

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON FINANCE OF THE UNITED STATES
SENATE ON PROPOSED TARIFF LEGISLATION ¹

[**Date approved:** September 19, 2001]²

Bill No.: S. 983; 107th Congress

Introduced by: Mr. ALLARD

Similar and/or related³ bills: H.R. 603; 107th Congress.

Summary of the bill.⁴

The bill would suspend the general rate of duty⁵ on--

Fructooligosaccharides (FOS) (provided for in subheading 2106.90.99).

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

Through: December 31, 2003.

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.]

¹ International trade analyst: Karl Rich (202-205-3317); nomenclature analyst: David Beck (202-205-2603).

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 (Y/N) ⁶
GTC Nutrition Company	Golden, CO	5/15/01	Y

Does the proponent plan **any** further processing or handling⁷ of the subject product after importation to its facilities in the United States (Y/N):

If “Yes,” provide location of this facility if different from above (city/state):

If “No,” provide location of proponent’s headquarters or other principal facility if different from above (city/state): n/a

The imported product	
Description and uses	Country(s) of origin
Fructooligosaccharides (FOS) are a class of natural sugars found in a number of fruits and vegetables, such as bananas, garlic, chicory roots, and onions. In addition to being a source of soluble fiber, FOS are a type of prebiotic, whose main function is to increase the number of beneficial bacteria found in the human digestive system, which is purported to promote digestive health and immune system function. Two main types of FOS are marketed for use as a dietary supplement. Long-chain FOS are contained in plant extracts, such as chicory inulin, which are sometimes marketed in dietary supplements that combine these long-chain FOS with probiotics (live beneficial bacteria). Short-chain FOS are chemically synthesized through the fermentation of sugars and water with <i>Aspergillus Niger</i> , a type of fungus. The bill, as proposed, covers a proprietary form of short-chain FOS that is manufactured in South Korea. Currently, both long-chain and short-chain FOS are classified under HTS 2106.90.99. ⁸	South Korea ⁹ Japan European Union ¹⁰

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.

⁸ The classification of long-chain FOS under HTS 2106.90.99 has been disputed by one importer. The long-chain FOS product that is imported is chicory inulin which they contend should be classified for tariff purposes as inulin (HTS 1108.20.00).

⁹ For the particular type of FOS imported by the proponent, all imports come from South Korea. Other varieties of FOS are produced in Japan and the European Union. FOS are not produced in the United States.

¹⁰ Chicory inulin, a long-chain FOS, is imported from the European Union.

– 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: 2106.90.99 ¹¹					
	2002	2003	2004	2005	2006
General rate of duty ¹² (AVE) ¹³	6.4%	6.4%	6.4%	6.4%	6.4%
Estimated value <i>dutiable</i> imports ¹⁴	\$3,500,000	\$3,500,000	\$3,500,000	\$3,500,000	\$3,500,000
Customs revenue loss	\$224,000	\$224,000	\$224,000	\$224,000	\$224,000

HTS number recommended by the Commission: <u>n/a</u> ¹⁵					
	2002	2003	2004	2005	2006
General rate of duty (AVE)					
Estimated value <i>dutiable</i> imports					
Customs revenue loss					

¹¹ The HTS number is as set forth in the bill. See technical comments for suggested changes (if any).

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>

¹⁴ The figure for dutiable imports includes **all** forms of FOS (long-chain and short-chain) as currently specified by the bill. Dutiable imports for the proprietary short-chain FOS sought by the proponent are estimated at \$1,400,000 for 2002-2006, representing a Customs revenue loss of \$89,600 for each year during that period.

¹⁵ If a different HTS number is recommended, see technical comments.

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

Contacts with firms or organizations <i>other than</i> the proponents			
Name of firm	Location contacted (city/state)	Date contacted	Response (Y/N) ¹⁶
Orafti Active Food Ingredients	Malvern, PA	5/23/01	Y ¹⁷

– 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 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.			

¹⁶ 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.

¹⁷ In a letter dated May 29, 2001, Orafti submitted comments concerning H.R. 4225 (introduced in the 106th Congress, but not enacted), which covered the same products. The Commission takes the view that these comments are also applicable to S. 983 (107th Congress).

Statements concerning “future” or “competitive” U.S. production			
Name of product	Name of firm	Location of U.S. production facility	Date received
Short-chain FOS (scFOS)	GTC Nutrition Company	n/a	5/18/01

– 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:

The proponent, in its submission (see appendix C), indicates that the scope of the bill is intended to cover “short chain fructooligosaccharides”; if the Committee on Ways and Means wishes to limit the scope in this manner, the Commission would recommend that the proposed article description be amended to read as follows: “Fructooligosaccharides comprising not less than 55 percent by weight of kestose (GF₂), nystose (GF₃) and beta-fructofuranosylnystose (GF₄) (provided for in subheading 2106.90.99)”.

However, in a written submission dated May 29, 2001 (see appendix D), Orafti (Malvern, PA) indicates that it would “oppose any changes to the bill that would narrow the definition of [fructooligosaccharides] to purposefully exclude our products.”

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:*¹⁸

n/a

¹⁸ 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.

Other technical comments (if any):

None.

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.

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 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. 1/4/00

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.]

107TH CONGRESS
1ST SESSION

S. 983

To suspend temporarily the duty on Fructooligosaccharides (FOS)

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2001

Mr. ALLARD introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To suspend temporarily the duty on Fructooligosaccharides (FOS)

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:

“	9902.21.01	Fructooligosaccha- rides (FOS) (pro- vided for in sub- heading 2106.90.99)	Free	No change	No change	On or before 12/31/2003	”.
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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 the
4 15th day after the date of the enactment of this Act.

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