey by the Ford Motor Company, were being entered in heading 8703, HTSUS, as motor vehicles specially designed for the transport of persons, and then converted for cargo use immediately after importation. The Port has requested the views of this office as to whether the subject vehicles are properly classified as passenger vehicles of heading 8703, HTSUS, or vehicles for the transport of goods of heading 8704, HTSUS.

Ford is represented by Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP in this matter. We have considered Counsel's submissions dated July 31, 2012, September 21, 2012, and November 15, 2012, in support of classification under heading 8703, HTSUS, in reaching our decision.

FACTS:

Ford imports a number of vehicles through the Port of Baltimore. These include the Connect XL Van, Connect XLT Van, and Connect XLT Wagon, and Connect XLT Premium Wagon. At issue is the classification of The Ford Transit Connect XL Van and Connect XLT Van (models S6A, S6B, S7A, S7B, S7C, and S7D (hereafter the vehicles at issue)). The Connect XL Van and XLT Van are imported with characteristics indicative of passenger vehicles, then converted for cargo use after importation. The models being converted for cargo use after importation have been identified as those with the six following three digit numerical codes occupying positions 5, 6, and 7 in each vehicle's 17-digit Vehicle Identification Number (VIN): S6A, S6B, S7A, S7B, S7C, and S7D. The Wagon models ("S9B" and "S9C") are imported and sold as passenger vehicles without modification.

All of the Ford Connect vehicles described above are four-door vans sharing the following design features: front wheel drive, front Macpherson-strut suspension with stabilizer bar, rear multileaf suspension with stabilizer bar, front cabin seating, air conditioning, center console with 2 cupholders and 2 stowage bins, front driver and passenger airbags. In their condition as imported, the Connect XL and XLT Vans also possess a single bench seat which can accommodate two passengers in the rear of the vehicle, with some leg room (which Ford's counsel refers to as "foot wells") and rear side windows. The Wagon models are imported with a bench seat that can accommodate three passengers in the rear of the vehicle. Citing the presence of rear seating and windows, Ford enters all of the Connect vehicles under heading 8703, HTSUS, as passenger vehicles.

However, immediately after release by CBP, Ford has the rear seating and associated safety restraints removed from the "S6" models identified above, and the rear seating, rear seat belts and the rear passenger windows removed from the "S7" models, in a warehouse on the marine terminal. The holes in the floor of the vehicle where the rear seats were originally attached to the vehicle floor are then covered up by installing a new uncarpeted cargo floor covering, which also covers the foot wells. The hole in the side of the vehicle that is created by removing the rear passenger windows is then covered up with a pre-made cover that is painted to match the exterior and interior color of the vehicle. The cloth material and padding used in the rear seating that is removed from the vehicle is discarded. After these modifications, these models are then sold at retail.

The Port of Baltimore contends that the "S6" and "S7" Connect Van models identified above are not classifiable as passenger vehicles under heading 8703, HTSUS, but rather are properly classified as vehicles for the transport of goods, under heading 8704, HTSUS. The Port argues that the temporary presence of seats and windows at the moment of importation is not relevant to the use of the good and thus should not affect the classification of the vehicle, and that the addition of these transitory features represents a deliberate attempt at circumventing the proper duty rate of heading 8704, HTSUS.

Ford, in turn, contends that the merchandise should be classified in its condition as imported, and that the vans, as imported, are passenger vehicles due to the rear seating and windows.

ISSUE:

Whether the Ford Transit Connect XL Van and Connect XLT Van (models S6A, S6B, S7A, S7B, S7C, and S7D) are classified in heading 8703, HTSUS, as passenger vehicles, or in heading 8704, HTSUS, as vehicles for the transport of goods.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined 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, 2 through 6, may then be applied in order.

The HTSUS provisions at issue are as follows:

8703: 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:

8703.23.00: Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc. . .

* * * *

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. . .

* * * *

The Harmonized Commodity Description and Coding System (HS) Explanatory Notes (“ENs”) constitute the official interpretation of the HS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HS at the international level, and are generally indicative of the proper interpretation of the HTSUS headings. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

EN 87.03 provides as follows:

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 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 tonnes 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;
- (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).

