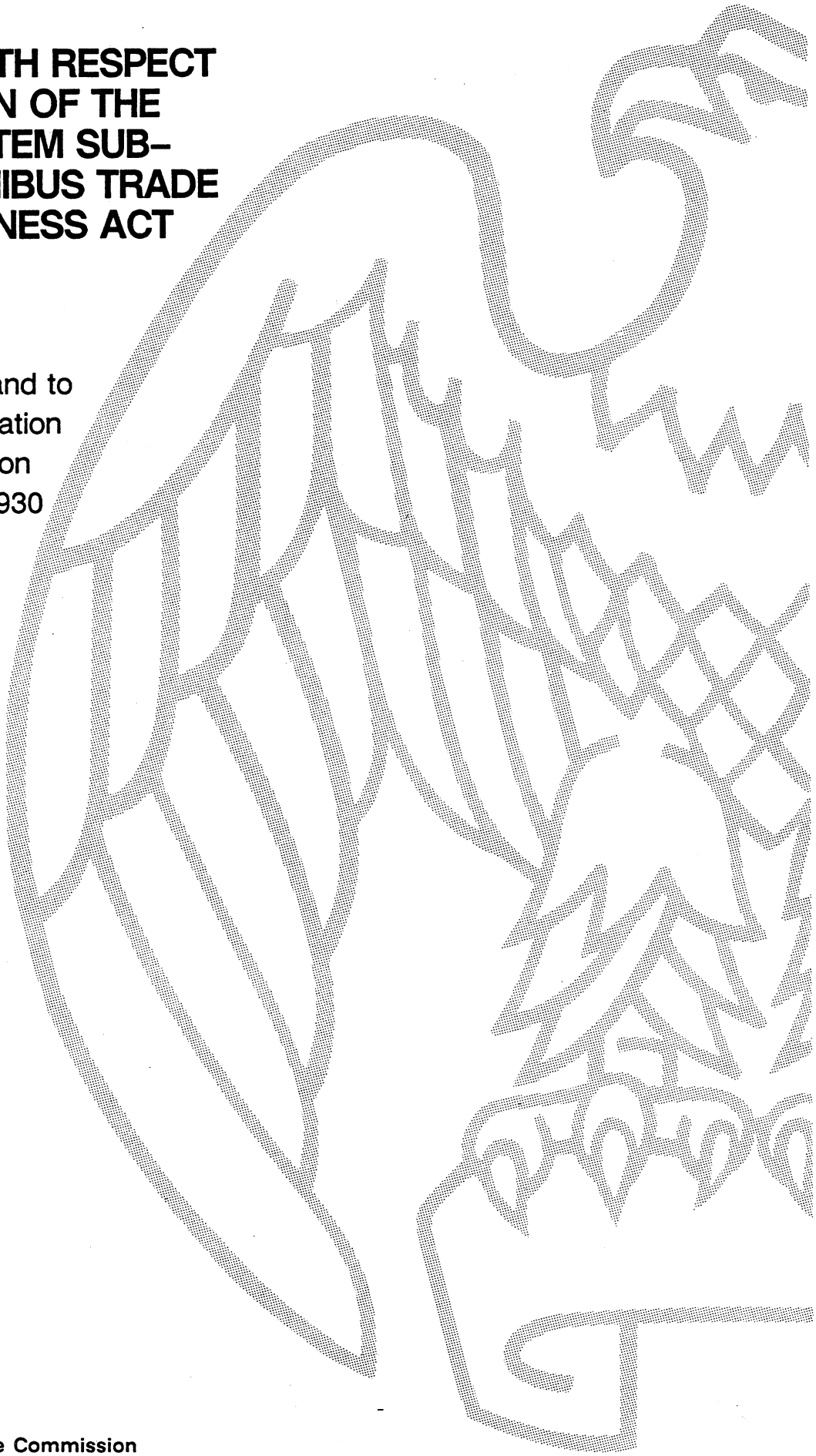
INVESTIGATION WITH RESPECT TO THE OPERATION OF THE HARMONIZED SYSTEM SUB-TITLE OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

Report to the Congress and to the President, on Investigation No. 332-274 Under Section 332 of the Tariff Act of 1930



USITC PUBLICATION 2296

JUNE 1990

United States International Trade Commission
Washington, DC 20436

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PREFACE

The U.S. International Trade Commission (Commission) instituted the present investigation, Investigation with Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988, Investigation No. 332-274, on March 14, 1989, pursuant to section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) to fulfill the requirements of section 1216 of the Omnibus Trade and Competitiveness Act of 1988 (OTCA).[1] Section 1216 of the OTCA provides—

> The Commission, in consultation with other appropriate Federal agencies, shall prepare, and submit to the Congress and to the President, a report regarding the operation of this subtitle [2] during the 12-month period commencing on the effective date of the Harmonized Tariff Schedule. The report shall be submitted to the Congress and to the President before the close of the 6-month period beginning on the day after the last day of such 12-month period.[3]

The "effective date" of the Harmonized Tariff Schedule (HTS) is January 1, 1989,[4] thus the "12-month period" ended on December 31, 1989. The Commission's report is due to the Congress and to the President at the close of the 6-month period beginning on the day after December 31, 1989, i.e., by the close of June 30, 1990.[5]

The report outlines the principal features of the Harmonized System Convention and describes the actions taken by the Harmonized System Committee and the Customs Cooperation Council to implement the Harmonized System internationally. The report next provides a brief historical background to, and section-by-section analysis of, subtitle B.[6] It also details the major actions taken by various Federal agencies, including the Commission, to implement subtitle B. And, it provides an assessment of its impact by the three agencies (other than the Commission) most directly affected by this subtitle: the United States Trade Representative, the United States Customs Service, and the Bureau of the Census. Finally, the report summarizes the submissions received from the private sector in connection with this investigation and provides an analysis of these submissions by the Staff.

Public notice of the investigation was given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 20, 1989 (54 F.R. 16010).[7] The information contained in this report was obtained from the Commission's files, from other Federal agencies, and from submissions by the public.

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[1] Public Law No. 100-418, Aug. 23, 1988, 102 Stat 1107-1574.

[2] "[T]his subtitle" refers to subtitle B (Implementation of the Harmonized Tariff Schedule) of title I (Trade, Customs, and Tariff Laws) of the OTCA.

[3] Section 1216 of the OTCA, 102 Stat. 1163.

[4] Section 1217(b) of the OTCA, 102 Stat. 1163.

[5] Since June 30, 1990, falls on a Saturday, the report is due on the following Monday, July 2. 1990.

[6] Subtitle B comprises sections 1201-1217 of the OTCA. 102 Stat. 1147-1163.

[7] The notice of the institution of the Commission's Investigation No. 332-274 is reproduced in app. A.

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EXECUTIVE SUMMARY

Enactment of subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988 provided for approval of the Harmonized System Convention by the United States Government, and implemented the international nomenclature established by the Convention in a new U.S. customs tariff. Subtitle B provided that this new tariff, the Harmonized Tariff Schedule, would take effect on January 1, 1989. This subtitle also established administrative arrangements for future U.S. participation in the international development of the system, and provided legal authority to the Commission and the President to ensure that the new U.S. customs tariff would continue to be maintained in accordance with the international system.

This report on the operation of subtitle B during 1989 reviews the requirements of the Convention, as well as the domestic implementing legislation. It also highlights significant actions taken at the international level by the Harmonized Systems Committee and the Customs Cooperation Council, and by United States Government agencies responsible for domestic implementation of these international actions.

Based upon the information received from the principal government agencies concerned, implementation of the Harmonized Tariff Schedule has proceeded without significant difficulty. While some private sector interests have complained about tariff treatment for a relatively small number of commodities, the most noteworthy observation is the overall absence of complaints from the private sector concerning the new tariff.

The agencies most directly affected by the new tariff are overwhelmingly positive in their reactions. The United States Trade Representative characterizes the Harmonized Tariff Schedule as a "great success" and states that the international nomenclature provides, for the first time, an ability to target precisely the areas where market access is most desirable based on the comparability of U.S. trade and tariff data with that submitted by our trading partners.

The Commissioner of Customs reports that the operation of the Harmonized System "has produced many desirable results" and, in particular, notes that it has alleviated the administrative burdens imposed on Customs by the previous classification concepts of "ornamentation on textile articles" and the chief value rule. Elimination of these rules under the Harmonized System has greatly simplified administration of the tariff classification system for the Customs Service and for the importing community.

Finally, the Director of the Bureau of the Census states that implementation of the new tariff "allows greater flexibility and imagination in developing new techniques for collecting and compiling U.S. foreign trade data." And, she reports that the new tariff has made possible a program for exchange of data with Canada that greatly increases the statistical accuracy of cross-border trade data for both countries. In addition, we understand that implementation of this program eliminates the previous requirement for U.S. exporters to prepare over 2 million export declarations each year covering shipments to Canada.

The Harmonized System Convention

The Harmonized System Nomenclature

Subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988 approved the International Convention on the Harmonized Commodity Description and Coding System (Convention or HS Convention),[1] which was developed under the auspices of the Customs Cooperation Council (CCC or Council). The Convention incorporates a standardized tariff nomenclature, the Harmonized Commodity Description and Coding System (Harmonized System or HS), as "the Annex" to the Convention.[2] Article 2 of the Convention provides that the Annex shall form an integral part of the Convention and that any reference to the Convention shall include a reference to the Annex. The purpose of the Convention is to facilitate international trade by the use of a single nomenclature for the description, classification, and coding of goods as they move in international trade, and to facilitate the collection, comparison, and analysis of international trade statistics.

Contracting Party Obligations

The basic obligation of Contracting Parties to the Convention is that their customs tariff and foreign trade statistical nomenclatures are to be in conformity with the Harmonized System.[3] This requires the use of all[4] the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes. It also requires the application of the general rules for interpretation of the Harmonized System as well as the various section and chapter notes. Modifications of the scope of the various parts of the Harmonized System are not permitted; however, further detailed subdivisions for classifying goods (such as for tariff, quota, or statistical purposes) are permitted so long as they are added and coded at a level beyond the six-digit numerical code provided in the Harmonized System. The Convention does not create any obligations in relation to rates of duty.[5]

Partial Application by Developing Countries

Articles 4 and 5 of the Convention provide for partial application of the Harmonized System by developing countries and for technical assistance to such countries as well. Malawi is the only country to elect partial application of the system in accordance with provisions allowing special treatment to developing countries.

Membership

The following are eligible to become Contracting Parties to the Convention: "Member States of the Council," certain "Customs or Economic Unions" and any other state by invitation of the Council.[6] The United States is a member state of the Council. Eligible parties may become a Contracting Party by signing without reservation, ratifying the Convention after signing with reservation, or by acceding to the Convention.[7] Since the HS Convention was opened for signature, a growing number of countries have become Contracting Parties. As of March 6, 1990, there were 56 Contracting Parties to the Convention.[8]

The Harmonized System Committee

Administration of the Convention is entrusted to the Harmonized System Committee (HSC or Committee) of the Council.[9] Each Contracting Party to the Convention is entitled to representation on this Committee.[10] Each Contracting Party shall have the right to one vote; nevertheless, where a customs or economic union as well as one or more of its member states are Contracting Parties, such Contracting Parties shall together only exercise one vote. The functions of the HSC include proposing amendments to the Convention, preparing guides for interpretation of the Harmonized System, preparing recommendations for securing uniformity in the application of the HS, furnishing information on matters concerning the classification of goods in the HS, and keeping the system up-to-date, while taking into account the needs of users and changes in technology or patterns of international trade.[11]

[1] Section 1201(1) of the OTCA, 19 U.S.C. 3001(1). Section 1202(2) of the OTCA, 19 U.S.C. 3002(2), defines the term "Convention" for purposes of subtitle B as the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986, submitted to the Congress on June 15, 1987. The HS Convention entered into force on January 1, 1988. The United States acceded to the HS Convention on October 31, 1988.

[2] Article 1(a) of the Convention defines the "Harmonized System" as "the Nomenclature comprising the headings and subheadings and their related numerical codes, the Section, Chapter and Subheading Notes and the General Rules for the interpretation of the Harmonized System, set out in the Annex to this Convention."

[3] Article 3 of the Convention.

[4] The Annex to the Convention states that "Heading No. 27.16 . . . Electrical energy" is an "optional heading."

[5] Article 9 of the Convention.

[6] Article 11 of the Convention.

[7] Article 12 of the Convention.

[8] The list of Contracting Parties is set forth in app. B, "Contracting Parties to the Harmonized System Convention."

[9] Article 7 of the Convention.

[10] Article 6 of the Convention.

[11] Article 7 of the Convention.

Decisions of the HSC not involving an amendment to the Convention may enter into force under a procedure whereby such decisions are deemed accepted if no Contracting Party requests that they be referred to the Council within 2 months of the decision.[12,13] If a matter is referred to the Council for approval, a Contracting Party may request that the question be returned to the Committee. The Committee must then study the question further, effectively nullifying or postponing a decision.

Amendment Procedure

Amendments to the Harmonized System will be submitted by the Committee to the Council, which may recommend them to the Contracting Parties.[14] However, recommendations cannot be made if a Contracting Party requests that a proposal, or any part thereof, be referred to the Committee for reexamination. When the Council does recommend an amendment, any Contracting Party may notify an objection thereto.[15] A recommended amendment is deemed accepted 6 months after the date of notification of the recommendation, provided there is no objection outstanding at the end of this period.[16] Amendments enter into force 21 to 33 months following the date of notification of the recommendation. This is intended to give Contracting Parties sufficient time to accomplish the legislative or regulatory formalities required by each Party's domestic law.[17] The length of this delay depends on the date of notification in each case. However, as noted, a recommended amendment does not enter into force if any Contracting Party has notified an objection thereto within the specified time.

Dispute Settlement

Disputes between Contracting Parties regarding the classification of merchandise under the Harmonized System are bound to arise. In the first instance, such disputes are to be settled by negotiation between the Contracting Parties concerned.[18] When disputes cannot be settled by direct negotiation, they may be referred to the HSC which will then recommend a solution. If the HSC is unable to settle a dispute, then the matter may be referred to the Council which may recommend a solution in conformity with article III(e) of "the Convention establishing the Council."[19] The Council may recommend a solution "in a conciliatory capacity;" but the decisions of the Council in such matters may only be taken by "a majority of two-thirds" of the eligible members present, provided that a quorum of at least one-half of the eligible members are present.[20] A Contracting Party, if it so desires, may agree in advance to accept the recommendation of the Committee or the Council as binding.[21]

Denunciation

The Convention is of unlimited duration, although any Contracting Party may denounce it.[22] Denunciation shall take effect 1 year after the receipt of the instrument of denunciation.

Activities Under the Convention

Harmonized System Committee Actions

Under the terms of the HS Convention, the Harmonized System Committee is required to meet at least twice each year. The Committee's initial meeting was held in April 1988 and it has met each fall and spring thereafter. This part of the report summarizes the major activities of the Harmonized System Committee and the Customs Cooperation Council in regard to the HS Convention since its entry into force on January 1, 1988.

Classification Decisions

The bulk of the work of the Harmonized System Committee is normally taken up in the consideration of specific classification questions and proposed amendments to the legal texts of the HS, the *Explanatory Notes,* or the *Compendium of Classification Opinions*. Since its first session, the HSC has considered over 50 classification issues and has recommended approximately 35 amendments to the text of the Harmonized System and 120 amendments to the *Explanatory Notes*. It has also proposed the addition of 14 classification opinions to the *Compendium of Classification Opinions*. It is not within the scope of this report to undertake a review of all decisions taken up or proposed by the Committee, since they have ranged throughout the entire nomenclature. Reports on each session and specific information on these classification issues are available at the Commission's Office of Tariff Affairs and Trade Agreements.

[12] Article 8 of the Convention.

[13] These HSC "decisions" may include decisions relative to the "*Explanatory Notes*, [the *Compendium* of] *Classification Opinions*, other advice on the interpretation of the [HS] and recommendations to secure uniformity in the interpretation and application of the [HS]." Ibid.

[14] Article 8 of the Convention.

[15] Article 16 of the Convention.

[16] Article 16 of the Convention.

[17] See those portions of the report entitled Section 1205 and Section 1206 for a detailed description of U.S. procedures which are required to implement proposed amendments to the Convention.

[18] Article 10 of the HS Convention.

[19] Article 1(e) of the HS Convention defines "the Convention establishing the Council" as the Convention establishing a Customs Cooperation Council, done at Brussels on December 15, 1950. 22 UST 320; TIAS 7063. (Hereafter, CCC Convention.)

[20] Articles III(e) and VIII of the CCC Convention.

[21] Article 10.4 of the HS Convention; article III(e) of the CCC Convention.

[22] Article 15 of the HS Convention.

Exchange of Classification Rulings

Shortly before the Harmonized System Convention entered into force, the United States proposed that the CCC undertake a program for the exchange of classification rulings. At its 1988 session, the Council agreed that this program should be implemented on a trial basis for a 1-year period. In 1989, the trial period was extended for an additional year. The purpose of the program is to ensure uniform application of the system, and to provide countries which were transposing their tariffs with useful information regarding the classification of merchandise. At its fifth session in March 1990, the HSC overwhelmingly agreed to propose to the Council that the program become permanent.

The Review Subcommittee

Based on another U.S. proposal, the Harmonized System Committee established a Review Subcommittee (RSC or Subcommittee) to ensure that the system is kept up to date by reflecting changes in technology and patterns of international trade, as envisioned in article 7.1(a) of the HS Convention. To encourage a broad base for input, it was agreed that the RSC should consist of representatives of Contracting Parties to the HS Convention as well as other members of the Council. In addition, countries which are not members of the Council, relevant inter-governmental and international organizations, and any experts whose participation was considered desirable, could be invited by the Secretary General of the CCC to contribute to the work of any given session.

The HSC has established a schedule for the Subcommittee to review the entire HS nomenclature on a 3-year revolving basis whereby related industrial sectors would be examined at the same time. This work commenced in January 1990. The RSC will meet semiannually to examine each chapter of the Harmonized System in the following order—

Chapters 84, 85, and 90	Machinery, electrical equipment, optical, measuring and scientific instruments and apparatus;
Chapters 50 through 63	Textiles;
Chapters 41 through 49	Leather, wood, and paper products;
Chapters 26, and 71 through 83	Base metals, jewelry;
Chapters 64 through 67	Footwear, headwear, down articles;
Chapters 86 through 89	Transportation equipment;
Chapters 1 through 24	Agriculture;
Chapters 27 through 40	Fuels and chemicals;
Chapters 25, and 68 through 70	Mineral, glass, and ceramic goods;
and	
Chapters 91 through 97	Miscellaneous goods.[23]

With respect to U.S. input, the Commission serves as the lead agency in soliciting comments and proposals to amend the Harmonized System. Thus far, three notices have been issued[24] and several informal meetings have been held with interested parties in the private and public sectors to develop proposals and positions with respect to RSC matters.

The Subcommittee held its first two sessions in January and March 1990 and has provisionally agreed to a number of proposed amendments. The proposals are being reviewed by industry and the interested agencies, and will be discussed at greater length in future meetings.

Frequency of Amendments

Based upon a recommendation from the Harmonized System Committee, the CCC, at its 1988 session, approved a recommendation to propose amendments to the Harmonized System at 3- to 4-year intervals. At the same meeting, the Council recommended that a number of minor amendments to the nomenclature be approved by the Contracting Parties. These amendments had been proposed earlier and were generally not of a substantive nature. The amendments have been approved by the Contracting Parties and are to be implemented not later than January 1, 1992. The next group of amendments will be submitted for approval at the Council's 1993 session. If approved, they would be implemented on January 1, 1996. This group of amendments will include those proposals which have been considered and recommended by the RSC.

Standard Units of Quantity

Based on another U.S. proposal, the Harmonized System Committee is currently considering the introduction of standard units of quantity in the Harmonized System. Adoption of the proposal would ensure the comparability of statistics generated by the system. At its fifth session, the Committee overwhelming agreed to continue studying this matter.

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[23] This list shows the *sequence* in which various chapters and sectors will be considered. Some industrial sectors (e.g., chapters 84, 85, and 90) will require two or three semiannual sessions of the RSC to complete the review work. Other sectors will require only a portion of a single semiannual RSC session; thus several sectors may be taken up at one RSC session. But the entire nomenclature will be reviewed during the 3-year cycle.

[24] See the discussion in the report with respect to section 1210 of the OTCA, and actions taken thereunder by USTR and by the Commission.

The "Descriptor List"

Even before the initial development of the Harmonized System, the United States had been interested in creating a list of commodity descriptors[25] that could be used on international trade documentation as a uniform and reliable basis for identifying products. After a number of studies and numerous discussions on how such a list could be created, it was decided to defer further consideration of the idea and to concentrate efforts on the development of the HS nomenclature.

Recently, a new study was undertaken to determine whether such a list would be of benefit and to identify a means by which it could be developed. The information received so far from potential users, including developing country administrations, multinational firms, and transport organizations, indicates the utility of this project. In addition, efforts to define a basis for creating a description system, while not as ambiguous as they originally appeared, are proceeding. This is a matter for continued study by the Harmonized System Committee. It is expected that a final decision on the creation of a descriptor list and the means for its development will be identified within the next year.

Training Activities

At its June 1988 session, the Council decided to undertake a comprehensive training program to aid in implementing the Harmonized System, and to provide an appropriate means for giving technical assistance to countries transposing their tariffs to the new system. A number of training courses have been established by the CCC for these purposes. It has been generally acknowledged that the training efforts of the CCC with respect to the Harmonized System have contributed significantly to the widespread use of the system.

Development of a New U.S. Tariff Based on the Convention

Introduction

This section is intended to provide some context to the framework and intent of subtitle B. It provides a brief review of the major milestones in the creation of a new U.S. tariff based on the international HS nomenclature which was developed by the United States[26] and its major trading partners under the auspices of the Customs Cooperation Council in Brussels. As previously noted, the HS nomenclature is embodied in the Annex to the International Convention on the Harmonized Commodity Description and Coding System.

Chronology from 1981 to 1988

In August 1981, the President requested that the Commission prepare a draft conversion of the Tariff Schedules of the United States (TSUS) into the format of the HS nomenclature that avoided rate changes significant for trade, industry and labor, simplified the tariff, and alleviated Customs administrative burdens. The Commission published a series of draft converted chapters of the HTS (in 28 volumes) for public comment from January 1982 to January 1983.[27] The Commission's draft conversion of the TSUS was submitted to the President for review in June 1983.[28]

The United States Trade Representative (USTR) established a task force[29] to deal with all aspects of the conversion process, including review of the Commission's proposed new U.S. tariff schedule, preparation of a new General Agreement on Tariffs and Trade (GATT) tariff schedule reflecting U.S. trade agreement obligations in HS format, and review of foreign countries' conversions to ensure that the effect on U.S. exports would be neutral. The primary focus of the work was to balance the often competing objectives of developing a sound nomenclature and maintaining tariff neutrality. These difficulties were compounded by the sheer magnitude of the technical task of accurately relating two quite different nomenclature structures, the TSUS and the HS, to each other. In all aspects of its work, the task force endeavored to make the exercise as transparent as possible and actively sought the views of the private sector.

During the summer and fall of 1983, the task force published and distributed the Commission's converted tariff schedule, published a notice

[25] The "descriptor list" is envisioned as a list of "key-words" arranged in alphabetic order which would direct the user to a particular HS heading where the goods are to be classified.

[26] A report describing the participation of the United States in the technical work that underlay the development of the Harmonized System from 1970 to 1980 was published by the Commission in 1980. U.S. International Trade Commission, *Interim Report on the Harmonized Commodity Description and Coding System* (Investigation No. 332-73), USITC Publication 1106, October 1980.

[27] U.S. International Trade Commission, *Draft Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1213 (vol. 1), January 1982; USITC Publication 1213 (vol. 28), January 1983.

[28] U.S. International Trade Commission, *Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1400, June 1983.

[29] This task force was composed of representatives from the Commission as well as the other agencies most immediately concerned with the new tariff, i.e., the Customs Service, the Bureau of the Census, the Department of Agriculture, etc. The task force was chaired by USTR.

inviting comments on the conversion, held public hearings inviting comments on the conversion (including public hearings in New York and Washington), and consulted all advisory committees for their views. In addition, members of the task force gave a series of speeches around the country to increase public awareness of the conversion.

