

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:** December 22, 1999]²

Bill No.: H.R. 2609; 106th Congress

Introduced by: Mr. CAMP (for himself and Mr. LEVIN)

Similar and/or related³ bills: None.

Summary of the bill:⁴

The bill would amend, on a permanent basis, the general rate of duty⁵ on--

Prototypes to be used exclusively for development, testing, product evaluation or quality control purposes.

Effective: on or after the date of the enactment of this Act

Through: n/a

Retroactive effect: with respect to entries of prototypes under subheading 9813.00.30 for which liquidation has not become final as of the date of enactment.

[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: Laura Polly (202-205-3408); 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>
Bruce Schulman, Stein, Shostak, Shostak and O’Hara, on behalf of Ford Motor Co.	Washington, DC	9/29/99	N

Location of the proponent’s U.S. facilities (if different from above):

Atlanta, GA; Chicago, IL; Louisville, KY; Dearborn, MI; Wayne, MI; Wixom, MI; St. Paul, MN; Kansas City, MO; St. Louis, MO; Edison, NJ; Avon Lake, OH; Lorain, OH; and Norfolk, VA.

The imported product

Description and uses of the imported product:

The subject products are prototypes to be used exclusively for development, testing, product evaluation, or quality control purposes. A new U.S. note would be added to subchapter XVII of chapter 98 of the HTS to define “prototypes” as being goods that are imported in limited noncommercial quantities, not for sale, and that are not subject to quantitative restrictions, antidumping orders, or countervailing duty orders. These goods would be of two types: originals or models for goods in the preproduction, production, or postproduction stage and to be used exclusively for development, testing, etc.; and with respect to articles in the production or postproduction stage, originals or models associated with a design change, improvement, or quality control. Automobile racing would not be considered “development, testing, product evaluation, or quality control.”

Country of origin of the imported product: Any/all

– 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(s) 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). Five year estimates are given for permanent amendments to the HTS. If the indicated duty rate is subject to “staging” during the five-year period, the rate for each period will be stated separately.]

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

HTS Number in the Bill

Estimated value of dutiable imports:

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

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

The bill proposes a new permanent HTS subheading for prototypes, 9817.85.01. Each prototype is currently imported under HTS provision covering the product for which is it a prototype (given that the prototype has the same physical characteristics and composition as the ordinary article), absent a special provision in chapter 98 or 99 that might describe the good. In particular, heading 9813.00.30 (mentioned in the bill) covers “articles intended solely for testing, experimental or review purposes, including specifications, photographs and similar articles for use in connection with experiments or for study.” Such goods can be imported free of duty under bond for a maximum of 3 years, under the terms of U.S. note 1 to subchapter XIII of chapter 98 of the HTS. After the bond period, the bonded good must be reexported, destroyed, or moved into a customs bonded warehouse or a foreign trade zone, or the appropriate duty must be paid on filing of a customs entry; Customs regulations provide that 110 percent of the estimated duties on such articles not exported or destroyed. (See 19 C.F.R.10.31, 10.39)

General rate of duty⁷ (AVE) currently in effect for this HTS No.:

Because there can be prototypes for nearly any product classified in the HTS, the entire spectrum of U.S. tariff rates may apply.

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>	<u>Fourth year</u>	<u>Fifth year</u>
n/a	n/a	n/a	n/a	n/a

HTS Number Recommended by the Commission⁸

Estimated value of dutiable imports:

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

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

⁷ See appendix B for column 1-special and column 2 duty rates.

⁸ If a different HTS number is recommended, see technical comments.

General rate of duty⁹ (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>	<u>Fourth year</u>	<u>Fifth year</u>
n/a	n/a	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)¹⁰</u>
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None.

– 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			

⁹ See appendix B for column 1-special and column 2 duty rates.