* * * *

Heading 8703, HTSUS, provides for motor vehicles principally designed for the transport of persons. The Federal Circuit in Marubeni America Corp v. United States, 35 F.3d 530, 534 (Fed.Cir. 1994), aff'g Marubeni America Corp. v. United States, 821 F. Supp. 1521 (CIT 1993) stated:

By the express language of 8703, "motor vehicle principally designed for the transport of persons," it is clear that the vehicle must be designed "more" for the transport of persons than goods. Webster's Third New International Dictionary of the English Language, Unabridged (1986) defines "principally" as "in the chief place, chiefly;" and defines "designed" as "done by design or purposefully opposed to accidental or inadvertent; intended, planned." Thus, if the vehicle is equally designed for the transport of goods and persons, it would not be properly classified under 8703 HTSUS.

Heading 8704, HTSUS, provides for motor vehicles for the transport of goods. Heading 8704 is a principal use provision governed by Additional U.S. Rule of Interpretation (AUSRI) 1(a).¹ AUSRI 1(a) provides:

1. In the absence of special language or context which otherwise requires--

- (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

CBP has repeatedly held that the principal use is the use of the class or kind of merchandise at issue that exceeds any other use. In determining whether imported merchandise falls within a particular class or kind of goods, United States v. The Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976) considered certain factors to be pertinent:

- a) The physical characteristics of the merchandise
- b) The expectation of the ultimate purchasers
- c) The channels of trade of the merchandise
- d) The environment of sale (accompanying accessories, manner of advertisement and display)
- e) Use in the same manner as merchandise which defines the class
- f) The economic practicality of so using the import
- g) Recognition in the trade of this use.

Pursuant to the CAFC decision in Marubeni as well as AUSRI 1(a) and Explanatory Note 87.03, a vehicle of heading 8703, HTSUS, must be designed "more" for the transport of persons than goods. If the instant vans are not designed more for the transport of persons than goods, even if they are equally designed for the transport of persons and goods, they will fall under heading 8704, HTSUS.

In this case, the physical characteristics of goods of heading 8703 are enumerated in the EN to heading 8703, that is, permanent rear seats, safety restraints, windows and passenger amenities.

At the time of importation, the instant vehicles do have a rear seat, seat belts and rear side windows indicative of passenger vehicles. However, these are all removed at the port facility immediately after importation from the "S7" models, and the rear seats and accompanying seat belts are removed from the "S6" models. Furthermore, the new (non-carpeted) flooring installed immediately after clearance by CBP covers the anchor points for the seats and eliminates the space for the "foot wells". The vans thus do not have permanent rear seating, safety equipment, or anchor points for the seat belts, unlike a vehicle of heading 8703, HTSUS (pursuant to EN 87.03). Eliminating the "foot

¹ See e.g., [HQ 086863](#), dated May 15, 1990; HQ [H007048](#), dated January 23, 2009

wells” by installing the new flooring also renders the vehicle significantly less comfortable for passenger transportation, even if the rear seating was offered as a configuration for sale on the subject vehicles (which it is not). Indeed, the Tire and Loading Information label from a newly converted Transit Connect “S7” van indicates a seating capacity for 2 passengers only in the front of the vehicle. The [****] Agreement between Ford Motor Company and the company charged with processing the vehicles at the conversion site indicates that a different [***] Label is affixed to the Connect Vans (which are described in the Agreement as [***] vans) at the factory, and then replaced at the conversion site with the new label reflecting the [***] passenger capacity. The rear seating is therefore present solely prior to importation, and has been added for no other apparent purpose than to claim the lower duty rate for passenger vehicles.

The removal of the rear passenger seat takes less than a minute and the addition of rear flooring to cover the exposed anchor points can be completed in under 5 minutes (as observed by CBP personnel at the conversion site). The removal of the windows from the “S7” models (and their replacement with windowless side panels) also takes approximately 5 minutes. That only minor interior changes were necessary to meet the design criteria of transporting cargo suggests that the instant vehicles are not designed for the transport of persons. Thus as sold and used, the instant vehicles do not have rear seating or windows.

In addition to the lack of permanent rear seats and windows, the cargo area of the instant vehicles lacks the comfort features and interior finish and fittings that are generally associated with the passenger areas of vehicles. Specifically, the cargo area of the vans lacks ventilation, ashtrays, cupholders, or rear speakers. In contrast, rear seat stereo speakers, as well as carpeting, floor mats and foot wells for the rear passenger area are standard equipment on the passenger versions of Ford Transit Connect vehicles (the “S9B” and “S9C” Wagons). Taken together, the absence of these passenger amenities is an indication that the vehicle is a cargo van.