In January 1984, the task force began a line-by-line review of the conversion, taking into account concerns raised by the private sector and by interested Federal agencies. Where necessary, the rate derivation methodology was altered or a new tariff line was added in order to increase the neutrality of the conversion. Following this review, a new draft tariff was published in September 1984,[30] which reduced the number of TSUS items subject to duty changes without significantly proliferating the number of rate lines in the new tariff structure. The task force distributed thousands of copies of the conversion and invited public comments.

The September 1984 document also formed the basis for a new GATT tariff schedule for the United States[31] in HS format. In late 1984, USTR submitted preliminary documentation for the new tariff schedule to trading partners for review and began a 15-month series of consultations with other countries to explain the conversion and to learn of trading partners' concerns. At the same time, the task force reviewed foreign conversions on a line-by-line basis and consulted with trading partners on items of export interest to the United States.

In the spring of 1986, the task force prepared revisions of the draft tariff that incorporated changes suggested by the private sector, comments from trading partners, changes legislated by Congress in the period between 1983 and 1986, and technical corrections. In addition, the task force developed data files comparing duties collected under the TSUS with those to be collected under the HTS. These duty collection computations were examined globally and sectorally, as well as from the vantage point of key trading partners, in order to ensure the neutrality of the conversion from all points of view.

In July 1986, the United States formally notified our trading partners under GATT article XXVIII of our intention to withdraw our existing schedule of tariff concessions[32] and to replace it with an HS-based schedule of tariff concessions. This notice initiated the necessary GATT article XXVIII negotiations to ensure that the conversion was consistent with our trade agreement obligations. Under the provisions of article XXVIII, countries had 90 days to reserve their rights on goods where they have supplier status. Thirty-six countries sent letters of reservation within the period; most also included their list of specific requests. The task force reviewed each specific request individually, assessing the impact of a proposed change on the conversion (both globally and sectorally), on the requesting country's overall balance of concessions, and on the balance of concessions for any other country affected by the change. Then, in consultation with private sector advisors, the task force made revisions aimed at restoring the neutrality of the conversion on a bilateral basis.

In October 1986, the Trade Policy Staff Committee republished, for public comment, the U.S. tariff conversion.[33] For the most part, the rates contained in the proposed new tariff were the same as our trade agreement rates. However, the HTS and the GATT *Schedule XX (U.S.)* do diverge in some areas because some U.S. tariff provisions are not bound in the GATT. In other cases, a rate lower than the GATT rate has been negotiated in a non-GATT agreement or has been enacted by Congress. The October publication represented a nearly final version of the new tariff, which the private sector could use to determine the classification of their products under the proposed HTS. In addition, the Customs Service prepared detailed guidance for the trade community and Customs Service staff to acquaint them with the principal features of the proposed new customs tariff.[34]

Legislation had also been introduced in the Congress which proposed to implement the new tariff schedule.[35] In order to provide further opportunity for public input, hearings were held by the Senate Committee on Finance.[36] The proposed new U.S. tariff[37] was submitted by the United States Trade Representative[38] to the

[30] Trade Policy Staff Committee, *Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System, Revised, Showing Administrative Changes Approved by the Trade Policy Staff Committee*, September 1984.

[31] *Schedule XX (U.S.)*, GATT.

[32] *Schedule XX (U.S.)*, GATT. This schedule was then based on the TSUS nomenclature.

[33] Trade Policy Staff Committee, *Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System, Revised, Showing Administrative Changes Approved by the Trade Policy Staff Committee*, October 1986.

[34] See, for example, United States Customs Service, *Harmonized System Handbook: A Guide to the New U.S. Tariff*, HB-3600-06 (August 1986).

[35] See, for example, section 5010(b) (Harmonized System) of subtitle A (the Trade Competitiveness Act of 1987) of title V (the International Economic Environment Improvement Act of 1987) of S. 539, 100th Cong., 1st Sess., Calendar No. 18, Feb. 19, 1987, pp. 618-639.

[36] Congress, Senate Committee on Finance, *Harmonized System: Hearing Before the Subcommittee on International Trade*, 100th Cong., 1st Sess., Publication 100-151, Apr. 27, 1987.

[37] United States Trade Representative, *Proposed United States Tariff Schedule Annotated in the Harmonized System Nomenclature*, July 1987.

[38] United States Trade Representative, *Submitting Report with Respect to the Harmonized System Implementation Act of 1987*, June 1987.

Committee on Finance[39] and to the Committee on Ways and Means[40] for review in July 1987. The House Committee on Ways and Means announced its intention to consider the new tariff and solicited public comments with respect to the proposed HTS.[41] The "Harmonized Tariff Schedule Implementation Act" was introduced on December 3, 1987.[42] The conferees on the OTCA provided the following background statement on the new tariff—

> Subtitle B provides for Congressional approval of the Convention, the enactment of the HTS to replace the existing Tariff Schedules of the United States (TSUS), and the establishment of an appropriate administrative framework for the implementation of the Convention. The implementation of the Harmonized System culminates a long process begun with the enactment of section 608 of the Trade Act of 1974 (Public Law 93-618). The HTS has undergone intense review by the Congress, the Administration, our trading partners, and the public, including scrutiny by affected private sector groups.
>
> The conferees believe that the HTS fairly reflects existing tariff and quota treatment and that the conversion is essentially revenue-neutral. Enactment of the tariff and quota treatment provided in this subtitle is intended to supersede and replace existing treatment as a matter of domestic law. The conferees find that any changes in the rates of duty are consequential to the process of converting to the new nomenclature, and are necessary to reflect an overall balance of tariff concession commitments between the United States and its trading partners in the GATT. Some of the rate increases in the United States conversion respond to our trading partners' failure to make appropriate commitments in the GATT negotiations on the Harmonized System. Although the U.S. conversion does meet our GATT obligations, some outstanding tariff issues resulting from enactment of the HTS are likely to reemerge. Any outstanding problems resulting from the GATT tariff negotiations may appropriately be resolved in the context of the Uruguay Round.[43]

The HTS was enacted by subtitle B of title I of the OTCA in August 1988.

Section-by-Section Analysis of Subtitle B and Actions Taken[44]

The following section-by-section analysis[45] of subtitle B is intended to serve as a useful guide in understanding the major actions taken to implement the international Harmonized System and the national Harmonized Tariff Schedule. The actions taken are discussed immediately following the section to which they appear most relevant.[46]

Section 1201

Section 1201[47] sets out the legislative purposes in enacting subtitle B. These include (1) approval of the International Convention on the Harmonized Commodity Description and Coding System;[48] (2) implementation in United States law of the nomenclature established internationally by the Convention; and (3) treatment of the Convention as a trade agreement obligation of the United States. The OTCA conferees had noted that section 102 of the Trade Act of 1974[49] "authorized nontariff agreements but was not applicable to agreements which involve comprehensive changes in U.S. tariffs."[50]

Section 1202

Section 1202[51] defines six terms used in subtitle B. These include the term "old Schedules," which is defined as title I of the

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[39] EC-1470, *A communication from the United States Trade Representative transmitting a draft of proposed legislation entitled "Harmonized System Implementation Act of 1987"*, to the Committee on Finance. 133 *Congressional Record*, 100th Cong., 1st Sess., S-8455, June 23, 1987.

[40] Executive Communication 1641, *A letter from the United States Trade Representative, transmitting a draft of proposed legislation to approve the International Convention on the Harmonized Commodity Description and Coding System, to authorize the implementation in the U.S. customs tariff of the Harmonized System nomenclature established internationally by the Convention, and for other purposes*; to the Committee on Ways and Means. 133 *Congressional Record*, 100th Cong., 1st Sess., H-5388, June 22, 1987.

[41] Congress, House Committee on Ways and Means, *Written Comments on Proposed Implementation of the Harmonized Commodity Description and Coding System*, 100th Cong., 2d Sess., Publication 100-35, July 12, 1988.

[42] H.R. 3690, 100th Cong., 1st Sess. 133 *Congressional Record* H-10988, December 3, 1987. The substance of H.R. 3690, as amended, was incorporated in H.R. 4848, 100th Cong., 2d Sess., as subtitle B of title I of that Act. H.R. 4848 was enacted as Public Law 100-418.

[43] Congress, H. Rept. 100-576, 100th Cong., 2d Sess. 548 (1988). (Hereafter, Conference Report.)

[44] As noted earlier, subtitle B of title I of the OTCA comprises sections 1201-1217 of that Act. Subtitle B is generally classified to 19 U.S.C. 3001 *et seq.*, but several sections and subsections are not codified.

[45] Sections 1212 and 1214 are discussed as one topic.

[46] The inclusion of specific actions in this compilation does not imply that subtitle B is the sole, or even the principal, legal authority for the action taken.

[47] 19 U.S.C. 3001.

[48] The "Convention" is defined in section 1202(2) as the Convention done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986, all the foregoing submitted to the Congress on June 15, 1987.

[49] 19 U.S.C. 2112.

[50] Conference Report, p. 547.

[51] 19 U.S.C. 3002.

Tariff Act of 1930 as in effect on December 31, 1988.[52] Title I on that date was the *Tariff Schedules of the United States* (TSUS).[53,54] The TSUS was enacted by the Tariff Classification Act of 1962[55] (the 1962 Tariff Act), which greatly simplified the structure of the tariff schedules enacted in titles I and II of the Tariff Act of 1930.[56] The 1962 Tariff Act reduced the 16 schedules in the 1930 Act to 8 schedules plus the Appendix;[57] these were collectively enacted as the TSUS.[58] The TSUS, in turn, was replaced by a *single* schedule, the *Harmonized Tariff Schedule of the United States* (HTS).[59,60]

Section 1203

Section 1203[61] provides congressional approval of U.S. accession to the Convention and authorizes the President to accept the final legal instruments that embody the Convention on behalf of the United States. The section also states that neither the entry into force of the Convention nor the enactment of subtitle B creates any unspecified private right of action or legal remedy, which is not otherwise expressly authorized under United States law. Section 1203(d) provides that section 125(a) of the Trade Act of 1974,[62] shall not apply to the Convention. Section 125(a) requires that trade agreements reducing duties or modifying nontariff barriers be subject to termination after no more than 3 years.

[52] Section 1202(5) of the OTCA, 19 U.S.C. 3002(5).

[53] 19 U.S.C. 1202 (1988).

[54] The legal text of the TSUS had not been published for several years in either the *U.S. Code* or the *U.S. Code Annotated*. Instead, these publications referred the reader to the current Commission publication of the *Tariff Schedules of the United States Annotated* (TSUSA). The legal text of the TSUS, as in effect on December 31, 1988, may be found in U.S. International Trade Commission, *Tariff Schedules of the United States Annotated (1987)*, USITC Publication 1910 (Nov. 4, 1986), and Supplement No. 1 (June 10, 1987), Supplement No. 2 (Nov. 2, 1987), and Supplement No. 3 (June 1, 1988), thereto; as modified and amended by actions taken from June through December 1988.

[55] Public Law No. 87-456, May 24, 1962, 76 Stat. 72.

[56] Title I of Public Law No. 361 (46 Stat. 590-763) encompassed the "Dutiable List" which enumerated all articles subject to duty in 15 separate schedules. 46 Stat. 590-672, 19 U.S.C. 1001 (1930). Title II set forth the "Free List" that enumerated all articles admitted free of duty in a 16th schedule. 46 Stat. 672-685, 19 U.S.C. 1201 (1930).

[57] The Appendix to the TSUS is often referred to, incorrectly, as schedule 9 of the TSUS.

[58] 19 U.S.C. 1202 (1963).

[59] Section 1204(a), 102 Stat. 1148.

[60] While the TSUS (19 U.S.C. 1202) was repealed by sections 1202(5) and 1204(a) of the OTCA, the correct citation to the HTS in the *U.S. Code* is unclear at present. However, a recent legislative practice has developed of citing the HTS to 19 U.S.C. 3007. See, e.g., H.R. 1594, 101st Cong., 1st Sess. (the Customs and Trade Act of 1990), as amended by the Senate, Apr. 24, 1990.

[61] 19 U.S.C. 3003.

[62] 19 U.S.C. 2135(a).

Section 1204

Section 1204[63] enacts the HTS into law by striking out title I of the Tariff Act of 1930 and inserting a new title I entitled "Title I—Harmonized Tariff Schedule of the United States." The OTCA does not contain the legal text of the HTS; rather section 1204(a) enacts the HTS by reference to two Commission publications, i.e., "Publication No. 2030 . . . and Supplement No. 1 thereto." The enacted (legal) text of the HTS is defined by subdivisions 1204(a)(1)(A)-(E) of section 1204(a) as the following portions of the referenced Commission publications—

(A) the General Notes;

(B) the General Rules of Interpretation;

(C) the Additional U.S. Rules of Interpretation;

(D) sections I to XXII, inclusive (encompassing chapters 1 to 99, and including all section and chapter notes, article provisions, and tariff and other treatment accorded thereto); and

(E) the Chemical Appendix to the Harmonized Tariff Schedule.[64]

Section 1204(a) also makes clear that the remaining parts[65] of the referenced publications are *not* part of the enacted text of the HTS.

Section 1204(b) directs the President to proclaim modifications to the HTS, such as pending staged rate reductions, and other executive, legislative, or judicial actions which take place during 1988, and that would have been incorporated into the HTS if they had taken place prior to January 1, 1988. Additionally, the President is authorized to proclaim modifications to the HTS to make such "technical rectifications as the President considers necessary."[66] The section also directs the President to bring U.S. tariff and other concessions in foreign trade agreements into conformity with the new HTS.

Section 1204(c) defines the "status" of the new HTS. It states that the provisions of the HTS as enacted by subtitle B, each statutory amendment subsequently made to the HTS, and each modification to the HTS subsequently proclaimed by the President, shall "be considered

[63] Section 1204(a) is set out as a note preceding 19 U.S.C. 1202. Sections 1204(b), 1204(c), and 1204(d) are classified to 19 U.S.C. 3004(b), 3004(c), and 3004(d), respectively.

[64] 102 Stat. 1148.

[65] The legal text of the HTS does not include "the statistical annotations, notes, annexes, suffixes, check digits, units of quantity, and other matters formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), nor the table of contents, footnotes, index, and other matters inserted for ease of reference." 102 Stat. 1148.

[66] These technical rectifications are defined in section 1202(6).

to be statutory provisions of law for all purposes."[67] The conferees on the OTCA explained that section 1204(c) is "intended . . . solely to ensure a solid legal foundation for the new tariff and to clarify the status of column 1 provisions where, for instance, rates proclaimed by the President have been subsequently modified by legislation. The statutory status given to column 1 provisions is not intended in any way to alter or diminish the authority of the President under existing or future law to modify the provisions of the tariff."[68] The provisions of section 1204(c) replace, to some extent, principles of statutory construction formerly codified by section 103 of the 1962 Tariff Act[69],[70] and general headnotes 4 and 9(d) of the TSUS.[71],[72]

Section 1204(d) was an interim measure designed to ensure that agency notices that were issued during the period after enactment of the OTCA and prior to January 1, 1989, made reference to both TSUS and HTS classifications.

Actions Taken in Accordance With Section 1204

The President has proclaimed numerous modifications to the HTS pursuant to section 1204. For example, there have been Proclamation 5885, Increase in the Rates of Duty for Certain Articles From Brazil, October 20, 1988;[73] Proclamation 5908, To Amend the Quantitative Limitations on Imports of Certain Cheeses, November 18, 1988;[74] Proclamation 5909, To Designate Guyana as a Beneficiary Country for Purposes of the Caribbean Basin Economic Recovery Act, November 18, 1988;[75] Proclamation 5911, To Implement Changes to the Harmonized Tariff Schedule of the United States, November 19, 1988;[76] Proclamation 5923, To Implement the United States-Canada Free-Trade Agreement, December 14, 1988;[77] Proclamation 5924, To Complete Implementation of the United States-European Community Agreement on Citrus and Pasta, and for Other Purposes, December 21, 1988;[78] Proclamation 5925, To Modify the Import Relief on Western Red Cedar Shakes and Shingles, December 21, 1988;[79] Proclamation 5978, To Implement in Terms of the Harmonized Tariff Schedule of the United States the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials, May 12, 1989;[80] and Proclamation 6030, To Provide for the Tariff Treatment of Goods From the Freely Associated States, To Implement Tariff Reductions on Certain Tropical Products, and for Other Purposes, September 28, 1989.[81]

The Customs Service, noting enactment of the HTS pursuant to section 1204, has provided extensive guidance with respect to the weight to be accorded various CCC documents in U.S. tariff classification questions.[82] The documents discussed in this Treasury decision as potentially useful in interpreting the HTS include the *Explanatory Notes*, the *Compendium of Classification Opinions*, Harmonized System Committee (HSC) reports prior to July 1983,[83] Interim HSC reports, reports of the HSC after January 1, 1988, classification rulings issued by the Customs administrations of other countries, certain "working documents,"[84] Nomenclature Committee reports, and "position papers."[85] The notice concludes that "Customs will give considerable weight to *Explanatory Notes* and the *Compendium of Classification Opinions* because they are the official interpretation of the HS, but they shall not be treated as dispositive. When it is necessary to determine the intent of the HSC, Customs will look to the Reports and Summary Records of the HSC. Other documentation may be consulted for information purposes only."[86]

Section 1205

Section 1205[87] directs the Commission to keep the HTS under continuous review and,

[67] 102 Stat. 1149.
[68] Conference Report, p. 548.
[69] Compare sections 1204(c)(1) and 1204(c)(2) of the OTCA with section 103 of the 1962 Tariff Act (76 Stat. 72, 74) and general headnotes 4, 9(d), TSUS.
[70] Section 103 of the 1962 Tariff Act formed the basis of a previous holding that some parts of the TSUS (e.g., the Appendix), as enacted by the Congress, did not have "statutory status." *National Silver Co. v. U.S.*, 74 Cust. Ct. 18, 388 F. Supp. 1391 (C.D. 4582, 1975).
[71] Compare sections 1204(c)(3) and 1204(c)(4) of the OTCA with general headnote 4, TSUS.
[72] The courts have discussed the President's authority under general headnote 4, TSUS, in the context of the imposition of a 10-percent "supplemental duty for balance of payments purposes" in 1971 (the "import surcharge" cases). *Yoshida International, Inc. v. U.S.*, 73 Cust. Ct. 1, 378 F. Supp. 1155 (C.D. 4550, 1974); *reversed on other grounds Yoshida International, Inc. v. U.S.*, 63 CCPA 15, 526 F.2d 560 (C.A.D. 1160, 1975).
[73] 53 F.R. 41551.
[74] 53 F.R. 47485.
[75] 53 F.R. 47487.
[76] 53 F.R. 47413.
[77] 53 F.R. 50638.
[78] 53 F.R. 51725.
[79] 53 F.R. 51737.
[80] 54 F.R. 21187.
[81] 54 F.R. 40839.
[82] 23 *Customs Bulletin*, No. 36, p. 1 (T.D. 89-80, Sept. 6, 1989), 54 F.R. 35127 (Aug. 23, 1989).
[83] These documents are also referred to as the "HSC summary records."
[84] The Customs Service "calls 'working documents' those documents issued by the Nomenclature and Classification Directorate of the CCC." Ibid.
[85] T.D. 89-80 describes these documents as "negotiating positions" jointly prepared by the Customs Service, the Commission, and the Bureau of the Census, for the guidance of the U.S. delegation to sessions of the HSC. Ibid.
[86] Ibid.
[87] 19 U.S.C. 3005.

periodically,[88] recommend such modifications to the President "as the Commission considers necessary or appropriate—

(1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;

(2) to promote the uniform application of the Convention and particularly the Annex thereto;

(3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;

(4) to alleviate unnecessary administrative burdens; and

(5) to make technical rectifications."[89]

Section 1205(b) directs the Commission to afford reasonable opportunity for interested parties to present their views in writing and, at its discretion, at a public hearing. In formulating its recommendations, the Commission must solicit, and give consideration to, the views of interested Federal agencies and the public.

Section 1205(c) requires the Commission to submit a report to the President presenting its recommendations. The report is to include a summary of the information on which the Commission's recommendations are based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The report will also include a copy of all written views submitted by interested Federal agencies and a copy or Commission-prepared summary of the written views of all other interested parties.

Section 1205(d) requires that Commission recommendations for modifications to the HTS be consistent with the Convention or any amendment thereto recommended for adoption. Additionally, recommended modifications must be consistent with sound nomenclature principles and must ensure substantial rate neutrality. Modifications that involve a change in any rate of duty must be consequent to, or necessitated by, recommended nomenclature modifications. Moreover, the recommended modification must not alter existing conditions of competition for the affected U.S. industry, labor, or trade.

Actions Taken in Accordance With Section 1205

On April 20, 1989, the Commission published a notice,[90] "Review of the Harmonized Tariff Schedule of the United States," intended to describe procedures for implementing section 1205 of the OTCA relating to the continuous review of the HTS by the Commission. The Commission stated that it would keep the HTS under continuous review and would recommend necessary or appropriate modifications to the HTS when amendments to the Harmonized System are recommended for adoption by the CCC, and as other circumstances warrant, including at the request of interested Federal agencies and the public. Interested Federal agencies and the public were invited to request that the Commission consider particular modifications to the HTS. If the request meets the statutory guidelines, then the Commission will publish its proposed recommendation in the *Federal Register* and afford reasonable opportunity for interested parties to present their views in writing.

If an amendment to the Convention is recommended by the Council for adoption, the Commission stated that it plans to publish the proposed amendment, along with a corresponding recommended modification to the HTS, where necessary or appropriate, in the *Federal Register* and invite public comment. The Commission will not, however, report a final recommendation to the President until the amendment has been accepted by the Contracting Parties. The procedural time limits for acceptance by the Contracting Parties were described earlier.[91] When a recommended amendment is not accepted, the Commission will terminate its consideration of any corresponding modifications to the HTS. When a recommended modification is accepted, the Commission will complete its consideration of any necessary or appropriate modifications and report to the President.

On January, 18, 1990, the Commission published a notice,[92] "Review of the Harmonized Tariff Schedule of the United States," to advise the public of certain proposed changes to the HTS and to solicit comments from other Federal agencies and the public relating to these proposed changes. The Commission noted that, during the last session of the CCC, held in July 1989, in Washington, DC, the Council recommended certain amendments to the nomenclature of the international HS, in accordance with article 16 of the Convention. The modifications had been recommended previously by the CCC's Harmonized System Committee. The consequential changes to the HTS were proposed by the Commission in order to conform the HTS with the Council's recommendations. To date, the Commission has not received any comments in opposition to the proposed HTS changes.

[88] There are two "triggers" for Commission action under section 1205(a): (1) "at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption" by the Contracting Parties; and (2) "as other circumstances warrant."

[89] 102 Stat. 1150.

[90] 54 F.R. 16007.

[91] See section entitled Harmonized System Convention.

[92] 55 F.R. 1733.

Section 1206

Section 1206[93] addresses presidential action after receipt of Commission recommendations under section 1205. Based on the Commission's recommendations, the President may proclaim modifications to the HTS if he finds such action to be in conformity with U.S. obligations under the Convention and not contrary to the national economic interest of the United States. Before the President makes such a proclamation, he is directed to submit a report to the Committee on Ways and Means and the Committee on Finance presenting the changes to the HTS that he intends to proclaim, and the reasons therefor. The Committees then have a "layover" period of 60 legislative days to consider the proposed changes before the President may issue the proclamation. Such changes may not take effect until 15 days after the date of publication of the proclamation in the *Federal Register*. Since the Commission has not yet made any recommendations under section 1205, the President, thus far, has had no occasion to act pursuant to this authority.

Section 1207

Section 1207[94] directs the Commission to maintain the HTS and publish the tariff "at appropriate intervals." The Commission must publish in the form of printed copy, but may also publish the HTS in microform or electronic form if, in its judgment, these formats would "serve the public interest and convenience."[95] While directing the Commission to include the current "legal text" of the HTS and the statistical information formulated pursuant to section 484(e) of the Tariff Act of 1930,[96] the Commission may also include "such other matters as the Commission considers to be necessary or appropriate to carry out the purposes enumerated in the Preamble to the Convention."[97] The OTCA also repealed the Commission's authority to publish[98] the TSUS effective January 1, 1989.[99]

Actions Taken in Accordance With Section 1207

In addition to Commission Publication No. 2030, and Supplement No. 1 thereto, which were enacted as the initial (or "baseline") edition of the HTS, the Commission has subsequently published several supplements to the baseline edition of the HTS.[100] Most recently, the Commission published the 1990 edition of the HTS,[101] and Supplement No. 1 thereto.[102] All of these Commission publications are available from the Government Printing Office in printed format and from the National Technical Information Service on magnetic media and microfiche.

