

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 109th Congress¹**

[Date approved: December 30, 2005]²

Bill No. and sponsor: H.R. 2816 (Mr. Richard Neal of Massachusetts).

Proponent name, location: Jana Brands, Inc., Natick, Mass.

Other bills on product (109th Congress only): S. 0599.

Nature of bill: Temporary duty suspension through December 31, 2008.

Retroactive effect: None.

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

Tuna in foil or other flexible containers, the foregoing weighing with their contents not more than 6.8 kg each (provided for in subheading 1604.14.10, 1604.14.22 or 1604.14.30).

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:

The subject tuna, a seafood, is packed in flexible pouches rather than cans. Pouched tuna is produced in two different size groups and for two different marketing channels: small pouches (e.g., 7 ounces of product) are marketed for retail sale, and large pouches (e.g., 43 ounces) are marketed to restaurant chains and other institutional users. Pouched tuna is a relatively new product, first introduced around 2000. Most (perhaps 90 percent) of the U.S. supply of pouched tuna is imported, because of the high labor cost involved with the packing of the product.³ The proponent, Jana Brands, imports and distributes the larger, institutional product. Some large pouches and all small pouches are marketed by the three largest U.S. tuna canners, StarKist, Bumble Bee, and Chicken of the Sea under their nationally advertised labels.

According to section 2 of the bill, its intent is to provide tariff treatment to member nations of the Association of Southeast Asian Nations (ASEAN), other than Myanmar, that is equivalent to that given to the designated beneficiary countries under the Andean Trade Promotion and Drug Eradication Act (ATPDEA). The special tariff provisions applicable to ATPDEA beneficiaries are set forth in HTS subheading 9821.01.01 and U.S. note 2 to subchapter XXII of chapter 98; trade is reported under 5 statistical reporting numbers established for pouched tuna in HTS chapter 16 in 2002.⁴ Total U.S. imports

¹ Industry analyst preparing report: Roger Corey (202-205-3327); Tariff Affairs contact: Jan Summers (202-205-2605).

² An electronic copy of this memorandum is available at http://usitc.gov/tata/hts/other/rel_doc/bill_reports/index.htm.

³ Representatives of U.S. tuna canners have told Commission staff in interviews that they also produce large pouches of tuna for institutional sales domestically because the labor cost disadvantage for large pouches is not as great as for retail-size pouches, which are all imported.

⁴ Pouched tuna is entered under HTS statistical reporting numbers 1604.14.1010 (tuna packed in oil), 1604.14.2251 (albacore tuna, not in oil, in-quota), 1604.14.2291 (other species, not in oil, in-quota), 1604.14.3051 (albacore tuna, not in oil, over-quota), and 1604.14.3091 (other species, not in oil, over-quota). The tariff-rate quota, which includes both pouched and canned tuna not in oil, covers goods not the product of U.S. insular possessions, and the in-quota quantity is limited to 4.8 percent of the previous

of pouched tuna in 2002 reached 40,677 metric tons, valued at \$131.8 million, falling in 2003 to 32,310 metric tons, valued at \$126.5 million. During January-August of 2005, imports reached 24,200 metric tons, valued at \$103.0 million, up by 8.3 percent in quantity and 22.6 percent in value over the same period in 2004. ASEAN member countries supply the bulk (about 60 percent) of U.S. imports.

The principal sources of U.S. pouched tuna imports during 2004 were as follows (data from the U.S. Department of Commerce):

Source	Quantity (MT)	Value (\$1,000)	Share of total value (%)
Thailand	19,192	\$72,011	56.9
Ecuador	10,910	47,874	37.8
Indonesia	823	2,899	2.3
Philippines	821	1,988	1.6
Other	564	1,716	1.4
Total	32,310	126,488	100.0
ASEAN only	20,944	77,232	61.1

As a share of total U.S. imports of canned and pouched tuna in 2004, pouched tuna accounted for 16 percent of quantity and 26 percent of value, but U.S. and foreign industry sources expect that the relative share accounted for by pouched tuna will grow as consumers become more familiar with the product.

