

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 28, 2000]²

Bill No.: S. 2164; 106th Congress

Introduced by: Mr. DURBIN

Similar and/or related³ bills: H.R. 2165, 106th Congress

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 (provided for in heading 9011)

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

Through: December 31, 2004.

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: Christopher 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 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
Amy Warlick Barnes, Richardson, & Colburn (for Leica Inc.) (312) 565-2000	Chicago, IL	Apr. 4, 2000	N
Leica Inc.	Deerfield, IL	Apr. 4, 2000	N

*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, sometimes but not in all cases.

If “Yes,” provide location of this facility if different from above (city/state): Deerfield, IL

If “No,” provide location of proponent’s headquarters or other principal facility if different from above (city/state): n/a

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.

The imported product	
Description and uses	Country(s) of origin
<p>Compound optical microscopes consist of an optical system, a specimen stage, one or two eyepiece-holder tubes, and an objective holder. The optical system consists of an objective 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 means of illuminating the object from below (a mirror illuminated by an external or an integral light source, and a set of condenser lenses to direct the beam of light from the mirror onto the object). Microscopes designed for use in semiconductor inspection often are equipped with special scanning stages for semiconductor wafers, devices, and masks. The stages permit the complete rotation of the semiconductor wafers or related devices on wafer holders, which fit onto the stage. The stages contain an opening that 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 systems can be used as stand-alone units for photomask, wafer, and device inspection or upgraded to act as high performance, fully automated systems.</p> <p>The subject legislation would cover all 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 “classroom 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.</p>	<p>Germany Switzerland</p>

– 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.]

**Compound optical microscopes provided for in heading 9011:
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), 9011.10.80 (7.2 percent), 9011.20.40 (3.9 percent), 9011.20.80 (7.2 percent), 9011.80.00 (6.4 percent), (trade weighted average 6.7 percent)

	2001	2002	2003	2004	2005
General rate of duty ⁹ (AVE) ¹⁰	6.7 percent	6.7 percent	6.7 percent	6.7 percent	6.7 percent
Estimated value <i>dutiable</i> imports	\$2.5 million	\$2.8 million	\$3.0 million	\$3.2 million	\$3.5 million
Customs revenue loss	\$168,000	\$188,000	\$201,000	\$214,000	\$235,000

HTS number recommended by the Commission: n/a ¹¹

	2001	2002	2003	2004	2005
General rate of duty (AVE)					
Estimated value <i>dutiable</i> imports					
Customs revenue loss					

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

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

¹⁰ AVE is ad valorem equivalent expressed as percent. Staged rates may be found at: <http://dataweb.usitc.gov>

¹¹ If a different HTS number is recommended, see technical comments.

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

Contacts with firms or organizations <i>other than the proponents</i>			
Name of firm	Location contacted (city/state)	Date contacted	Response (Y/N) ¹²
Accu-Scope, Inc.	Sea Cliff, NY	Apr. 4, 2000	N
Applied Precision, Inc.	Isahquah, WA	Apr. 10, 2000	N
Bio-Rad Laboratories, Inc.	Mountain View, CT	Apr. 6, 2000	N
Carl Zeiss Inc.	Minneapolis, MN	Apr. 5, 2000	N
Fisher Scientific International	Pittsburgh, PA	Apr. 4, 2000	N
Irvine Optical Company	Burbank, IL	Apr. 5, 2000	N
Ken-A-Vision Mfg. Co.	Kansas City, MO	Apr. 10, 2000	N
L.W. Scientific	Tucker, GA	Apr. 4, 2000	N
Olympus America, Inc.	Melville, NY	Apr. 5, 2000	N
Otem International	Fairport, NY	Apr. 5, 2000	N
Prior Scientific Inc.	Rockland, MA	Apr. 5, 2000	N
TriTek Corp.	Summerduck, VA	Apr. 5, 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.]*

¹² 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			
Name of product	Name of firm	Location of U.S. production facility	Date received
Microscope	TriTek Corp.	Summerduck, VA	Apr. 6, 2000

Statements concerning “future” or “competitive” U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None.			