Section 1208

Section 1208[103] directs the Bureau of the Census to compile and publish the foreign trade statistics for imports and exports in the format of the HS nomenclature.

Actions Taken in Accordance With Section 1208

The Commission, in conjunction with the Secretaries of Commerce and Treasury, under the authority of section 1208 and section 484(e) of the Tariff Act of 1930,[104] established statistical nomenclature for imports and exports based upon the HTS. The annotated version of the HTS, as of January 1990, includes approximately 14,224 product categories used for the compilation of import statistics. The revised export statistical system, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States (Schedule B)*, also went into effect on January 1, 1989, and includes approximately 8,200 categories.

In response to requests from the importing and exporting community, the statistical nomenclature in the HTS includes all of the product category detail of *Schedule B* and is fully comparable with that system. Consequently, the HTS can be used to complete export declarations as well as import documents.

As the result of a "Memorandum of Understanding" between the United States and Canada, adjustments were made to each country's import-reporting systems to enable each country to use the other's import data to reflect export statistics.[105] This data exchange

[93] 19 U.S.C. 3006.
[94] 19 U.S.C. 3007.
[95] 102 Stat. 1151.
[96] 19 U.S.C. 1484(e).
[97] 102 Stat. 1152.
[98] Section 201 of the 1962 Tariff Act, 76 Stat. 72, 74.
[99] Section 1213(b) of the OTCA, 102 Stat. 1155.
[100] These include Supplement No. 2 (Nov. 1, 1988); Supplement No. 3 (Dec. 16, 1988); and Supplement No. 4 (June 9, 1989).

[101] U.S. International Trade Commission, *Harmonized Tariff Schedule of the United States (1990), Annotated for Statistical Reporting Purposes*, USITC Publication 2232, November 1989.
[102] U.S. International Trade Commission, *Harmonized Tariff Schedule of the United States (1990), Annotated for Statistical Reporting Purposes*, USITC Publication 2232, Supplement No. 1 (June 1, 1990).
[103] 19 U.S.C. 3008.
[104] 19 U.S.C. 1484(e).
[105] Thus, for example, data published by the Bureau of the Census regarding U.S. exports to Canada is based upon the corresponding import data that is collected by Canada and provided to the United States. Previously, such Census data was derived from shipper's export declarations filed by U.S. exporters with the Customs Service at each border crossing. Generally, import declarations are more closely scrutinized by the respective customs administrations for the two countries than are export declarations, at least with respect to cross-border trade.

was implemented beginning January 1990 and has resulted in the publication of more accurate and more complete export data for both countries. In addition, it eliminates the previous requirement for U.S. exporters to prepare over 2 million export declarations each year covering shipments to Canada.

Section 1209

Section 1209[106] confers responsibility for trade policy in relation to the Convention on the USTR. USTR is directed to seek advice from the private sector (including "a functional advisory committee"[107]) and interested Federal agencies before formulating the U.S. position with respect to the Convention or any amendments thereto.

Section 1210

Section 1210[108] provides that, subject to the policy direction of the USTR, the Departments of Treasury and Commerce and the Commission shall have responsibility for formulating U.S. positions on technical and procedural issues relating to the Convention and for representing the United States Government with respect thereto. The conferees on the OTCA were careful to spell out their views with respect to the allocation of responsibilities under these two sections.

> Sections 1209 and 1210 set out the roles of the United States agencies principally responsible for the Harmonized System. These provisions are meant to ensure a broad base of participation in the work relating to the HTS and to the Convention. The USTR will be responsible for overall trade policy coordination with respect to the Convention, with the advice of the Trade Policy Committee. The Customs Service will be responsible for interpreting and applying the HTS, and will continue to take a lead role in the CCC's Harmonized System Committee, particularly with respect to issues regarding United States interpretation and application of the HTS to particular products. The ITC is also expected to play a lead role in formulating United States positions for, and representing the United States in, the CCC's Harmonized System Committee, particularly with regard to assuring that the Convention recognizes the needs of the U.S. business community for a nomenclature that reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices. The Commerce Department's Bureau of the Census will be responsible for ensuring that United States positions with respect to the HTS reflect broader interests in consistency and comparability of statistical reporting.
>
> The conferees intend that the views of the private sector on the Convention be sought systematically through direct contacts with appropriate private sector advisory committees, trade organizations or trade groups, and through product experts in U.S. agencies such as the Department of Agriculture and the Department of Commerce.[109]

Section 1210(c) addresses the availability of CCC publications and directs the Commission to "see to the publication" of the "summary records" of the CCC's Harmonized System Committee and the CCC's *Explanatory Notes, Compendium of Classification Opinions,* and other instruments relating to the Convention. The Commission's obligation to "see to" such publication is limited by the requirement to observe the "applicable copyright laws" for all publications except the HSC summary records.[110] It might be useful to note the conferees' views on the "status" of the CCC's *Explanatory Notes*—

> The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized System. They provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system.
>
> The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on contracting parties to the Convention. Thus, while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.[111]

Actions Taken in Accordance With Sections 1209 and 1210 by USTR

The USTR has set up comprehensive procedures to carry out the mandate of sections 1209 and 1210.[112] These procedures include (1) policy coordination and U.S. Government

[106] 19 U.S.C. 3009.
[107] Although this committee is not identified in the statute or in the Conference Report, section 1209 is understood to refer to the Industry Functional Advisory Committee for Customs Matters.
[108] 19 U.S.C. 3010.
[109] Conference Report, p. 549.
[110] 102 Stat. 1153.
[111] Conference Report, p. 549.
[112] 53 F.R. 45646-45647.

representation; (2) dissemination of information and solicitation of public views and the designation of a secretariat; (3) technical proposals; (4) inquiries regarding U.S. exports; and (5) dispute settlement procedures. Each of these topics will be addressed in turn.

Policy Coordination and U.S. Government Representation

Under section 1209, the USTR is made responsible for coordinating trade policy concerning the Convention. Section 1210 provides that, subject to the policy direction of the USTR, the Departments of Treasury and Commerce and the Commission shall have responsibility for formulating U.S. positions on technical and procedural issues relating to the Convention and for representing the United States Government with respect thereto. USTR observed that the Commission's continuous review authority regarding the HTS at the national level (under section 1205) corresponds with the Customs Cooperation Council's administrative oversight authority regarding the Harmonized System nomenclature at the international level.[113]

Availability of Information and Solicitation of Public Views

The USTR notice stated that "summary records" of past sessions of the HSC will be made available at the National Technical Information Service. HSC documents, including the draft agenda of upcoming sessions, will be available at the Trade Advisory Center of the Department of Commerce. Further, in an effort to receive private sector views on current issues before the HSC, the Commission's Office of Tariff Affairs and Trade Agreements was directed to maintain a list of interested parties. The list is to be referred to when making direct contacts for advice on pending matters. That office will also serve as the secretariat to the three agencies with respect to activities under section 1210 and, in that capacity, will receive inquiries and petitions for consideration by the agencies concerned.

Technical Proposals

USTR stated that section 1210 requires the Commission and the Secretaries of Commerce and of the Treasury to prepare technical proposals to be submitted to the Council in connection with their responsibilities in the area of trade statistics arising under the Convention and under section 484(e) of the Tariff Act of 1930.[114] Among other things, the proposals are intended to assure that the U.S. contribution to the Convention recognizes the needs of the U.S. business community for a trade nomenclature reflecting sound principles of commodity identification, modern production methods, and current trading patterns and practices. Thus, USTR noted that these proposals may relate to issues concerning the interpretation of the nomenclature, or its amendment to reflect new technology or changes in patterns in international trade.

Inquiries Regarding U.S. Exports

The USTR notice states that inquiries relating to the classification of goods under the export classification system *(Schedule B)*, as well as routine inquiries concerning the tariff classification of goods which U.S. producers plan to export to other countries should be addressed to the Commercial Rulings Division of the United States Customs Service. All other inquiries and complaints from interested parties concerning treatment under the international HS, of goods produced in and exported from the United States, are to be considered by the three agencies. These agencies will review each such inquiry or complaint and take such actions or make such recommendations as may be consistent with U.S. export interests. These actions may include the formulation of technical proposals to be submitted to the HSC or the Council, presentation of the U.S. Government's position on the particular technical or procedural matters raised, requests that the HSC provide information or guidance, or steps toward the initiation of dispute settlement under article 10 of the Convention.

Dispute Settlement Procedures

USTR stated that the three agencies are also directed to establish procedures to ensure that the provisions in article 10 of the Convention are utilized to promote U.S. export interests. As discussed earlier, article 10 provides that any dispute between Contracting Parties concerning the interpretation or application of the Convention is to be settled by negotiations between the Contracting Parties to the extent possible. If this cannot be accomplished, the parties (that is, the governments concerned) are to refer the dispute to the HSC for its consideration and recommendations. The HSC, in turn, is to refer irreconcilable disputes to the Council for its recommendations. Individual parties have no standing to initiate dispute settlement under the Convention. Thus, it is necessary for individuals or firms seeking to raise disputes with another Contracting Party to file inquiries or complaints with the United States Government and to present, or assist in the collection of, any information relating to the dispute that may be required. If the three

[113] Ibid.
[114] 19 U.S.C. 1484(e).

agencies determine that action is warranted, they will recommend to the USTR the initiation of bilateral negotiations with the other Contracting Party. If unsuccessful, or if resort to the other Contracting Party is deemed not to be appropriate, the U.S. delegate will invoke the dispute settlement procedures in the HSC and the Council.

Actions Taken in Accordance With Section 1210 by the Commission

In July 1989, the Commission announced its intention to obtain views of interested parties and agencies concerning possible modifications to the international nomenclature for chapters 84, 85, and 90 of the Harmonized System.[115] These proposed amendments had been announced by the HSC at a previous session and Contracting Parties were required to submit comments within a limited period of time. The Commission noted that it was interested, in particular, in obtaining the views of interested parties concerning possible nomenclature amendments covering robotic devices, telecommunications products, and other goods falling within these three chapters. The comments were solicited pursuant to the Commission's responsibilities under section 1210.

More recently, the Commission has given notice of "Possible Modifications to the International Harmonized System Nomenclature" pursuant to section 1210.[116] The Commission announced the schedule of the Review Subcommittee of the Harmonized System Committee which will consider, and possibly revise, the international nomenclature of the HS. The Commission solicited the views of interested parties for use in developing U.S. proposals for changes in that nomenclature system. The comments sought by the Commission are to be limited to statements of problems and specific proposals for changes in the Harmonized System, including the General Rules of Interpretation, the international chapter notes and the nomenclature through and including the six-digit level. The Commission stated that the comments should be prepared with a view toward insuring that the HS keeps abreast of changes in technology and in patterns of international trade. The Commission also noted that no proposals for changes in the *Explanatory Notes* (which will be taken up by the HSC separately) or in national-level provisions (including U.S. eight-digit subheadings, statistical reporting numbers, and rates of duty) will be considered by the Commission during this review process.

The Commission announced that the Review Subcommittee will meet semiannually to examine HS chapters in the order previously described.[117] More than 25 submissions have been received from interested parties in the private sector suggesting changes to the international HS. In addition, numerous comments and suggestions have been received from interested Federal agencies. U.S. proposals to the Review Subcommittee are being formulated to reflect this input. The Review Subcommittee will make recommendations to the HSC which, in turn, will submit the decisions to the Council for final approval in mid-1993. Those modifications adopted by the Council would enter into force on January 1, 1996.

Section 1211

Section 1211[118] addresses a variety of issues raised by the transition from the TSUS to the HTS. The first of these concerns the effect of enactment of the HTS upon existing executive actions, such as proclamations, regulations, rulings, notices, findings, determinations, orders, recommendations, and other written actions which contained references to TSUS classifications. Section 1211(a) directs the appropriate officials to take whatever action is necessary to conform those actions in effect on December 31, 1988, with the new HTS classification system "to the fullest extent practicable."[119] However, the failure to conform these documents shall not affect to any extent "the validity or effect" of the actions.[120] The question of the weight to be given to prior administrative and judicial decisions under the TSUS, when interpreting the HTS, was also addressed by the conferees on the OTCA—

> In light of the significant number and nature of changes in nomenclature from the TSUS to the HTS, decisions by the Customs Service and the courts interpreting nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTS. Nevertheless, on a case-by-case basis prior decisions should be considered instructive in interpreting the HTS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS.[121]

Section 1211(b) assures that certain statutory requirements to obtain advice from the Commission, other Federal agencies, and the public, under the Generalized System of Preferences (GSP)[122] shall be treated as having been satisfied by the administrative process

[115] 54 F.R. 30284.
[116] 55 F.R. 1736.

[117] See the previous outline of the Review Subcommittee schedule in the section dealing with Activities Under the Convention.
[118] 19 U.S.C. 3011.
[119] 102 Stat. 1153.
[120] Ibid.
[121] Conference Report, pp. 549, 550.
[122] 19 U.S.C. 2461 *et seq.*

initiated by the USTR on December 8, 1986.[123] This process reviewed the proposed conversion of the GSP from the TSUS to the HTS and was deemed the equivalent of the statutory process required by title V of the Trade Act of 1974.[124] The conferees on the OTCA also noted their intention that "the term 'article' in sections 504(c) and 504(d) of the Trade Act of 1974 (19 U.S.C. 2464(c) and 2464(d)) in general refer to the eight-digit tariff item [sic] numbers of the HTS. Exceptions may be made to this rule if necessary to ensure that an article is a coherent product category."[125] The courts had earlier ruled that an "article" for GSP purposes meant an individual product rather than an entire "tariff item."[126]

Section 1211(c) grants authority to the President to adjust quota coverage with respect to certain agricultural products in the new HTS. It authorizes the President to proclaim changes in subchapter IV of chapter 99 of the HTS and in additional U.S. Note 2 to chapter 17 of the HTS to conform them to part 3 of the Appendix to the TSUS, and to headnote 2 ("sugar headnote") to subpart A of part 10 of schedule 1, TSUS, respectively. Such changes may be proclaimed if the President determines that conversion from the TSUS to the HTS has resulted in (1) goods previously covered by section 22[127] import restrictions or by the sugar headnote being excluded from such restrictions; or (2) goods previously excluded from section 22 import restrictions or not previously covered by the sugar headnote being included within such restrictions. Section 1211(c) further provides that this authority may not be exercised after June 30, 1990.

Section 1211(d) directs the Commission to initiate an investigation under section 332 of the Tariff Act of 1930[128] at the earliest practicable date after January 1, 1989, of certain "final judicial decisions." These decisions must have sustained, in whole or in part, a protest filed under section 514 of the Tariff Act 1930,[129] or a petition by an American manufacturer, producer, or wholesaler under section 516 of such Act,[130] covering "articles" entered before January 1, 1989. Section 1211(d) also limits the scope of the investigation to such "final judicial decisions" which (1) are "published" during the 2-year period beginning on February 1, 1988; and (2) would have affected tariff treatment under the HTS if the decisions had been published during the period of the conversion of the TSUS into the format of the HS.

Section 1211(d) directs the Commission to recommend those changes to the HTS that the Commission would have recommended if such final judicial decisions had been made before the conversion of the TSUS into the format of the HS. Section 1211(d) further directs the Commission to report the results of this investigation to the President, the Committee on Ways and Means, and the Committee on Finance no later than September 1, 1990. Thereafter, the President is directed to review all changes recommended by the Commission and, as soon as practicable, to proclaim any such changes that the President determines are "necessary or appropriate" to conform the HTS to the final judicial decisions.[131] The President's proclamation is to be effective retroactively for entries made after January 1, 1989, as well as for entries made prospectively.

Actions Taken in Accordance With Section 1211

On March 24, 1989, the Bureau of Alcohol, Tobacco, and Firearms (BATF) announced that it was amending certain regulations[132] "to conform, to the fullest extent practicable, with the tariff classification system of the HTS all existing regulations which contain references to the tariff classification of articles under the old [TSUS]."[133] This action was undertaken, according to the BATF, pursuant to section 1211(a) of the OTCA.

On December 20, 1989, the U.S. Department of Agriculture gave notice of the procedures to be used by the Department in developing recommendations to the President that he proclaim changes to the HTS pursuant to section 1211(c).[134] The Department advised that the review of requests for changes would commence on January 22, 1990, and that the President must exercise his authority under this section by June 30, 1990.

On April 20, 1989, the Commission gave notice[135] of the institution of an investigation[136] of "certain final judicial decisions" pursuant to section 1211(d). The Commission announced that it would make its recommendations, with respect to potential modifications to the HTS under this authority, to the President and to the Congress, as directed by section 1211(d), by September 1, 1990. On May 18, 1990, the

[123] 51 F.R. 44163.
[124] 19 U.S.C. 2461 *et seq.*
[125] Conference Report, pp. 548, 549. And see, Congress, S. Report 93-1298, 93rd Cong., 2d Sess. p. 225 (1974), which contains almost identical language.
[126] *West Bend Co. v. U.S.*, 6 CIT 218, 576 F. Supp. 630 (1983).
[127] 7 U.S.C. 624.
[128] 19 U.S.C. 1332.
[129] 19 U.S.C. 1514.
[130] 19 U.S.C. 1516.
[131] 102 Stat. 1155.
[132] 27 CFR Pt. 275.
[133] 54 F.R. 12189.
[134] 54 F.R. 53344.
[135] 54 F.R. 16011.
[136] U.S. International Trade Commission, *Certain Final Judicial Decisions Relating to Tariff Treatment* (Investigation No. 332-273).

Commission published a notice,[137] in connection with this investigation, which advised of various proposals to modify the HTS and solicited comments on such proposals from other Federal agencies and the public. The notice stated that interested parties have suggested changes to the HTS based upon "final judicial decisions" that they believe are within the scope of this investigation.[138] These submissions encompass two product categories: (1) certain power supplies for ADP machines; and (2) certain chromatography and electrophoresis equipment.

Section 1212 and Section 1214

Section 1212[139] must be read in conjunction with section 1214.[140] These two sections are purely "housekeeping" measures. Section 1214 contains a lengthy list of conforming amendments (that substitute current HTS references for references to the repealed TSUS) to codified titles,[141] and to various enumerated Acts, such as the Tobacco Adjustment Act of 1983,[142] the Act Relating to the Reforestation Trust Fund,[143] and the Agricultural Act of 1949.[144] To ensure that other references to the TSUS that may have been missed in the compilation under section 1214 were accounted for, section 1212 provides a general cross reference from the TSUS to the HTS, unless the context clearly demonstrates that substitution of the HTS reference would effect a substantive change in the law.

Section 1213

Section 1213[145] makes technical amendments to section 604 of the Trade Act of 1974,[146] the Tariff Classification Act of 1962,[147] and section 315(d) of the Tariff Act of 1930.[148]

Section 1215

Section 1215[149] amends section 128(b) of the Trade Act of 1974[150] to provide the President with additional negotiating authority for certain high technology products described as digital processing units.[151] The conferees on the OTCA noted that "section 1215 and the relevant provisions of the HTS suspending the duty on certain automatic data processing equipment are intended to provide a pragmatic approach to an ongoing dispute concerning the proper classification of such equipment in the TSUS. Neither section 1215 nor the duty suspension provisions are intended in any way to express a Congressional view on the ongoing TSUS classification dispute."[152]

Section 1216

Section 1216[153] directs the Commission, in consultation with other appropriate Federal agencies, to report on the operation of subtitle B during 1989 by June 30, 1990.

Actions Taken in Accordance With Section 1216

The Commission, on April 20, 1989, gave notice[154] of the initiation of this investigation (332-274) to report on the operation of subtitle B during 1989. The United States Trade Representative, the Commissioner of Customs, and the Director of the Bureau of the Census submitted written comments concerning the operation of subtitle B pursuant to section 1216.[155] In addition, six submissions were received from interested parties in the private sector.

Section 1217

Section 1217[156] states the effective dates for subtitle B. Sections 1204(c), 1211, and 1212 take effect on January 1, 1989. The amendments made by sections 1204(a), 1213 and 1214 take effect and apply with respect to "articles" entered on and after January 1, 1989. The other provisions of subtitle B (e.g., approval of U.S. accession to the Convention) take effect on August 23, 1988.

Questions Concerning the Scope of the New Tariff

Subtitle B enacts a new U.S. tariff to replace the TSUS. However, it is not at all clear that the scope of the HTS is coextensive with the scope of the repealed TSUS. In most instances these changes in coverage are directly attributable to the implementation of the international HS nomenclature in the new tariff. For example, the term "goods" under the HTS is generally broader in coverage than its counterpart ("articles") under the former TSUS.[157] The principal differences between the TSUS and the HTS, in this respect, are as follows—

[137] 55 F.R. 20666.
[138] To date, at least 12 submissions have been received in connection with this investigation.
[139] 19 U.S.C. 3012.
[140] 102 Stat. 1155-1163.
[141] Section 1214(a), 102 Stat. 1155-1156.
[142] Amended by section 1214(b), 102 Stat. 1156.
[143] Amended by section 1214(r), 102 Stat. 1160.
[144] Amended by section 1214(w), 102 Stat. 1163.
[145] 102 Stat. 1155.
[146] 19 U.S.C. 2483.
[147] 76 Stat. 72.
[148] 19 U.S.C. 1315(d).
[149] 102 Stat. 1163.
[150] 19 U.S.C. 2138(b).
[151] These products are also referred to as "mother boards" or "main boards" for automatic data processing machines.
[152] Conference Report, p. 550.
[153] Section 1216 is classified to 19 U.S.C. 3005 note. 102 Stat. 1163.
[154] 54 F.R. 16010.
[155] See app. C, app. D, and app. E, respectively.
[156] Section 1217 is classified to 19 U.S.C. 3001 note. 102 Stat. 1163.
[157] Compare general headnotes 1 and 5, TSUS, with General Notes 1 and 4, HTS.

1. Currency, electricity, securities, and vessels (other than "yachts or pleasure boats") were *not* "articles subject to the provisions of [the TSUS]." (General headnote 5, TSUS.) By contrast, all of the foregoing *are* "goods subject to the provisions of the [HTS]." (General Notes 1 and 4, HTS.)
2. "Telecommunications transmissions" are specifically excluded from coverage as "goods subject to the provisions of the [HTS]" (General Note 4(b), HTS), while the former TSUS did not explicitly address this subject.

