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**: April 18, 2002][2]

Bill No.: S. 1798; 107th Congress

Introduced by: Mr. BREAUX

Similar and/or related[3] bills: S. 1795, S. 1796, S. 1797, S. 1902 and S. 1904; 107th Congress.

Summary of the bill:[4]

The bill would effectively extend for 2 additional years the temporary suspension of the general rate of duty[5] on--

certain railway car body shells of stainless steel,

and would replace existing heading 9902.86.07 covering similar goods.

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

Through: December 31, 2005.

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 analyst: Tracy Quilter (202-205-3437); attorney advisor: 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]
Sumitomo Corporation of America (SCOA)	New York, NY	02/19/02	Yes

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)*: Yes.

If "Yes," provide location of this facility if different from above (city/state): Milwaukee, WI

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
The subject goods, which are classified for tariff purposes as parts of railway rolling stock, are stainless steel railway car body shells designed for bi-level gallery type passenger trailer railway cars with aggregate capacity of up to 150 passengers per car (compared to the 148-passenger capacity allowed under the existing duty suspension). The proponent's shells are made by Nippon Sharyo, Ltd. to customer specification and will be finished in the United States. The railway cars will be used by the Northeast Illinois Regional Commuter Railroad Corp. (Metra) for commuter coaches, pursuant to a contract between SCOA and Metra. Although the new heading would cover other imports of such body shells, import estimates in this report are limited to the proponent's goods because available information on other contracts relating to production for rail or transit projects suggests the proponent would be the principal beneficiary of the duty suspension.	Japan

[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.

– 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*: 8607.99.10 [8]					
	2002	2003	2004	2005	2006
General rate of duty[9] (AVE)[10]	2.8	2.8	2.8	2.8	2.8
Estimated value ***dutiable*** imports	$13-15 million	$16-18 million	$16-18 million	$13-15 million	0
Customs revenue loss	$364,000-420,000	$448,000-504,000	$448,000-504,000	$364,000-420,000	0

HTS number *recommended by the Commission*: n/a [11]					
	2002	2003	2004	2005	2006
General rate of duty (AVE)					
Estimated value ***dutiable*** imports					
Customs revenue loss					

– CONTACTS WITH OTHER FIRMS/ORGANIZATIONS –

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

Contacts with firms or organizations *other than* the proponents			
Name of firm	Location contacted (city/state)	Date contacted	Response received? (Yes/No)[12]
Kawasaki Rail Car, Inc.	Yonkers, NY	3/19/02	Yes
Bombardier Transportation[13]	Québec, Canada	02/20/02	Yes
Metra	Chicago, IL	03/20/02	No

– 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
Stainless steel railway car body shells	Kawasaki Rail Car, Inc.	Lincoln, NE	3/22/02

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

[12] 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.
[13] Bombardier imports the hollow shells from Canada free of duty under NAFTA and finishes them in Plattsburgh, NY.

amendments to subchapter II of chapter 99 of the HTS) should be limited to ***eight*** *rather than ten 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:

Both the provision the bill would delete and the new provision should be referred to as headings, rather than subheadings. It would not be necessary to delete the existing heading; it would be possible to amend the article description and expiration date to accomplish the intended result. As to the description, we would defer to the Customs Service to indicate whether the words “gallery type” (used in both the existing and the proposed headings to refer to the finished cars for which the subject shells are intended) might need explanation or modification. With regard to the proposed heading, it does seem possible that there could be confusion about how to count passenger spaces if a car has a flip-up seat (such as those in the Metrorail system cars used locally) seating two persons that can be lifted to allow one wheelchair to be positioned in that space. Given that the actual imported product of concern is the shell and not the finished car, it might be useful to consider amending the description as follows:

> Railway rolling stock body shells, of stainless steel, the foregoing designed for gallery type two-level railway passenger cars (provided for in subheading 8607.99.10).