All passenger version Ford Transit Connect vehicles (sold as the “Wagon” model) come equipped with a three seat passenger bench seat with headrests in the rear seating area. However, the Connect XL and XLT vans which are modified and sold for cargo use after importation feature only a two seat rear passenger bench seat made from inferior quality fabric and padding over a simple metal frame, without headrests. This seating is of a lower quality than the seating presented with the passenger vans. The cargo versions of the Ford transit Connect vans are sold without the availability of a rear seat option, so it is clear that it is not intended to be a permanent feature of the vehicles in question. Vehicles equipped with a three seat passenger bench seat made of high quality materials become a passenger vehicle, while those equipped with a two seat rear passenger bench seat made of inferior quality materials are quickly processed for cargo use by removing the rear seating and windows and installing a new cargo floor and covering the window holes with pre-made panels painted to match the vehicle color.

Additional physical differences between the cargo and passenger models include the lack of fog lights on the cargo van models and the color of the door handles and

front grill. On the Wagon models, the color of the door handle matches the color of the vehicle, but the door handles on the Van models are black regardless of the color of the vehicle. The front grill on the Wagon models also has a chrome finish, as opposed to the front grill of the cargo van models, which has a dull gray finish. These are small differences, but the finishing touches on the passenger models that make them appear more polished, and the less polished look of the cargo models, is suggestive of their respective uses.

The Connect Vans and Wagons can also be configured with the optional Crew Chief fleet management tool designed for the commercial user. Crew Chief can perform diagnostic functions such as checking tire pressure or deciphering engine warnings. The system can also provide fuel calculations and fuel tax reporting. The Crew Chief system is one of several tools offered as part of the Ford Work Solutions system, which is only available on other Ford cargo trucks such as the Ford F-150 and FX4 trucks, the F-Series Super Duty XL and XLT trucks; and the E-Series vans, which indicates that Ford itself considers the Connect to belong to the class or kind of vehicles used primarily for transporting cargo. See http://www.ford.com/assets/pdf/FordWorkonline_NAV.pdf; <http://www.popularmechanics.com/cars/news/4248153>.

In sum, the physical design features of the Transit Connect Vans demonstrate that the Connect Vans are not designed more for the transport of persons than for the transport of goods. When all Carborundum factors are considered, the Transit Connect Van is not principally designed for the transport of persons, but rather, is a cargo vehicle principally used for the transport of goods.

The manner in which the Connect Vans are offered for sale further emphasizes that they are designed and used as cargo vehicles for the transport of goods. All models of the Ford Transit Connect Van at issue are sold, advertised, and marketed emphasizing their cargo carrying capabilities. The Transit Connect Vans are sold without the availability of a rear seat option. The Ford website contains the following statements on the Transit Connect van:

The Transit Connect Van can take 129.6 cu. ft.* of cargo, items up to 6' long, 4' wide and nearly 5' tall. Transport large, flat-sided loads on the flat load floor.

*Maximum 129.6 cu. ft. (Van); 118.7 cu. ft. with seat backs folded down and flipped forward (Wagon).

With a payload capacity of 1,600 lbs. (Transit Connect Van) when properly equipped and a spacious cargo area, the ruggedly built Transit Connect is the perfect work vehicle.

See <http://www.ford.com/trucks/transitconnect>.

The Ford website also features the Transit Connect Vans in use as cargo/delivery vehicles by businesses such as “the Maid Group,” “Danny Armand’s

Market” and “Boo Boo Busters”, a clear indication of the target market and intended use of the Connect vehicles. The expectation of the ultimate purchasers of Connect vans is thus that they are receiving a vehicle with rear space sufficient to be used principally for cargo conveyance. In contrast, the “Wagon” model is clearly displayed with the three seat rear bench seating, and being used as a passenger vehicle.

NHTSA Regulations and VIN Numbers

We further note that the “S7A” and “S7B” models are identified as cargo vehicles in the Vehicle Identification deciphering information provided by Ford to the National Highway Safety Administration. Vehicle manufacturers are required by Federal regulation to assign a VIN to each motor vehicle that they manufacture and to permanently affix the VIN to the vehicle. 49 C.F.R. § 565.16. A VIN consists of 17 characters. The 5th, 6th and 7th characters in the VINs of the Ford Connect vehicles, as noted in the facts section above, consist of the S6A, S6B, S7A, S7B, S7C, S7D, S9B and S9C codes, which designate the vehicle chassis type.