The Customs Service has published guidelines on the proper interpretation and application of General Rule of Interpretation 1 of the HTS.[158] In these instructions, Customs sets forth its position that the international HS nomenclature "is a detailed goods nomenclature in which all goods are classified. In this context the word 'goods' is used in its broadest sense to include all merchandise; *the word should be thought of as opposed to services.*"[159]

The conferees on the OTCA were sufficiently concerned with such "definitional" problems[160] that they inserted the following statement—

> Electricity and electrical energy were considered to be "intangibles" under the existing TSUS and therefor not subject to the entry requirements applicable to imported articles. Although the HTS has a specific heading for "electrical energy," additional U.S. legal note 8(b) in chapter 27 of the HTS provides that electrical energy shall continue to be exempt from statutory entry requirements, but instead "shall be entered on a periodic basis in accordance with regulations to be prescribed by the Secretary of the Treasury." This provision will facilitate the collection of import statistics on electrical energy without otherwise affecting its legal status under U.S. trade laws.[161]

As the conferees noted in their statement, questions concerning the scope of the HTS may have significance beyond interpretation of the tariff laws, e.g., the "old" countervailing duty (CVD) law.[162] Recently, the International Trade Administration (ITA) was required to determine whether a petitioner's allegations "that CASE software . . . imported packaged ready for sale; [CASE software imported] as a master disk for duplication purposes within the United States; or [CASE software imported] via telecommunications transmission" was "merchandise" subject to the CVD law.[163] The ITA stated that it "had to examine the complex issue of whether the software product described in the petition constitutes merchandise subject to the [CVD] Act, i.e., whether the software . . . is a 'good' or a 'service'."[164] The ITA stated that the CVD "law provides no direct guidance on this question."[165] Subsequently, the ITA stated that "we believe that it is reasonable to conclude that CASE software *on a carrier medium* may be treated as merchandise for purposes of section 303 of the [CVD] Act . . . based on its treatment under the HTS."[166] The ITA relied, to some extent, upon its interpretation of the interrelationship between "general headnote 1 to the tariff schedules"[167] and "General Note 5" of the HTS.[168] The ITA also reasoned that—

> The transference of CASE software onto a carrier medium gives the subject merchandise undeniable characteristics of merchandise. It is similar to such items as books, newspapers, and magazines. Although most of the value of these items resides in the intangible component they contain, they are treated by Customs as merchandise. *See* Chapter 49 of the HTS. The classification of these items is not based on the intellectual property contained on them but according to their physical manifestation. Similarly, it is reasonable for [ITA] to consider software on a carrier medium as merchandise.[169]

The respondents argued extensively that "software" was not "merchandise" for purposes of the CVD law citing the exemption provided by "General Note 5(c),"[170] and stating (1) that "software is not a good under the U.S. tariff schedules;" and (2) that "the embodiment of software on media does not 'create merchandise'."[171] This was not a novel position, at least in the context of interpretation of the

[158] 23 *Customs Bulletin*, No. 36, p. 13, (O.C.O.D. 89-1), Sept. 6, 1989.
[159] Ibid. Emphasis added.
[160] "Without cogent reasons to construe the meaning of 'articles' differently at different places in the customs laws, we must conclude that Congress intended the word to be used in the same sense throughout". *Armco Steel Corp. v. Stans*, 431 F.2d 779, 790 (2d Cir., 1970).
[161] Conference Report, p. 550.
[162] Section 303 of the Tariff Act of 1930, 19 U.S.C. 1303.
[163] ITA notice of initiation of CVD investigation on certain CASE software products from Singapore, 54 F.R. 37013, 37014 (Sept. 6, 1989). See also ITA preliminary affirmative CVD determination, 55 F.R. 1596 (Jan. 17, 1990); and ITA final negative CVD determination, 55 F.R. 12248 (Apr. 2, 1990).
[164] 54 F.R. 37013. This dichotomy parallels the position taken by the Customs Service in O.C.O.D. 89-1, above.
[165] 54 F.R. 37013.
[166] 55 F.R. 1597 (emphasis added).
[167] 55 F.R. 1597. The correct reference is to General Note 1, HTS.
[168] 55 F.R. 1598. The correct reference is to General Note 4, HTS.
[169] 55 F.R. 1598.
[170] 55 F.R. 12250. The correct reference is to General Note 4(c), HTS, which exempts "records, diagrams and other data with regard to any business, engineering or exploration operation whether on paper, cards, photographs, blueprints, tapes or other media" from coverage under the HTS.
[171] 55 F.R. 12250.

tariff laws. The Customs Service had previously noted the receipt of "comments addressing the classification of *intangibles* [172] such as software and other intellectual properties" in a Treasury decision implementing revised rules for valuation of merchandise under the TSUS in 1981.[173] In 1985, Customs reaffirmed their previous position that they had been "and will continue to value imported carrier media bearing data or instructions for use in data processing equipment *exclusive of a value element* for the data, instructions, or information component contained on such software."[174]

The respondents also argued that "whether or not it is on a carrier medium, [the CASE software product] is duty-free and must be provided an injury test."[175] The ITA, in its final determination, reiterated its previous position that "CASE software on a carrier medium is dutiable... [and thus]...no injury test is required."[176],[177] The ITA cited HTS subheadings 8524.21.30, 8524.22.20, 8524.23.20, and 8524.90.40 as the dutiable provisions which encompassed the subject of the investigation.[178],[179] However, the ITA held that no benefits which constitute bounties or grants within the meaning of the CVD law had been provided to the exporters and terminated the investigation.[180]

Comments by Other Federal Agencies

The Commission received three comments from other Federal agencies in connection with this investigation. The agencies are the United States Trade Representative, the United States Customs Service, and the Bureau of the Census. Their comments generally reflect the view that the implementation of the Harmonized System has been very beneficial for U.S. trade interests overall and has had a positive impact on the operations of each agency. Their comments are discussed in more detail below.

[172] "Intangibles" under the TSUS were "articles" which were outside the scope of that tariff. General headnote 5, TSUS.

[173] 15 *Customs Bulletin* p. 13, p. 21 (T.D. 81-7, 1981) (emphasis added). 46 F.R. 2597 (Jan. 12, 1981).

[174] 19 *Customs Bulletin* p. 299 (T.D. 85-124, 1985) (emphasis added), 50 F.R. 30558 (July 26, 1985).

[175] 55 F.R. 12251.

[176] Ibid.

[177] Under the "old" CVD law, an injury determination is not required with respect to *dutiable* merchandise. 19 U.S.C. 1303(b)(1).

[178] 55 F.R. 12248, 12249.

[179] These provisions cover "recorded media . . . on which phenomena other than sound or image have been recorded," e.g., magnetic tapes, disc packs, diskettes and cassettes for various kinds of office machines, primarily computers. However, "data-bearing paper tapes or punch cards" which have been made by perforation are classifiable in chapter 48. *Explanatory Notes*, p. 1373.

[180] 55 F.R. 12248.

United States Trade Representative[181]

The USTR characterizes implementation of the HS as a "great success." She states that the HS provides, for the first time, an ability to target precisely the areas where market access is most desirable based on the comparability of U.S. trade and tariff data with that submitted by our trading partners. The ability of the private sector to advise trade negotiators on matters of interest has also been enhanced by their experience with the HS.

The USTR has received relatively few private sector complaints with respect to the HS conversion and she concludes that "overall, the conversion was balanced and neutral." This is attributed to the extensive work done by all agencies in connection with the conversion and to the numerous opportunities for participation and input from the private sector. This opportunity for input resulted in "very few concerns" having been expressed by those industries which participated fully in the process.

Our trading partners have similarly had few complaints with respect to the HTS. Those that have been raised generally involve products that were not traded during 1981–83, which was the base period used in the article XXVIII negotiations to conform our *Schedule XX (U.S.)* to the new HS-based U.S. tariff. Since there was no trade during the base period, there was no expectation by either the United States or our trading partners with respect to classification practice under the international HS. While the USTR concludes that, overall, "the conversion appears to be balanced both globally and bilaterally," she notes that the Uruguay Round provides an opportunity to address any remaining problems.

United States Customs Service[182]

The Commissioner of the Customs Service reports that the operation of the Harmonized System since January 1, 1989, "has produced many desirable results." She states that Customs has predicated the introduction of many innovations that benefit the importing community and facilitate the movement of cargo on the implementation of the HS in our national tariff.

In particular, the Commissioner notes that Customs has introduced an expedited procedure which permits importers to obtain binding classification rulings at the district where the importer makes entry or where it does business. This is believed to be more convenient than requiring all ruling requests to be handled either by the National Import Specialists in New York or

[181] The USTR comments are set forth in app. C, "Letter from the United States Trade Representative."

[182] The Customs Service comments are set forth in app. D, "Letter from the United States Customs Service."

by Customs attorneys at the Washington, DC, headquarters. She reports that approximately 13,000 such rulings have been issued within 30 days of the request and that approximately 2,000 more "complex or novel" rulings have been issued within 120 days of the request.

Customs has also implemented an administrative procedure to correct inconsistencies in classification (or other) decisions obtained at different ports (or from Headquarters). Customs will also delay the effect of certain decisions when an importer has "detrimentally relied on" the earlier variant rulings or prior customs treatment in cases involving substantially identical transactions.

The Commissioner states that Customs has developed a "ruling module" which is to be made part of their Automated Commercial System (ACS). It became operational this year and contains 1,500 rulings. Customs expects to make this classification information available to the importing public and the international community in an automated format in the near future. The wider dissemination of classification rulings is expected to produce greater uniformity in classification decisions under the national HTS. She also notes the ambitious effort by the CCC to develop an "automated commodity data base which would serve as an index" at the international (six-digit) level of the HS. This development, in conjunction with the ACS ruling module, "will be of great assistance to the business community and will produce a greater certainty in the tariff classification" process under the international HS.

The Commissioner reported on the introduction of a "pre-classification program" that permits inspection and classification of merchandise on the importer's premises. She notes that approximately 200 importers have received 532 pre-entry classification decisions under this program, and that an additional 39 requests are pending. In addition, she notes efforts at increased training of Customs personnel and the public to enhance implementation of the new tariff. Participation by Customs in the HSC has lead to decisions by that body to clarify the legal text and *Explanatory Notes* to the HS. The Review Subcommittee of the HSC is currently bringing the HS "up to date" during its review of chapters 84, 85, and 90. The Commissioner cites "the existence of a common tariff language" as facilitating discussions with our trading partners on tariff classification issues.

Finally, the Commissioner reported that implementation of the HS-based tariff has alleviated the administrative burdens imposed on Customs by the TSUS classification concepts of "ornamentation on textile articles"[183] and the chief value rule.[184] Elimination of these rules has simplified administration of the tariff classification system. In addition, the existence of the HS *Explanatory Notes* "has proven to be very helpful."

Bureau of the Census[185]

The Director of the Bureau of the Census reports that implementation of the HS-based tariff "allows greater flexibility and imagination in developing new techniques for collecting and compiling U.S. foreign trade data." The Census Bureau has implemented the program to exchange cross-border trade data with Canada in 1990. This program has provided a "major improvement in data accuracy" and would only have been practical when both countries had implemented the HS nomenclature in their national tariffs.

[183] The "ornamentation" rules were embodied in headnote 3, schedule 3, TSUS. *Endicott Johnson Corp. v. U.S.*, 82 Cust. Ct. 49, 470 F. Supp. 845 (C.D. 4787, 1979) is often cited for the proposition that "ornamentation" of textiles or apparel must have a primary purpose of adorning, embellishing, decorating, or enhancing the appearance of the merchandise on which that feature is located. For the most part, there was a great disparity in the duty rates between textile articles which were classified as "ornamented" and those textile articles which were classified as non-ornamented (and, thus, subject to much lower rates of duty). Consequently, interpretation of the "ornamentation" concept was a matter of considerable significance for both importers and the Customs Service. This concept has been the subject of extensive administrative and judicial interpretation. The appellate decision in *Endicott Johnson, supra*, is generally regarded as the leading judicial pronouncement on the subject. See *U.S. v. Endicott Johnson Corp.*, 67 CCPA 47, 617 F.2d 278 (C.A.D. 1242, 1980).

[184] The "chief value" principle of tariff classification was embodied in general headnotes 9(f)(i) and 10(f), TSUS. This concept controlled the classification of imported merchandise which was composed of more than one constituent material. For example, if an imported shirt was composed of a blend of cotton and man-made fibers, the "chief value" rule required classification in the category which covered shirts of man-made fibers, if the man-made fiber component exceeded "in value each other single component material." Thus classification (and the resulting duty rate) was dependent upon a determination of the *relative value*, at the time of importation, of each component material in the imported article. Since the relative values of component materials could (and did) shift over time, the applicable TSUS classification could change between the date of manufacture and the date of importation. And, similarly, identical merchandise imported at different times could be subject to different rates of duty if the relative values of the component materials had changed sufficiently. Because this situation often led to unpredictable classification results, the new HTS substituted the "chief weight" principle, in lieu of "chief value," in those product areas in which the issue had proved most troublesome (i.e., textiles and metals). U.S. International Trade Commission, *Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1400, June 1983, pp. 23-24.

[185] The Bureau of the Census comments are set forth in app. E, "Letter from the Bureau of the Census."

The Director states that the international HS nomenclature has enabled them to reconcile U.S. foreign trade data with that of our major trading partners with much less difficulty and fewer time-consuming procedures than the previous system (the TSUS) required. She believes that implementation of the new tariff will dictate "more accurate international trade statistics in the long term." And, since the CCC will act as "arbitrator" among countries with differing interpretations of the classification system, this is likely to promote greater uniformity of commodity trade data internationally.

Comments by the Private Sector

The Commission received six submissions from the private sector in connection with this investigation, as follows: American Cordage and Netting Manufacturers, American Dairy Products Institute, American Iron Ore Association, Buffalo Industries, Inc., Nobelpharma USA, Inc., and the Spring Manufacturers Institute. A summary of each submission is set forth below, followed by an analysis and discussion of the submission by the staff.

American Cordage and Netting Manufacturers

The American Cordage and Netting Manufacturers (ACNM) submitted comments concerning aspects of the HTS of concern to its membership.[186] ACNM describes itself as the trade association representing members who manufacture all types of cordage (rope, twine, and cable) of manmade fibers, including fish netting. They seek to delete the existing separate provisions for twine, cordage, ropes and cables, of wide nonfibrillated polyethylene or polypropylene strip (HTS subheadings 5607.41.10 and 5607.49.10).

ACNM advances several points in support of its position. It argues that there is a "major error" in the HTS that allows importers to avoid higher rates of duty (applicable to other types of cordage) and quotas that would make these products subject to restraint under the textile import program if the changes they seek were implemented.[187] Basically, ACNM's position is that no cordage "of wide *nonfibrillated* strip can exist."[188] Consequently, it argues that the HTS subheadings referred to above are inappropriate or superfluous because no product exists that can properly be described by these subheadings.

ACNM states that all cordage results from a process which creates a longitudinal alignment of the molecules within the product; that these aligned chains of molecules have strong end-to-end bonding but weak transverse, or chain-to-chain bonding; and that the weak chain-to-chain bonding splits naturally, causing fibrils. It is this splitting that is termed "fibrillation" and which imparts desired properties to the product making it useful as cordage. ACNM further argues that a product described as "cordage" that is not fibrillated is not "cordage" (i.e., does not have the properties necessary to be considered "cordage") and, therefore, "wide *nonfibrillated* cordage" does not exist. Since such products cannot exist, the subheadings in question should be eliminated.

ACNM also believes that the two subheadings were created by an "inadvertence" during the conversion from the TSUS to the HTS.[189] It cites the "essential character" classification rule in the HTS to argue that all products which they view as cordage should be classified as "cordage" and, as a result, be subject to the same (i.e., higher) rates of duty and to quantitative restraints under the textile import program. Alternatively, ACNM advances the proposition that if these two subheadings are retained "for whatever reason," the rates and quota treatment applicable to other cordage should be made applicable to these two subheadings as well.[190]

In support of its position, ACNM relies upon a 1985 decision by the Treasury Department.[191] It quotes that portion of the ruling which held that certain polypropylene rope and twine made of fibrillated film or strips should be classified as cordage of manmade fibers and subject to "textile" rates of duty and quota treatment rather than treatment as "articles of plastics, not specially provided for." It also states that the present system of classification causes substantial losses in customs revenue since, if its proposal were adopted, the same quantity[192] of imports would be subject to duty at higher rates. ACNM estimates "revenue losses" during the first 11 months of 1989 at between $130,278 and $1,081,626.[193]

Staff Analysis and Discussion

The argument producers make is that "wide *nonfibrillated* strip" cannot be made (i.e., that it does not exist) and that the HTS subheadings are therefore irrelevant. However, there is considerable evidence that the Customs Service explicitly recognizes the existence of these products.

[186] The ACNM comments are set forth in app. F, "Submission by the American Cordage and Netting Manufacturers."
[187] App. F, p. F-4.
[188] App. F, p. F-5, emphasis added.
[189] App. F, p. F-8.
[190] App. F, p. F-10.
[191] 19 *Customs Bulletin* 431 (T.D. 85-183, 1985).
[192] The statement with respect to alleged revenue losses does not appear to take into account the effect that imposition of textile quotas would have on the present level of imports if the ACNM proposals were implemented.
[193] App. F, p. F-13.

Treasury Decision 85-183 was published by the Customs Service, pursuant to section 516 of the Tariff Act of 1930,[194] in response to a petition filed by the Sunshine Cordage Corporation, an American manufacturer of polypropylene rope. The Customs Service ruled on several classification issues raised by Sunshine Cordage. In addition to the holding quoted by ACNM in its submission, Customs also held that the "petition is denied to the extent that we find the classification of polypropylene cordage made of *nonfibrillated* film or strips over one inch wide, under the provision for articles of plastics, n.s.p.f., in item 774.55, TSUS, is correct and will be continued."[195] The Customs Service also continued its practice of classifying "twine made from a single strand of fibrillated polypropylene material, which before fibrillation was one inch or less in width, as cordage."[196] Customs noted that its "decision is limited to the described rope and twine and no distinctions will be made between products made by different fibrillation processes or those having different degrees of strand coarseness."[197] Finally, Customs advised the petitioner that, if it was not satisfied by the instant ruling, Sunshine Cordage could "further argue [its] position on the classification of *nonfibrillated* rope by filing a notice of intention to contest this decision as provided for in . . . 19 CFR 175.23."[198] Customs also stated that the "rope for which classification will not be changed is made from twisted plastic *nonfibrillated* film or strips over one inch wide."[199] This decision was reaffirmed by the Area Director, New York Seaport, United States Customs Service, in a ruling dated January 14, 1986, that, again, explicitly recognized the existence of "ropes . . . made from twisted, *nonfibrillated* strips of polypropylene plastic that measure over one inch in width."[200]

ACNM argues that creation of these subheadings in the HTS was "inadvertent." The record does not support this assertion. A letter from Commission staff to the Assistant Commissioner of Customs in March 1986 raised the issue of the appropriate treatment in the HTS for cordage "described as *non-fibrillated* strip . . . [which evidenced] a fibrillous nature."[201] In response, the Customs official reaffirmed the previous position explicitly classifying "nonfibrillated" cordage over one inch in width as "articles of plastics and not of textile fibers."[202] The official also stated that Customs "would not take into account an orientation for fibrillation or an otherwise fibrous character if the strips remain not fibrillated."[203] He advised Commission staff that the contemplated treatment of this cordage in the proposed HTS "will accurately represent our present tariff treatment [under the TSUS]."[204] However, the official also offered his opinion that the proposed provisions would "perpetuate otherwise illogical disparate tariff treatment . . . which make distinctions that have become artificial and obsolete against the background of present cordage manufacturing methods. These distinctions invite duty-rate circumvention and create loopholes . . . Customs administrative interests would be best served if it were possible to make no distinctions between cordage based on *nonfibrillated* strip or fibrillated strip composition, or between cordage based on *nonfibrillated* strip width, with averaging or some other adjustment for a single duty rate."[205]

It is clear from the foregoing that the existence of a "nonfibrillated" cordage product was clearly recognized by the agencies most directly concerned with the development of the HTS and that the creation of these subheadings was not "inadvertent." Concern expressed by the importers of these "nonfibrillated" products, together with the President's guidelines for the tariff conversion,[206] prompted the development of additional U.S. note 1 to chapter 56 and subheadings 5607.41.10 and 5607.49.10 in order to maintain *rate* neutrality in the HTS.

However, resolution of this tariff classification issue in the conversion to the HTS did not necessarily have any implications with respect to quota coverage under the textile import program. Quota treatment (or "quota neutrality") under the textile import program is not addressed in the President's guidelines for the tariff conversion.[207] The statutory authority to impose restraints under the textile import program generally derives from section 204 of the Agricultural Act of 1956, as amended,[208],[209] and not from title I of the Tariff

[194] 19 U.S.C. 1516.
[195] 19 *Customs Bulletin* 431, 437 (1985), emphasis added.
[196] Ibid.
[197] Ibid.
[198] Ibid. Emphasis added.
[199] 19 *Customs Bulletin* 431, 433 (1985), emphasis added.
[200] Area Director, New York Seaport, United States Customs Service, Letter Ruling, Jan. 14, 1986, File No. 816572, emphasis added.
[201] Letter from Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission to Assistant Commissioner (Regulations and Rulings), United States Customs Service, Mar. 4, 1986, emphasis added.
[202] Letter from Director, Office of Regulations and Rulings, United States Customs Service, to Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Apr. 2, 1986, Customs Service Headquarters File No. 077893.
[203] Ibid.
[204] Ibid.
[205] Ibid. Emphasis added.
[206] U.S. International Trade Commission, *Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1400, June 1983, pp. 1, 30-33.
[207] Ibid.
[208] 7 U.S.C. 1854.
[209] This authority has been the subject of extensive litigation. E.g., *Mast Industries v. Regan*, 8 CIT 214, 596 F. Supp. 1567 (1984); *A.A.E.I. v. U.S.*, 7 CIT 79, 583 F. Supp. 591 (1984); *affirmed A.A.E.I. v. U.S.*, 751 F.2d 1239 (Fed. Cir. 1985).

Act of 1930, as amended (i.e., the HTS),[210] nor from any other section of subtitle B. Similarly, the "textile category" codes, which are placed in the annotated version of the HTS pursuant to section 484(e) of the Tariff Act of 1930[211] for ease of reference and as "a convenient cross-reference,"[212] do not provide any additional authority to impose restraints under the textile import program.[213]

Finally, it is worth noting that imports during 1989 in the two subheadings covering twine, cordage, ropes and cables, of wide nonfibrillated polyethylene or polypropylene strip, were valued at $5.0 million. Imports in the other four subheadings for polyethylene or polypropylene cordage products totaled $10.6 million.

American Dairy Products Institute

The American Dairy Products Institute (ADPI) submitted comments concerning aspects of the HTS of concern to its membership.[214] ADPI describes itself as the trade association of the leading manufacturers of processed dairy products including nonfat dry milk, dry whole milk, whey and whey products, evaporated milk, and other processed dairy ingredients. Its members reportedly account for 81 percent of domestic production of these products. In addition, its membership includes companies that supply and service the dairy industry, as well as companies who utilize these dairy products.

ADPI, in its submission, argues that the current structure of the HTS "provides substantial loopholes for quota avoidance."[215] ADPI describes the products of concern to its members as "chocolate block," which it asserts is classified in subheading 1806.20.20, and "other confectionery chocolate," which is said to fall under subheadings 1806.20.40 and 1806.32.20. ADPI states that "essential character" is the principal basis for determining classification under the HTS in contrast with the "chief value" or "end use"[216] tests employed under the TSUS.

In support of its assertions of "product shifting" and "quota avoidance," ADPI reports that imports of chocolate block increased at an annual rate of 16 percent in 1989 under the HTS. It also reports that imports of this product increased from 3.8 million pounds in 1978 to 67.4 million pounds in 1988 under the TSUS. ADPI claims that the increased imports were chiefly in the "non-butter-fat/milk quota" category. ADPI also claims that the source of these quota-evading products has shifted from the EC to Canada (due to imposition of a "non-section 22 sugar quota"[217] on EC exports). ADPI also reports that shipments of non-butter-fat-containing chocolate (i.e., "other confectionery chocolate") increased between 1978 and 1988, under the TSUS, while shipments of products containing butterfat "dropped off sharply" following imposition of the "butterfat quota." ADPI states that it cannot supply comparable statistics for imports occurring before and after implementation of the HTS because of the "shift in classification nomenclature" from one system to the other.[218]

ADPI reports that there are two section 22 quotas[219] currently applicable to products containing butterfat or other milk solids under the provisions for "other confectionery chocolate" but that there is no similar quota for "chocolate block." It argues that the only distinction between these two categories is the weight of the imported product and, inferentially, that if one product is subject to quota, the higher weight importations ought also to be subject to quota. ADPI asserts that shippers can "easily see the advantage in aggregating product for entry so that quotas do not apply."[220]

ADPI is also concerned with the operation of the section 22 quota for dry whole milk. It argues that this quota should be extended to cover "confectionery chocolate" on the premise that "dry whole milk is well known to be the most often-used milk solid in these products." This

[210] Section 1204(a) of the OTCA, 102 Stat. 1148.
[211] 19 U.S.C. 1484(e).
[212] Statistical Note 4, Section XI, HTS.
[213] *Acrilicos v. Regan*, 9 CIT 442, 617 F. Supp. 1082 (1985).
[214] The ADPI comments are set forth in app. G, "Submission by the American Dairy Products Institute."
[215] App. G, p. G-4.
[216] The TSUS employed two "use" concepts in interpreting classification provisions controlled by "use"; these were the "chief use" and "actual use" concepts. These principles were embodied in general headnote 10(e), TSUS. Some provisions of the TSUS expressly required that classification of the imported article be determined on the basis of "chief use" of that class or kind of merchandise in the United States at the time of importation. But, in most cases, a requirement for proof of "chief use" was implied from the language of the tariff provision. For example, a provision for "household utensils" was interpreted to require proof that such utensils were chiefly used in the home. "Chief use" was defined as that "use which exceeds all other uses (if any) combined." General headnote 10(e)(i), TSUS. A

[216]—*Continued*
determination of "actual use" was based upon whether: (1) the "use" of the imported article was "intended at the time of importation;" (2) the imported article was "so used;" and (3) "proof [of such use was] furnished within 3 years" after the date of entry to the Customs Service. General headnote 10(e)(ii), TSUS. The "chief use" rule was replaced by the "principal use" criterion in an effort to simplify Customs Service determinations under "use" provisions in the new tariff. U.S. International Trade Commission, *Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1400, June 1983, pp. 34-35.
[217] App. G, p. G-7.
[218] App. G, p. G-7.
[219] Section 22 of the Agricultural Adjustment Act of 1933, as amended, authorizes the President to impose fees or quotas on imported products that undermine any U.S. Department of Agriculture domestic commodity program. 7 U.S.C. 624.
[220] App. G, p. G-8.

