

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 110th Congress¹**

[Date approved: September 8, 2008]²

Bill No. and sponsor: H.R. 5212 (Mrs. Ellen O. Tauscher of California).

Proponent name,³ location: Applied Materials, Inc., Santa Clara, CA.

Other bills on product (110th Congress only): H.R. 5027 and H.R. 5207.

Nature of bill: Temporary duty suspension through December 31, 2011.

Retroactive effect: None.

Suggested article description(s) for enactment (including appropriate HTS subheading(s)):

Mass flow controllers for regulating the flow of gases, having a minimum flow rating of 100 milliliters per minute (provided for in subheading 8481.80.90).

Check one: Same as that in bill as introduced.
 Different from that in bill as introduced (see Technical comments section).

Product information, including uses/applications and source(s) of imports:

A mass flow controller (MFC) is used to set, measure, and control the flow of a gas in a wide variety of machinery or applications. Typically, MFCs each consist of a base, sensor (typically a thermal sensor), gas bypass to feed the sensor, control valve, and printed circuit board. MFCs can be incorporated in manufacturing machinery or used outside of such machinery. Types of machinery incorporating MFCs include machinery used in semiconductor, liquid crystal display, data storage, industrial vacuum, and industrial coating manufacturing. The principal U.S. import sources of MFCs are Germany, the Netherlands, Japan, and China. Dutiable U.S. imports under HTS subheading 8481.80.90 (a broader category than is covered by this bill) totaled just over \$1.9 billion in 2007. Japan and Germany, the two leading suppliers of dutiable imports, accounted for \$582 million and \$388 million, respectively.

¹ Industry analyst preparing report: Ruben Mata (202-205-3403) and Dennis Fravel (202-205-3404); Tariff Affairs contact: Jan Summers (202-205-2605).

² Access to an electronic copy of this memorandum is available at http://www.usitc.gov/tata/hts/other/rel_doc/bill_reports/.

³ The sponsor/proponent did not identify any additional beneficiaries of this bill. In addition, USITC staff identified one additional beneficiary of this bill that was not identified by the sponsor/proponent, and that beneficiary submitted a written representation that it would benefit from this bill.

Estimated effect on customs revenue:

HTS subheading: 8481.80.90					
	2009	2010	2011	2012	2013
Col. 1-General rate of duty	2%	2%	2%	2%	2%
Estimated value <i>dutiable</i> imports	\$13,000,000	\$13,000,000	\$13,000,000	\$13,000,000	\$13,000,000
Customs revenue loss	\$260,000	\$260,000	\$260,000	\$260,000	\$260,000

Source of estimated dutiable import data: Commission estimates.

Contacts with domestic firms/organizations (including the proponent):

Name of firm/organization	Date contacted	Claim US makes same or competing product(s)?	Submission attached?	Opposition noted?
		(Yes/No)		
Applied Materials, Inc. (Proponent) Joe Pasetti, 202-638-4434, ext. 6	04/30/2008	No	No	No
Advanced Energy Industries, Inc. Cindy Pitrat, 970-407-6012	06/11/2008	No	Yes	No
Brooks Instrument, LLC Steve Fierce, 215-362-3500	06/10/2008	No	No	No
Celerity, Inc. Carol Kimura, 408-946-3100	06/09/2008	No	No	No
Corning, Inc. Debbie Waggoner, waggonerdl@corning.com	06/06/2008	No	No	No
Endress+Hauser, Inc. Kathy Gemenden, 317-535-7138	06/17/2008	No	No	No
Entegris, Inc. Lynn Shida, 978-436-6661	06/11/2008	No	No	No
Fujikin America, Cartens Controls Div. John Crawford, jcrawford@fujikin.com	06/20/2008	No	No	No
KLA-Tencor Corp. Meggan Powers, 408-875-3000	06/05/2008	No	No	No
McMillan Co. Bob McMillan, 512-863-0231	06/17/2008	No	No	No
MKS Instruments, Inc. Don Higgins, 978-645-5500	06/06/2008	No	No	No