– 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:

The long proposed article description refers to “cleanroom class 1 criteria”, but does not specify what entity sets the criteria or where they can be found. If they are established and maintained by a private body, they could be changed without any notice to Customs officials and on any basis that body might choose. Moreover, importers might not be immediately aware of such changes, which would directly affect the scope of the duty suspension; they probably could not be held responsible for errors in entering goods in such situations, given the requirements of the Customs Modernization Act that the government inform importers of legal matters for which they are responsible. Also, we suggest that the English unit of measurement of 8 inches in the description be replaced with the metric equivalent, “20.32 cm”.

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:*¹³

n/a

Other technical comments (if any):

Based on information from the proponent, the bill would rectify what is asserted to be an exclusion of microscopes used in the semiconductor manufacturing and testing process from the intended duty-free treatment under the Information Technology Agreement (ITA-1). 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 receiving duty-free treatment. All of the ITA signatories except for the United States have made such microscopes free of duty under HTS heading 9011, but they remain dutiable in the United States under HTS heading 9011. In its submission to the WTO, the United States had said in the Singapore Ministerial Declaration that the subject microscopes were included under HTS heading 9031 and were free of duty thereunder. However, Customs states that it classifies the product named in this bill under HTS heading 9011, not heading 9031.

¹³ 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.]

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.]

----- Original Message ----- **From:** Rex A. Hoover **To:** Chuck Robb **Cc:** John Warner ; Chris Johnson **Sent:** Thursday, April 06, 2000 10:00**Subject:** S. 2164 :-(

Dear Senator Robb,

My family and I are opposed to S. 2164. Please take all appropriate action to assure this bill never gets out of committee. I am a nine year U.S. Naval veteran and the founder of a company that has invented, patented and sells a microscope that is in direct competition with Leica and the other foreign owned companies that would benefit from passage of this bill. My family invested our own funds to develop our products and we employ five people in Virginia whose financial well being is dependent on our success.

The biggest challenge we have faced was to wean our U.S. customer base from purchasing overpriced and limited-function competing products from well established foreign companies with massive marketing resources. Compared to that problem, inventing and manufacturing a product that advances the state of the art was easy. We are just beginning to reestablish the United States as the premier provider of high-end microscopy products. Our revenue has doubled every year for the last few years and our business outlook is outstanding. We are a living example of the American Dream. Giving our foreign competition a boost by suspending import duty on their products will do us real and immediate harm.

Rex A. Hoover
TriTek Corp.
5263 Stewart Road
Sumerduck, VA 22742
540-439-3690
540-439-4009 FAX
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About the Company

TriTek is a Virginia based development and manufacturing company specializing in applications requiring expertise in microscopic video imaging, analytical software and computerized motion control. Founded in 1992, TriTek's first mission was to reinvent the compound microscope. Our primary goal was to develop a fully integrated computerized microscope using an electronic video imaging system and the finest optical components available while maintaining a user-friendly ergonomic environment. In 1995 we launched our PC-based vision workstations achieving great success as shown by our growing list of satisfied customers that include some of the world's largest semiconductor manufacturers and healthcare providers.

President: Rex A. Hoover
Vice-President: Robert G. Hoover
Secretary/Treasurer: Patricia M. Hoover
Director of Marketing & Sales: Thomas A. Hoover
Director of Operations: Angela M (Hoover) Cook

106TH CONGRESS
2D SESSION

S. 2164

To suspend temporarily the duty on certain compound optical microscopes.

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2000

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

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 SUSPENSION OF DUTY ON CER-**
4 **TAIN COMPOUND OPTICAL MICROSCOPES.**

5 (a) IN GENERAL.—Subchapter II of chapter 99 of
6 the Harmonized Tariff Schedule of the United States is
7 amended by inserting in numerical sequence the following
8 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 12/31/2004	”.
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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 date that is 15 days after the date of the enactment
5 of this Act.

○