"loophole" is alleged to encourage "those who would interfere with the dairy price support system by spelling out a way to import large quantities of dry whole milk into the country" outside the dry whole milk quota.[221] ADPI believes that accurate data on the volume of dry whole milk contained in imported chocolate block is not being adequately reported. And, it asserts, this quantity of dry whole milk far exceeds the global annual quota of 7,000 pounds.

ADPI offers three suggestions to correct what it perceives as deficiencies in the operation of the HTS. First, it suggests certain statistical annotations to subheading 1806.20.20 that would separately identify shipments of chocolate block according to dry whole milk content. Second, it argues that the quotas covering butterfat and other milk solids should be extended to cover chocolate block for the same reasons that those quotas are now applied to other confectionery chocolate. Third, it asserts that the dry whole milk quota should be extended to certain confectionery chocolates since their "essential character . . . is milk chocolate when they contain butterfat or other milk solids."[222]

Staff Analysis and Discussion

The ADPI request for additional statistical annotations covering chocolate block was referred to the Committee for Statistical Annotation of Tariff Schedules (the "484(e) Committee") pursuant to section 484(e) of the Tariff Act of 1930.[223] Decisions on requests for statistical annotations are made administratively by this committee which comprises representatives of the Department of Commerce (the Bureau of the Census), the Department of the Treasury (the Customs Service), and the Commission. The "484(e) Committee" has agreed to implement certain statistical annotations that, the Committee believes, will provide information at the level of detail desired by ADPI in terms of "kilograms of milk solids content" for chocolate block. These annotations were scheduled to appear in the first supplement to the 1990 edition of the HTS, which was published in June 1990.

The alleged "loophole" with respect to chocolate block described by ADPI is believed to have existed under the TSUS as well. We understand that the Customs Service interpreted TSUS items 950.15 and 950.16 as not covering chocolate bars/blocks over 10 pounds each (TSUS item 156.25). The conversion from the TSUS to the HTS did not, in our opinion, effect any significant change in quota coverage.

Similarly, with respect to ADPI's assertion that a "loophole" exists with respect to dry whole milk quota coverage, the HTS is believed to reflect accurately the quota coverage that existed under the TSUS. It is entirely possible, as ADPI infers, that the improvement in product nomenclature and interpretive legal notes under the HTS serves to illuminate a quota "loophole." But, if this is the situation, it is a "loophole" that already existed under the TSUS and has simply become somewhat more transparent under the new system. Any decision to alter the preexisting quota coverage would have been a "trade policy" decision and not the "purely ministerial" tariff conversion function which was undertaken in response to the President's request.[224]

Finally, we believe that classification of some importations during the first year of operation under the HTS was somewhat unsettled and the initial import statistics, as a consequence, may reflect "one-time" anomalies that will disappear as importers and the Customs Service gain greater experience with the new system. We also note that the U.S. Department of Agriculture has authority to adjust section 22 (and "sugar headnote") quota coverage[225] in the HTS to ensure that products that were subject to restraint before the conversion remain subject to restraint after implementation of the new system.[226]

American Iron Ore Association

The American Iron Ore Association (AIOA) submitted comments concerning aspects of the HTS of concern to its membership.[227] AIOA is concerned with the statistical accuracy of imports of "direct reduced iron" that is provided for in heading 7203 of the HTS. The AIOA submission states that the "current definition" of this product in the HTS may result in misinterpretation of that term and, consequently, misclassification of imports of "direct reduced iron" as "iron ore" by the Customs Service.[228] To correct this perceived problem in the HTS, AIOA proposes an amended "article description" for HTS heading 7203.

Staff Analysis and Discussion

First, the "article description" for HTS heading 7203 has been agreed to by the United States in accordance with the HS Convention and cannot be unilaterally altered by any party

[221] App. G, p. G-9.
[222] App. G, p. G-11.
[223] 19 U.S.C. 1484(e).

[224] See generally, U.S. International Trade Commission, *Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1400, June 1983.
[225] See previous discussion with respect to section 1211(c) and actions taken in accordance with that section.
[226] 19 U.S.C. 3011(c).
[227] The AIOA comments are set forth in app. H, "Submission by the American Iron Ore Association."
[228] Ibid.

without international agreement. Interested parties (such as the AIOA) have been invited to submit requests for changes to the international nomenclature in the Commission's notice published in the *Federal Register* of January 18, 1990.[229] AIOA might, for example, wish to propose a new interpretive note to the HS convention that would clarify any ambiguities that it perceives in the current language of heading 7203.

Second, heading 7203 covers two distinct categories of goods (1) "ferrous products obtained by direct reduction of iron ore and other spongy ferrous products, in lumps, pellets or similar forms"; and (2) "iron having a minimum purity by weight of 99.94 percent, in lumps, pellets or similar forms." AIOA's primary concern is with the first category (i.e., "direct reduction iron") but it also believes that the minimum purity requirements of the second category may cause misclassification by the Customs Service. The *Explanatory Notes* to the HS provide clear differentiation between these two categories; thus the potential for such misclassification is unlikely.

Finally, the operation of note 2 to chapter 26 (covering, among other goods, "iron ores") strictly limits the kinds of mineral products classifiable as ores, including iron ores of HTS heading 2601.

Buffalo Industries, Inc.

Buffalo Industries, Inc., (Buffalo) submitted comments concerning HTS heading 6309, which covers worn clothing and "other worn articles".[230] Buffalo states that it is in the business of collecting, sorting, and reselling rags and used clothing. Buffalo imports containers of used clothing in bales, which it purchases from the Salvation Army in Canada. The company anticipates increased foreign sourcing of used clothing because "of shortages in domestic supply."[231] It estimates that approximately 15 percent of its imports will be resold in the United States after fabrication into industrial wipers. Wool goods will be sorted and reexported to Italy. Other "general clothing" will be sorted by type and reexported to several countries. Approximately 10–15 percent of imports, according to Buffalo, is ultimately sent "to landfills for destruction."[232]

Buffalo states that imports under heading 6309 are subject to country-of-origin marking rules.[233,234] It also points out that legal notes in the HTS require that goods entered under heading 6309 must be "in bulk or in bales, sacks or similar packings."[235] The company argues that the marking requirements for this merchandise are so onerous and that compliance is so economically prohibitive as to render HTS heading 6309 "a nullity." Buffalo appears to suggest that the country-of-origin marking requirements for goods entered under heading 6309 should be interpreted to permit its own importations to occur in an economic manner. Buffalo does not request any specific changes to the HTS.

Staff Analysis and Discussion

Buffalo's concerns appear to be directed more toward the interpretation of country-of-origin marking rules by the Customs Service than toward the operation of the Harmonized System as such. Moreover, an analysis of data on such imports under the TSUS and under the HTS does not support Buffalo's contention that heading 6309 is a "nullity." Thus, we conclude that no changes to the HTS are required for heading 6309.

The TSUS included worn clothing and "other worn articles" in the provisions for "rags" (TSUS items 390.30, 390.40, 390.50, and 390.60), which together had total imports of about $8.5 million in 1988. The HTS provides separate provisions for worn clothing and "other worn articles" (subheadings 6309.00.0010 and 6309.00.0020). The data indicate that significant trade, about $3 million, occurred in 1989 for worn clothing. The bulk of this trade, by value, was from West Germany, while the bulk of the trade, based on quantity, was from Canada. Official statistics of the U.S. Department of Commerce are presented in the following tabulation—

Total Imports For 1989

	Quantity	Value
Worn clothing		
6309.00.0010	1,763,887 kg	$2,918,595
"Other worn articles"		
6309.00.0020	145,976 kg	$277,181

Principal Countries

	Quantity	Value
Worn clothing		
6309.00.0010		
Canada	604,173 kg	$150,382
F.R. Germany	310,910 kg	$1,118,041
U.K.	229,237 kg	$407,371
"Other worn articles"		
6309.00.0020		
Netherlands	52,297 kg	$110,367
U.K.	40,933 kg	$70,112
Mexico	15,363 kg	$2,415

Source: U.S. Department of Commerce.

[229] 55 F.R. 1737, Jan. 18, 1990.
[230] The comments by Buffalo are set forth in app. I, "Submission by Buffalo Industries, Inc."
[231] App. I, p. I-2.
[232] Ibid.
[233] The applicable customs regulations are set forth in 19 CFR Part 134.
[234] Country-of-origin marking rules apply to virtually all importations into the customs territory of the United States. 19 U.S.C. 1304.
[235] App. I, p. I-3.

Nobelpharma USA, Inc.

Nobelpharma submitted comments concerning the tariff treatment accorded titanium dental implants under the HTS.[236] It states that these products were formerly classifiable as "articles of titanium" under TSUS item 658.00 and dutiable at the rate of 5.5 percent ad valorem. It further states that these goods have since become classifiable under the provision for parts and accessories for artificial teeth under HTS subheading 9021.29.80 and are dutiable at 9 percent ad valorem. The company requests the creation of appropriate 8-digit subheadings under subheading 9021.29 to restore the tariff treatment previously received. Nobelpharma argues that the 9-percent rate is an "anomaly" and was not derived from the "applicable" TSUS item (658.00) but, instead, was derived from TSUS item 709.55 which they believe is an incorrect derivation.[237]

Staff Analysis and Discussion

At the outset, we note that there is no record of this product having been brought to the attention of those agencies that drafted the conversion of the TSUS into the HTS. If this situation had been brought to the attention of the responsible agencies in a timely manner, it is entirely possible that the previous tariff treatment under the TSUS could have been applied to this product under the HTS.

We do not believe that it is reasonable to assume, as Nobelpharma does, that the absence of an entry in the HTS/TSUS cross reference tables indicates that this merchandise was not considered. "Zero percent" allocations[238] were deleted from the cross reference tables in all instances; and the trade in the TSUS category in question would not have justified an allocation greater than zero. The cross reference tables were not intended to account for (nor, did they account for) every conceivable product. This is particularly true with respect to products classifiable in residual "basket" categories such as TSUS item 658.00. We were aware that the HTS provision in question would include "accessories" and that it would be likely to encompass numerous products from various parts of the TSUS. Under the conversion guidelines and based on the preponderance of trade,[239] the rate of duty for HTS subheading 9021.29.80 would clearly have been that which applied to TSUS item 709.55.

Nobelpharma's requested changes can be accomplished by enactment of legislation to reduce the rate of duty applied to its products under the HTS. There are several bills currently pending before the Congress that arose from circumstances similar to those alleged by Nobelpharma. And, as noted earlier, the potential for resolution of Nobelpharma's complaint exists in the context of the on-going Uruguay Round negotiations.[240]

Spring Manufacturers Institute, Inc.

The Spring Manufacturers Institute (SMI) submitted comments concerning the tariff nomenclature covering certain springs of concern to its membership.[241] SMI describes itself as a nonprofit trade association made up of manufacturers of precision mechanical springs and their suppliers throughout North America. SMI has 289 members that reportedly account for 66 percent of North American production of these products. It states that 1988 industry sales volume totaled more than $1.67 billion, and that its member companies employ more than 20,000 employees. According to SMI, the automotive market constituted approximately 46 percent of industry sales volume in 1988.

SMI expresses concern about the adequacy of statistical information on imports of certain automotive springs under HTS heading 7320. More specifically, SMI believes that the Bureau of the Census is no longer reporting statistics for imports of those products that qualify for duty-free entry under the United States-Canada Automotive Products Trade Act (APTA). SMI also proposes a revised system of statistical reporting for these imports which, in its view, should be more closely aligned with the Department of Commerce Census of Manufacturers' Standard Industrial Classification (SIC) system. SMI requests that statistical annotations to various subheadings under heading 7320 be brought into conformity with certain SIC categories (e.g., four groups based on type of manufacture) or with industry sales data categories (e.g., ten groups based on type of spring function or type of manufacture).

[236] The Nobelpharma comments are set forth in app. J, "Submission by Nobelpharma USA, Inc."

[237] App. J, pp. J-4, J-5, J-6.

[238] "Zero percent" allocations were created by Commission analysts during a review of all TSUS classifications which could theoretically be cross-referenced to new HTS classifications. If trade under the TSUS in any of these "theoretical" cross references was negligible or non-existent, a "zero percent" allocation was assigned to the TSUS item with respect to that particular HTS cross reference. The cross reference tables do not include TSUS items with "zero percent" allocations, but the absence of these cross references does not indicate that the TSUS item was not considered. It simply recognizes the absence of identifiable trade in that item. Consequently, the rate of duty for that TSUS item could not be used as a basis for the cross-referenced HTS provision under the conversion guidelines.

[239] U.S. International Trade Commission, *Conversion of the Tariff Schedules of the United States Annotated into the Nomenclature Structure of the Harmonized System* (Investigation No. 332-131), USITC Publication 1400, June 1983, pp. 30-33.

[240] See the previous discussion of the letter submitted by the United States Trade Representative. And see, Conference Report, p. 548.

[241] The SMI comments are set forth in app. K, "Submission by the Spring Manufacturers Institute, Inc."

Staff Analysis and Discussion

The APTA statistics that SMI seeks are currently being tabulated and reported by the Bureau of the Census, although this is accomplished under the HTS by the "B" code in the "column 1-special" subcolumn of the HTS rate of duty columns rather than by separate tariff lines, as was the case under the TSUS. The request for statistical alignment based upon SIC codes has been referred to the "484(e) Committee" for its consideration.[242] These proposals do not require modification or restructuring of the legal text of the HTS.

[242] 19 U.S.C.1484(e).

APPENDIX A
NOTICE OF INSTITUTION OF THE INVESTIGATION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

(332-274)

Investigation with Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: United States International Trade Commission

ACTION: Institution of investigation and request for public comment

SUMMARY: This notice is intended to describe the procedures for a Commission investigation of the operation during 1989 of the Harmonized System subtitle of the Omnibus Trade and Competitiveness Act of 1988 (the Act), as required by section 1216 of the Act.

EFFECTIVE DATE: March 14, 1989

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (202-252-1592) or Leo A. Webb (202-252-1599).

BACKGROUND: Section 1216 of the Act (Pub. L. 100-418) directs the Commission, in consultation with other appropriate Federal agencies, to prepare, and submit to the Congress and to the President, a report regarding the operation of the Harmonized System subtitle of the Act during the 12-month period commencing on January 1, 1989. The Commission instituted investigation No. 332-274, on March 14, 1989, pursuant to section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) to fulfill the requirements of section 1216 of the Act. The report will be submitted to the Congress and to the President by June 30, 1990.

WRITTEN SUBMISSIONS: Interested parties (including other Federal agencies) are invited to submit written statements concerning the subject of the report. More specifically, interested parties are requested to advise the Commission of their views on the operation of the Harmonized System subtitle of the Act during 1989 and, in particular, the Harmonized Tariff Schedule of the United States, and to suggest changes which, in their opinion, would improve its operation. Such statements must be submitted by no later than January 31, 1990, in order to be considered by the Commission. The Commission may subsequently schedule a public hearing in connection with this investigation if, in its opinion, the information submitted warrants such action.

The Commission will include copies (or summaries, as appropriate) of written statements in its report to the Congress and to the President. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's rules of practice and

procedure (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: April 12, 1989

APPENDIX B
CONTRACTING PARTIES TO THE HARMONIZED SYSTEM CONVENTION

CONTRACTING PARTIES TO

THE HARMONIZED SYSTEM CONVENTION

SITUATION ON 6 March 1990

States and Customs or Economic Unions	Date on which these States or Unions became Contracting Parties	Entry into force of the Convention in respect of these States or Unions
Australia	22-09-1987	01-01-1988
Austria	22-09-1987	01-01-1988
Bangladesh	22-09-1987	01-07-1988
Belgium	22-09-1987	01-01-1988
Botswana	13-02-1987	01-01-1988
Brazil	08-11-1988	01-01-1989
Cameroon	16-05-1988	01-07-1989
Canada	14-12-1987	01-01-1988
Côte d'ivoire	25-01-1990	01-01-1991
Czechoslovakia	09-12-1986	01-01-1988
Denmark	22-09-1987	01-01-1988
Finland	22-09-1987	01-01-1988
France	22-09-1987	01-01-1988
Germany (F.R.)	22-09-1987	01-01-1988
Greece	15-07-1988	01-01-1990
Iceland	28-10-1987	01-01-1988
India	23-06-1986	01-01-1988
Ireland	22-12-1987	01-01-1988
Israel	05-08-1987	01-01-1988
Italy	31-05-1989	01-01-1991
Japan	22-06-1987	01-01-1988
Jordan	10-06-1985	01-01-1988
Kenya	29-07-1988	01-07-1989
Korea (Rep. of)	27-11-1987	01-01-1988
Lesotho	12-12-1985	01-01-1988
Luxembourg	11-07-1988	11-07-1988
Madagascar	22-12-1987	01-01-1988
Malawi (*)	25-10-1988	01-04-1989
Malaysia	15-12-1987	01-01-1988
Malta	20-12-1989	01-01-1990
Mauritius	10-06-1985	01-01-1988
Netherlands	22-09-1987	01-01-1988
New Zealand	22-09-1987	01-01-1988
Nigeria	15-03-1988	15-03-1988
Norway	27-08-1987	01-01-1988
Pakistan	22-09-1987	01-07-1988
Portugal	04-11-1987	01-01-1988
Saudi Arabia	10-03-1988	01-01-1990
Senegal	21-09-1989	01-01-1991
South Africa	25-11-1987	01-01-1988
Spain	28-09-1987	01-01-1988
Sri Lanka	03-05-1988	01-01-1989
Swaziland	26-11-1985	01-01-1988
Sweden	22-09-1987	01-01-1988
Switzerland	22-09-1987	01-01-1988
Togo	12-02-1990	01-01-1992
Tunisia	28-10-1987	01-01-1989
Turkey	15-12-1988	01-01-1989
Uganda	11-07-1989	01-01-1991
United Kingdom	22-09-1987	01-01-1988
United States	31-10-1988	01-01-1989
Yugoslavia	10-09-1987	01-01-1988
Zaire	10-11-1987	01-01-1988
Zambia	22-12-1986	01-01-1988
Zimbabwe	05-11-1986	01-01-1988
EEC	22-09-1987	01-01-1988
TOTAL	56	

(*) : Partial application

SIGNATURES SUBJECT TO RATIFICATION :

Algeria, Argentina, Burundi, Ghana, Haiti, Hungary, Iran, Liberia, Morocco, Syrian Arab Rep.

APPENDIX C
LETTER FROM THE UNITED STATES TRADE REPRESENTATIVE

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

The Honorable Anne Brunsdale
Chairman
United States International
Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Chairman Brunsdale:

Thank you for your letter inviting comments for the Commission's report to Congress on the operation of the Harmonized System during the first year of implementation.

From our perspective, implementation of the Harmonized System has been a great success. The benefits of adopting an international nomenclature system have become readily apparent as we prepare for the Uruguay Round tariff negotiations. As you know, the United States intends to participate in the tariff negotiations by using a "request/offer" procedure. The Harmonized System gives us the ability, for the first time in negotiations of this sort, to compare our trade and tariff information with that of other countries in order to target precisely those areas where market access is most desirable. In addition, our private sector now has experience dealing with the Harmonized System, which enhances their ability to advise us on both the request and offer sides of the negotiation.

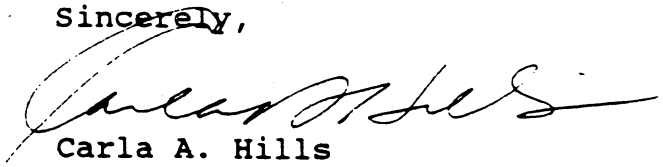
Over the past year, we have received relatively few private sector complaints on the Harmonized System conversion. From this I conclude that, overall, the conversion was balanced and neutral. A great deal of the credit for this goes to the efforts of all agencies to ensure that the process of converting the tariff was fully transparent. During its initial drafting of the Harmonized System conversion between August 1981 and June 1983, the International Trade Commission published draft chapters for public comment and held several sets of public hearings. Later, in examining and negotiating the conversion, the Trade Policy Staff Committee held two sets of public hearings, published the proposed new tariff three times and actively solicited private sector comments on the proposed new tariff. Our experience has been that there have been very few concerns raised by those industries that participated fully in the conversion process.

Neither have we received many compliments nor complaints from trading partners on the new tariff schedule. I think this means we did a good job.

It would be unrealistic to expect that in an exercise as massive as the Harmonized System transposition, there would not have been a few changes in the duty rates applicable to particular products. For the most part, however, the issues that have been raised by trading partners involve products that were not traded during 1981-83, the base period used for the GATT Article XXVIII negotiations. As a result, there should have been no expectation by either the United States or other countries about where these products would be classified in the Harmonized System. Overall, however, the conversion appears to be balanced both globally and bilaterally. The Uruguay Round provides an opportunity for those countries with particular problems to address their concerns.

I hope this information is helpful to the Commission in preparing its report to the Congress in investigation No. 332-274. If we can provide further assistance, please do not hesitate to call on us.

Sincerely,



Carla A. Hills

CAH:nam

APPENDIX D
LETTER FROM THE UNITED STATES CUSTOMS SERVICE

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

April 25, 1990

CLA-2 CO:R:C:G
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Dear Chairman Brunsdale: 332-274

This is in reference to your request of March 26, 1990, inviting us to comment on the operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988.

The operation of the Harmonized System since its implementation on January 1, 1989, has produced many desirable results. We have utilized the opportunity to introduce many innovations which have assisted the importing community and facilitated the movement of cargo. Included among these are administrative procedures which permit an importer to obtain a binding tariff classification ruling at the district where the particular merchandise is imported or where the importer does business. Except for questions which have been referred to Customs Headquarters because of their complex or novel nature, rulings have been issued within 30 days of the request therefore. The most recent statistics show that approximately 13,000 such rulings have been timely issued and that approximately 2000 additional rulings covering issues referred to Customs Headquarters have been issued within 120 days of the request.

Importers have also been provided with an opportunity to have inconsistencies in Customs decisions corrected and to have Customs decisions delayed when the importer has detrimentally relied on an earlier Customs ruling or Customs treatment accorded to substantially identical transactions.

We have also developed a ruling module as part of our Automated Commercial System. The module, which became operational on January 1, 1990, contains 1500 rulings and is updated twice a week. This information will be available shortly in an automated format to the importing public and the international community. We believe the

availability of these rulings will produce a greater uniformity in Customs decisions. We also believe that the free exchange of information will create a better understanding of the tariff classification process in the United States and will permit commercial enterprises to import merchandise with a maximum certainty as to how merchandise will be classified.

Further, we have introduced a pre-classification program which affords importers of sizable quantities and varieties of merchandise the opportunity to have their merchandise classified prior to actual importation. Under this program a Customs import specialist may visit the importer's premises prior to importation to examine the various articles for which a tariff classification is desired and issue a binding ruling. Approximately 200 importers have already received a total of 532 pre-entry classification decisions, each covering anywhere from 5 to 400 different articles. An additional 39 requests for pre-entry classification are pending.

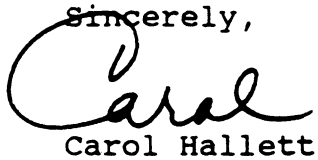
We have also undertaken efforts to enhance the implementation of the Harmonized System through the training of Customs personnel and the public. We anticipate the extension of such training efforts.

Through our participation in the Harmonized System Committee of the Customs Cooperation Council we have had extensive discussions resulting in decisions to clarify the legal text and the Explanatory Notes of the Harmonized System. The Review Subcommittee of the Harmonized System Committee is making significant progress in bringing the Harmonized System up to date through its current examination of Chapters 84, 85 and 90. The existence of a common tariff language has facilitated discussions with our trading partners on a number of tariff classification issues.

