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]

[**Date approved**: December 7, 2001][2]

Bill No.: H.R.2967; 107th Congress

Introduced by: Mrs. THURMAN

Similar and/or related[3] bills: None.

Summary of the bill:[4]

The bill would provide for duty free treatment[5] of--

certain foodstuffs originating in NAFTA countries.

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

Through: No expiration date.

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.*]

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[1] International trade analysts: John Fry (202-708-4157), Joanna Bonarriva (202-205-3312); attorney adviser: 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 received? (Yes/No)[6]
Peanut farmers (led by Raymond Robinson)	Williston, FL	11/6/01	No.

*Does the proponent plan **any** further processing or handling[7] of the subject product after importation to its facilities in the United States (Y/N)*: 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
The bill would create a limited chapter 98 tariff provision to accord duty-free entry to certain agricultural products of subheading 2008.11 of the Harmonized Tariff Schedule of the United States (HTS). The subheading covers peanuts (ground-nuts) that have been prepared or preserved, including those in the form of peanut butter or paste, whether or not sugar or other sweetening matter has been added. The new category would cover goods made in Canada and/or Mexico using a good or material exported from the United States and are originating goods for purposes of the North American Free Trade Agreement (NAFTA). The preparations of subheading 2008.11 are not all eligible for unlimited duty-free entry under the NAFTA. At present, for example, a limited quantity of peanut butter and paste that are considered products of Canada can enter free of duty under subheading 2008.11.05, while peanut butter and paste that are goods of Mexico under the NAFTA are eligible for reduced-duty entry under subheading 2008.11.15; no duty preference is given to additional quantities of Canadian goods. Under the bill, a number of conditions would need to be met for entry under the new chapter 98 heading, including (1) satisfying the normal requirements relating to U.S. rules of origin and (2) any good or material of heading 1202 (peanuts, not roasted or otherwise cooked, whether or not shelled or broken) or 2008 (fruits, nuts and other edible parts of plants, prepared and preserved, whether or not sugar or sweetening have been added) that was used in processing in Mexico and/or Canada of the good imported into the United States must be a product of the United States and produced from quota peanuts, as defined in section 358-1 of the Agriculture Adjustment Act of 1938, that are products of the United States. The latter U.S. peanuts are produced under the terms of marketing orders of USDA. The goods would be excluded from safeguards of chapter 99 and also excluded from being counted toward tariff-rate quota (TRQ) trigger quantities applicable under subheading 2008.11. At present, under the NAFTA rules of origin set forth in general note 12, goods wholly produced or obtained in the NAFTA region qualify for NAFTA preferences, prepared blanched peanuts of subheading 2008.11 must be made from NAFTA-country peanuts, and other goods of 2008.11 must be processed so that their non-NAFTA-origin inputs change heading or, in the case of peanut butter and paste, change chapter. However, we note that many shipments of agricultural goods of Canada that meet NAFTA rules of origin are not eligible for preferential rates because no preferences are accorded to over-TRQ shipments from Canada and, in some cases, Canada received small allocations of within-TRQ trigger quantities.	Canada Mexico

– 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.*]

HTS number *used in the bill*: 2008.11 [8] (Mexico)					
	2002	2003	2004	2005	2006
General rate of duty[9] (AVE)[10]	5.25	5.25	5.25	5.25	5.25
Estimated value ***dutiable*** imports	$3,400,000	$3,400,000	$3,400,000	$3,400,000	$3,400,000
Customs revenue loss	$178,500	$178,500	$178,500	$178,500	$178,500

HTS number *used in the bill*: 2008.11 [11] (Canada)					
	2002	2003	2004	2005	2006
General rate of duty[12] (AVE)[13]	0	0	0	0	0
Estimated value ***dutiable*** imports	0	0	0	0	0
Customs revenue loss	0	0	0	0	0

[8] The HTS number is as set forth in the bill. See technical comments for suggested changes (if any).

