March 27, 1998

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]

Bill no., sponsor, and sponsor's state: H.R. 1875 (105th Congress), Representative Crane (IL)

Companion bill: None

Title as introduced: To amend the Harmonized Tariff Schedule of the United States to allow entry of peanut butter and peanut paste manufactured from Mexican peanuts in foreign trade zones, without being subject to a tariff-rate quota.

Summary of bill:[2]

The bill would amend general note 15 to the Harmonized Tariff Schedule of the United States (HTS) to provide that peanut butter and peanut paste manufactured in, and entered from, a U.S. foreign-trade zone (FTZ) would not be counted toward a tariff-rate quota (TRQ), with certain provisos. The TRQs for agricultural products were established when previous absolute global quotas, under section 22 of the Agricultural Adjustment Act (7 U.S.C. sec. 624), were converted to tariffs in the Uruguay Round of multilateral tariff negotiations. General note 15 now gives special status to five classes of goods (including government importations and other specified entries) that are covered both by these global TRQs and by special safeguard provisions under subchapter IV of chapter 99; these TRQs cover agricultural products of HTS chapters 2 through 52. The general note was added to the HTS in order to exempt shipments of particular TRQ goods from being counted toward the trigger for the relatively high over-quota duty rates, "specified as the in-quota quantity for any such product in such chapters." Accordingly, for each product category covered by a TRQ, a chapter note specifies the trigger quantity with annual staging, and the chapter generally contains one tariff subheading for goods described in general note 15, another for the in-quota shipments, and one or more subheadings for over-quota shipments.

The title of the bill, but not the proposed amendment to the general note (the present text of which is not limited by country), would add a sixth class of apparently TRQ-exempt goods--namely, peanut butter and paste made from Mexican peanuts in a U.S. FTZ.[3] The bill's text would amend the general note by adding a sixth class of TRQ-exempt goods, peanut butter and paste made in a FTZ. It would provide that any

---

[1] Industry analyst: Stephen Burket (205-3318); attorney: Jan Summers (205-2605).

[2] See appendix A for definitions of tariff and trade agreement terms.

[3] By the text of additional U.S. note 2 to chapter 12, the peanut TRQ covers in-shell and shelled peanuts, blanched peanuts, and other peanuts, but it does not cover peanut butter or peanut paste. The latter two products are covered by a separate TRQ under HTS subheadings 2008.11.02 through 2208.11.15; most of the in-quota quantity is allocated to Canada. Thus, the peanut butter/paste TRQ is separately computed, and the peanut content in peanut butter and peanut paste entered from outside the U.S. customs territory does not count toward the peanut TRQ in chapter 12.

peanuts that are not qualifying goods under HTS general note 12, and any peanut butter or paste from any source, the foregoing if imported for use in such zone manufacturing, must be entered for consumption[4] prior to admission to the FTZ. General note 12 sets forth the tariff treatment of goods eligible for preferences under the North American Free Trade Agreement or NAFTA.

Under the NAFTA as implemented on January 1, 1994, peanuts that were goods of Mexico under the terms of HTS general note 12 were accorded duty-free entry when imported in quantities not exceeding the limits[5] set forth in note 16 to subchapter VI of chapter 99; for additional quantities, low-value shipments were dutiable at the rate of 51.7¢/kg and higher-value shipments at 181.4 percent ad val. During 1994, although an absolute quota limited global imports of peanuts under HTS heading 9904.20.20, U.S. note 1 to subchapter IV of chapter 99 stated that "...The provisions of this subchapter shall not apply to articles imported into the United States that are qualifying goods of Mexico." Thus, shipments from Mexico--but not from Canada--were exempt from the application of fees or global quotas, and the counting of shipments from Mexico would have been done along two tracks: originating/qualifying (NAFTA-rate) goods would not have been counted, but nonoriginating (general-rate) imports would have been counted toward the global quantitative limit. Goods of Canada were already eligible to enter the United States free of duty, if requirements of general note 12 were met.

