

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON WAYS AND MEANS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES ON PROPOSED TARIFF LEGISLATION <sup>1</sup>

[**Date approved:** December 16, 1999]<sup>2</sup>

**Bill No.:** H.R. 2098; 106<sup>th</sup> Congress

Introduced by: Mr. FRELINGHUYSEN

Similar and/or related<sup>3</sup> bills: None.

Summary of the bill:<sup>4</sup>

The bill would suspend the general rate of duty<sup>5</sup> on--

Dark couverture chocolate

Effective: The 15th day after the date of enactment.

Through: December 31, 2003.

Retroactive effect: None.

*[The remainder of this memorandum is organized in five parts: (1) information about the bill's proponent(s) and the product which is the subject of this bill; (2) information about the bill's revenue effect; (3) contacts by Commission staff during preparation of this memorandum; (4) information about the domestic industry (if any); and (5) technical comments.]*

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<sup>1</sup> International trade analyst: Lowell Grant (202-205-3312); attorney: Jan Summers (202-205-2605).

<sup>2</sup> Access to an electronic copy of this memorandum is available at <http://www.usitc.gov/billrpts.htm>. Access to a paper copy is available at the Commission's Law Library (202-205-3287) or at the Commission's Main Library (202-205-2630).

<sup>3</sup> "Similar bills" are bills in the other House, in the current Congress, which address, at least in part, the substance of this bill. "Related bills" are bills in the **same** House, in the current Congress, but which are either earlier (or later) in time than the bill which is the subject of this memorandum.

<sup>4</sup> The product nomenclature is as set forth in the bill. See technical comments for differences in recommended nomenclature.

<sup>5</sup> See appendix A for definitions of tariff and trade agreement terms.

– THE PROPONENT AND THE IMPORTED PRODUCT –

**The proponent firm/organization(s)**

<u>Name</u>	<u>Location contacted</u>	<u>Date Contacted</u>	<u>Written Response (Y/N)</u> <sup>6</sup>
Novartis Corp.	Washington, D.C.	10/13/99	N

Location of the proponent's U.S. facility (if different from above): Puerto Rico.

**The imported product**

Description and uses of the imported product:

Chocolate is obtained by grinding cocoa beans and is typically known as chocolate liquor. Chocolate liquor can be pressed to separate the liquid (cocoa butter) from the solid cocoa cake; the latter is ground to produce cocoa powder. Additional cocoa butter is usually added to chocolate liquor to make dark unsweetened chocolate. The addition of sugar produces dark sweetened chocolate. The addition of milk produces sweetened milk chocolate. Bulk chocolate is used by manufacturers of candy and confectionery as ingredients in candy or confectionery or as a coating for candy or confectionery.

The subject dark couverture chocolate is made in Belgium<sup>7</sup> and is used as an ingredient in a chocolate laxative. While U.S. standards of identity for sweet chocolate (21 CFR 163.123) require that it contain not less than 15 percent by weight of chocolate liquor, and semisweet or bittersweet chocolate is defined as containing not less than 35 percent by weight of chocolate liquor, there are no U.S. standards of identity for dark couverture chocolate. Couverture chocolate is defined in Codex Alimentarius as a product that must contain not less than 35 percent cocoa solids, not less than 31 percent cocoa butter, and not less than 2.5 percent fat-free cocoa solids. It is reported that most dark chocolate sold commercially in the United States (whether produced domestically or imported) meets that definition for couverture chocolate.<sup>8</sup> In order to fall into subheading 1806.20, the product must be a preparation (other than sweetened cocoa powder) in blocks or other solid forms weighing more than 2 kilograms, or in liquid, paste or other bulk forms in containers whose contents exceed 2 kilograms each. To fall in subheading 1806.20.50, the product must be a preparation consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and contain not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar, other than certain enumerated products.

Country of origin of the imported product:

Belgium, France, Switzerland, Germany, Austria, Sweden, and the United Kingdom

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<sup>6</sup> Written responses received prior to approval of this report by the Commission, if any, will be included in appendix C.

<sup>7</sup> Chocolate that meets the Codex definition of "couverture" is believed to have been imported from the other countries listed below during 1998.

