

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON FINANCE OF THE UNITED STATES
SENATE ON PROPOSED TARIFF LEGISLATION ¹

[**Date approved:** June 12, 2000]²

Bill No.: S. 1432; 106th Congress

Introduced by: Mr. LAUTENBERG

Similar and/or related³ bills: H.R. 2098, 106th Congress

Summary of the bill:⁴

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

Dark couverture chocolate (provided for in subheading 1806.20.50)

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: Devry S. Boughner (202-205-3313); 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 suggested changes (if any).

⁵ See appendix A for definitions of tariff and trade agreement terms.

– THE PROPONENT AND THE IMPORTED PRODUCT –

The proponent firm/organization(s)			
Name of firm	Location contacted (city/state)	Date contacted	Response (Y/N) ⁶
Novartis Corporation	Washington, D.C.	March 28, 2000	N
Ex Lax, Inc.	Humacao, Puerto Rico	March 29, 2000	Y

*Does the proponent plan **any** further processing or handling⁷ of the subject product after importation to its facilities in the United States (Y/N):* Yes. Humacao, Puerto Rico

The imported product	
Description and uses	Country(s) of origin
<p>Dark chocolate is a mixture of chocolate liquor and cocoa butter. Chocolate liquor is a product resulting from the roasting and grinding of cocoa beans. If pressed, the chocolate liquor will produce two separate products: cocoa butter and cocoa powder. Additional cocoa butter is added to chocolate liquor to make dark, unsweetened chocolate. The addition of sugar produces dark, sweetened chocolate. Dark, sweetened chocolate is often purchased in bulk by candy and confectionery manufacturers to be remelted and used as ingredients in candy or confectionery or as a coating (“couverture”) for candy or confectionery.</p> <p>The imported “dark couverture” chocolate which is the subject of this bill is used as a coating for chocolate laxatives. The contents of the imported chocolate are as follows: 15.7 percent cocoa butter, 37.9 percent cocoa mass (approximately 50 percent cocoa butter and 50 percent cocoa powder), 46.1 percent sugar, 0.03 percent vanilla, and 0.27 percent emulsifier (soya lechtin).</p> <p>The term “dark couverture” is a European term and is not an approved designation in the United States; however the “dark couverture” which is the subject of this bill meets the U.S. definition of “sweet chocolate” and the international definition of “couverture chocolate.” The U.S. standards of identity define sweet chocolate as containing not less than 15 percent by weight of chocolate liquor (21 CFR 163.123). Couverture chocolate, a chocolate coating or covering, is defined in Codex Alimentarius to contain not less than 35 percent cocoa solids, not less than 31 percent shall be cocoa butter and not less than 2.5 percent shall be fat free cocoa solids. It is reported that most dark chocolate sold commercially in the United States (produced domestically or imported) meets the definition for couverture chocolate.⁸</p>	<p>Belgium is the country of origin for the product of this legislation; however chocolate believed to meet the international definition of “couverture chocolate” was imported from France, Switzerland, Germany, Austria, Sweden, and the United Kingdom.</p>

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

⁷ The phrase “further processing or handling” can include repackaging, storage or warehousing for resale, etc.

⁸ Conversation with Mark Spini, Guittard Chocolate, March 14, 2000.

– EFFECT ON CUSTOMS REVENUE –

[*Note: This section is divided in two parts. The first table addresses the effect on customs revenue based on the duty rate for the HTS number set out in the bill. The second table addresses the effect on customs revenue based on the duty rate for the HTS number recommended by the Commission (if a different number has been recommended). Five-year estimates are given based on Congressional Budget Office “scoring” guidelines. If the indicated duty rate is subject to “staging” during the duty suspension period, the rate for each period is stated separately.*]

HTS number used in the bill: 1806.20.50 ⁹					
	2001	2002	2003	2004	2005
General rate of duty ¹⁰ (AVE) ¹¹	4.3%	4.3%	4.3%	4.3%	4.3%
Estimated value <i>dutiable</i> imports	\$3,741,146 ¹²	\$3,741,146	\$3,741,146	\$3,741,146	\$3,741,146
Customs revenue loss	\$160,869	\$160,869	\$160,869	\$160,869	\$160,869

HTS number recommended by the Commission: n/a ¹³					
	2001	2002	2003	2004	2005
General rate of duty (AVE)					
Estimated value <i>dutiable</i> imports					
Customs revenue loss					

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

⁹ The HTS number is as set forth in the bill. See technical comments for suggested changes (if any).

