

September 8, 1997

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 LEGISLATION¹

Bill no., sponsor, and sponsor's state: H.R. 1876 (105th Congress), Representative Sensenbrenner (WI).

Companion bill: None.

Title as introduced: To clarify that certain large components of certain scientific instruments and apparatus shall be provided the same tariff treatment as those scientific instruments and apparatus.

Summary of bill:²

The bill would amend U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS), so that separable components imported for assembly in the United States into scientific instruments or apparatus listed in the note--where the instrument or apparatus itself, due to size and complexity, cannot be imported in an assembled state--also would be eligible for duty-free entry under the so-called Florence Agreement. Under this agreement, as implemented by the United States,³ nonprofit institutions can apply to the Department of Commerce (DOC) for permission to import free of duty specified scientific instruments or apparatus, when there is no domestic equivalent therefor and when the Customs Service agrees that the goods are classifiable in one of the enumerated tariff categories.

The bill also would amend subdivision (c) of that note to provide for expedited DOC consideration as to each component for which duty-free entry is requested under subheading 9810.00.60. The Secretary of Commerce, upon receipt of a petition by an eligible institution, would be able to hold a single expedited hearing to determine whether such duty treatment should be given to all of the components of the particular scientific instrument or apparatus for which the application is made. Last, the Secretary of the Treasury and the Secretary of Commerce would be authorized to make such modifications to regulations as are necessary to carry out the amendments.

Effective date: Upon enactment.

Retroactive effect: None.

¹ Industry analyst: James M. Brandon (205-3433); attorney: Jan Summers (205-2605).

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

³ See Public Law 89-651 of Oct. 14, 1966 (80 Stat. 807).

Statement of purpose:

Representative Sensenbrenner stated in the Congressional Record:

. . . Today we are introducing a bill to clarify the interpretation of language contained in the Florence Agreement, a multilateral international agreement regarding the importation of educational, scientific, and cultural materials. Signed by the United States, it allows for the duty-free importation of scientific apparatus into the United States, if used by U.S. approved institutions for educational, scientific, and cultural purposes.

As nations tighten their research budgets, international scientific collaborations involving many nations are becoming more common. Therefore, it is crucial the United States promulgate the same tariff treatment for the importation of component parts of large scientific instruments, as for the scientific instruments themselves. The need for this legislation was demonstrated last year by the difficulties experienced in the Gemini International Telescope project. The U.S. Customs Service narrowly defined the words “instruments or apparatus” not to include “components” of these instruments.

. . . To prevent future problems, this bill addresses the difficulties encountered through the interpretation of the words “instruments or apparatus” by the U.S. Customs Service. It states that separate components shall be included under the definition of instruments or apparatus, and that therefore they shall be eligible for the same tariff treatment under the Harmonized Tariff Schedule of the United States. This bill will ensure that the United States fulfills the Florence Agreement’s intent of furthering the exchange of ideas, knowledge, and information through the interchange of scientific instruments and apparatus.⁴

Product description and uses:

The subject components of large scientific instruments and apparatus that must be imported unassembled include a wide range of products. The 8-meter mirror used in the Gemini International Telescope is an example of a component that probably would have been covered by the bill; large and complex telescopes cannot usually be imported in assembled form.

Tariff treatment:⁵

The subject components, if separately imported, would be classifiable throughout the tariff schedule. The various instruments and apparatus, if imported in unassembled or disassembled state in a single shipment or on a single customs entry, would likely be classifiable as the complete article under General Rule of Interpretation 2(a) to the HTS. The goods covered by the bill would therefore be those imported in separate shipments over a longer period of time.

⁴ Statement of Representative Sensenbrenner, Congressional Record, June 12, 1997.

⁵ See appendix B for column 1-special and column 2 duty rates.

<u>Product</u>	<u>Col. 1-general HTS subheading</u>	<u>rate of duty</u>
Scientific instruments and apparatus.	9810.00.60	Free

Structure of domestic industry (including competing products):

Approximately 200 companies in the United States manufacture scientific instruments and apparatus. These companies either produce or import component parts that are required for final assembly of the product. It is not known how many of these companies are engaged in the manufacture of the subject components of large or complex scientific instruments and apparatus, that cannot be imported in assembled form.

Private-sector views:

The Commission contacted the Analytical Instrument Association⁶ and interested agencies of the Federal Government.⁷ The association had not submitted any written comments as of the date of preparation of this report.

U.S. consumption:

Due to the wide range of components covered by the bill and the uncertainty as to the scope of “large or complex” instruments or apparatus that cannot be imported in assembled form, it is not possible to estimate U.S. production, imports, exports, or consumption of the subject products.