The implementation of the Harmonized System has eliminated several concepts, which existed under the Tariff Schedules of the United States and were difficult to administer, e.g., the concept of ornamentation on textile articles and the concept of chief value. In addition, the existence of the Harmonized System Explanatory Notes has proven to be very helpful.

We also note the very ambitious effort of the Customs Cooperation Council to seek to develop an automated commodity data base which would serve as an index at the international 6 digit level of the system. We anticipate that this, in addition to the Customs automated ruling module previously mentioned, will be of great assistance to the business community and will produce a greater certainty in the tariff classification of commodities.

Sincerely,



Carol Hallett

Ms. Anne Brunsdale
Chairman
United States International
Trade Commission
500 E Street, SW
Washington, D.C. 20436

APPENDIX E
LETTER FROM THE BUREAU OF THE CENSUS

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

MAY 0 4 1990

Honorable Anne Brunsdale
Chairperson, United States International
Trade Commission
Washington, D.C. 20436

Dear Ms. Chairperson:

Thank you for your letter inviting comment on the operation of the Harmonized System (HS) subtitle of the Omnibus Trade and Competitiveness Act of 1988.

The HS allows greater flexibility and imagination in developing new techniques for collecting and compiling U.S. foreign trade data. We began exchanging import data with Canada in January 1990. Thus, we now derive our export data to our largest single trading partner from the Canadian import data and vice versa. This is a major improvement in data accuracy, having eliminated the problem of undocumented export shipments to Canada. This type of data exchange is practical only when countries use comparable tariff schedules.

This international nomenclature also enables the Census Bureau to reconcile foreign trade data with our other major trading partners at the 6-digit level. Prior to the implementation of the HS, reconciliation was a much more difficult and time consuming procedure. Our major trading partners such as Canada had their own domestic tariff nomenclature that was not comparable to that of the United States.

The HS will dictate consistent commodity classification and more accurate international trade statistics in the long term. As countries disagree on the interpretation of the HS, the Customs Co-operation Council (CCC) will act as arbitrator, giving guidance and opinion as to the correct interpretation. This was not possible when member nations of the CCC used a variety of classification systems.

Sincerely,

Barbara Everitt Bryant

Barbara Everitt Bryant
Director
Bureau of the Census

APPENDIX F
SUBMISSION BY THE AMERICAN CORDAGE AND NETTING MANUFACTURERS

Contains No
Business
Proprietary
Information
Total Pages 15

Before the

United States International Trade Commission

Investigation #332-274

Request for

Investigation with Respect to the Operation of the

Harmonized System Subtitle of the Omnibus Trade

and Competitiveness Act of 1988

On Behalf of

American Cordage & Netting Manufacturers

January 31, 1990

Submitted by

Ann Ottoson King
Counsel to
American Cordage &
Manufacturers
1667 K Street, N.W.
Suite 801
Washington, D.C. 20006
(202) 955-3900

Before the
United States International Trade Commission
Investigation #332-274

**REQUEST FOR
INVESTIGATION WITH RESPECT TO THE OPERATION OF THE
HARMONIZED SYSTEM SUBTITLE OF THE OMNIBUS TRADE
AND COMPETITIVENESS ACT OF 1988**

I. INTRODUCTION

A. ACNM's Interest in the Investigation

The American Cordage and Netting Manufacturers (ACNM) hereby submits these comments in response to the April 20, 1989 announcement by the International Trade Commission (ITC) of the Institution of an Investigation and request for public comments, designated Investigation #332-274, Investigation With Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988 (Investigation). See 54 Fed. Reg. 16010.

B. ACNM's Organization and Area of Interest

ACNM, headquartered in Washington, D.C. is an incorporated association dedicated to a strong American Industry. Its members manufacture all types of cordage (rope, twine, and cable) of manmade fibers, including fishnetting, and are located across the country.

The notice of Investigation particularly requested written submissions advising the ITC of the views of interested parties on the operation of the Harmonized Tariff Schedule of the United States (HTSUS) and suggestions for changes to improve the

operation of the system. Pursuant to Section 1216 (COMMISSION REPORT ON OPERATION OF SUBTITLE) of the Omnibus Trade and Competitiveness Act of 1988 (P.Law 100-418) the ITC is requesting comments from interested sectors of the Government and other parties. The legislative history additionally directs the ITC to play a lead role in the formulation of U.S. policy in this area "particularly with regard to assuring that the Convention recognizes the needs of the U.S. business community for a nomenclature that reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices." See House Conf. Rep. No. 100-576 at 549.

The sections which follow present ACNM's views and suggestions regarding the system for describing rope and twine of polyethylene and polypropylene under the recently adopted nomenclature.

C. ACNM's Assessment of the Operation and Suggestions for Change in the HTSUS.

From this year's experience in the marketplace and a review of the available 11 months of import statistics, ACNM believes there is a major error in the United States version of the Harmonized System Nomenclature which allows many exporters to the United States to avoid Congressionally mandated quotas and duties when shipping rope, twine and cable of polyethylene or polypropylene fibers. The removal of the extra sections which are not found in the tariff schedules of other most countries and do not represent products which can be manufactured would close

the massive loopholes which operate to the detriment of U.S. industry and the U.S. Treasury. Failing that the sections should be amended to reflect modern production methods and the marketplace.

II. ACNM'S VIEWS ON THE OPERATION OF THE HTSUS

A. Listing of HTSUS Items of Interest to ACNM

1. Manmade Fiber Cordage Classifications

The manmade fiber cordage classification are:

HTSUS 5607.41.30 Binder or baler twine of polyethylene or polypropylene.

HTSUS 5607.49.15 Other cordage and twine of polyethylene or polypropylene, not braided or plaited, measuring less than 4.8mm in diameter.

HTSUS 5607.49.25 Other cordage and twine of polyethylene or polypropylene, not braided or plaited, measuring 4.8mm or more in diameter.

There are two other inappropriate classification numbers listed within the cordage headings:

HTSUS 5607.41.10 Binder or baler twine of polyethylene or polypropylene of wide nonfibrillated strip.

HTSUS 5607.49.10 Other cordage and twine of polyethylene or polypropylene of wide nonfibrillated strip.

These latter two items are inappropriate because they do not describe an imported product. They cannot describe the imported product because no binder, baler or other twine and no rope of wide nonfibrillated strip can exist. See full HTSUS listing, Attachment A.

The term "fibrillated strip" has often been used to describe an intermediate stage of production for many products--like polypropylene cordage. During the usual production process a polyolefin resin (particularly polypropylene or polypropylene mixed with polyethylene) is extruded into a desired shape. This shape, whether monofilament or film, whole or cut into tapes, is oriented as it passes through the process. Orientation refers to the alignment of the molecules within the product; during orientation the molecules are aligned in a longitudinal direction, parallel to each other. These aligned chains of molecules have strong end-to-end bonding but weak transverse, or chain-to-chain bonding. The weak chain-to-chain bonding splits naturally, causing fibrils. The presence of these fibrils (which may easily be smaller than the human eye can see) imparts desired properties to the product which make it usable as cordage. It is this splitting which is termed fibrillation.

Further mechanical processing may be used to enhance the degree of fibrillation or speed the naturally occurring process of fibrillation. The resulting structure can be described as a fibrous network which, either alone or in combination with others, may be twisted into cordage or woven to form some other textile product (e.g. carpet backing, placemats).

2. The U.S. Trade Parameters Concerning These Items

a. The Applicable Duty Structure

Currently there are several duty rates applicable to these products, depending upon just where they are classified and

their country of origin. See Attachment A. There is, however one striking dichotomy in the applicable duty rates. Binder and baler twine of polyethylene and polypropylene (5607.41.30.00) carries a duty rate of 8% General, 3.2% IL and 6.4% CA, while binder and baler twine "of wide nonfibrillated strip" of polyethylene or polypropylene (5607.41.10.00) carries a duty rate of 5.3% General, is free for A,E, and IL, and is 4.2% for Canada. The identical duty dichotomy exists between other polypropylene or polyethylene cordage under 4.8mm in diameter (5607.49.15.00) and other polyethylene or polypropylene cordage of "wide nonfibrillated strip" (5607.49.10.00). A greater divergence is seen between the duty rates of larger than 4.8mm diameter cordage and twine (5607.49.25.00) which caries a duty rate of 27.6 cents/kg + 15% in the General Column, Special Column rates of 11 cents/kg + 6% for IL and 22 cents/kg + 12% for CA, and the larger cordage of "wide nonfibrillated strip" also classified under 5607.49.10.00 with the rates noted above.

The <u>only</u> descriptional difference correlating with the marked differences in rates is the alleged construction of "wide nonfibrillated strip". As noted above, this is not a description which can describe cordage. Cordage cannot be made from uniaxially oriented isotactic polyolefin (e.g. polypropylene and polyethylene) without fibrillation occurring. Therefore there is no need for these provisions in the HTSUS.

b. The Applicable Quota Parameters

A similar dichotomy can be seen when comparing applicable quota categories. Those provisions which describe the product as manufactured of "wide nonfibrillated strip" carry no quota despite the fact the items contained therein are textiles which should be subject to the textile quota provisions. Those which do not carry this designation are subject to MFA Textile Category 201 quotas. Again, the spurious term is the only difference between the quota and non-quota items.

c. The Nature of the Dichotomy

This variance, based upon the phantom description of "wide nonfibrillated strip", presumably results from an inadvertence in the conversion from the TSUS to the HTSUS, when the provisions describing cordage of "wide nonfibrillated strip" were included in the nomenclature for the first time. See Attachment B. Previously, attempts to enter these products as plastic strip were made under Schedule 7 of the TSUS in a basket plastics category (774.55). Customs declared that cordage was cordage (T.D.85-183). For non-cordage, there are available alternatives. In the HTSUS these descriptions were included in the cordage classifications, placing cordage where it belongs. The duty and quota parameters which were applied, however, were not the applicable duty and quota provisions for cordage classifications under the HTSUS.

B. Essential Character as Classification Criteria.

The general basis for determining classification of an item is its "essential character" under the HTSUS; this differs substantively from the previous rule under the TSUS where classification was primarily determined by the component of chief value. (The prior decision criteria led to fishing nets with lead weights attached being classified as lead (with no duty) rather than as fishing nets (with a duty).) Under the essential character criteria, see Attachment C, items are to be classified according to the component which makes them what they are, or gives them their essential character. (Therefore, fishing nets with lead lines attached are now properly classified as fishing nets.)

"Essential character" has had such a short life as the classification criteria for the United States that there is not yet a large body of precedent for this application. Our research has uncovered, however, the Customs position that prior essential character criteria have some influence on current classification thinking. Additionally, Customs advises us "The important thing to remember is that it bears no relationship to component material in chief value, as such, and cannot be resolved on the basis of any single factor such as weight." See Harmonized System Handbook; August 1986, Department of the Treasury, U.S. Customs Service HB 3600.06 at 14.

C. The Essential Character of Cordage and the Duty and Quota Parameters of Cordage.

The position of the American Cordage and Netting Manufacturers is that cordage cannot be made out of polyolefin which does not fibrillate, and imports of manmade fiber cordage of polyolefin (especially polyethylene and polypropylene) should be so classified as they cross the border as to incur the duties and quotas which Congress has mandated.

When the HTSUS was adopted cordage was correctly grouped together as cordage, a textile, following numerous U.S. Customs Service (Customs) decisions. This grouping was clearly consistent in view of the essential character criteria for classification under the HTSUS nomenclature. It was inconsistent however to add new duty rates to the section and to omit textile quota coverage from these items. If, for whatever reason, the irrelevant terms "of wide nonfibrillated strip" are to be retained, the applicable duty and quota rates should be applied. The current situation provides a vast loophole for imports by giving a lower duty rate to products which technically cannot exist. See Attachment D.

The keystone of the Customs ruling on this subject was:

> polypropylene rope and twine made of fibrillated film or strips which in their condition before fibrillation are over one inch in width are properly classifiable under the provisions for cordage of man-made fibers in items 316.55 and 316.58 TSUS.

(see T.D. 85-183). See conversion table, Attachment B. In the accompanying text, Customs made the point that such products are to be considered fibrillated regardless of when fibrillation takes place (Id.) Fibrillation takes place during orientation of the polyolefin. Polyolefin must be oriented to produce cordage. Therefore there is no cordage "of wide nonfibrillated strip."

D. Cordage at a Lower Duty Rate Than That for Cordage.

1. Conversion from TSUS to HTSUS

The conversion to the HTSUS provided for cordage to be dutied at non-cordage rates. A perfect example of this is the varying rates of duty for binder/baler twine. Duty rates for binder/baler twine, TSUS 316.55, were set at the time the MTN rates were negotiated; in 1988 the rate was 8%, the same as the 1989 rate for HTS 5607.41.30. But the duty rate for HTS 5607.41.10 (Binder/baler twine of polyethylene or polypropylene "of wide nonfibrillated" strip) is 5.3% rather than the 8% Congressionally mandated for binder/baler twine. See Conversion, Table B.

Additionally the TSUS rate for 316.58 (rope of man-made fiber) was the same as the HTS 5607.49.25 rate of $.276/kg + 15%. However, the rate for HTS 5607.49.10 (other cordage of polyethylene or polypropylene of wide nonfibrillated strip) is 5.3%, the old rate for the plastic basket category, not the Congressionally-mandated, duly negotiated rate for rope.

Attention should also be paid to the non-concurrence of special duty rates, both HTS 5607.49.10 and 5607.41.10 carry the equivalent special duty rates for plastic not those for cordage.

The official concordance tables state that HTS 5607.41.30 is an HTS number covering products from the old TSUS numbers 316.55 and 316.58. If this is followed, then rope can be duties as twine (TSUS 316.58 as 316.55 or $.276/kg + 15% as 8% instead).

2. Volume of Imports Under These Headings

Figures are only available through November of 1989 for imports to the United States classified under the HTSUS. Binder or baler twine (5607.41.10) imports have totalled 210,436 kilos with an average unit value of $1.795. See Attachment E. Of this total South Korea accounted for 36 percent by volume with an average unit value of $1.609. Id.

Imports of other than binder and baler twine, most likely industrial twine and rope, for the same period totalled 2,365,675 kilos with an average unit value of $1.802. See Attachment E. Imports from South Korea accounted for 91 percent of this total. Id.

3. Substantial Losses in Revenue to the U.S. Treasury

With the loss to Korea of GSP duty-free status, the annual losses to the United States Treasury have decreased sharply. However all shipments under these items from Honduras, Brazil and the Philippines entered duty free as did some of the shipments from Costa Rica. We have estimated losses for the

first 11 months of 1989 at between $130,278.00 and $1,081,626.00 depending upon the diameter of the actual products imported under 5607.49.10 (which is not recorded). Industry experts feel the total is near the high and because most of the imported product is rope. Imports under the non-baler or binder twine provision appear to be increasing. This loss to the Treasury should be stopped.

4. Not Intended HTSUS Operation

Foreign manufactured products are provided with a loophole to avoid appropriate duties and quotas. Although there can be no such product as cordage of "wide nonfibrillated strip", these designations are provided for in the HTSUS. Large volumes of product are being imported under these classifications and entering the domestic marketplace. These imported products avoid appropriate duties and quotas. This nomenclature therefore neither reflects modern producing methods nor current trading patterns and practices.

III. ACNM'S SUGGESTIONS FOR MODIFICATION OF THE HTSUS

A. <u>There Should Be No Provision For Cordage Of Wide Nonfibrillated Strip</u>.

As has been shown above there is no method of manufacture available to produce cordage of "wide nonfibrillated strip." To have these two items in the HTSUS is inappropriate. The two items are delineated at the 8-digit level and may, therefore, be removed from the HTSUS by unilateral action.

Such removal would correct the inadvertence resulting from the conversion of the TSUS to the HTSUS and carry out the guidelines of both the Harmonized System Classification and the ITC directive. The "essential character" criteria mentioned supra, clearly direct that cordage be classified as cordage. Because there can be no such product as cordage "of wide nonfibrillated strip" there can be no essential character basis for classifying cordage under either of these item designations. Their essential character is as the type of cordage they are; types have already been provided for in the HTSUS. Therefore the two "of wide nonfibrillated strip" categories are superfluous. Their removal would certainly help to lead to a system of nomenclature which would reflect sound principles of commodity identification.

B. All Cordage Classification Items Should Carry The Appropriate Duty Rates and Quota Status for Cordage.

As detailed supra the rates of duty and the quota status applied to the spurious classification items for cordage of "wide nonfibrillated strip" are inappropriate. They cannot be a part of a nomenclature which reflects world and U.S. trading patterns. Cordage is cordage. If such a product as cordage of "wide nonfibrillated strip" could be found to exist, it would still be cordage and should be dutied and quoted appropriately. The loss to the Treasury is an illustration of how great the problem is. To reflect modern producing methods and current trading patterns and practices, the schedules should, following sound principles of commodity identification, contain the same

duty rate if, for whatever reason, the "of wide nonfibrillated strip" language is retained.

IV. SUMMARY AND PRAYER FOR RELIEF

It is the position of the domestic industry which produces the products like, most nearly like, and competitive with the imported products whose misclassification forms the foundation for this request that cordage manufactured of uniaxially oriented isotactic polyolefin cannot be cordage of "wide nonfibrillated strip" as described in the Harmonized Tariff Schedules of the United States (HTSUS). This position is based upon the combined technical knowledge of members and consultants that once isotactic polyolefin is uniaxially oriented, it fibrillates. While certain steps may be taken to decrease the evidence of this inherent property when viewed with the naked-eye, incontrovertible scientific evidence clearly demonstrates fibrillation takes place.

To recognize the needs of the U.S. business community with regard to sound principles of commodity identification, the designation of products which cannot exist and products which essential character guidance shows to be irrelevant should be removed from the HTSUS. The two classifications for cordage "of wide nonfibrillated strip" should therefore be removed from the HTSUS.

If, for some reason this removal at the 8-digit level cannot be accomplished the schedule should be adjusted to reflect "sound

principles of commodity identification, modern production methods and current trading patterns and practices" by making the duty and quota status that which such cordage should carry rather than using irrelevant wording in the nomenclature to describe a phantom category, thereby providing a duty and quota avoidance loophole to the detriment of domestic industry and the U.S. Treasury., the ITC should have an adjustment made.

Respectfully Submitted,

Ann Ottoson King
Counsel to
American Cordage & Netting
Manufacturing

MAN-MADE FIBER CORDAGE CLASSIFICATIONS

HTS Subheading	Product Description
5607.41.10	Polyethylene or polypropylene binder or baler twine, of "wide nonfibrillated strip"
Rates of duty:	General 5.3% Special Free (A,E,IL); 4.2% (CA) Column 2 80% MFA Textile Category: None
5607.41.30	Polyethylene or polypropylene binder or baler twine
Rates of duty:	General 8% Special 3.2% (IL); 6.4% (CA) Column 2 76.5% MFA Textile Category: 201
5607.49.10	Other polyethylene or polypropylene cordage of "wide nonfibrillated strip"
Rates of duty:	General 5.3% Special Free (A,E,IL); 4.2% (CA) Column 2 80% MFA Textile Category: None
5607.49.15	Other polyethylene or polypropylene cordage and twine, not braided or plaited, measuring less than 4.8mm in diameter
Rates of duty:	General 8% Special 3.2% (IL); 6.4% (CA) Column 2 76.5% MFA Textile Category: 201
5607.49.25	Other polyethylene or polypropylene cordage and twine, not braided or plaited, measuring 4.8mm or more in diameter
Rates of duty:	General 27.6 cents/kg + 15% Special 11 cents/kg + 6% (IL); 22 cents/kg + 12% (CA) Column 2 27.6 cents/kg + 76.5% MFA Textile Category: 201
5607.49.30	Other polyethylene or polypropylene cordage and twine, braided or plaited
Rates of duty:	General 7.2% Special 2.9% (IL); 5.7% (CA) Column 2 60% MFA Textile Category: 669
5607.50.20	Cordage and twine of synthetic fibers other than polyethylene or polypropylene, not braided or plaited
Rates of duty:	General 27.6 cents/kg + 15%

	Special	11 cents/kg + 6% (IL); 22 cents/kg + 12% (CA)
	Column 2	27.6 cents/kg + 76.5%
	MFA Textile Category:	201
5607.50.40		Cordage and twine of synthetic fibers other than polyethylene or polypropylene, braided or plaited
Rates of duty:	General	7.2%
	Special	2.9% (IL); 5.7% (CA)
	Column 2	60%
	MFA Textile Category:	669
5607.90.20		Cordage and twine of other than synthetic fibers, jute, sisal, abaca, coir, or other hard (leaf) fibers
Rates of duty:	General	7.2%
	Special	Free (E*); 2.9% (IL); 5.7% (CA)
	Column 2	40%
	MFA Textile Category:	201
5608.11.00		Made up fishing nets of man-made textile materials
Rates of duty:	General	17%
	Special	6.8% (IL); 13.6% (CA)
	Column 2	82%
	MFA Textile Category:	229
5608.19.10.10		Salmon gill fish netting of nylon or other polyamids
Rates of duty:	General	17%
	Special	6.8% (IL); 13.6% (CA)
	Column 2	82%
	MFA Textile Category:	229
5608.19.10.20		Other fish netting of man-made textile materials
Rates of duty:	General	17%
	Special	6.8% (IL); 13.6% (CA)
	Column 2	82%
	MFA Textile Category:	229
5608.90.10		Other fish netting and fishing nets
Rates of duty:	General	17%
	Special	6.8% (IL); 13.6% (CA)
	Column 2	82%
	MFA Textile Category:	229
5609.00.30		Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included, of man-made fibers
Rates of duty:	General	9%
	Special	Free (IL); 7.2% (CA)

Column 2 78.5%
MFA Textile Category: None

Rates of Duty Key
General: Most-Favored-Nation
Special: GSP (A,A*); CBI (E,E*); U.S.-Israel FTA (IL); U.S.-Canada FTA (CA)
Column 2: Soviet Bloc nations

MFA: MultiFiber Arrangement

MDL1.25

CONVERSION FROM TSUS TO HTSUS

TSUS Subheading	HTSUS Subheading
316.55 Cordage of man-made fibers measuring under 3/16 inch in diameter Duties: Column 1 8% Special 4% (I) Column 2 76.5%	5607.41.30 Binder or baler twine of PE/PP Duties: General 8% Special 3.2% (IL); 7.2% (CA) Column 2 76.5% 5607.49.15 Other PE/PP cordage, measuring less than 4.8 mm in diameter Duties: General 8% Special 3.2% (IL); 7.2% (CA) Column 2 76.5%
316.58 Cordage of man-made fibers 3/16 inch or over in diameter Duties: Column 1 $0.125/Lb+15% Special $0.063/Lb+7.5%(I) Column 2 76.5%	5607.49.25 Other PE/PP cordage, measuring 4.8 mm or more in diameter Duties: General $0.276/kg+15% Special $0.11/kg+6%(IL) $0.248/kg+13.5% (CA) Column 2 $0.276/kg+76.5%
348.0065 Tubular braids with a nonelastic core, of man-made fibers: cable, rope, cord and twine measuring under 3/16 inch in diameter Duties: Column 1 7.2% Special Free (E*); 3.6% (I) Column 2 60%	5607.49.30 Other braided or plaited cordage of PE or PP Duties: General 7.2% Special 2.9% (IL); 6.4% (CA) Column 2 60%
348.0075 Tubular braids with a nonelastic core, of man-made fibers: cable, rope, cord and twine measuring 3/16 inch or more in diameter Duties: Column 1 7.2% Special Free (E*); 3.6% (I) Column 2 60%	5607.49.30 Other braided or plaited cordage of PE or PP Duties: General 7.2% Special 2.9% (IL); 6.4% (CA) Column 2 60%

348.0575
Other braids of man-made fibers: cable, rope, cord and twine measuring under 3/16 inch in diameter
Duties:

Column 1	8.4%
Special	Free (E*); 4.2% (I)
Column 2	90%

348.0575
Other braids of man-made fibers: cable, rope, cord and twine measuring 3/16 inch or over in diameter
Duties:

Column 1	8.4%
Special	Free (E*); 4.2% (I)
Column 2	90%

774.58
Articles not specially provided for, of rubber or plastics:
Other: Other
Duties:

Column 1	5.3%
Special	Free (A*,E,I)
Column 2	80%

5607.50.40
Braided or plaited cordage of synthetic fibers other than PE or PP
Duties:

General	7.2%
Special	2.9% (IL); 6.4% (CA)
Column 2	60%

5607.50.40
Braided or plaited cordage of synthetic fibers other than PE or PP
Duties:

General	7.2%
Special	2.9% (IL); 6.4% (CA)
Column 2	60%

5607.41.10
PE or PP baler or binder twine of "wide nonfibrillated strip"
Duties:

General	5.3%
Special	Free (A,E,IL); 4.7% (CA)
Column 2	80%

5607.49.10
Other PE or PP cordage of "wide nonfibrillated strip"
Duties:

General	5.3%
Special	Free (A,E,IL); 4.7% (CA)
Column 2	80%

Sources:

1. Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System (USITC Publication 2051)

2. Tariff Schedules of the United States Annotated, 1987 (USITC Publication 1910)

3. Harmonized Tariff Schedule of the United States (USITC Publication 2030)

HARMONIZED TARIFF SCHEDULE of the United States

GENERAL RULES OF INTERPRETATION

3. When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

   (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

   (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

TARIFF HISTORY: MAN-MADE FIBER CORDAGE
1967-1988

	1967	1968	1969	1970	1971
316.55	-	-	-	-	-
316.58	-	-	-	-	-
316.60*	25¢/lb + 30%	22¢/lb + 27%	20¢/lb + 24%	17¢/lb + 21%	15¢/lb + 18%
348.0065	30%	27%	24%	21%	18%
348.0075	30%	27%	24%	21%	18%
348.0565	42.5%	38%	34%	29.5%	25%
348.0575	42.5%	38%	34%	29.5%	25%
355.4520	-	-	-	-	-
355.4530	-	-	-	-	-
355.4560**					

* 316.55 and 316.58 established (transferred from 316.60) effective January 1, 1982. (316.60 discontinued)

** 355.4520 and 355.4530 established (transferred from 355.4560) effective 1981. (355.4560 discontinued)

Sources: History of the Tariff Schedules of the United States Annotated (USITC P 1192); Tariff Schedules of the United States Annotated, 1979-1988.

