

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 ¹

[Date approved: January 10, 2000]²

Bill No.: H.R. 2165; 106th Congress

Introduced by: Mr. PORTER

Similar and/or related³ bills: None.

Summary of the bill:⁴

The bill would suspend the general rate of duty⁵ on--

Compound optical microscopes: whether or not stereoscopic and whether or not provided with a means for photographing the image; especially designed for semiconductor inspection; with full encapsulation of all moving parts above the stage; meeting “cleanroom class 1” criteria; having a horizontal distance between the optical axis and C-shape microscope stand of 8" or more; and fitted with special microscope stages having a lateral movement range of 6" or more in each direction and containing special sample holders for semiconductor wafers, devices, and masks

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

Through: December 31, 2002.

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.]

¹ International trade analyst: Chris Johnson (202-205-3488); attorney: Jan Summers (202-205-2605).

² 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).

³ “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.

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

⁵ 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)⁶</u>
Barnes, Richardson, & Colburn (for Leica Inc.)	Chicago, IL	9/13/99 9/17/99	N N

Location of the proponent's U.S. production facility (if different from above): Deerfield, IL

The imported product

Description and uses of the imported product:

Compound optical microscopes each consist of an optical system, a specimen stage, one or two eyepiece-holder tubes, and an objective holder. The optical system comprises an objective lens designed to produce a magnified image of the object, and an eyepiece which further magnifies the observed image. The optical system usually also incorporates a device for illuminating the viewed object from below, generally by means of a mirror illuminated by an external or an integral light source, and a set of condenser lenses which direct the beam of light from the mirror on to the object. Microscopes designed for use in semiconductor inspection often are equipped with special scanning stages for semiconductor wafers, devices, and masks. The stages allow for the complete rotation of the semiconductor wafers or related devices on wafer holders that fit onto the stage. The stages each contain an opening, which can be closed by means of a lid. The lid is used to close the opening when a wafer is being inspected to create an opaque stage, because the light must come from above. When photomasks are being inspected, the opening is left open so that light from below can be used. The microscope systems can be used as stand-alone units for photomask, wafer, and device inspection or can be upgraded to act as high performance, fully automated systems.

The subject legislation would cover those compound optical microscopes, especially designed for semiconductor inspection, that meet the following specifications: full encapsulation (enclosure) of all moving parts of the microscope above the stage; meeting "cleanroom class 1" criteria;⁷ having a horizontal distance between the optical axis and C-shape microscope stand of 8" or more; and fitted with special microscope stages having a lateral movement range of 6" or more in each direction and containing special sample holders for semiconductor wafers, devices and masks.

Country of origin of the imported product: Austria, Germany

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

⁷ These criteria are not specified, nor are such criteria referenced or enumerated anywhere in the HTS. See technical comments.

– 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>
\$2.5 million	\$2.8 million	\$3.0 million

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

Compound optical microscopes provided for in heading 9011 fall in the following HTS rate lines:

9011.10.40
9011.10.80
9011.20.40
9011.20.80
9011.80.00

General rate of duty⁸ (AVE) currently in effect for this HTS No.:

9011.10.40: 3.9 percent ad valorem
9011.10.80: 7.2 percent ad valorem
9011.20.40: 3.9 percent ad valorem
9011.20.80: 7.2 percent ad valorem
9011.80.00: 6.4 percent ad valorem
trade weighted average: 6.6 percent ad valorem

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>
\$165,000	\$185,000	\$198,000

⁸ See appendix B for column 1-special and column 2 duty rates.

HTS Number Recommended by the Commission⁹

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 duty¹⁰ (AVE) currently in effect for this HTS No.: n/a

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)¹¹</u>
Accu-Scope, Inc.	Sea Cliff, NY	9/9/99	N
Applied Precision, Inc.	Isahquah, WA	9/9/99	N
Bio-Rad Labs, Inc.	Mountain View, CA	9/9/99	N
Carl Zeiss Inc.	Thornwood, NY	9/13/99	N
Fisher Scientific	Pittsburgh, PA	9/13/99	N
LW Scientific, Inc.	Tucker, GA	9/13/99	N
Metron Optics, Inc.	Solana Beach, CA	9/9/99	N
Nikon Inc.	Melville, NY	9/13/99	N
Prior Scientific Inc.	Rockland, MA	9/14/99	N
Ready Products Corp.	Irvine, CA	9/13/99	N
U.S. Customs Service	Wash. DC	9/9/99	Y

All but one of the companies contacted indicated they import but do not produce microscopes, and that U.S. production of compound optical microscopes is negligible. Most production of such microscopes is in Europe and East Asia. An official of Ready Products Corp. verbally indicated that the firm had U.S. production until September 1999, when it sold its microscope division to Amarel in Fairport, NY. No

⁹ If a different HTS number is recommended, see technical comments.

¹⁰ See appendix B for column 1-special and column 2 duty rates.