Estimated effect on customs revenue:

HTS subheadings: 1604.14.10, 1604.14.22, and 1604.14.30					
	2005	2006	2007	2008	2009
Col. 1-General rate of duty	12.5%	12.5%	12.5%	12.5%	12.5%
Estimated value <i>dutiable</i> imports ^{1/}	\$85,800,000	\$95,330,000	\$105,900,000	\$117,700,000	\$130,750,000
Customs revenue loss	\$10,725,000	\$11,916,000	\$13,238,000	\$14,713,000	\$16,344,000

^{1/} The dutiable import data (using 2004 dutiable trade and projecting growth based on industry information) reflect products of the current ASEAN members (excluding Myanmar); dutiable trade was reported only under HTS 1604.14.3051 and 1604.14.3091.

Source of estimated dutiable import data: Commission estimates.

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

year's apparent U.S. consumption of canned and pouched tuna.

Name of firm/organization <u>1/</u>	Date contacted	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
		(Yes/No)		
Jana Brands (Proponent) Steve Forman, 508-620-0001	Nov. 2003	No	No	No

1/ See industry contacts enumerated in previous bill report on this product (HR 3620, 108th Congress).⁵ No new information was supplied to the Commission in the preparation of this report.

Technical comments:⁶

These comments reiterate concerns expressed in the Commission’s report on H.R. 3620, 108th Congress, and add to those points the issues raised in the first and last paragraphs set forth below.

Scope of the bill--We note that under the GSP program, only Cambodia, Indonesia, Philippines and Thailand are eligible for treatment as one country to determine if goods qualify for duty-free entry, and the other ASEAN members’ contribution to such goods cannot be included toward meeting the required value-content threshold (see general note 4(a)). If this provision is meant to take into account the same criteria that are considered in the GSP program, it would be necessary to limit the availability of the new provision to those 4 countries.

Product description--The subheading identified in the product description of the bill appears to be in error. It reads (provided for in subheading 1604.30.91). This subheading is a nonexistent HTS number. Furthermore, HTS subheading 1604.30 pertains to caviar and caviar substitutes not tuna in airtight containers. It is suggested that the subheading should be provided for in HTS subheading 1604.14. In addition to the misclassification of the HTS subheading, there are 3 HTS subheadings in which tuna in foil can fall--namely, 1604.14.10, 1604.14.22, and 1604.14.30. The bill further states that the aggregate quantity of tuna entered under subheading 9902.16.04 during any calendar year shall be limited to the quantity of tuna entered free of duty from an ATPDEA beneficiary country during the preceding calendar year pursuant to section 204(b)(4) of the Andean Trade Preference Act. Tuna from ATPDEA countries that enter free of duty are provided for in HTS subheadings 1604.14.10, 1604.14.22, and 1604.14.30. As the bill currently reads, the duty free treatment afforded ASEAN countries would apply to only one HTS subheading (1604.14.30) whereas the duty-free treatment accorded the ANDEAN countries applies to 3 HTS subheadings. Thus, the article description for this temporary provision should modified to read as shown on page 1 of this report.

Product requirements-- The rules of origin and other requirements applicable to the subject tuna are not set forth in this bill as they are in the ATPDEA. For example, under the ATPDEA to be eligible for duty-free treatment tuna must be harvested by United States vessels or by ATPDEA beneficiary country vessels. Thus, the bill appears to be less restrictive.

⁵ See http://hotdocs.usitc.gov/tata/hts/other/rel_doc/bill_reports/hr-3620.pdf.

⁶ 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.

Possible Customs administrative problem—The new U.S. note 17 (b) to subchapter II of chapter 99 of the HTS may be difficult for Customs to administer. Note 17(b) states “The aggregate quantity of tuna entered under subheading 9902.16.04 during any calendar year shall be limited to the quantity of tuna entered free of duty from an ATPDEA beneficiary country (as defined in section 204(b)(6) of the Andean Trade Preference Act (19 U.S.C. 3202(b)(6) and designated in Note 11(d) of this Schedule) during the preceding calendar year pursuant to section 204(b)(4) of the Andean Trade Preference Act (19 U.S.C. 3202(b)(4)).

As U.S. import statistics generally lag 4-6 weeks behind, U.S. Customs officials would not know the quantity of tuna entered free of duty from an ATPDEA beneficiary country for the preceding calendar year. It is likely that the quantity of such imports would not be available until late February or March of the following year. At most U.S. Customs would have to provide an estimate of the quantity imported from an ATPDEA beneficiary country and put in place a temporary quantity at the beginning of a new calendar year. Later when the total quantity is established, Customs would have to revise the quantity that could enter free of duty for the ASEAN countries. However, contacts with Customs officials indicate that the reporting is automated and the provision would likely be administered on a post-entry basis, in which entries would be liquidated only when the tariff treatment can be determined.⁷

WTO concerns—Last, we note that a provision that is not applicable on a normal trade relations basis would be inconsistent with U.S. commitments under the General Agreement on Tariffs and Trade 1994.