	1972	1973	1974	1975	1976
316.55	-	-	-	-	-
316.58	-	-	-	-	-
316.60*	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%
348.0065	15%	15%	15%	15%	15%
348.0075	15%	15%	15%	15%	15%
348.0565	21%	21%	21%	21%	21%
348.0575	21%	21%	21%	21%	21%
355.4520	-	-	-	-	-
355.4530	-	-	-	-	-
355.4560**					

* 316.55 and 316.58 established (transferred from 316.60) effective January 1, 1982. (316.60 discontinued)

** 355.4520 and 355.4530 established (transferred from 355.4560) effective January 1, 1981. (355.4560 discontinued)

Sources: History of the Tariff Schedules of the United States Annotated (USITC Publication 1192); Tariff Schedules of the United States Annotated, 1979-1988.

	1977	1978	1979	1980	1981
316.55	-	-	-	-	-
316.58	-	-	-	-	-
316.60*	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%
348.0065	15%	15%	15%	15%	15%
348.0075	15%	15%	15%	15%	15%
348.0565	21%	21%	21%	21%	21%
348.0575	21%	21%	21%	21%	21%
355.4520	-	-	25 /lb + 32.5%	25 /lb + 32.5%	25 /lb + 32.5%
355.4530	-	-	25 /lb + 32.5%	25 /lb + 32.5%	25 /lb + 32.5%
355.4560**		25 /lb + 32.5%			

* 316.55 and 316.58 established (transferred from 316.60) effective January 1, 1982. (316.60 discontinued)

** 355.4520 and 355.4530 established (transferred from 355.4560) effective January 1, 1981. (355.4560 discontinued)

Sources: History of the Tariff Schedules of the United States Annotated (USITC Publication 1192); Tariff Schedules of the United States Annotated, 1979-1988.

	1982	1983	1984	1985	1986
316.55	10¢/lb + 13.8%	8¢/lb + 12.7%	6¢/lb + 11.5%	4¢/lb + 10.3%	2¢/lb + 9.2%
316.58	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%
316.60*	-	-	-	-	-
348.0065	13.7%	12.4%	11.1%	9.8%	8.5%
348.0075	13.7%	12.4%	11.1%	9.8%	8.5%
348.0565	18.9%	16.8%	14.7%	12.6%	10.5%
348.0575	18.9%	16.8%	14.7%	12.6%	10.5%
355.4520	21¢/lb + 30.6%	18¢/lb + 28.6%	15¢/lb + 26.7%	12¢/lb + 24.8%	9¢/lb + 22.8%
355.4530	21¢/lb + 30.6%	18¢/lb + 28.6%	15¢/lb + 26.7%	12¢/lb + 24.8%	9¢/lb + 22.8%
355.4560**	-	-	-	-	-

* 316.55 and 316.58 established (transferred from 316.60) effective January 1, 1982. (316.60 discontinued)

** 355.4520 and 355.4530 established (transferred from 355.4560) effective January 1, 1981. (355.4560 discontinued)

Sources: History of the Tariff Schedules of the United States Annotated (USITC Publication 1192); Tariff Schedules of the United States Annotated, 1979-1988.

	1982	1983	1984	1985	1986
316.55	10¢/lb + 13.8%	8¢/lb + 12.7%	6¢/lb + 11.5%	4¢/lb + 10.3%	2¢/lb + 9.2%
316.58	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%	12.5¢/lb + 15%
316.60*	-	-	-	-	-
348.0065	13.7%	12.4%	11.1%	9.8%	8.5%
348.0075	13.7%	12.4%	11.1%	9.8%	8.5%
348.0565	18.9%	16.8%	14.7%	12.6%	10.5%
348.0575	18.9%	16.8%	14.7%	12.6%	10.5%
355.4520	21¢/lb + 30.6%	18¢/lb + 28.6%	15¢/lb + 26.7%	12¢/lb + 24.8%	9¢/lb + 22.8%
355.4530	21¢/lb + 30.6%	18¢/lb + 28.6%	15¢/lb + 26.7%	12¢/lb + 24.8%	9¢/lb + 22.8%
355.4560**	-	-	-	-	-

* 316.55 and 316.58 established (transferred from 316.60) effective January 1, 1982. (316.60 discontinued)

** 355.4520 and 355.4530 established (transferred from 355.4560) effective January 1, 1981. (355.4560 discontinued)

Sources: History of the Tariff Schedules of the United States Annotated (USITC Publication 1192); Tariff Schedules of the United States Annotated, 1979-1988.

	1987	1988
316.55	8%	8%
316.58	12.5¢/lb + 15%	12.5¢/lb + 15%
316.60*	-	-
348.0065	7.2%	7.2%
348.0075	7.2%	7.2%
348.0565	8.4%	8.4%
348.0575	8.4%	8.4%
355.4520	6¢/lb + 20.9%	3¢/lb + 18.9%
355.4530	6¢/lb + 20.9%	3¢/lb + 18.9%
355.4560**	-	-

* 316.55 and 316.58 established (transferred from 316.60) effective January 1, 1982. (316.60 discontinued)

** 355.4520 and 355.4530 established (transferred from 355.4560) effective January 1, 1981. (355.4560 discontinued)

Sources: History of the Tariff Schedules of the United States Annotated (USITC Publication 1192); Tariff Schedules of the United States Annotated, 1979-1988.

BINDER OR BALER TWINE OF POLYETHYLENE OR POLYPROPYLENE (OF WIDE NONFIBRILLATED STRIP) U.S. GENERAL IMPORTS, BY COUNTRY AND PORT NOVEMBER 1989 AND YEAR-TO-DATE (5607.41.10)

Country	Port	Kilos	Customs Value	Unit Value	Kilos	Customs Value	Unit Value
			November 1989			Year-to-date	
Canada	Buffalo	0	$0	$0.000	19,126	$36,656	$1.917
Honduras	Puerto Rico	0	$0	$0.000	18,647	$30,000	$1.609
Switzerland	New Orleans	0	$0	$0.000	53,361	$101,303	$1.898
	Milwaukee	0	0	0.000	96	1,394	14.521
	Total	0	$0	$0.000	53,457	$102,697	$1.921
Italy	Savannah	0	$0	$0.000	9,973	$15,577	$1.562
S. Korea	New York	0	$0	$0.000	50,748	$79,907	$1.575
	San Fran	0	0	0.000	7,853	15,550	1.980
	Col-Snake	0	0	0.000	17,359	26,789	1.543
	Total	0	$0	$0.000	75,960	$122,196	$1.609
Taiwan	New Orleans	0	$0	$0.000	11,398	$31,120	$2.730
	Los Angeles	0	0	0.000	20,575	35,618	1.731
	St. Louis	0	0	0.000	1,300	3,869	2.976
	Total	0	$0	$0.000	33,273	$70,607	$2.122
Totals		0	$0	$0.000	210,436	$377,733	$1.795

OTHER CORDAGE AND TWINE OF POLYETHYLENE OR POLYPROPYLENE (OF WIDE NONFIBRILLATED STRIP) U.S. GENERAL IMPORTS, BY COUNTRY AND PORT NOVEMBER 1989 AND YEAR-TO-DATE (5607.49.10)

Source	Port	Kilos	Customs Value November 1989	Unit Value	Kilos	Customs Value Year-to-date	Unit Value
Canada	St. Albans	0	$0	$0.000	125	$1,488	$11.904
Costa Rica	Baltimore(OGN)	0	$0	$0.000	20,425	$27,873	$1.365
	Baltimore(GSP)	0	0	0.000	19,391	26,140	1.348
	Los Angeles(GSP)	0	0	0.000	19,809	26,647	1.345
	Total	0	$0	$0.000	59,625	$80,660	$1.353
Brazil	New York	6,336	$11,791	$1.861	15,134	$30,083	$1.988
Sweden	San Francisco	0	$0	$0.000	12,966	$41,219	$3.179
Norway	San Francisco	0	0	$0.000	5,920	$17,453	$2.948
United Kingdom	New York	0	$0	$0.000	7,663	$24,534	$3.202
	Tampa	3,446	10,291	2.986	11,451	35,603	3.109
	Chicago	1,363	4,916	3.607	1,363	4,916	3.607
	Houston	0	0	0.000	286	1,105	3.864
	Total	4,809	$15,207	$3.162	20,763	$66,158	$3.186
France	New York	0	$0	$0.000	103	$2,175	$21.117
	San Diego	0	0	0.000	1,515	34,192	22.569
	Los Angeles	0	0	0.000	336	9,561	28.455
	Total	0	$0	$0.000	1,954	$45,928	$23.505
West Germany	Los Angeles	0	$0	$0.000	181	$1,500	$8.287
	Cleveland	0	0	0.000	38	9,819	258.395
	Total	0	$0	$0.000	219	$11,319	$51.685

Portugal	Col-Snake	16,689	$35,433	$2.123	16,689	$35,433	$2.123
	Seattle	0	0	0.000	42,497	91,259	2.147
	Total	16,689	$35,433	$2.123	59,186	$126,692	$2.141
Philippines	Los Angeles	0	$0	$0.000	13,061	$13,253	$1.015
S. Korea	Boston	0	$0	$0.000	44,341	$87,467	$1.973
	New York	0	0	0.000	20,824	35,308	1.696
	Philadelphia	16,969	28,156	1.659	146,702	258,540	1.762
	Baltimore	36,612	64,976	0.246	264,150	493,925	1.870
	Tampa	0	0	0.000	32,821	55,903	1.703
	Mobile	0	0	0.000	17,208	37,426	2.175
	New Orleans	134,039	221,296	1.651	991,514	1,666,563	1.681
	Los Angeles	0	0	0.000	165,097	309,062	1.872
	San Francisco	0	0	0.000	63,176	108,514	1.718
	Col-Snake	6,761	12,146	1.796	60,537	100,151	1.654
	Seattle	0	0	0.000	112,368	202,260	1.800
	Hawaii	0	0	0.000	1,655	2,935	1.773
	Detroit	0	0	0.000	31,289	54,041	1.727
	Chicago	0	0	0.000	66,201	128,381	1.939
	St. Louis	0	0	0.000	17,683	31,296	1.770
	Miami	0	0	0.000	47,103	88,676	1.883
	Houston	0	0	0.000	70,081	118,645	1.693
	Total	194,381	$326,574	$1.680	2,152,750	$3,779,093	$1.755
Taiwan	Mobile	0	$0	$0.000	1,200	$3,285	$2.737
	Hawaii	0	0	0.000	322	1,174	3.646
	Chicago	0	0	0.000	19,256	34,810	1.808
	St. Louis	0	0	0.000	950	2,799	2.946
	Miami	1,034	4,237	4.098	2,244	49,831	22.206
	Total	1,034	$4,237	$4.098	23,972	$49,831	$2.079
Totals		223,249	$393,242	$1.761	2,365,675	$4,263,177	$1.802

ESTIMATES OF FOREGONE TARIFF REVENUE: 1989
(based on imports through November 1989)

A) 5607.41.10, HTSUS (PE/PP binder or baler twine of "wide nonfibrillated strip")

Actual rates of duty: 5.3% (MFN)
Free (A,E,IL)
4.7% (CA)

Potential rates: 8.0% (MFN)
6.4% (CA)

Country	Customs Value	Actual Revenue	Potential Revenue	Foregone Revenue
Canada	$36,656	$1,723	$2,346	$623
Honduras	30,000	0	2,400	2,400
Switzlnd	53,457	2,833	4,277	1,443
Italy	15,577	826	1,246	421
S. Korea	122,196	6,476	9,776	3,299
Taiwan	70,607	3,742	5,649	1,906
Totals	$328,493	$15,600	$25,693	$10,093

B) 5607.49.10, HTSUS (Other PE/PP cordage of "wide nonfibrillated strip", assuming all imports measure less than 4.8mm in diameter)

Actual rates of duty: 5.3% (MFN)
Free (A,E,IL)
4.7% (CA)

Potential rates: 8.0% (MFN)
6.4% (CA)

Country	Customs Value	Actual Revenue	Potential Revenue	Foregone Revenue
Canada	$1,488	$70	$95	$25
C. Rica*	80,660	1,477	6,453	4,976
Brazil	30,083	0	2,407	2,407
Sweden	41,219	2,185	3,298	1,113
Norway	17,453	925	1,396	471
UK	66,158	3,506	5,293	1,786
France	45,928	2,434	3,674	1,240
FRG	11,319	600	906	306
Portugal	126,692	6,715	10,135	3,421
Phil. R.	13,253	0	1,060	1,060
S. Korea	3,779,093	200,292	302,327	102,036
Taiwan	49,831	2,641	3,986	1,345
Totals	$4,263,177	$220,845	$341,030	$120,185

* Revenue figures based on only the portion of imports from Costa Rica that are subject to duty

C) 5607.49.10, HTSUS (Other PE/PP cordage of "wide nonfibrillated strip", assuming all imports measure 4.8mm or more in diameter)

Actual rates of duty: 5.3% (MFN)
Free (A,E,IL)
4.7% (CA)

Potential rates: 27.6 cents/kg + 15% (MFN)
24.8 cents/kg + 13.5% (CA)

Country	General Imports (kg)	Customs Value	Actual Revenue	Potential Revenue	Foregone Revenue
Canada	125	$1,488	$70	$232	$162
C. Rica*	59,625	80,660	1,477	28,556	27,078
Brazil	15,134	30,083	0	8,689	8,689
Sweden	12,968	41,219	2,185	9,762	7,577
Norway	5,920	17,453	925	4,252	3,327
UK	20,763	66,158	3,506	15,654	12,148
France	1,954	45,928	2,434	7,429	4,994
FRG	219	11,319	600	1,758	1,158
Portugal	59,186	126,692	6,715	35,339	28,624
Phil. R.	13,061	13,253	0	5,593	5,593
S. Korea	2,152,750	3,779,093	200,292	1,161,023	960,731
Taiwan	23,972	49,831	2,641	14,091	11,450
Totals	2,365,677	$4,263,177	$220,845	$1,292,378	$1,071,533

* Revenue figures based on only the portion of imports from Costa Rica that are subject to duty

Note: Volume figures are included here due to the combination of both specific and ad valorem rates on each of the potential duties.

Source: U.S. Department of Commerce
Leighton and Regnery
January 1990

APPENDIX G
SUBMISSION BY THE AMERICAN DAIRY PRODUCTS INSTITUTE

Contains No Business
Proprietary Information
Total Pages: 16

Before the

United States International Trade Commission

Investigation #332-274

Request for

Investigation with Respect to the Operation of the

Harmonized System Subtitle of the Omnibus Trade

and Competitiveness Act of 1988

On Behalf of

American Dairy Products Institute

January 31, 1990

Submitted by

Leighton and Regnery
Washington Counsel to
American Dairy Products
Institute
1667 K Street, N.W.
Suite 801
Washington, D.C. 20006
(202) 955-3900

I. INTRODUCTION

A. ADPI's Interest in the Investigation

The American Dairy Products Institute (ADPI) hereby submits these comments in response to the April 20, 1989, announcement by the International Trade Commission (ITC) of the Institution of an Investigation and Request for Public Comments, designated Investigation #332-274, Investigation With Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988 (Investigation). See 54 Fed. Reg. 16010.

B. ADPI's Organization and Area of Interest

ADPI, headquartered in Chicago, Illinois, is the trade association of the nation's leading manufacturers of processed dairy products including nonfat dry milk, dry whole milk, whey and whey products, evaporated milk and other processed dairy ingredients. Member companies, located throughout the United States, manufacture approximately 81 percent of the aforementioned processed dairy products in this country. In addition, many companies that supply and serve the industry in some manner, as well as those who utilize the industry products, are active members of ADPI.

The notice of institution particularly requested written submissions advising the ITC of the views of interested parties on the operation of the Harmonized Tariff Schedule of the United States (HTSUS) and suggestions for changes which would improve

its operation. The investigation is being conducted as provided for in §1216 (Commission REPORT ON OPERATION OF SUBTITLE) of the Omnibus Trade and Competitiveness Act of 1988, (P.Law 100-418). Additionally, the legislative history of this provision directs the ITC to play a lead role in formulating U.S. policy in this area, "particularly with regard to assuring that the Convention recognizes the needs of the U.S. business community for a nomenclature that reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices." See House Conf. Rep. No. 100-576 at 549.

The following presents ADPI's views and suggestions regarding the descriptions of chocolate for confectionery uses which may contain dry whole milk or butterfat.

C. ADPI's View of the Operation and Suggestions for Change

Based upon a year's of experience and monitoring of the eleven months of import statistics that are currently are available, ADPI believes that the current structure of the HTSUS provides substantial loopholes for quota avoidance. ADPI further believes that these loopholes can be closed by minor adjustments to the HTSUS, which ADPI has proposed to the Committee for Statistical Annotation of Tariff Schedules (484e Committee), and application of quota provisions to products with definitions that clearly include quota-covered items.

II. ADPI VIEWS ON OPERATION OF THE HTSUS

A. Description of Items of Concern to ADPI

1. Chocolate block

"Chocolate block" is used primarily by the confectionery industry for coatings for various candies and other confectionery uses, as well as for ice cream toppings. It is classified under HTSUS 1806.20.20, described by the following criteria:

> a preparation of ground cocoa beans,
>
> with or without added cocoa fat,
>
> with or without flavoring or emulsifying agents,
>
> with not more than 60 percent by weight of sugar,
>
> with not more than 32 percent by weight of butterfat or other milk solids, and
>
> in the form of blocks or slabs of 4.5 kilograms or more.

2. Other confectionery chocolate

Other chocolate for confectionery uses is classified under HTSUS 1806.20.40 and HTSUS 1806.32.20, described by the following criteria:

> a preparation of ground cocoa beans,
>
> with or without added cocoa fat,
>
> with or without flavoring or emulsifying agents,
>
> with not more than 60 percent by weight of sugar,
>
> with not more than 32 percent by weight of butterfat or other milk solids, and
>
> in the form of blocks or slabs not weighing 4.5 kilograms or more.

A table setting forth the HTSUS classifications of these items together with the appropriate quota and duty designations is attached at A.

B. Essential Character is the Main Classification Criteria under the HTSUS

The general basis for determining classification of an item is its "essential character" under the HTSUS; this differs substantively from the previous rule under the Tariff Schedules of the United States (TSUS) where classification was primarily determined by the component of chief value or end use. Under the essential character criteria, items are to be classified according to the component that makes them what they are, or gives them their essential character. The headnote definitions of essential character are attached at B.

"Essential character" has had such a short life as the classification criteria for the United States that there is not yet a large body of precedent for this application. ADPI's research has uncovered, however, the Customs position that prior essential character criteria have some influence on current classification thinking. Additionally, Customs has stated that "The important thing to remember is that it bears no relationship to component material in chief value, as such, and cannot be resolved on the basis of any single factor such as weight." See Harmonized System Handbook; August 1986, Department of the Treasury, U.S. Customs Service HB 3600.06 at 14.

C. Current Operation of the HTSUS Provides Vast Opportunities for Massive Quota Avoidance.

1. Import Data Display a Picture of Product Shifting

a. Chocolate Block 1987-1989

Although a brief dip in the volume of shipments, following the imposition of the non-section 22 sugar quota against the EC, suggested that imports of chocolate block might be levelling off in 1988, 1989's strong figures affirm that the numbers are still rapidly rising. Indeed, imports of chocolate block, which had been only 3.8 million pounds in 1978, totalled 67.4 million pounds in 1988 - an increase of 1,674 percent. Projected figures for 1989, averaged from the first 11 months, estimate the annual total will be 78,303,832 pounds. This is an increase of approximately 16 percent in one year. This massive increase shows up only in the non-butter-fat/milk quota item. Shipping sources have also shifted so that little product is imported from the EC because of the sugar quota, but the overwhelming majority of the product is mixed in Canada for shipment into the United States. The source of the sugar in the Canadian product is not, however, recorded in United States import statistics.

b. Other Confectionery Chocolate

Because of the shift in classification nomenclature to the HTSUS, comparative statistics for pre and post HTSUS adoption are not available for individual numbers. What can be documented is that shipments of non-butterfat-containing chocolate increased between 1978 and 1988 while

shipments of those products that contained butterfat dropped off sharply, coincident with the application of the butterfat quota. 1989 Imports of these items under the HTSUS are estimated at 48,272,091 pounds, based upon the first 11 months.

2. Quota Avoidance

a. Butterfat Quota and Butterfat and other Milk Solids Quota

There are currently two quotas applied under Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624) ("Section 22 Quota") on items containing butterfat or butterfat or other milk solids which are applicable to "other confectionery chocolate." These quotas are split by butterfat content and apply only to certain countries. There is no similar quota applied to "chocolate block" despite the fact that the only difference in the two descriptions is the weight of the unit in which the product is imported. The operation of the HTSUS in this portion provides a loophole around the quota by clearly setting out a classification with a larger unit volume and the same content proportions. Shippers can easily see the advantage in aggregating product for entry so that the quotas do not apply. Apparently due to inadvertence, shippers need only package the product in a larger unit volume to avoid the quotas.

b. Dry Whole Milk Quota

There is currently a worldwide Section 22 quota on dry whole milk imports into the United States. Yet despite the presence in the definitions of the confectionery chocolate items of the ceiling percentages for butterfat and other milk solids,

this quota does not cover these items. This is true in spite of the fact that dry whole milk is well known to be the most often-used milk solid in these products. The HTSUS therefore advertises another loophole for those who would interfere with the dairy price support system by spelling out a way to import large quantities of dry whole milk into the country without the milk being subject to quota.

c. Sugar Quota

Chocolate block is currently subject to a temporary quota on contained sugar from the European Community.

3. Difficulty in Quantification

Quantification of the volume of contained dry whole milk in imports of chocolate block is virtually impossible. In its survey of this issue, the General Accounting Office (GAO) estimated that the dry whole milk totalled between 4.8 and 13.3 million pounds in 1988.[1] See Report at 16. One thing is clear: whatever the correct total is within this range, the dry whole milk in imports of chocolate block far exceed the 7000 pound world quota for dry whole milk. See Attachment C for estimates of the total volume of product (differentiated from the contained milk or butterfat, for example) that may be avoiding each respective quota.

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1 "Dairy Imports: Issues Related to Chocolate Products," GAO/RCED-89-159BR, July 1989 (hereinafter "Report").