Vehicle manufacturers must provide the NHTSA with the information necessary to decipher the characters contained in their VINs at least 60 days prior to offering for sale the first vehicle identified by a VIN containing that information. In the case of Ford Transit Connect vans, the information provided to NHTSA by Ford Motor Company identifies the chassis type of the S7A and S7B as “Cargo Conv”. The VIN associated with the S6 and S7 vehicles is affixed on the vehicles at the time of their completion in the factory, prior to exportation. This indicates that they are designed for cargo use prior to importation, and remain cargo vehicles in their condition as imported, prior to removal of the seats and windows.

The NHTSA further confirms that Ford identifies all the Connect models as [**] in the FMVSS (Federal Motor Vehicle Safety Standards) certification label required by the NHTSA. Most cargo vans are classified as trucks under NHTSA safety standards. A truck is defined in NHTSA regulations as “a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.” See 49 CFR 571.3.} The VIN information affixed to the vehicles at the time of manufacture is a clear indication that in the entire product lifetime of the Connect Vans, they are destined from the beginning to be cargo vans. Their identity and purpose as cargo vehicles are fixed from the time of manufacture, not after importation.

Finally, we note that Ford identifies all the XL and XLT Van Models (the S6A, S6B, S7A, S7B, S7C) as [***] in the vehicle modification instructions it provides to the company responsible for processing the Vans for cargo use post-importation.

As sold and actually used, it is undisputed that the vans are cargo vehicles of heading 8704, HTSUS. See e.g., HQ 082729, March 14, 1990, in which CBP classified two different configurations of the Mazda Multi-Purpose Van (MPV) in headings 8703, HTSUS, and heading 8704, HTSUS. The passenger wagon, classified in heading 8703, HTSUS, was imported with one or two rear bench seats, a fully carpeted interior, fabric

headliner, trim panels, seat belts, and other features for passenger comfort. The MPV windowed van, on the other hand, was imported with a partial headliner of plastic, no rear seating, a carpeted rear floor, plain hardboard trim, and pre-drilled holes (sealed with bolts and/or rubber caps) for seats and related accessories. See also, HQ W968379, dated January 25, 2007, in which CBP classified an open bed pickup truck with permanently installed rear seating and numerous auxiliary features indicative of passenger vehicles in heading 8704, HTSUS. We noted in HQ W968379 that the included passenger comfort features such as carpeting, permanent rear seating, audio system with speakers for the rear seating, arm rests, hand holds, map pockets, seat belts, child seat tie downs, and ash tray in the front seat, were limited to the passenger cab and did not extend into the cargo area of the vehicle. Thus, CBP concluded that the auxiliary features existing in the vehicle did not indicate that the vehicle was intended more for the transport of passengers than cargo. Hence, the absence of such auxiliary features in the cargo area of the Transit Connect Vans is indicative of a vehicle that is used principally for the transport of goods and not passengers. In contrast, CBP determined in HQ 956345, dated February 16, 1995, that a two-door, four-passenger Land Rover SUV was classified in heading 8703, HTSUS. The Land Rover came in an optional soft top model allowing for an open air cargo area. However, the Rover was classified in heading 8703, HTSUS, because the Land Rover had a small cargo area. The vehicle's cargo area was fully carpeted with speakers, but there was very little usable cargo space because the cargo area was restricted by roll bars and wheel wells which extended nearly the entire length of the cargo area. The rear door of the Rover also did not allow full access to the cargo area. Furthermore, the doors of the SUV were only 20 inches high, making it difficult for higher stacking of materials.

The Transit Connect vehicles are also recognized in the auto trade as cargo vehicles. Online reviews of the cargo Vans and passenger Wagons highlight the Van's utility as a delivery van and cargo hauler for small businesses, and emphasize that it is specifically developed as a commercial vehicle, with passenger comfort a secondary consideration even in the passenger-configured Wagons. See e.g., http://www.thecarconnection.com/review/1069292_2010-ford-transit-connect_styling_2; <http://www.autoblog.com/2012/09/04/ford-transit-connect-makes-a-fieta-face>; <http://www.autoblog.com/2011/04/14/2011-ford-transit-connect-xlt-premium-wagon-review-road-test/#continued>; <http://www.leftlanenews.com/new-car-buying/ford/transit-connect>; <http://consumerguideauto.howstuffworks.com/2012-ford-transit-connect.htm>. <http://www.caranddriver.com/reviews/2010-ford-transit-connect-first-drive-review>; <http://www.leftlanenews.com/ford-transit-connect-first-drive-review.html>. It is clear that the Connect is a commercial vehicle first and foremost, with the passenger version coming later and with relatively few passenger-oriented features compared to competing vehicles such as minivans and station wagons. For example, one review of the XLT Wagon complains:

"Despite the incredible amount of interior volume, there is no third row of seating, just a second row that sits slightly elevated behind the driver and front passenger. A third row isn't even optional, so the Transit Connect XLT is a strict five-seater with a giant 78.4 cubic-foot cargo area. Oddly, despite all that empty space behind the second row of seats, leg room is incredibly tight and the seats don't slide. What the chairs can do is fold

forward against the front seatbacks, creating a downright silly 118.7 cubic-feet of cargo area. With nearly 60 inches of interior height and a payload capacity of 1,600 pounds, these specs make it easy to understand why the Transit Connect is so popular with small business owners.”