Effect on customs revenue:⁸

Again, because the types and volume of such components--which currently would be subject to duty under provisions throughout the HTS--cannot be ascertained or estimated, it is not possible to provide an estimate of the bill’s effects on future customs revenues. It would have no retroactive effect, given that it lacks an effective date clause and is therefore prospectively effective as of its date of enactment.

Technical comments:

The terms “size and complexity” relating to scientific instruments and apparatus are obviously subject to interpretation and do not provide guidance in defining their intended coverage. As with some other aspects of the chapter 98 provisions implementing the Florence Agreement, protests and litigation can be anticipated regarding the scope of “large or complex” products that cannot be imported in an assembled

⁶ Telephone conversation with Mike Duff, Executive Director, July 31, 1997.

⁷ Faxed copy of bill to Barbara Kiefer, National Import Specialist 114, U.S. Customs Service, for comments, July 31, 1997, and telephone conversation with Frank Creel, U.S. Department of Commerce, July 31, 1997.

⁸ Actual revenue loss may be understated in the event of a significant increase in imports over the duty suspension period.

state. The bill as currently drafted is subject to being read narrowly, so as to apply only to components listed on a single customs entry and shipped together through the same port. In the case of large, complex scientific instruments such as telescopes, it is possible that the components will be made in different countries and over a period of time, and will be shipped at different times, shipped through different ports, and listed on separate customs entries. If the intent of the bill is that it be read more broadly so as to apply in these or other situations, it is suggested that consideration be given to adding language to the bill that would amend subdivision (a) of note 6 of subchapter X of chapter 98 of the HTS to this effect.

It is suggested that contracts for purchase or similar documents might be referred to in delineating the range of eligible components. This approach has been used in other situations, such as in setting the scope of unfair import investigations regarding shipments of components or units that might enter the United States over several months. Also, it is suggested that the Customs Service be consulted regarding its interpretation of “components” to ascertain if any obvious problems with that term exist--such as whether “units” or subassemblies of a very large installation would be included, and whether Customs reads the provision as encompassing parts that are themselves imported for assembly into “components” or subassemblies. It is possible that Customs might raise administrative problems with the proposal, given the absence of any time period or other criteria setting a possible maximum scope for the new treatment; however, the measure might be amended to provide that DOC would set any such time periods and resolve scope issues in its decisions granting duty-free treatment.

Consideration of international obligations:

We note that the implementation of this change would unilaterally expand the treatment mandated by U.S. obligations under the Florence Agreement.

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.

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APPENDIX B

**SELECTED PORTIONS OF THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

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

105TH CONGRESS
1ST SESSION

H. R. 1876

To clarify that certain large components of certain scientific instruments and apparatus shall be provided the same tariff treatment as those scientific instruments and apparatus.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 1997

Mr. SENSENBRENNER (for himself, Mr. BROWN of California, Mr. SCHIFF, Mr. BARCIA, Mr. BOEHLERT, Mrs. MORELLA, Mr. WELDON of Pennsylvania, Mr. ROHRABACHER, Mr. CRAMER, Mr. BARTON of Texas, Mr. EHLERS, Mr. GUTKNECHT, and Mr. MCHALE) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To clarify that certain large components of certain scientific instruments and apparatus shall be provided the same tariff treatment as those scientific instruments and apparatus.

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. TARIFF TREATMENT FOR CERTAIN COMPO-**
4 **NENTS OF SCIENTIFIC INSTRUMENTS AND**
5 **APPARATUS.**

6 U.S. Note 6 of subchapter X of chapter 98 of the
7 Harmonized Tariff Schedule of the United States is

1 amended in subdivision (a) be adding at the end the fol-
2 lowing new sentence: “The term ‘instruments and appara-
3 tus’ under subheading 9810.00.60 includes separable com-
4 ponents of an instrument or apparatus listed in this sub-
5 division that are imported for assembly in the United
6 States in such instrument or apparatus in a case in which
7 the instrument or apparatus, due to its size and complex-
8 ity, cannot be imported in its assembled state.”.

9 **SEC. 2. CONSOLIDATED HEARING PROCESS.**

10 U.S. Note 6 of subchapter X of chapter 98 of the
11 Harmonized Tariff Schedule of the United States is
12 amended in subdivision (c) by adding at the end the fol-
13 lowing: “In order to provide for expedited consideration
14 of each component of a scientific instrument or apparatus
15 for which duty treatment is requested under subheading
16 9810.00.60, the Secretary of Commerce, upon receipt of
17 a petition by an affected institution, may hold a single
18 expedited hearing to determine whether or not to grant
19 such duty treatment to all of the components of the par-
20 ticular scientific instrument or apparatus for which the
21 application is made.”.

22 **SEC. 3. MODIFICATIONS OF REGULATIONS.**

23 The Secretary of the Treasury and the Secretary of
24 Commerce shall make such modifications to regulations as

1 are necessary to carry out the amendments made by this
2 Act.

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