¹⁰ 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 would suggest adding to the article description the expression “(as defined in U.S. note VI to this subchapter)” immediately after the word “Prototypes” to emphasize that not every good is to be considered a prototype. We also note that the exclusion for goods under quota or subject to antidumping or countervailing duty orders does not apply to goods subject to additional duties, tariff-rate quotas, or safeguard measures under subchapters III and IV of chapter 99 of the HTS. If the scope of the exclusion is to be modified to cover these goods, new paragraph (c) of proposed note 6 could be amended by deleting “or” before “countervailing” and by inserting “or provisions of subchapter III or IV of chapter 99 of this schedule” immediately before “may”. If goods subject to legislated increased duties under subchapter I of chapter 99 are also to be excluded, the language being inserted would read “or provisions of subchapter I, III or IV of chapter 99 of this schedule”. Moreover, adding the expression “(including goods subject to textile agreements)” after “restrictions” may help assure U.S. textile firms that commercial importations of such goods are not likely if this bill is enacted. Last, for clarity, we suggest that paragraph (a)(ii) of the new note 6 be amended by striking “the product itself” and “the product” and inserting “the articles themselves” and “the articles” in lieu thereof.

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 bill¹¹: n/a

Other technical comments (if any):

The proposed measure would seem likely to present administrative and interpretive difficulties for Customs, if not also compliance difficulties for importers. The new U.S. note’s requirement that Customs ascertain whether a prototype is an original or model for another article that is in preproduction, production, or postproduction anywhere in the world seems burdensome, and it would also be hard to decide if an article is “associated with a design change” or indeed a “new” article. The new note may also present confusion in that paragraph (c) begins with the word “Articles”—although the formulation of paragraph (a) uses the word “article” to mean the good for which the subject import is a prototype. The generic expression “Goods of a type” might be clearer. We note that Customs and importers could have difficulty in deciding if a prototype is essentially an article subject to quota, additional duty, etc.—especially in the case of goods undergoing design changes or modifications. Antidumping and countervailing duty orders have their product scope delineated by the wording used by the Department of Commerce, not the applicable HTS provisions; interpretation of the narrative descriptions is often difficult but must be done carefully to avoid an expansion of the application of increased duties without prior notice to importers.

¹¹ 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.

There is some ambiguity in the method by which this measure would apply to unliquidated entries of goods under temporary importation bond imported under heading 9813.00.30. This bill would create a new tariff provision, but the goods previously entered under heading 9813.00.30 may not automatically qualify for entry under the terms of new note 6 as a prototype. Thus, some articles already entered under bond might somehow be given duty-free entry (without being reclassified) even if they might not qualify for entry under new heading 9817.85.01, and Customs may lack the information needed to see if the goods qualify.

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. 2609

To promote product development and testing in the United States, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 1999

Mr. CAMP (for himself and Mr. LEVIN) introduced the following bill; which
was referred to the Committee on Ways and Means

A BILL

To promote product development and testing in the United
States, and for other purposes.

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. SHORT TITLE.**

4 This Act may be cited as the “Product Development
5 and Testing Act of 1999”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1)(A) A substantial amount of development
9 and testing occurs in the United States incident to

1 the introduction and manufacture of new products
2 for both domestic consumption and export overseas.

3 (B) Testing also occurs with respect to mer-
4 chandise that has already been introduced into com-
5 merce to insure that it continues to meet specifica-
6 tions and performs as designed.

7 (2) The development and testing that occurs in
8 the United States incident to the introduction and
9 manufacture of new products, and with respect to
10 products which have already been introduced into
11 commerce, represents a significant industrial activity
12 employing highly-skilled workers in the United
13 States.

14 (3)(A) Under the current laws affecting the im-
15 portation of merchandise, such as the provisions of
16 part I of title IV of the Tariff Act of 1930 (19
17 U.S.C. 1401 et seq.), goods commonly referred to as
18 “prototypes”, used for product development testing
19 and product evaluation purposes, are subject to cus-
20 toms duty upon their importation into the United
21 States unless the prototypes qualify for duty-free
22 treatment under special trade programs or unless
23 the prototypes are entered under a temporary impor-
24 tation bond.

1 (B) In addition, the United States Customs
2 Service has determined that the value of prototypes
3 is to be included in the value of production articles
4 if the prototypes are the result of the same design
5 and development effort as the articles.