The words “of a type used in commuter or light rail systems” or a similar descriptive phrase could be inserted after “cars” to delineate more narrowly the type of finished cars involved. We do not know the effect on import volumes and thus on revenue loss that these changes might cause, but it would simplify the administration and interpretation of the heading. As an alternative to the present bill and to S. 1796, it would be possible to eliminate existing headings 9902.86.07 and 9902.86.08 and combine them into a single provision, by slightly altering the article description just proposed (delete “cab control” and insert after “cars” the phrase “, whether or not with cab control”).

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:[14]

n/a

Other technical comments (if any):

It is noted that the HTS number referred to in the new heading covers a much larger group of goods than the subject product. Imports were estimated based on a percentage of trade reported under this HTS "basket" category and also by taking into account the number of railcars likely to be imported under the terms of the proponent's contract. The bill will be effective through December 31, 2005; estimated duty losses are provided through that year. Deliveries are expected to take place in 2002 to 2005.

It is further noted that the bill as drafted would have only a prospective effect, but it is possible that some of the subject goods might have been entered by the time this bill, if enacted, would be effective. Additional language would be needed to allow the importer(s) to request retroactive application of the duty suspension to those goods. This result would be accomplished by adding an additional subsection to grant such treatment:

> Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law to the contrary, upon proper request filed by the importer with the appropriate customs officer within 180 days of the date of enactment of this Act, any entry of the goods described in heading 9902.86.07 (as added by subsection (a) of this section) made on or after January 1, 2002, and before the effective date of this Act shall be reliquidated as free of duty.

[14] 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.*]

BACKGROUND INFORMATION FOR PROPOSED BILL #1 (new)

PRODUCT TO BE IMPORTED BY SUMITOMO (SCOA) FROM JAPAN:

Railway passenger coaches made of stainless steel (completely finished cars) classified in the Harmonized Tariff Schedules of the United States (HTSUS) under 8605.00.0000 is the product to be imported related to proposed duty suspension bill. There are two distinct gallery type styles of such cars: cab control passenger cars and trailer passenger cars. Only one of each of the finished cars will be imported. Under a contract with the Chicago METRA Authority, two finished cars are to be provided by SCOA prior to another 298 cars to be finished in the U. S. from rail car body shells that will also be imported from Japan. The rail car body shells classified under 9902.86.07 and 9902.86.08 (HTSUS 8607.99.1000) to be imported for the Chicago METRA Authority contract are, quite literally, the hollow shells of the specified rail cars that will be outfitted and completed in the United States. The integration of all the additional equipment and systems needed to make a finished (completed) car, in terms of value added in the United States, is more than half of the total value of the finished product. All the finished cars will be used by the Chicago METRA Authority to add to a fleet of rail cars that METRA already has in service. In December 2000, METRA's board formally approved a contract to acquire an additional 300 gallery type cars. Sumitomo Corporation of America (SCOA) was awarded the contract to provide subject cars.

COMPETITION:

There are no U.S. manufacturers of either the finished cars or the rail car body shells. SCOA has already been awarded the contract.

NON-CONTROVERSIAL:

Bill should be non-controversial since there are no U.S. manufacturers of the stainless steel rail car passenger coaches needed by METRA.

PAYGO (CBO REVENUE SCORING):

The potential revenue effect of the proposed duty suspension will not exceed the Congressional guidelines. Reference accompanying product profiles.

CONTACT INFORMATION

The necessary product related information for the requested legislation is reflected in accompanying product profile. Please contact Max Turnipseed (225-338-0310) or by e-mail at: *MCTINT@worldnet.att.net* for any additional information needed.

Enclosures

October 30, 2001

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. 1798

To extend temporarily the duty on railway car body shells of stainless steel.

IN THE SENATE OF THE UNITED STATES

DECEMBER 11, 2001

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

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A BILL

To extend temporarily the duty on railway car body shells of stainless steel.

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

SECTION 1. RAILWAY CAR BODY SHELLS.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by striking subheading 9902.86.07 and inserting in numerical sequence the following subheading:

"	9902.86.07	Railway car body shells of stainless steel the foregoing which are designed for gallery type passenger trailer railway cars each having an aggregate passenger capacity up to 150 (including flip-up seating and wheelchair spaces) on two levels (provided for in subheading 8607.99.10)	Free	No change	No change	On or before 12/31/05	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.

○