[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] The HTS number is as set forth in the bill. See technical comments for suggested changes (if any). Only a limited quantity of goods of Canada now qualifies for duty-free entry. Because the over-tariff-rate-quota duty rate remains prohibitively high, only imports from Canada which currently receive duty-free treatment are shipped to the United States. Therefore, revenue loss to Customs from duty-free treatment of Canadian imports under H.R. 2967 is shown to be zero. But imports from Canada entering under HTS subheading 2008.11 would likely increase from current levels if the legislation is enacted.

[12] See appendix B for column 1-special and column 2 duty rates.

[13] AVE is ad valorem equivalent expressed as percent. Staged rates may be found at: http://dataweb.usitc.gov

HTS number *recommended by the Commission*: n/a [14]					
	2002	2003	2004	2005	2006
General rate of duty (AVE)					
Estimated value ***dutiable*** imports					
Customs revenue loss					

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

Contacts with firms or organizations *other than* the proponents			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No)[15]
Grocery Manufacturers of America	Washington, DC	10/30/01	No.
American Peanut Council	Alexandria, VA	11/7/01	No.
Georgia Peanut Commission	Tifton, GA	11/7/01	Yes.

– 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*

[14] If a different HTS number is recommended, see technical comments.

[15] 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.

Commission cannot, in the context of this memorandum, make any statement concerning the validity of these claims.]

Statements concerning current U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
None.			

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 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:

We note first that the bill regularly refers to "rules of origin promulgated by the Secretary of the Treasury pursuant to Annex 311" of the NAFTA. This annex refers to country of origin marking (in terms of physical labelling) and not to the rules that determine eligibility for NAFTA tariff preferences, which are set forth in Annex 401 to the NAFTA and largely incorporated in general note 12 to the HTS. The so-called "Customs marking rules" that have been adopted by Customs are to determine–*after* a good is found to be eligible for a tariff preference under the rules of general note 12–whether it gets a Canadian or a Mexican special duty rate under the pertinent HTS provision; there are problems where the marking rules suggest that a good is a "product of the United States" because the HTS contains no special duty rates for such imported articles.

Second, the proposed chapter 98 heading would cover goods that are a "product of Canada or Mexico"; this phrase is usually taken to refer to any article substantially transformed in such country for general duty rate purposes and not to "goods of Canada" or "goods of Mexico"–meaning imports eligible for a NAFTA tariff preference. Thus, the "product of" language usually connotes a broader group of goods than would normally be contemplated under NAFTA. We suggest therefore that the terms of proposed U.S. note 7(b) should be amended accordingly.

Third, the requirement that U.S. peanuts–but only those produced and presumably sold as "quota peanuts" under the cited statute (those grown under USDA marketing orders)–be used in goods entered under the new provision would be a narrowing of the rule of preference now applied under NAFTA. Under general note 12, any U.S. (or Canadian or Mexican) peanut could be used in a good entered into the United States with a claim for NAFTA tariff preferences, except for blanched peanut preparations as noted above. North American inputs need not change tariff provision in the manner prescribed in general note 12(t) but are presumed all to be "originating" under NAFTA. This difference would in a sense therefore be a legal inconsistency within the HTS as well as an inconsistency with the terms of the NAFTA. We would note as well that Customs would not be able to tell readily which U.S. peanuts were incorporated into a preparation in Canada or in Mexico and track whether the peanuts were in fact "quota peanuts."

Fourth, if any goods of subheading 2008.11–those covered by new U.S. note 7 to chapter 98 and the new heading–are to be excluded from counting under the TRQs that apply in chapter 20, the pertinent additional U.S. notes to chapter 20 would need to be amended to exclude them, again to maintain internal HTS legal consistency and to make administration of the TRQs clear. In most cases, Mexican goods are already excluded from being counted toward TRQ triggers.