<sup>8</sup> Telephone conversation with official of Guittard Chocolate Corp., Oct. 5, 1999.

– EFFECT ON CUSTOMS REVENUE –

[Note: This section is divided in two parts. The first part addresses the effect on customs revenue based on the duty rate for the HTS number set out in the bill. The second part addresses the effect on customs revenue based on the duty rate for the HTS number recommended by the Commission (where a different number has been recommended). Three year estimates (or four year estimates, etc.) are given based on the duration of the proposed duty suspension. If the indicated duty rate is subject to “staging” during the duty suspension period, the rate for each period will be stated separately.]

**HTS Number in the Bill**

Estimated value of dutiable imports during the duration of the duty suspension:

<u>First year</u>	<u>Second year</u>	<u>Third year</u>
\$3,980,000 <sup>9</sup>	\$3,980,000	\$3,980,000

HTS (8-digit) No. used in the bill: 1806.20.50

General rate of duty<sup>10</sup> (AVE) currently in effect for this HTS No.: 4.4% ad valorem (4.3% after 1999)

Calculated customs revenue loss (based on rate for the HTS number in the bill):

<u>First year</u>	<u>Second year</u>	<u>Third year</u>
\$175,153	\$175,153	\$175,153

**HTS Number Recommended by the Commission<sup>11</sup>**

Estimated value of dutiable imports during the duration of the duty suspension:

<u>First year</u>	<u>Second year</u>	<u>Third year</u>
n/a	n/a	n/a

HTS (8-digit) No. recommended by the Commission (where different): None.

General rate of duty<sup>12</sup> (AVE) currently in effect for this HTS No.: n/a

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<sup>9</sup> This is the value of all dutiable imports in 1998. The assumption is that all the imports entered under this tariff category are couverture chocolate. The proponent of the legislation reported 1998 imports of couverture chocolate amounting to \$155,555.

<sup>10</sup> See appendix B for column 1-special and column 2 duty rates.

<sup>11</sup> If a different HTS number is recommended, see technical comments.

<sup>12</sup> See appendix B for column 1-special and column 2 duty rates.

Calculated customs revenue loss (based on rate for the Commission’s HTS number):

<u>First year</u>	<u>Second year</u>	<u>Third year</u>
n/a	n/a	n/a

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

Following is a list of contacts by the Commission in connection with this memorandum with firms or organizations **other than** the proponents.

<u>Name</u>	<u>Location</u>	<u>Date Contacted</u>	<u>Written Response (Y/N)</u> <sup>13</sup>
Chocolate Mfg. Assn	McLean, VA	9/29/99	N
Guittard Chocolate. Co.	San Francisco, CA	10/5/99	N
Hershey Foods	Hershey, PA	10/5/99	N

– THE DOMESTIC INDUSTRY –

*[Note: This section is divided in two parts. The first part lists written submissions received by the Commission which assert that **the imported product itself** is produced in the United States and freely offered for sale under standard commercial terms. The second part lists written submissions received by the Commission which assert either that (1) the imported product will be produced in the United States in the future; or (2) another product which **may compete** with the imported product is (or will be) produced in the United States and freely offered for sale under standard commercial terms. All submissions received by the Commission prior to approval of this report will be included in appendix D. The Commission cannot, in the context of this memorandum, make any statement concerning the validity of these claims.]*

**Statements concerning current U.S. production**

<u>Name of Product</u>	<u>Name of Firm</u>	<u>Location of U.S. Production Facility</u>	<u>Date Received</u>
n/a			

**Statements concerning “future” or “competitive” U.S. production**

<u>Name of Product</u>	<u>Name of Firm</u>	<u>Location of U.S. Production Facility</u>	<u>Date Received</u>
n/a			

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<sup>13</sup> Written responses received prior to approval of this report by the Commission, if any, will be included in appendix D.