The review further notes other features of the XLT Wagon that appear better suited for a commercial vehicle, such as the suspension and the brakes, and suggests that the XLT Wagon is best suited for “the very small business owner whose daily driver might double as his delivery vehicle.”

See <http://www.autoblog.com/2011/04/14/2011-ford-transit-connect-xlt-premium-wagon-review-road-test/#continued>

As another review of both the cargo and passenger models summarizes: “Transit Connect is a worthwhile choice for business owners or folks who simply want or need to carry a whole lot of stuff.” <http://consumerguideauto.howstuffworks.com/2012-ford-transit-connect-1.htm>.

Finally, with regard to the economic practicality of using the Connect as a cargo vehicle, we note that the price of the Connect XL and XLT Vans is very similar to the XLT Wagon and Wagon Premium. For example, the XLT Van is priced at \$23,325, and the XLT Wagon at \$23,890. Thus, it would not be economically practical to use the Connect Vans as passenger vehicles, given the availability of a passenger-configured version for only a few hundred dollars more. Reviews support the economic value of the Connect as a cargo vehicle: Consumerguide gives it an 8 out of 10 for value within its class (as exemplified by utility vans such as the Chevrolet HHR Panel and Mercedes-Benz Sprinter). <http://consumerguideauto.howstuffworks.com/2012-ford-transit-connect-1.htm>.

While certain physical characteristics of the Transit Connect Vans in their condition as imported are suggestive of passenger vehicles, the transient nature of these features (i.e., the rear seats and windows), the other physical features suggestive of cargo vans (such as the ample cargo space compared to the passenger space and the lack of auxiliary features in the cargo area), as well as the marketing, advertisement, channels of trade, expectation of the ultimate purchaser, recognition in the trade of use as cargo vehicles, and economic practicality of such use all support the finding that the subject vans are of a class or kind of vehicles used for the transport of goods, and thus belong in heading 8704, HTSUS.

Tariff Engineering

Ford argues that the presence of rear seating and windows at the time of importation requires the conclusion that the vehicles are principally designed for the transport of persons. Essentially, Ford argues that it is irrelevant that the seats and windows are not intended for use in these vehicle. We disagree. First, for the reasons described above, applying the Carborundum factors the subject vans are not of a kind principally designed for the transport of persons. However, even if as imported, the

vans were so designed, the undisputed facts here require something more than simply looking at the condition of the goods as imported. The Federal Circuit has concluded that CBP should classify a product based on its intended use after importation if the physical condition of the merchandise has been manipulated in such a way as to avoid a higher duty or quota and which has no manufacturing or commercial purpose.

The concept of tariff engineering is based on the long-standing principles that merchandise is classifiable in its condition as imported and that an importer has the right to fashion merchandise to obtain the lowest rate of duty and the most favorable treatment. In U.S. v. Citroen, 223 U.S. 407 (1912), however, Justice Hughes pointed out that “although dutiable classification of articles imported must be ascertained by an examination of the imported article itself, in the condition in which it is imported [,] this, of course does not mean that a prescribed rate of duty can be escaped by resort to disguise or artifice.” In the case at hand, then, a determination must be made as to whether or not the temporary addition of rear passenger seats and windows to the vehicles at issue is a disguise or artifice.