Recommended changes to any CAS 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:[16]

n/a

Other technical comments (if any):

We would have concerns about introducing terms such as "food preparations" in one part of the HTS that are not necessarily used in other provisions, where the meaning might not be clear. Also, we would expect Customs not to wish to see the phrase "product of Canada or Mexico" (which has the meaning noted above) circumscribed for this one tariff heading only by new U.S. note 7(b). The proposed new language is long and complex, and Customs should be consulted for additional information about its likely interpretation and its administrability.

[16] 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. Eligible products of qualifying sub-Saharan African countries may qualify for duty-free entry under the **African Growth and Opportunity Act** (AGOA), under the terms of general note 16 to the tariff schedule, through September 30, 2008, as indicated by the symbol “D” in the special subcolumn and as set forth in subchapter XIX of chapter 98.

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. Eligible products of qualifying beneficiary countries may qualify for duty-free or reduced-duty entry under the **Caribbean Basin Trade Partnership Act** (CBTPA), under the terms of general note 17 to the tariff schedule, through September 30, 2008, as indicated by the symbol “R” in the special subcolumn and in subchapter XX of chapter 98.

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. 5/9/01

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.*]

I

107TH CONGRESS
1ST SESSION

H. R. 2967

To provide duty-free treatment for certain foodstuffs originating in NAFTA countries.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2001

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

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A BILL

To provide duty-free treatment for certain foodstuffs originating in NAFTA countries.

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

SECTION 1. DUTY-FREE TREATMENT OF CERTAIN FOODSTUFFS ORIGINATING IN NAFTA COUNTRIES.

(a) AMENDMENTS TO U.S. NOTES.—Subchapter II of chapter 98 of the Harmonized Tariff Schedule of the United States is amended by adding after U.S. note 6 the following new note:

''7. Certain food preparations that are the product of Canada or Mexico consisting of, or processed using, a ma-

terial exported from the United States.—The following provisions apply only to subheading 9802.00.95:

''(a) Entry of any product described by subheading 9802.00.95:

''(i) shall not be subject to duty under the provisions of subchapter IV of chapter 99; and

''(ii) if a tariff-rate quota provision would have applied to such product but for subheading 9802.00.95, the quantity of the product entered under that subheading shall not be counted against the quantity specified as the in-quota quantity for any such product.

''(b) The term 'product of Canada or Mexico' means a good:

''(i) that is determined to be a product of Canada or of Mexico under rules of origin promulgated by the Secretary of the Treasury pursuant to Annex 311 of the North American Free Trade Agreement, as implemented under the North American Free Trade Agreement Implementation Act; or

''(ii) that is processed, packaged, or otherwise advanced in value or improved in condition in Canada or Mexico (or both) and that is

determined to be a product of the United States under such rules of origin.

''(c) The term 'product of the United States' means a good or material that is determined to be a product of the United States under rules of origin promulgated by the Secretary of the Treasury pursuant to Annex 311 of the North American Free Trade Agreement, as implemented under the North American Free Trade Agreement Implementation Act.

''(d) The term 'processed in Canada or Mexico (or both) using a good or material that was exported from the United States' includes, but is not limited to:

''(i) processing in Canada or Mexico using a good or material that previously was imported into the United States; and

''(ii) processing in Canada or Mexico using a good or material that was processed in a country or countries other than Canada or Mexico after exportation from the United States, if such processing did not effect a change in the country of origin of the good as exported from the United States.''.

(b) DUTY-FREE TREATMENT.—Subchapter II of chapter 98 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9802.00.95	Any good of subheading 2008.11, that is a product of Canada or Mexico and that was processed in Canada or Mexico (or both) using a good or material exported from the United States, if the following conditions are met: (1) the good as imported into the United States is an originating good satisfying the requirements of General Note 12 of the tariff schedule; and (2) any good or material of heading 1202 or 2008 that was used in the processing in Canada or in Mexico (or both) of the good imported into the United States was a product of the United States and was produced from quota peanuts as defined in section 358–1 of the Agriculture Adjustment Act of 1938 that are products of the United States	Free (see U.S. note 7 of this subchapter)			".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

○