

September 9, 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. 2044 (105th Congress), Representative Matsui (CA)

Companion bill: None.

Title as introduced: To suspend temporarily the duty on the production of anti-cancer drugs.

Summary of bill:²

Temporarily suspends the column 1 rate of duty for U.S. imports of (3S)-2,2-Dimethyl-3-thiomorpholine-carboxylic acid, a chemical used to make a newly-discovered anti-cancer drug. The bill would amend subheading 2934.90.90 of chapter 29 of the HTS to add the subject chemical by name with free entry during 1998-2000.

Effective date: 15th day after enactment.

Retroactive effect: None.

Statement of purpose:

Representative Matsui made no statement in the Congressional Record at the time this legislation was introduced. However, in a letter to Commission staff, Mr. Robert A. Shapiro of Barnes, Richardson, and Colburn, counsel to Agouron Pharmaceuticals, Inc., the firm that intends to import the subject chemical, stated:

Agouron is seeking a temporary tariff suspension for certain chemicals used in the production of three newly-developed anti-cancer drugs which are currently still undergoing testing. The compound in HR 2044 is important in the production of a product that is in clinical trials directed toward advanced cancer, including prostate cancer.

¹ Industry analyst: Aimison Jonnard (205-3350); attorney: Leo Webb (205-2599).

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

Agouron is also seeking duty free treatment for these chemicals under the WTO pharmaceutical zero-for-zero update negotiations, which are to become effective in 1999. In the interim, however, a substantial duty cost will be incurred in obtaining critical components from foreign suppliers, which significantly adds to the costs of development. The temporary suspension of duty on these products will allow consumers to have access to these anti-cancer drugs as cost-effectively as possible.

Product description and uses:

(3S)-2,2-Dimethyl-
thiomorpholine carboxylic acid: The subject chemical is a synthetic organic chemical intermediate that will be used in the production of anti-cancer drugs.

Tariff treatment:^{3,4}

<u>Product</u>	Col. 1-general <u>HTS subheading</u>	<u>rate of duty</u>
(3S)-2,2-Dimethyl-3-thiomorpholine carboxylic acid . . .	2934.90.90	7.1%

Structure of domestic industry (including competing products):

(3S)-2,2-Dimethyl-3-
thiomorpholine carboxylic acid: According to Commission records and industry sources, there was no appreciable domestic production of this chemical during the past 5 years. Drugs produced by other pharmaceutical companies for the treatment of cancer are similarly derived from organic chemical intermediates, but different in composition from the subject chemical.

Private-sector views:

Absent appreciable domestic production of the subject chemical, the Commission contacted four pharmaceutical companies that produce or are developing drugs for the treatment of cancer.⁵ None of the companies had submitted written comments as of August 1, 1997.

³ See appendix B for column 1-special and column 2 duty rates.

⁴ See technical comments section.

⁵ Merck & Co.; Eli Lilly & Co., Pfizer, Inc.; and SmithKline Beecham Pharmaceuticals were contacted about this proposed legislation on July 23, 1997.

U.S. consumption:

(3S)-2,2-Dimethyl-3-thiomorpholine carboxylic acid:	<u>1994</u>	<u>1995</u>	<u>1996</u>
U.S. production ¹	0	0	0
U.S. imports ¹	0	0	0
U.S. exports.....	0	0	0
Apparent U.S. consumption.....	0	0	0

¹Production and/or imports in these years negligible in commercial terms.

Source: Based on official statistics of the U.S. Department of Commerce and estimates provided by industry representatives.

Principal import sources: Japan.

Principal export markets: None.

Effect on customs revenue:⁶

Future (1998-2000) effect: \$480,000 x .071 = \$34,200 per year (based on industry estimates).

Retroactive effect: None.

Technical comments:

In the title of the bill, the words “the production of” should be replaced by the words “imports of chemical intermediates to produce.”

The bill gives the HTS subheading number as 2921.30.50; however, the Customs Service has indicated that this product is classified in 2934.90.90. The Committee may wish to amend the bill accordingly.

⁶ Actual revenue loss may be understated in the event of a significant increase in imports over the duty suspension period should the anti-cancer drugs be approved for use in the United States. Industry sources expect, however, that these intermediates will be added to the Pharmaceutical Appendix of the HTS during the second review of the pharmaceutical agreement enacted as a result of the Uruguay Round Agreement negotiations. If this happens, the imports of these products would enter the United States free of duty (possibly as early as 1999).

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.

Rev. 8/12/97

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. 2044

To suspend temporarily the duty on the production of anti-cancer drugs.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1997

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

A BILL

To suspend temporarily the duty on the production of anti-cancer drugs.

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.**

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:

“	9902.32.19	(3S)-2,2-Di-methyl-3-thiomorpholine carboxylic acid (CAS No. 84915-43-5)(provided for in subheading 2921.30.50)	Free	No Change	No Change	On or before 12/31/2000	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
2 this section applies with respect to goods entered, or with-
3 drawn from warehouse for consumption, on or after 15th
4 day after the date of the the enactment of this Act.