– TECHNICAL COMMENTS –

Recommended changes to the nomenclature in the bill: We note that the terms “dark” and “couverture” are not used or defined in the HTS. Accordingly, it would assist in the identification of this product if physical characteristics could be specified in the article description. Thus, for example, if the subject product meets the definition quoted above from the Codex Alimentarius, the phrase “; containing 35 percent or more by weight of cocoa solids, 31 percent or more of cocoa butter, and 2.5 percent or more of fat-free cocoa solids” could be added after “chocolate” in the proposed description. Moreover, the word “couverture” suggests that the subject chocolate is used for coating or covering another product, rather than as an ingredient in a product (such as a laxative); we would defer to Customs as to whether the deletion of this word from the article description of the new heading (assuming the addition of physical characteristics along the lines suggested above) might be desirable.

Recommended changes to any C.A.S. numbers in the bill (if given): None.

Recommended changes to any Color Index names in the bill (if given): None.

Basis for recommended changes to the HTS number used in the bill<sup>14</sup>: n/a

Other technical comments (if any): None.

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<sup>14</sup> The Commission may express an opinion concerning the HTS classification of a product to facilitate the Committee’s consideration of the bill, but the Commission also notes that, by law, the U.S. Customs Service is the only agency authorized to issue a binding ruling on this question. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

## APPENDIX A

### TARIFF AND TRADE AGREEMENT TERMS

In the **Harmonized Tariff Schedule of the United States** (HTS), chapters 1 through 97 cover all goods in trade and incorporate in the tariff nomenclature the internationally adopted Harmonized Commodity Description and Coding System through the 6-digit level of product description. Subordinate 8-digit product subdivisions, either enacted by Congress or proclaimed by the President, allow more narrowly applicable duty rates; 10-digit administrative statistical reporting numbers provide data of national interest. Chapters 98 and 99 contain special U.S. classifications and temporary rate provisions, respectively. The HTS replaced the **Tariff Schedules of the United States** (TSUS) effective January 1, 1989.

Duty rates in the **general** subcolumn of HTS column 1 are most-favored-nation (now referred to as normal trade relations) rates, many of which have been eliminated or are being reduced as concessions resulting from the Uruguay Round of Multilateral Trade Negotiations. Column 1-general duty rates apply to all countries except those listed in HTS general note 3(b) (Afghanistan, Cuba, Laos, North Korea, and Vietnam), which are subject to the statutory rates set forth in **column 2**. Specified goods from designated general-rate countries may be eligible for reduced rates of duty or for duty-free entry under one or more preferential tariff programs. Such tariff treatment is set forth in the **special** subcolumn of HTS rate of duty column 1 or in the general notes. If eligibility for special tariff rates is not claimed or established, goods are dutiable at column 1-general rates. The HTS does not enumerate those countries as to which a total or partial embargo has been declared.

The **Generalized System of Preferences** (GSP) affords nonreciprocal tariff preferences to developing countries to aid their economic development and to diversify and expand their production and exports. The U.S. GSP, enacted in title V of the Trade Act of 1974 for 10 years and extended several times thereafter, applies to merchandise imported on or after January 1, 1976 and before the close of June 30, 1999. Indicated by the symbol "A", "A\*", or "A+" in the special subcolumn, the GSP provides duty-free entry to eligible articles the product of and imported directly from designated beneficiary developing countries, as set forth in general note 4 to the HTS.

The **Caribbean Basin Economic Recovery Act** (CBERA) affords nonreciprocal tariff preferences to developing countries in the Caribbean Basin area to aid their economic development and to diversify and expand their production and exports. The CBERA, enacted in title II of Public Law 98-67, implemented by Presidential Proclamation 5133 of November 30, 1983, and amended by the Customs and Trade Act of 1990, applies to merchandise entered, or withdrawn from warehouse for consumption, on or after January 1, 1984. Indicated by the symbol "E" or "E\*" in the special subcolumn, the CBERA provides duty-free entry to eligible articles, and reduced-duty treatment to certain other articles, which are the product of and imported directly from designated countries, as set forth in general note 7 to the HTS.

Free rates of duty in the special subcolumn followed by the symbol "IL" are applicable to products of Israel under the **United States-Israel Free Trade Area Implementation Act** of 1985 (IFTA), as provided in general note 8 to the HTS.

Preferential nonreciprocal duty-free or reduced-duty treatment in the special subcolumn followed by the symbol "J" or "J\*" in parentheses is afforded to eligible articles the product of designated beneficiary countries under the **Andean Trade Preference Act** (ATPA), enacted as title II of Public Law 102-182 and implemented by Presidential Proclamation 6455 of July 2, 1992 (effective July 22, 1992), as set forth in general note 11 to the HTS.