Recently in Heartland By-Products, Inc. v. United States, 264 F.3d 1126 (Fed. Cir. 2001), the Court upheld Customs’ determination that adding molasses to raw sugar prior to importation in order to obtain a lower duty rate and to avoid quota restrictions was improper. The Court upheld Customs’ revocation of a New York ruling letter in which the agency concluded that “the processing in this case is not legitimate tariff engineering. But rather, it is merely disguise or artifice intended to escape a higher rate of duty such as a quota tariff rate.” Heartland at 1126 *citing* 33 Cust B. & Dec. 41, 44 (1999). In Heartland the molasses was added to the sugar to form a syrup prior to importation. Once imported the molasses was removed. After the molasses was removed, the sugar was used in the same manner as sugar subject to quota. There was no commercial use for the sugar syrup in its condition as imported. *Id.* The concurring opinion in CAFC in Heartland stated as follows:

Heartland makes no claim that the presence of the molasses in the sugar during the syrup's journey from Canada to the United States in any way aided, improved or facilitated the refining of the sugar syrup after the molasses had been removed. It does not state, or even suggest, that if the sugar syrup it had imported had not contained the molasses; it would temporarily have added molasses in the United States and then removed it prior to processing. Since the addition and removal of the molasses from the sugar served no manufacturing or commercial purpose, the conclusion is irresistible that the only purpose of this strange arrangement was to create a fictitious product that, because of the temporary presence of the molasses, qualified for the lower rate of duty on sugar imports containing specified amounts of non-sugar solids.

Heartland at 1137-1138 (Friedman, C.J., concurring).

CBP has similarly ruled that manipulation of a product in a way that serves no commercial purpose other than to evade higher tariff duties or quotas goes beyond permissible tariff engineering. See, e.g., HQ 964222, dated July 7, 2002, in which

lumber boards were cut on one side in a “dog-eared” cut and entered as fence pickets under heading 4421, HTSUS, although they were sold to customers for the manufacture of trusses or finger-jointed studs. CBP determined that the principal use of the lumber boards was not as fence pickets, but rather as lumber for the manufacture of trusses or finger-jointed studs, and that cutting a dog-ear on all the boards at issue was not a genuine step in the manufacture of fence pickets, nor legitimate tariff engineering, but rather a disguise or artifice intended to escape quota restrictions under the 1996 U.S.-Canada Softwood Lumber Agreement. See also, HQ 952935 January 6, 1993.

The scenario in the instant case is significantly similar to Heartland and the lumber board decision. The installation of the rear seats in the van models at issue in no way improves the product or affects its ultimate use in any way, given that they are removed immediately after importation, and the vans are sold and actually used as cargo vans. Similarly, the rear windows in the “S7” models serve no purpose other than to manipulate the tariff schedule, as they are also immediately removed upon importation. The addition and removal of these features thus serves no manufacturing or commercial purpose. The conclusion is therefore irresistible that the only purpose of this arrangement is to create an ephemeral product that, because of the temporary presence of the rear seats and windows, would appear to qualify for the lower rate of duty on imports of passenger vehicles, but which will never be entered into the stream of commerce.

Pursuant to the Heartland decision, such a product is not classified in its physical condition upon importation, but rather based on its intended and ultimate use. The intended and ultimate use of the Connect XL Van and XLT Van is to transport cargo. Therefore, pursuant to Heartland and prior CBP rulings, the instant vans are correctly classified in heading 8704, HTSUS.

In contrast, in HQ 965751, dated November 18, 2002 (cited by Ford), CBP agreed with the importer that a slipper imported with a layer of textile glued to the outer sole was deemed to fall within heading 6405, HTSUS, which provides for other footwear, including footwear with textile outer soles, instead of in heading 6404, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials. The addition of textile to the slipper was not deemed to be a fraud or artifice to evade higher duty rates, because the slipper was sold in exactly the same condition as imported; the textile covering on the sole of the slipper was not removed prior to its sale. See also HQ 964978, dated April 18, 2002.

The instant case is thus more akin to the scenario in Heartland than to the facts of HQ 965751 or HQ 964978, because the placement of rear seats and windows in the Connect Vans is not a genuine step in the manufacture of these vehicles. The product as entered is not a commercial reality; it exists only to manipulate the tariff schedule rather than for any manufacturing or commercial purpose.

HOLDING:

The Ford Transit Connect XL Van and Connect XLT Van (models S6A, S6B, S7A, S7B, S7C, and S7D) are classified in heading 8704, HTSUS, specifically subheading 8704.31.00, HTSUS, which provides for “Motor vehicles for the transport of goods: Other, with spark-ignition internal combustion piston engine: G.V.W. not exceeding 5 metric tons.” The 2012 column one, general rate of duty is 25% ad valorem.

Duty rates are provided for the internal advice applicant’s convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

You are directed to mail this decision to the internal advice applicant, no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will make the public version of the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.CBP.gov, by means of the Freedom of Information Act, and other public methods of distribution.

Sincerely,

Myles B. Harmon, Director
Commercial and Trade Facilitation Division