In the Uruguay Round, Mexico negotiated for and was accorded special treatment with respect to the TRQs set up to replace the absolute global quotas. Articles the product of Mexico--whether or not they are originating/qualifying goods--are not counted toward global TRQ trigger levels (pursuant to additional U.S. note 2 to HTS chapter 12 and additional U.S. note 5 to chapter 20). When Mexican shipments are entered, the note excludes them from classification in the in-quota tariff categories, subheadings 1202.10.40, 1202.20.40, 2008.11.22 or 2208.11.45 for peanuts and subheading 2008.11.05 for peanut butter or paste. Goods of Mexico under general note 12 that meet a general note 15 exemption can enter at a NAFTA-Mexico duty rate of "free" under non-TRQ categories, subheadings 1202.10.05, 1202.20.05, 2008.11.02, 2008.11.22 or 2008.11.42. All other articles the product of Mexico must be classified only under the over-quota categories, and nonoriginating goods and goods imported without importer claims for NAFTA treatment are dutiable at general rates. Mexican peanuts fall under HTS subheadings 1202.10.80, 1202.20.80, 2008.11.35 or 2008.11.60; if they are originating/qualifying goods, they are accorded NAFTA duty treatment in the form of special TRQs under HTS subheadings 9906.12.01 through 9906.12.06 and

---

[4] Customs regulations (19 C.F.R. 141.0a(f) define "entered for consumption" as meaning 'that an entry summary for consumption has been filed with Customs in proper form, with estimated duties attached.' The entry summary comprises such documentation as would allow Customs to assess duties and to collect statistics on imported goods, and determine if they comply with applicable laws; it is normally filed when goods enter the customs territory (whether from another country, from a FTZ, etc.). Goods that are entered for consumption are then counted toward the TRQ trigger quantities, according to Customs Service officials. Under the bill's new language, foreign-origin goods would be entered for consumption, counted toward either the peanut or peanut butter TRQ, admitted into the FTZ for manufacturing, and then either entered or exported; the bill does not specify the customs treatment to be accorded to the goods while in the FTZ or upon leaving the FTZ. We note again that Mexican goods are not counted toward these TRQs.

[5] Pursuant to general note 12(s)(I), qualifying goods are agricultural goods that originate in the NAFTA region and are imported from Mexico, whether or not they resulted from non-NAFTA seeds or plants; but in ascertaining whether the goods originate, processes done in or materials obtained from Canada are treated as if done in or obtained from a non-party to the NAFTA and would presumably be required to meet tariff classification shift and other rules set forth in general note 12. In addition, in order to qualify for NAFTA preferences if exported from Mexico, peanuts of heading 1202 must be harvested in the territory of Mexico, and goods of subheading 2008.11 must contain only Mexican-harvested peanuts of heading 1202. This status is likewise reflected in the tariff-shift rules of general note 12(t); only peanuts grown and harvested in the NAFTA region, and peanut butter/paste made therefrom, can receive a NAFTA duty preference.

9006.20.03 through 9906.20.05, inclusive. Peanut butter or paste falls under subheading 2008.11.15. For purposes of the NAFTA, but not of ordinary customs entries, U.S. FTZs are treated as part of U.S. territory, so that no additional special benefits accrue from using the zones.

Effective date: Upon enactment.

Retroactive effect: None.

Statement of purpose:

Representative Crane made no statement in the Congressional Record at the time that the legislation was introduced. The bill was introduced on behalf of Golden Peanut Co., located in Alpharetta, GA.[6] The amendment to HTS general note 15 is reportedly designed to correct an anomaly resulting from the combined effect of certain provisions in the NAFTA pertaining to imports of peanut butter and paste. Under current law, peanut butter and peanut paste made in Mexico from peanuts grown in Mexico qualify for entry into the United States without being subject to the provisions of the general tariff-rate quota that limits imports of peanut butter and paste imported from all other countries. U.S. producers, because they lack equivalent access to Mexican origin peanuts for use in the production of peanut butter and paste in the United States, are said to be at a competitive disadvantage relative to Mexican producers of these same products.