⁷ USITC staff telephone conversation with an official of the Customs quota branch, Feb. 19, 2004.

109TH CONGRESS
1ST SESSION

H. R. 2816

To provide duty-free treatment for certain tuna.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2005

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

A BILL

To provide duty-free treatment for certain tuna.

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. SHORT TITLE.**

4 This Act may be cited as the “Fair Trade in Pouch
5 Tuna Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) a strong relationship between the United
9 States and the member nations of the Association of
10 Southeast Asian Nations (ASEAN) is a force for
11 stability and development in the Southeast Asian re-

1 gion and international trade is a critical element of
2 this relationship;

3 (2) many of the ASEAN nations are important
4 friends and allies in the ongoing fight against world
5 terrorism;

6 (3) many nations in the ASEAN region were di-
7 rectly impacted by the December 26, 2004, earth-
8 quake off the west coast of Northern Sumatra, Indo-
9 nesia, which unleashed a devastating tsunami that
10 killed more than 160,000 people and resulted in un-
11 told economic damage;

12 (4) even though a robust international relief ef-
13 fort has been launched, all measures, large and
14 small, that impact this region should be considered
15 as part of that relief effort;

16 (5) ASEAN nations provide a large portion of
17 the processed tuna imported into the United States;

18 (6) such imports are subject to tariffs whereas
19 tuna in airtight pouches imported from the bene-
20 ficiary countries of the Andean Trade Promotion
21 and Drug Eradication Act (Andean) are not;

22 (7) as a result, tuna in airtight pouches im-
23 ported from ASEAN member nations is placed at a
24 competitive disadvantage that has harmed the econo-

1 mies of these nations and that will ultimately harm
2 consumers in the United States; and

3 (8) eliminating tariffs on pouch tuna imported
4 from the ASEAN countries in a quantity equal to
5 the quantity imported from Andean countries will re-
6 store fair trade in the pouch tuna market and will
7 benefit United States consumers and the economies
8 of the ASEAN nations.

9 **SEC. 3. MODIFICATION OF DUTY TREATMENT FOR CERTAIN**
10 **TUNA.**

11 (a) IN GENERAL.—Subchapter II of chapter 99 of
12 the Harmonized Tariff Schedule of the United States is
13 amended by inserting in numerical sequence the following
14 new heading:

“	9902.16.04	Tuna in foil or other flexible containers weighing with their contents not more than 6.8 kg each (provided for in subheading 1604.30.91)	No change	Free, if the product of a country listed in U.S. Note 18 to this subchapter and in the quantity provided for in such Note	No change	On or before 12/31/2008	”.
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15 (b) ASEAN COUNTRIES.—The U.S. Notes to sub-
16 chapter II of chapter 99 of the Harmonized Tariff Sched-
17 ule of the United States are amended by adding at the
18 end the following:

19 “18. For purposes of heading 9902.16.04:

1 “(a) Products of the following countries are eli-
2 gible to enter at the special rate of duty set forth
3 in such subheading: Brunei, Cambodia, Indonesia,
4 Laos, Malaysia, Philippines, Singapore, Thailand,
5 and Vietnam. The special rate of duty does not
6 apply to the Union of Myanmar.

7 “(b) The aggregate quantity of tuna entered
8 under subheading 9902.16.04 during any calendar
9 year shall be limited to the quantity of tuna entered
10 free of duty from all ATPDEA beneficiary countries
11 (as defined in section 204(b)(6)) of the Andean
12 Trade Preference Act (19 U.S.C. 3202(b)(6)) and
13 designated in Note 11(d) of this Schedule) during
14 the preceding calendar year pursuant to section
15 204(b)(4) of the Andean Trade Preference Act (19
16 U.S.C. 3202(b)(4)).

17 “(c) The products of a country listed under
18 subsection (a) shall be eligible to enter at the special
19 rate of duty set forth in such subheading only if
20 such country provides and enforces internationally
21 recognized worker rights and environmental protec-
22 tions.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section apply to goods entered, or withdrawn from

- 1 warehouse, for consumption on or after the 15th day after
- 2 the date of enactment of this Act.

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