Name of firm/organization	Date contacted	Claim US makes same or competing product(s)?	Submission attached?	Opposition noted?
		(Yes/No)		
National Electrical Manufacturers Association John Meakem, joh_meakem@nema.org	06/06/2008	No	No	No
Nor-Cal Products, Inc. David Stone, davidstone@n-c.com	06/05/2008	No	No	No
Novellus Systems, Inc. Nicole Malcolm, pushpita.prasad@novellus.com	06/05/2008	No	Yes	No
Parker Hannifin Corp., Melissa Darrigan, 260-748-6010 Art Schmill, 215-723-4000	06/17/2008	No	No	No
Qioptiq Imaging Solutions John Gebhardt, john.gebhardt@ny.qioptiq.com	06/06/2008	No	No	No
SAES Pure Gas, Inc. Cristian Landoni, cristian_landoni@saes-group.com	06/05/2008	No	No	No
Semiconductor Equipment and Materials International Ken Schramko, kschramko@semi.org	06/05/2008	No	No	No
Sierra Instruments, Inc. Scott Rouse, 831-373-0200	06/10/2008	Yes	Yes	Yes
3M Co. Megan Ivory, mmivory@mmm.com	06/09/2008	No	No	No
T&M Service Mike Brooker, mbrooker@tandmservice.com	06/05/2008	No	No	No
Valve Manufacturers Association of America Bill Sandler, 202-331-8105	06/10/2008	No	No	No
W.L. Gore and Associates Mike Ratchford, mratchfo@wlgore.com	06/06/2008	No	No	No
Xandex, Inc. Nariman Manoochehri, nmanoochehri@xandex.com	06/05/2008	No	No	No

Technical comments:⁴

The article description should be amended as shown on page 1 to limit its scope to goods of interest to the proponent. The bill as introduced is extremely broad in scope although additional information may help clarify the description. HTS subheading 8481.80.90 covers a range of non-hand-operated valves (solenoid valves; ballcock mechanisms; self-operating regulator valves for controlling variables such as temperature, pressure, flow, and liquid level; valves with electrical or electro-hydraulic actuators; valves with hydraulic actuators; valves with pneumatic actuators; valves with thermostatic actuators; and other valves not otherwise specified under HTS heading 8481) that could be described as devices to control the flow of gases. However, the proponent has indicated that the actual products of interest are “Mass flow controllers that operate with a lower limit of gas flow of 500 milliliters,” and stated that these controllers are described in Customs ruling letter NY R01762, dated April 26, 2005. This clarification served as the basis for the recommended language shown on page 1.

Based on the proponent’s expression of its intended coverage, our survey of domestic interested firms was limited to those concerned with mass flow controllers and did not include the potentially hundreds of other valve manufacturers that might be affected by the broad product scope in the bill as drafted. The written submission for related bill H.R. 5212 from Advanced Energy Industries, Inc., suggests that the industry appears to describe this category of valves by measuring the flow rate in terms of standard cubic centimeters per minute or “scm” (with a cubic centimeter equal to a milliliter).⁵ Thus, the flow rate specified in this bill should be described as 500 milliliters per minute.

There is a potential overlap in the coverage of this bill with the coverage of H.R. 5212, but we are unable to determine an appropriate method to modify one or both of these bills to avoid this problem. Last, we note that Customs officials may interpret the proposed language (“for regulating”) as an “actual use” provision requiring post-entry verification for each shipment. However, because the phrase “for controlling” is used in existing statistical reporting numbers under HTS subheading 8481.80.90, it is hoped that the phrase “for regulating” may be interpreted as a descriptive term rather than as a use criterion.

⁴ The Commission may express an opinion on the HTS classification of a product to facilitate consideration of the bill. However, by law, only the U.S. Customs Service is authorized to issue a binding ruling on this matter. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

⁵ Other industry references suggest that a criterion specifying standard liters per minute may also be used to describe these values.

110TH CONGRESS
2D SESSION

H. R. 5212

To suspend temporarily the duty on Gas Flow Control Valve 100 milliliters minimum.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2008

Mrs. TAUSCHER introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To suspend temporarily the duty on Gas Flow Control Valve 100 milliliters minimum.

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. GAS FLOW CONTROL VALVE 100 MILLILITERS**

4 **MINIMUM.**

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:

“	9902.01.00	Gas Flow Control Valve 100 milliliters minimum (provided for in subheading 8481.80.90)	Free	No change	No change	On or before 12/31/2011	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) applies to articles entered, or withdrawn
3 from warehouse for consumption, on or after the 15th day
4 after the date of the enactment of this Act.

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