Preferential free rates of duty in the special subcolumn followed by the symbol "CA" are applicable to eligible goods of Canada, and rates followed by the symbol "MX" are applicable to eligible goods of Mexico, under the **North American Free Trade Agreement**, as provided in general note 12 to the HTS and implemented effective January 1, 1994 by Presidential Proclamation 6641 of December 15, 1993. Goods must originate in the NAFTA region under rules set forth in general note 12(t) and meet other requirements of the note and applicable regulations.

Other special tariff treatment applies to particular **products of insular possessions** (general note 3(a)(iv)), **products of the West Bank and Gaza Strip** (general note 3(a)(v)), goods covered by the **Automotive Products Trade Act (APTA)** (general note 5) and the **Agreement on Trade in Civil Aircraft (ATCA)** (general note 6), **articles imported from freely associated states** (general note 10), **pharmaceutical products** (general note 13), and **intermediate chemicals for dyes** (general note 14).

The **General Agreement on Tariffs and Trade 1994** (GATT 1994), pursuant to the Agreement Establishing the World Trade Organization, is based upon the earlier GATT 1947 (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786) as the primary multilateral system of disciplines and principles governing international trade. Signatories' obligations under both the 1994 and 1947 agreements focus upon most-favored-nation treatment, the maintenance of scheduled concession rates of duty, and national treatment for imported products; the GATT also provides the legal framework for customs valuation standards, "escape clause" (emergency) actions, antidumping and countervailing duties, dispute settlement, and other measures. The results of the Uruguay Round of multilateral tariff negotiations are set forth by way of separate schedules of concessions for each participating contracting party, with the U.S. schedule designated as Schedule XX. Pursuant to the **Agreement on Textiles and Clothing (ATC)** of the GATT 1994, member countries are phasing out restrictions on imports under the prior "Arrangement Regarding International Trade in Textiles" (known as the **Multifiber Arrangement (MFA)**). Under the MFA, which was a departure from GATT 1947 provisions, importing and exporting countries negotiated bilateral agreements limiting textile and apparel shipments, and importing countries could take unilateral action in the absence or violation of an agreement. Quantitative limits had been established on imported textiles and apparel of cotton, other vegetable fibers, wool, man-made fibers or silk blends in an effort to prevent or limit market disruption in the importing countries. The ATC establishes notification and safeguard procedures, along with other rules concerning the customs treatment of textile and apparel shipments, and calls for the eventual complete integration of this sector into the GATT 1994 over a ten-year period, or by Jan. 1, 2005.

Rev. 10/26/98

**APPENDIX B**

**SELECTED PORTIONS OF THE  
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

*[Note: Appendix may not be included in the electronic version of this memorandum.]*



## **APPENDIX C**

### **STATEMENTS SUBMITTED BY THE PROPONENTS**

*[Note: Appendix C may not be included in the electronic version of this memorandum posted on the Commission's web site if an electronic copy of the statement was not received by the Commission.]*

## **APPENDIX D**

### **STATEMENTS SUBMITTED BY OTHER FIRMS/ORGANIZATIONS**

*[Note: Appendix D may not be included in the electronic version of this memorandum posted on the Commission's web site if an electronic copy of the statement was not received by the Commission.]*

106TH CONGRESS  
1ST SESSION

# H. R. 2098

To suspend temporarily the duty on dark couverture chocolate.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1999

Mr. FRELINGHUYSEN introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To suspend temporarily the duty on dark couverture chocolate.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DARK COUVERTURE CHOCOLATE.**

4 (a) IN GENERAL.—Subchapter II of chapter 99 of  
5 the Harmonized Tariff Schedule of the United States is  
6 amended by inserting in numerical sequence the following  
7 new heading:

“	9902.18.06	Dark couverture chocolate (pro- vided for in sub- heading 1806.20.50) .....	Free	No change	No change	On or before 12/31/2003	”.
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1       (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply with respect to articles entered,  
3 or withdrawn from warehouse for consumption, on or after  
4 the 15th day after the date of the enactment of this Act.

○