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

¹¹ AVE is ad valorem equivalent expressed as percent.

¹² This is the value of *all* dutiable imports under HTS 1806.20.50 for 1999 (excluding imports under GSP, NAFTA and preferential rate programs). HTS 1806.20.50 is classified as “Other”, thus, not all imports in this category are dark couverture; however, all imports entering under this tariff line will be affected by the duty suspension. The proponent of the legislation reported imports of \$155,555 of dark couverture chocolate in 1999 (see appendix C).

Contacts with firms or organizations <i>other than</i> the proponents			
Name of firm	Location contacted (city/state)	Date contacted	Response (Y/N) ¹⁴
J. Emanuel Chocolatier	Chester, New Jersey	March 28, 2000	N
Flyer Candy Bar Company	Montclair, New Jersey	March 30, 2000	Y
Chocolate Manufacturers' Association	McLean, Virginia	March 31, 2000	Y
Guittard Chocolate	Burlingame, CA	March 16, 2000	Y

– THE DOMESTIC INDUSTRY –

*[Note: This section is divided in two parts. The first part lists non-confidential 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 non-confidential 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 in connection with this bill prior to approval of the 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			
Name of product	Name of firm	Location of U.S. production facility	Date received
Dark couverture chocolate	Chocolate Manufacturers' Association		April 11, 2000

¹⁴ Non-confidential written responses received prior to approval of this report by the Commission, if any, will be included in appendix D. Only statements submitted in connection with **this** bill will be included in the appendix.

Statements concerning current U.S. production			
Dark couverture chocolate	Chocolate Manufacturers' Association	The following facilities were listed by the Association as being able to produce dark couverture chocolate: 1. Archer Daniels Midland (ADM Cocoa), Milwaukee, WI and Mansfield, MA; 2. Barry Callebaut, USA, Inc., St. Albans, VT and Pennsauken, NJ; 3. Guittard Chocolate, Burlingame, CA; 4. Nestle Chocolate and Confections, Fulton, NY and Burlington, WI; 5. World's Finest Chocolate, Inc., Chicago, IL; and 6. Bloomer Chocolate Company, Union City, CA, Chicago, IL, and East Greenville, PA.	April 20,2000
Dark couverture chocolate	Flyer Candy Bar Company	Montclair, New Jersey	April 17, 2000
Dark couverture chocolate	Guittard Chocolate	Burlingame, CA	April 18, 2000

Statements concerning "future" or "competitive" U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
Dark couverture chocolate	Chocolate Manufacturers' Association	(see above)	April 11, 2000

– TECHNICAL COMMENTS –

*[The Commission notes that references to HTS numbers in temporary duty suspensions (i.e., proposed amendments to subchapter II of chapter 99 of the HTS) should be limited to **eight** rather than ten digits. Ten-digit numbers are established by the Committee for Statistical Annotation of Tariff Schedules pursuant to 19 U.S.C. 1484(f) and are not generally referenced in statutory enactments.]*

Recommended changes to the nomenclature in the bill:

None.

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:¹⁵

n/a

Other technical comments (if any):

None.

¹⁵ 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 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) plus Serbia and Montenegro, 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 September 30, 2001. 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. 1/4/00

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.]

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VP & General Manager

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May 2, 2000

Ms. Devry Boughner
U.S. International Trade Commission
Washington, D.C. 20436

Re: Dark Couverture Chocolate

Dear Ms. Boughner:

The chocolate intermediate, small round drops, is procured from Callebout in Belgium and is further processed, at the Ex-Lax plant in Puerto Rico, by melting and adding the active ingredient to make Ex-Lax Chocolated Laxative. The chocolate was being brought in duty free under HTS 1806.20.2010 and it was later classified under HTS 1806.20.5000 at 4.5% duty. The reclassification was due to the size and weight. The weight needs to be 4.5kgs in bars, slats or blocks of chocolate.

The finished product is strictly for the United Kingdom market and upon manufacture it's exported to the U.K.

The annual estimated value of dutiable imports is approximately \$155,000 with customs revenue of \$7,000.