6 (4)(A) Assessing duty on prototypes twice, once
7 when the prototypes are imported and a second time
8 thereafter as part of the cost of imported production
9 merchandise, discourages development and testing in
10 the United States, and thus encourages development
11 and testing to occur overseas, since, in that case,
12 duty will only be assessed once, upon the importa-
13 tion of production merchandise.

14 (B) Assessing duty on these prototypes twice
15 unnecessarily inflates the cost to businesses, thus re-
16 ducing their competitiveness.

17 (5) Current methods for avoiding the excessive
18 assessment of customs duties on the importation of
19 prototypes, including the use of temporary importa-
20 tion entries and obtaining drawback, are unwieldy,
21 ineffective, and difficult for both importers and the
22 United States Customs Service to administer.

23 (b) PURPOSE.—The purpose of this Act is to promote
24 product development and testing in the United States by

1 permitting the importation of prototypes on a duty-free
2 basis.

3 **SEC. 3. AMENDMENTS TO HARMONIZED TARIFF SCHEDULE**
4 **OF THE UNITED STATES.**

5 (a) **HEADING.**—Subchapter XVII of Chapter 98 of
6 the Harmonized Tariff Schedule of the United States is
7 amended by inserting in numerical sequence the following
8 new heading:

“	9817.85.01	Prototypes to be used exclusively for development, testing, product evaluation or quality control pur- poses	Free	”
				The rate appli- cable in the ab- sence of this heading

9 (b) **U.S. NOTE.**—The U.S. Notes to subchapter XVII
10 of chapter 98 of the Harmonized Tariff Schedule of the
11 United States are amended by adding at the end the fol-
12 lowing:

13 “6. The following provisions apply to heading 9817.85.01:

14 “(a) The term ‘prototypes’ means originals or models of
15 articles that—

16 “(i) are either in the preproduction, production, or
17 postproduction stage and are to be used exclusively
18 for development, testing, product evaluation, or qual-
19 ity control purposes; and

20 “(ii) in the case of originals or models of articles that are
21 either in the production or postproduction stage, are
22 associated with a design change from current produc-

1 tion (including a refinement, advancement, improve-
2 ment, development, or quality control in either the
3 product itself or the means for producing the prod-
4 uct).

5 For purposes of clause (i), automobile racing shall not be
6 considered to be “development, testing, product eval-
7 uation, or quality control.”.

8 “(b)(i) Prototypes (as defined in paragraph (a)) may only
9 be imported in limited noncommercial quantities in ac-
10 cordance with industry practice.

11 “(ii) Prototypes (as defined in paragraph (a)), or parts
12 of prototypes, may not be sold (including sale for
13 scrap purposes) after importation into the United
14 States.

15 “(c) Articles subject to quantitative restrictions, anti-
16 dumping orders, or countervailing duty orders, may
17 not be classified as prototypes under this note. Arti-
18 cles subject to licensing requirements, or which must
19 comply with laws, rules, or regulations administered
20 by agencies other than the United States Customs
21 Service before being imported, may be classified as
22 prototypes, provided that they comply with all applica-
23 ble provisions of law and otherwise meet the definition
24 of ‘prototypes’ under paragraph (a).”.

1 **SEC. 4. ENTRY PROCEDURES.**

2 The Secretary of the Treasury shall establish regula-
3 tions for the identification of prototypes at the time of
4 importation into the United States in accordance with the
5 provisions of this Act and the amendments made by this
6 Act.

7 **SEC. 5. EFFECTIVE DATE.**

8 This Act, and the amendments made by this Act,
9 shall apply with respect to—

10 (1) an entry of a prototype under heading
11 9817.85.01 of the Harmonized Tariff Schedule of
12 the United States, as added by section 3(a) of this
13 Act, on or after the date of the enactment of this
14 Act; and

15 (2) an entry of a prototype (as defined in U.S.
16 Note 6(a) to subchapter XVII of chapter 98 of the
17 Harmonized Tariff Schedule of the United States, as
18 added by section 3(b) of this Act) under heading
19 9813.00.30 of the Harmonized Tariff Schedule of
20 the United States for which liquidation has not be-
21 come final as of the date of enactment of this Act.

○