¹¹ Written responses received prior to approval of this report by the Commission, if any, will be included in appendix D.

submission was received from the firm. Attempts to reach appropriate representatives at Amarel, or its Optem International Division, have not been successful.

Representatives of two U.S. importers of compound optical microscopes (including microscopes competitive with the subject microscopes), Prior Scientific Inc. in Rockland, MA and Accu-Scope, Inc. in Sea Cliff, NY, stated verbally that the firms oppose the legislation. Although both support elimination of the duties on all compound optical microscopes, they indicated in telephone conversations that HR 2165 is written in such a way as to suspend the duties on a particular microscope manufactured primarily by Leica, a competitor of both firms. Both firms stated that provision of duty relief to a single importer would be unfair. Further, such a duty suspension could provide a price advantage to the company benefiting from the proposed legislation, thus undercutting the sales of other U.S. microscope suppliers to the semiconductor manufacturing industry. Neither Prior Scientific nor Accu-Scope has provided written comments in connection with the bill.

A spokesman for Leica Microscopes Inc. in Deerfield, IL (the proponent) states that there is no U.S. production of the complete microscope inspection system described in HR 2165. Almost all are produced in Germany and Japan. However, Leica states there may be several U.S. OEM suppliers that import the microscope and integrate them into complete semiconductor inspection systems.

– 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>
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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>
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n/a

– TECHNICAL COMMENTS –

Recommended changes to the nomenclature in the bill: The proposed article description is extremely long and presents some difficulties—namely, that the “cleanroom class 1” criteria are not specified (either in the bill or in the existing HTS), and that English units of measure rather than metric ones are used to describe the goods’ physical characteristics. One way to deal with such a long list of characteristics is to move many of them to a U.S. note, which would be added to subpart II of chapter 99 of the HTS. Here is a suggested approach: insert the words “U.S. note and” after “new” in line 7 on page 1 of the bill, add the new U.S. legal note set forth below, and rewrite the proposed tariff provision’s article description as set forth below.

“13. For purposes of heading 9902.98.07, the term “compound optical microscopes” refers to the following goods: compound optical microscopes specially designed for semiconductor inspection, the foregoing whether or not stereoscopic and whether or not provided with a means for photographing the image, with full encapsulation of all moving parts above the stage, meeting “cleanroom class 1” criteria as specified by [**make reference to authoritative published source**], each having a horizontal distance between the optical axis and C-shape microscope stand of 20.3 centimeters or more, and fitted with microscope stages having a lateral movement range of 15.2 centimeters or more in each direction and containing sample holders for semiconductor wafers, devices or masks.”

Revised article description: “Compound optical microscopes described in U.S. note 13 to this subchapter (provided for in heading 9011)”

We note that in the metric conversion suggested above we slightly understated the precise values indicated in the conversion, to allow slight deviations from the stated thresholds. We have also dropped the word “special” in the latter part of the description because the goods are initially required to be “specially designed” for the stated use; that should be sufficient for Customs, without introducing an undefined term. The phrase “wafers, devices, and masks” was revised slightly to read “wafers, devices or masks”; the revised language is preferable unless it is certain that each sample holder be capable of holding all 3 types of semiconductor. Last, in the “special” rates of duty subcolumn, the word “Change” need not be capitalized.

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 bill¹²: n/a

¹² 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.

Other technical comments (if any):

This bill may be intended to rectify an apparent exclusion by the United States of microscopes used in the semiconductor manufacturing and testing process from the duty-free treatment contemplated under the Uruguay Round's Information Technology Agreement ("ITA-1"—as originally implemented). Optical stereoscopic microscopes and photomicrographic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles were specifically listed in the Singapore Ministerial Declaration on Trade in Information Technology Products for the purpose of according duty-free treatment thereto. All of the ITA signatories except the United States have made such microscopes free of duty under HTS heading 9011, but such imports remain dutiable in the United States under HTS 9011. In its submission to the WTO, the United States had said that those goods in the Singapore Ministerial Declaration were included under heading 9031 and were already free of duty. However, Customs reportedly classifies the subject products under heading 9011, not heading 9031.

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. 2165

To suspend temporarily the duty on certain compound optical microscopes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1999

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

A BILL

To suspend temporarily the duty on certain compound optical
microscopes.

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. TEMPORARY DUTY SUSPENSION.**

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:

“	9902.98.07	Compound optical microscopes: whether or not stereoscopic and whether or not provided with a means for photographing the image; especially designed for semiconductor inspection; with full encapsulation of all moving parts above the stage; meeting “cleanroom class 1” criteria; having a horizontal distance between the optical axis and C-shape microscope stand of 8” or more; and fitted with special microscope stages having a lateral movement range of 6” or more in each direction and containing special sample holders for semiconductor wafers, devices, and masks (provided for in heading 9011)	Free	No Change	No change	On or before 12/31/2002	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) applies with respect to goods entered, or
3 withdrawn from warehouse for consumption, on or after
4 the 15th day after the date of the enactment of this Act.