We respectfully request that the bill to suspend the general rate of duty on the Dark Couverture Chocolate be enacted.

Truly yours,

Santos Troche, Jr.

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.]

April 11, 2000

The Honorable William V. Roth, Jr.
Chairman, Senate Finance Committee
SD-219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Roth:

This letter from the Chocolate Manufacturers Association (CMA) is in response to your request for comments regarding **S. 1432**, a measure introduced by Sen. Frank Lautenberg of New Jersey to temporarily **suspend the duty on dark couverture chocolate** imported into the United States. We would appreciate these comments being included in the committee record on this legislation.

CMA represents eight companies that produce over 90% of the chocolate manufactured in the United States. It is our understanding that this legislation was introduced on behalf of a laxative company in New Jersey that uses this specific type of chocolate for its product. The company may have indicated to Senator Lautenberg and to Rep. Rodney Frelinghuysen (sponsor of a similar measure on the House side) that the only source available for this chocolate was from abroad.

However, in contacting the eight members of our association, we found that many of our members make this kind of chocolate and would be willing to supply the laxative company with this important ingredient. One company said they have made dark couverture chocolate for 60 years and two said they have manufactured couvertures and dark chocolates for over 100 years.

Of our eight members, only one told us they do not produce any chocolates for sale as couvertures. Another said there is not a U.S. standard of identity available for dark couverture chocolate. So they asked how Congress could consider legislation that would discontinue a tariff on something that is not clearly defined. Four other companies indicated they can make this chocolate and of those, three said they were able to supply the laxative manufacturer.

We have been told that measures to suspend tariffs are generally not supposed to impact American companies. But clearly the suspension of duties on imported dark couverture chocolate could divert sales from these domestic chocolate manufacturers. We would therefore ask that the committee not bring up S. 1432 for consideration before this issue is investigated further.

Please do not hesitate to contact our office if you have any questions about this matter.

Sincerely,

Stephen G. Lodge
Vice President, Legislative Affairs

cc: Sen. Daniel P. Moynihan, Sen. Frank Lautenberg, Devry Boughner (USITC)

April 18, 2000

Mr. Devry S. Boughner
International Trade Analyst
US International Trade Commission
500 E. Street, SW
Washington, DC 20436

RE: S. 1432 to Temporarily suspend the duty on dark couverture chocolate

Dear Mr. Boughner:

As you are aware from our phone conversation, there is no United States Standard of Identity defining "Dark Couverture Chocolate" nor is there any agreed international standard. The applicant specifies that the chocolate which they desire is of the following composition:

15.7% Cocoa Butter
37.9% Cocoa Mass (chocolate liquor)
46.1% Sugar
0.03% vanilla
0.27% soya lecithin emulsifier

The applicant has stated that this composition chocolate is not available in the United States as a basis for requesting the duty exemption.

The applicant's claim that this semi-sweet chocolate is not available in the United States is incorrect. Guittard Chocolate Company manufactures more than 10 different dark chocolates with cocoa mass and sugar compositions similar to the above composition. Each represents a different flavor profile.

The cocoa butter content of each of our chocolates is always adjusted for our customers to meet the viscosity requirements which they have. It is readily adjusted on any product. I note that the specification above is not complete without viscosity and fineness specifications which are tailored for each product.

To our knowledge, the composition noted above is a common one within the chocolate manufacturing industry in the United States and should be available from several chocolate manufacturers.

Guittard would be pleased to receive samples from the applicant and submit samples of the "dark couverture chocolate" to them for comparison.

Accordingly, we believe it inaccurate of the applicant to state that no chocolate is available in the United States which meets their requirements and it is contrary to the best interests of the chocolate manufacturing industry of the United States to grant this temporary exemption from duty.

Sincerely,

Edward S. Seguire
Vice President Research and Development/
Quality Assurance

Cc: Mr. Gary W. Guittard

106TH CONGRESS
1ST SESSION

S. 1432

To suspend temporarily the duty on dark couverture chocolate.

IN THE SENATE OF THE UNITED STATES

JULY 26, 1999

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Finance

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 12/31/2002	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) applies with respect to articles entered, or
3 withdrawn from warehouse for consumption, on or after
4 the 15th day after the date of the enactment of this Act.

○