Product description and uses:

Peanut butter and peanut paste: Peanut butter and peanut paste are prepared by roasting and grinding clean, sound, mature peanuts that usually have been blanched (so that the seed coat has been removed). Peanut butter may have seasoning, such as salt and sweeteners, and stabilizers added; it must contain at least 90 percent peanuts by weight. Peanut butter is used primarily in the home, but large quantities are also used in the commercial/institutional manufacture of sandwiches, candy, and bakery products. Peanut paste consists of 100 percent roasted, ground peanuts without added salt, sweeteners, or stabilizers.

Tariff treatment:[7]

Product	HTS subheading	Col. 1-general rate of duty	Special
Peanut butter and peanut paste:			
Other [imported in excess of TRQ].....		2008.11.15	143.4% 3.9¢/kg (MX)

[6] Telephone conversation with Timothy Stanceu, Hogan & Hartson L.L.P., on July 17, 1997.
[7] See appendix B for column 1-special and column 2 duty rates.

Structure of domestic industry (including competing products):

In recent years, there were about 40 firms processing peanut butter and peanut paste in the United States. The industry is a highly concentrated one that is dominated by a few firms marketing national brands such as Skippy, Jif, and Peter Pan. Typically, these firms forward-contract for much of their raw peanut needs, but are not involved in the production of peanuts. Peanut butter and peanut paste account for about 50 percent of the domestically produced peanuts used in food products.

Private-sector views:

The Commission staff contacted a peanut sheller/processor and eight trade associations.[8] Five associations submitted comments on this bill, which are attached in appendix C. The other organizations contacted had not submitted written comments as of the date of the preparation of this report.

U.S. consumption:

Peanut butter and peanut paste:	1994	1995	1996
	----------($1,000)----------		
U.S. production[1]	430,229	411,269	415,042
U.S. imports	26,435	20,647	28,127
U.S. exports	26,049	28,700	32,731
Apparent U.S. consumption	430,615	403,216	410,438

[1]Value of U.S. production calculated as follows: Peanuts used in peanut butter production x2 (convert to inshell basis) x average farm price received by farmers.

Principal import sources: Canada and Argentina
Principal export markets: Canada, Saudi Arabia, and Japan

Effect on customs revenue:[7]

Future (1998-2000) effect: The revenue effect of the bill cannot be calculated, because of the unavailability of data specific to the scope of the proposed changes.

---

[8] Commission staff contacted Hogan & Hartson L.L.P., counsel for Golden Peanut Co., (202-637-5600), on July 17, 1997; Peanut and Tree Nut Processors Association, (301-365-2521), on July 16, 1997; Georgia Agricultural Commodity Commission for Peanuts, (912-386-3470), on July 16, 1997; GFA Peanut Association, (912-336-5421), on July 16, 1997; Alabama Peanut Producers Association, (334-792-6482), on July 16, 1997; and Florida Peanut Producers Association, (904-263-6130), on July 16, 1997; National Peanut Growers Group, (254-734-2222), on July 16, 1997; American Peanut Product Manufacturers, Inc., (202-842-2345), on July 24, 1997; and National Confectioners Association, (703-790-5011), on July 24, 1997.

[7] Actual revenue loss may be understated in the event of a significant increase in imports over the duty suspension period.

Retroactive effect: None.

Technical comments:

After considering the bill as drafted, we question whether the proposed amendments to the HTS would be interpreted to carry out the apparent intent of the sponsor, particularly in view of the complexity of the TRQs accorded to qualifying goods of Mexico under chapter 99. It would seem that the changes to general note 15 can primarily be directed at two products: Peanuts from Mexico that are either imported directly into a U.S. foreign trade zone or imported into the customs territory for eventual shipment to and use in a U.S. foreign trade zone; and peanut butter or peanut paste made in such a zone from peanuts from Mexico and then entered into the U.S. customs territory. Thus, we would offer substitute language to cover those products in general note 15 and to deal with the two types of goods separately. We include language as well to cover peanut butter or paste made in a zone from previously duty-paid peanut butter or peanut paste, but we are unclear as to the sponsor's intent with respect to these goods:

(f) peanuts that are qualifying goods of Mexico--
  (i) imported for shipment to a foreign trade zone for manufacture in such zone into peanut butter or peanut paste, or
  (ii) admitted directly into a U.S. foreign trade zone for manufacture in such zone into peanut butter or peanut paste; and

(g) peanut butter or peanut paste manufactured in and entered from a foreign trade zone from--
  (i) peanuts that are qualifying goods of Mexico, or
  (ii) peanut butter or peanut paste that had been entered for consumption prior to admission into the foreign trade zone.

For purposes of subdivisions (f) and (g) of this note, the term "foreign trade zone" means a foreign trade zone established pursuant to the Act of June 18, 1934, commonly referred to as the Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

We note that Customs acts in conjunction with the Foreign Trade Zones Board at the Department of Commerce to administer zone operations and products entered therefrom, and that these agencies might be consulted with respect to the administrability of the proposed language.[8]

[8] Briefly stated, the Board can regulate the customs treatment of goods in the foreign trade zone in certain respects and also provide for the treatment of goods being brought from the zone into the customs territory. If a good is admitted into a zone for manufacturing, the zone user normally can examine the tariff provisions applicable to that good in its existing state and to the ultimate zone product being entered into the customs territory in order to ascertain which provision has the lower rate of duty. If the good itself would have the lower rate when so entered, the zone user can file to have the good treated as "privileged" and to retain that tariff classification and duty rate when imported, even if substantially transformed into the ultimate product. If the finished product instead falls in the lower rate category, the user allows it to be treated as nonprivileged goods and then classified and dutied in its ultimate condition as entered into the customs territory. However, if the use of this option might result in circumvention of quotas or dumping duties or might cause other problems, the Board can preclude zone users from declaring goods as privileged or even require all output to be exported or the operation halted. This regime is complicated with respect to Mexico and the NAFTA by virtue of the inclusion of the zones within the "territory of the United States" for purposes of trade covered by the treaty. See Annex 201.1, item (c)(ii).

Consideration of international obligations:

With respect to the proposal as drafted, given possible confusion in its interpretation, there may be potential issues or problems relating to U.S. international obligations. These problems should be avoidable if the language of the tariff amendments is clarified.

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 (MFN) 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 enumerated 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 MFN-eligible 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, 1998. 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 or 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.

APPENDIX B

SELECTED PORTIONS OF THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

(Appendix not included in the electronic version of this report.)

APPENDIX C

OTHER ATTACHMENTS

(Appendix not included in the electronic version of this report.)

I

105TH CONGRESS
1ST SESSION

H. R. 1875

To amend the Harmonized Tariff Schedule of the United States to allow entry of peanut butter and paste manufactured from Mexican peanuts in foreign trade zones, without being subject to a tariff-rate quota.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 1997

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

---

A BILL

To amend the Harmonized Tariff Schedule of the United States to allow entry of peanut butter and paste manufactured from Mexican peanuts in foreign trade zones, without being subject to a tariff-rate quota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PEANUT BUTTER AND PASTE MANUFACTURED IN A FOREIGN-TRADE ZONE.

General Note 15 of the Harmonized Tariff Schedule of the United States is amended—

(1) by striking ''and'' at the end of subdivision (d);

(2) by striking the period at the end of subdivision (e) and inserting a semicolon; and

(3) by adding at the end the following:

''(f) peanut butter and paste manufactured in, and entered from, a foreign-trade zone: *Provided,* That—

''(i) any peanuts that are not qualifying goods under General Note 12, and

''(ii) any peanut butter or paste,

imported for use in such manufacturing are entered for consumption prior to admission to the foreign-trade zone.

For purposes of subdivision (f), the term 'foreign-trade zone' means a foreign-trade zone established pursuant to the Act of June 18, 1934, commonly referred to as the 'Foreign Trade Zones Act (19 U.S.C. 81a and following).''.

○