III. ADPI'S SUGGESTIONS FOR MODIFICATION OF THE OPERATION OF THE HTSUS

A. Adopt a Statistical Breakout for Chocolate Block

On October 13, 1989, ADPI submitted to the 484e Committee a request for a statistical breakout from HTS 1806.20 for the purpose of separating shipments under this heading according to dry whole milk content. Dry whole milk is the milk solid commonly used in the production of milk chocolate. This breakout would enable those involved to determine the actual quantity of contained imported milk. A table setting forth the requested breakout is appended at D. It should be noted that this breakout is at a level that does not require international negotiation.

B. Extend the Butterfat and Butterfat and Other Milk Solids Quotas to the Identical Item in a Larger Aggregate

The identity of descriptions between chocolate block and other confectionery chocolate point to the omission of the butterfat and butterfat and other milk solids quotas on chocolate block as an inadvertence. All three of the identically defined products should be covered under the quota.

C. Extend Dry Whole Milk Quota Coverage to the Dry Whole Milk Containment

It was only at the time of the shift from the TSUS to the HTSUS, or January 1, 1989, that the descriptions of the confectionery chocolate classifications contained the butterfat or other milk solids provisions. Under the TSUS, the primary guide for classification was component of chief value or end use, as discussed above. Under the HTSUS, the primary guide for these

items is essential character. The essential character of these confectionery chocolates is milk chocolate when they contain butterfat or other milk solids. As such, their milk or butterfat content is provided for in the HTSUS. The current schedules operate to provide a loophole for importers who wish to avoid the quota on dry whole milk and costs to the Commodity Credit Corporation have been estimated at up to $11.4 million in 1988 alone. See Report at 24. The schedule should be modified so that the loophole emphasized by its wording is closed.

IV. SUMMARY AND PRAYER FOR RELIEF

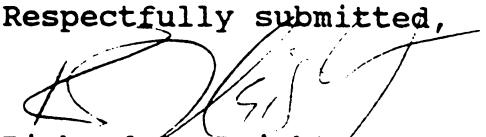
Based upon the experience of its members and the statistical information relating to imports summarized in this submission, ADPI believes that the HTSUS is operating to the detriment and injury of the domestic producers of processed dairy products, contrary to national policy exemplified by the section 22 quotas on butterfat and dry whole milk. In this instance the language does not reflect sound principles of commodity identification. Nor does it reflect current trading practices when it provides such loopholes.

It is ADPI's considered opinion that the situation could best be remedied by three simple modifications to the HTSUS:

- add the statistical breakout applied for to chocolate block;
- clarify that the butterfat quota applies to all sizes of the imported confectionery chocolate and that there should be no size exemption for larger blocks or bars than the two sizes with quotas, and

- follow the HTSUS guidelines on essential character including the dry whole milk imported in confectionery chocolate so that there is no loophole for avoiding the quota in the HTSUS.

Respectfully submitted,



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Washington Counsel to the
American Dairy Products Institute

CHOCOLATE BLOCK AND OTHER CHOCOLATE PRODUCTS

HTSUS Subheading	Product Description
1806.20.20	Chocolate, in blocks or slabs weighing 4.5 kg or more each
Rates of duty:	General Free
	Special Free
	Column 2 8.8 cents/kg
	Quota: 9903.17.10
	EC 6,408,000 kg
1806.20.40.20	Chocolate, in blocks or slabs weighing over 2 kg but less than 4.5 kg, not containing butterfat or other milk solids
Rates of duty:	General 5%
	Special Free (A,E,IL); 4% (CA)
	Column 2 40%
	Quota: None
1806.20.40.40	Chocolate, in blocks or slabs weighing over 2 kg but less than 4.5 kg, containing over 5.5% by weight of butterfat
Rates of duty:	General 5%
	Special Free (A,E,IL); 4% (CA)
	Column 2 40%
	Quota: 9904.10.63
	Ireland 4,286,491 kg
	UK 3,379,297 kg
	Netherlands 45,359 kg
	Australia 2,000,000 kg
	New Zealand 1 kg
	Other None
1806.20.40.60	Chocolate, in blocks or slabs weighing over 2 kg but less than 4.5 kg, containing not over 5.5% by weight of butterfat or containing other milk solids
Rates of duty:	General 5%
	Special Free (A,E,IL); 4% (CA)
	Column 2 40%
	Quota: 9904.10.66
	UK 421,845 kg
	Ireland 1,700,988 kg
	New Zealand 1 kg
	Other None
1806.32.20.30	Chocolate, in blocks, slabs or bars weighing not over 2 kg, not filled, containing over
5.5%	by weight of butterfat (except articles
for	consumption at retail as candy or confection)
Rates of duty:	General 5%
	Special Free (A,E,IL); 4% (CA)

	Column 2	40%	
	Quota:	9904.10.63	
		Ireland	4,286,491 kg
		UK	3,379,297 kg
		Netherlands	45,359 kg
		Australia	2,000,000 kg
		New Zealand	1 kg
		Other	None

1806.32.20.60 Chocolate, in blocks, slabs or bars weighing not over 2 kg, not filled, containing 5.5% or less by weight of butterfat (except for consumption at retail as candy or confection)

Rates of duty:	General	5%	
	Special	Free (A,E,IL); 4% (CA)	
	Column 2	40%	
	Quota:	9904.10.66	
		UK	421,845 kg
		Ireland	1,700,988 kg
		New Zealand	1 kg
		Other	None

1806.32.20.90 Chocolate, in blocks, slabs or bars weighing not over 2 kg, not filled, for consumption at retail as candy or confection

Rates of duty:	General	5%
	Special	Free (A,E,IL); 4% (CA)
	Column 2	40%
	Quota:	None

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

GENERAL RULES OF INTERPRETATION

3. When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

   (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

   (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

ATTACHMENT C

U.S. Chocolate Imports Avoiding Quotas in 1989 (based on imports through November)

Quota Type	Total Imports Avoiding Quota (kg)*
EC Sugar	7,391,389
World-wide Dry Whole Milk	41,653,054
Butterfat, >5.5% by weight	62,521
Butterfat, ≤5.5% by weight or containing other milk solids	4,463

* These figures are based on imports entering under the following HTSUS subheadings which, depending on country of origin, avoid one or more of the above quotas: 1806.20.20, 1806.20.40.20, 1806.20.40.40, 1806.20.40.60, 1086.32.20.30, 1806.32.20.45, 1086.32.20.50, 1806.32.20.60, 1806.32.20.90

Source: U.S. Department of Commerce
Leighton and Regnery
January 1990

Proposed Breakout

ADPI is requesting the Committee to "break out" from the current 1806.20.20 the following additional subsections:

1806	Chocolate and other food preparations containing cocoa:
1806.20	Other preparations in blocks or slabs weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg:
	Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar:
1806.20.20	In blocks or slabs weighing 4.5 kg or more each:
1806.20.20.10	Containing no butterfat or other milk solids
1806.20.20.20	Containing more than 0 but no more than 5.5 percent by weight of butterfat or other milk solids
1806.20.20.30	Containing more than 5.5 percent, but no more 15 percent by weight of butterfat or other milk solids
1806.20.20.40	Containing more than 15 percent, but no more than 22 percent by weight of butterfat or other milk solids
1806.20.20.50	Containing more than 22 percent, but no more than 32 percent by weight of butterfat or other milk solids

APPENDIX H
SUBMISSION BY THE AMERICAN IRON ORE ASSOCIATION

Late filing accepted per Chairman's ltr

1301 East Ninth Street
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Cleveland, Ohio 44114-1824

216-589-4000
Facsimile 216-589-4109 4237
Telex 980582 980588

M.A.Hanna Company

January 26, 1990

Secretary
U. S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Sir:

I am writing to you on behalf of the American Iron Ore Association (AIOA) in my capacity as Chairman of the Association's Statistics Committee in order to propose an amendment to the commodity definition of "Direct Reduced Iron (#7203)" contained in the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988.

The AIOA believes that the current definition does not accurately define "Direct Reduced Iron" and may result in misinterpretation. Accordingly, the AIOA would like to propose that the definition be replaced by the following:

Direct Reduced Iron

#7203 A ferrous material made from a natural or an agglomerated iron ore feedstock subjected to a thermal reduction process which has converted a portion of the iron oxide in the feedstock to metallic iron. Direct reduced iron may be in the form of lump, pellets or briquettes and should contain a minimum of 35 percent metallic iron.

It is the AIOA's hope that the use of this definition in the Harmonized Tariff Schedule will eliminate all possibility that imports and exports of "Direct Reduced Iron" might be categorized as iron ore by the U.S. Customs Service.

Naturally, I would be pleased to meet with representatives of the International Trade Commission at their convenience in order to facilitate consideration of this proposal. I may be contacted by telephone at 216/589-4026.

Sincerely,

P. M. Earl
Vice President, Ore Sales

cc: George Ryan, Executive Director AIOA

APPENDIX I
SUBMISSION BY BUFFALO INDUSTRIES, INC.

BOGLE & GATES

LAW OFFICES

JOEL R. JUNKER

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01287/01301

June 6, 1989

Secretary
U. S. International
Trade Commission
500 E Street S.W.
Washington, D.C. 20436

Re: **Investigation with Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988**

Dear Sir:

We are counsel for Buffalo Industries of Seattle, Washington which wishes to submit comment in response to the referenced investigation (54 Fed. Reg. 16010, April 20, 1989). Our comments relate directly to improved operations of the Harmonized Tariff Schedule of the United States, Heading No. 6309, which relates to worn clothing and other worn articles.

Background. Buffalo Industries, Inc. has been in the business of collecting, sorting and reselling rags and used clothing for over 40 years. Buffalo Industries imports containers of used clothing in bales purchased from the Salvation Army in British Columbia, Canada, entered through the Port of Blaine, Washington. Because of shortages in domestic supply, the company anticipates increased foreign sourcing of used clothing.

There are several intended uses and ultimate destinations for the imported goods. Approximately 15% will be sold in the United States after fabrication into industrial wipers. Wool items are to be sorted and sold for re-export to Italy. General clothing is to be sorted by type and sold for re-export to a number of countries. Approximately 10 to 15% is to be taken to landfills for destruction.

Heading No. 6309. Although the old Tariff Schedule provided a classification for rags, there was no separate general classification for used clothing until the Harmonized System provided a new separate heading in the Tariff Schedule for worn clothing and worn textile articles in Heading No. 6309. The Notes to Chapter 63 require that any articles, to qualify for this classification must (1) show signs of appreciable wear and (2) be entered in bulk or in bales, sacks or similar packings.

Imported items under Heading No. 6309 are subject to the country of origin marking requirements of 19 CFR Part 134. However, because of the nature of goods and the manner of packaging in bulk and bale, the identification and marking of country of origin is either impossible or done at an expense economically prohibitive of the goods' importation. In other words, the application of country of origin marking requirements to Heading No. 6309 renders this classifications a nullity.

Feasibility of Country Marking. It should be noted initially that in many if not most cases, specific articles of worn clothing imported from a foreign source may be impossible to identify by country of origin. There is no certainty that the source countries themselves require country of origin labeling, and even if they do, worn clothing may no longer have labels attached or readable labels. Consequently, a significant percentage of any imported worn clothing simply cannot be identified by country of origin at any cost.

Assuming that it is possible to identify the country of origin of imported used clothing, the expense of identifying by separate item the country of origin would render the importation economically prohibitive. For example, in the industry the typical current cost of a container of used clothing is approximately $.08-.10 per pound or $3,200 to $4,000. There is an additional minimum freight cost of $250 per container. Thus, the total cost of the container shipment is approximately $3,450-$4,250. The cost of sorting used garments by clothing type is approximately $.06-.08 per pound. Buffalo Industries estimates that the process of sorting by country of origin in addition would increase the cost 2-1/2 times at a minimum to $.15 per pound. At $.15 a pound, the additional cost for processing a container is $6,000. The minimum total cost of a container consequently comes to $6,000 (processing), plus $3,200 (clothing costs), plus $250 (freight) for a minimum total of $9,450 per container.

At this cost, the importation of used garments cannot be conducted on a competitive basis. Indeed, Buffalo Industries would find it to be more economically feasible in such

circumstances to establish processing operations in Canada at a lesser cost.

Other Labeling Requirements. Special treatment of country of origin marking requirements for used clothing is consistent with the treatment of used clothing under other labeling requirements. The Textile Fiber Products Identification Act (15 USC §79(g)) requires certain labeling of "household textile articles" which include wearing apparel. However, there is an express exclusion of these requirements for second hand household textile articles that are discernably second hand or are marked to indicate their second hand character (16 CFR §303.45(a)(5)).

The Wool Products Labeling Act of 1939 (15 USC §68) requires labels on wool products to contain certain information such as the percentage of wool fiber, country of processing, registration identification and the like. Unlike the Textile Fiber Products Identification Act, there is no exemption on the face of the statute or regulations which exempts used clothing. However, we have consulted with the Federal Trade Commission to determine that agency's policy with respect to used clothing under the Act. We were advised formally by an agency official that, "Because of the practical difficulties and costs involved in marking the clothing subject to the Wool Act, and because such marking would not benefit consumers in any manner, I would have no objection to the entry of these wool items without their being marked." (Copy of letter attached.)

The rationale and public policy purposes behind the Textile Fiber Products and Wool Product labeling acts are effectively the same as for country of origin labeling requirements. The exemption of labeling requirements for used clothing does not affect negatively these underlying policy purposes. Similarly, the policy behind the country of origin labeling requirements for imported apparel and textile items is not harmed by similar treatment of used clothing entered under Heading No. 6309.

Finally, rags, which can be functionally equivalent to used clothing for commercial importation purposes, have long been exempted from country of origin labeling requirements under the J-list. (19 C.F.R. 134.33)

Conclusion. In sum, the nature, value and processing costs for used garments do not make a country of origin determination economically feasible, even when it is possible. The effect of applying country of origin marking requirements to used clothing would be to render Heading No. 6309 a nullity, for

June 6, 1989

no imports could take place within the bounds of the regulations or economic feasibility.

If we can provide any additional information in this matter, please do not hesitate to contact us.

Very truly yours,

BOGLE & GATES

Joel R. Junker

cc: Buffalo Industries

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
LOS ANGELES REGIONAL OFFICE

February 2, 1988

Joel R. Junker, Esq.
Bogle & Gates
Bank of California Center
Seattle, WA 98164
(206) 623-4326

subject: marking of imported, used clothing

Dear Mr. Junker

From our phone conversations and from your letter of January 27, I understand the factual situation as follows. Your client intends to import into the United States used clothing manufactured in several other countries. This bulk, used clothing will enter the U.S. through Canada. Approximately 15% of the imported clothing will be sold in the United States as industrial wipers; approximately 10% to 15% will be destroyed. Concerning the remainder, this clothing will be sorted by type and re-exported to a number of countries, and wool items will be sorted and re-exported to Italy. Your client would like to know how all the clothing should be marked at time of entry.

The first thing to keep in mind is that, pursuant to Rule 45(a)(5) under the Textile Act, any of this clothing that does not contain wool need not be marked. But what of the clothing that contains wool (i.e., and is subject to the Wool Act and not the Textile Act)? Neither the Wool Act nor its implementing regulations have a provision which parallels Rule 45(a)(5) under the Textile Act.

Strictly speaking, the clothing that contains wool must be marked with all required Wool Act disclosures: 1) fiber content 2) country of origin and 3) a company name or a registered identification number. Thus, if your client were to so mark these wool items, it would have to: 1) identify the items of clothing that contain any amount of wool 2) test each item and determine the fiber content and 3) determine the appropriate country of origin.

It is important to keep in mind that we are considering wool items that will be re-exported. Under no circumstances will this clothing be sold to United States consumers. Thus, if sorting, testing, marking etc., is undertaken, it would serve no practical aim--such as to provide disclosure information to consumers; instead, it would be done exclusively to comply with the marking provisions of the Wool Act.

Because of the practical difficulties and costs involved in marking the clothing subject to the Wool Act, and because such marking would not benefit consumers in any manner, I would have no objection to the entry of these wool items without their being marked. If any Customs official would like to explore this matter at more length, I may be reached at my FTS number: 793 7975.

Cordially,

Bret S. Smart

Bret S. Smart
Program Advisor

APPENDIX J
SUBMISSION BY NOBELPHARMA USA, INC.

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November 7, 1989

Kenneth R. Mason, Secretary
U.S. International Trade Commission
500 E Street, S.W.
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Operation Of The Harmonized System Subtitle
Of The Omnibus Trade And Competitiveness Act Of 1988.
Inv. No. 332-274
Dutiable Status Of Titanium Dental Implants
Classified In HTS Subheading 9021.29.80

Dear Mr. Mason:

This letter is submitted on behalf of our client, Nobelpharma USA, Inc., of Chicago, Illinois, in response to the Commission's request for public comments on the operation of the Harmonized Tariff Schedule ("HTS") during the first year of its use.[1]

The adoption of the HTS has resulted in an unforeseen and inadvertent increase in the rate of duty on titanium dental implants imported by our client. These products were dutiable at

[1] Investigation With Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988, 54 Fed. Reg. 16010 (Apr. 20, 1989) [hereinafter Harmonized System Investigation]. The investigation was instituted pursuant to the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-416, § 1216, 102 Stat. 1107, 1163. The Harmonized System subtitle of the Act is id., tit. I, subtit. B, 102 Stat. at 1147-1163.

the rate of 5.5 percent under the former Tariff Schedules of the United States ("TSUS") but are now dutiable at the rate of 9.0 percent. To improve the operation of the HTS, the 5.5 percent rate of duty should be restored by creating appropriate subheadings at the eight-digit level.

Description Of The Product

Nobelpharma imports titanium dental implants from Sweden, where they are manufactured by Nobelpharma's parent company. The implants and related components are used in a specialized technique of reconstructive dental surgery known as osseointegrated implant dentistry. This recently developed procedure allows the permanent replacement of teeth in selected patients suffering from the loss of the original teeth. In the procedure, threaded titanium implants are surgically inserted into the patient's jawbone. After the implants are inserted, the bone tissue grows into the threads of the implant, unites with the titanium, and produces "osseo-integration," the actual incorporation of the titanium into the bone tissue. The osseointegrated implants then serve as anchors for artificial teeth.

Tariff Classification

Under the TSUS, dental fixtures were not classified as artificial teeth and dentures and, instead, were classified on the basis of the material of which the fixtures were composed in chief

value.[2] Under this principle, Nobelpharma's dental implants were classified under the provision for articles of base metals not specially provided for in item 658.00, TSUS, dutiable at the rate of 5.5 percent ad valorem after January 1, 1987.

When the HTS took effect on January 1, 1989, the Customs Service began to classify Nobelpharma's dental implants under the provision for "artificial teeth and dental fittings, and parts and accessories thereof: other: other" in subheading 9021.29.80, HTS. A corresponding provision for "other dental fittings" did not exist in the TSUS, and the new provision is assigned the rate of duty of 9.0 percent ad valorem.

Effect On The Operation Of The HTS

Increasing the rate of duty on titanium dental implants is contrary to the basic purpose of the HTS. The HTS was intended, to the extent possible, to maintain tariff neutrality by avoiding

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[2] See Cust. Rul. Ltr. 072690 (Sept. 8, 1983) (temporary crowns used to protect teeth in dental surgery, classified as articles of plastic); Cust. Rul. Ltr. 054319 (Mar. 30, 1978) (screw post placed in tooth to retain built-up material before placing crown on a tooth, classified as either article of gold or article of steel coated with precious metal); Cust. Rul. Ltr. 041267 (Aug. 18, 1975) (inlays and anchors used to hold partial denture in place, classified as articles of steel); T.D. 71-83(5), 5 Cust. Bull. 161 (1971) (socket and pin system for anchoring artificial teeth, classified as article of platinum).

changes in the rates of duty on individual products.[3] The 9.0 percent rate of duty imposes an unwarranted burden on importers and consumers of these products.

In fact, the new 9.0 percent rate of duty on titanium dental implants is an anomaly. The cross-reference from the proposed HTS to the TSUS shows that this rate was derived from the provision for artificial teeth and dentures in item 709.55, TSUS.[4] Yet this provision was not applicable to titanium implants and similar dental fixtures. Nor did the drafters of the HTS expect any products classified in item 658.00, TSUS, to be classified in subheading 9021.29.80, HTS.[5] Articles of titanium classified in item 658.00, TSUS, were expected to be classified in subheading 8108.90, HTS.[6] The provision at the eight-digit level for articles

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[3] See Int'l Trade Comm'n, Pub. No. 1400, Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System, Submitting Report at v, 22, 31, 55-56 (1983).

[4] Int'l Trade Comm'n, Pub. No. 1400, Conversion of the Tariff Schedules Annotated into the Nomenclature Structure of the Harmonized System, Annex III: Cross-Reference from Converted Tariff Schedule to Present TSUSA, at 879 (1983).

[5] Id., Annex II: Cross-Reference from Present TSUSA to Converted Tariff Schedule, at 1152; id., Annex III, at 879.

[6] Id., Annex II, at 945; id., Annex III, at 713.

of titanium, subheading 8108.90.30, HTS, was assigned the proper 5.5 percent rate of duty.[7]

Requested Action

The Commission has invited interested parties "to suggest changes which ... would improve [the] operation [of the HTS]."[8] The operation of the HTS would be improved by correcting the unforeseen increase in duty on titanium dental implants and restoring the previous rate of 5.5 percent.

This change can be accomplished by creating new subheadings under the existing provision for "artificial teeth and dental fittings, and parts and accessories thereof: other: other." One new subheading should provide for "artificial teeth and dental fittings, and parts and accessories thereof: other: other: of titanium" and should be assigned the column 1 rate of duty of 5.5 percent. (It would also be appropriate to create other new subheadings for dental fixtures made of other materials, with the same rate of duty as the corresponding TSUS provision.)

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[7] See Trade Policy Staff Committee, Conversion of the Tariff Schedules of the Untied States into the Nomenclature Structure of the Harmonized System, Revised, Showing Administrative Changes Approved by the Trade Policy Staff Committee, at 81-8 (1984) (creating subheadings 8108.90.30 and 8108.90.60).

[8] Harmonized System Investigation, supra note 1, 54 Fed. Reg. at 16011.

Kenneth R. Mason, Secretary
November 7, 1989

Please do not hesitate to notify us if you have any questions or require any additional information concerning the treatment of our client's merchandise under the HTS. If requested, we are prepared to meet with members of the Commission staff to discuss this matter further.

Very truly yours,

Patrick C. Reed

Patrick C. Reed

FREEMAN, WASSERMAN & SCHNEIDER
Attorneys For
Nobelpharma USA, Inc.

APPENDIX K
SUBMISSION BY THE SPRING MANUFACTURERS INSTITUTE, INC.

BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

Review of the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988	Investigation No. 332-274

STATEMENT ON BEHALF OF
THE SPRING MANUFACTURERS INSTITUTE, INC.

January 30, 1990

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Counsel for the Spring
Manufacturers Institute, Inc.

The Spring Manufacturers Institute, Inc. ("SMI") submits this statement with respect to Investigation No. 332-274, which was instituted pursuant to Section 322(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Under Section 1216 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) (the "Act"), the U.S. International Trade Commission (the "Commission" or "ITC"), is directed to prepare and submit a report regarding the operation of the Harmonized System subtitle of the Act during the 12-month period commencing on January 1, 1989. In this submission, SMI will advise the Commission of its views on the operation of the Harmonized Tariff Schedule (the "Harmonized System" or H.S.) during 1989 and will suggest improvements in its operation as it affects the U.S. spring manufacturers industry.

SMI is a non-profit trade association made up of manufacturers of precision mechanical springs and their suppliers throughout North America. SMI's 289 members represent more than two-thirds of U.S. spring production. In 1988, sales volume totaled more than $1.67 billion, representing the productive work output of more than 20,000 American workers. In 1988, sales of springs to the automotive market constituted approximately 46% or $768 million in total sales volume.

I. SMI'S STATEMENT IN INVESTIGATION NO. 332-284

Given the importance of this domestic industry, SMI has repeatedly participated in investigations before the Commission regarding the classification and treatment of certain springs. Most recently, on December 15, 1989, SMI filed a statement in opposition to the redesignation of Mexico as eligible for duty-free treatment for certain springs under the U.S. Generalized System of Preferences, pursuant to Investigation No. 332-284 ("SMI Dec. 15, 1989 Statement").[1/]

For purposes of the spring industry, the scope of Investigation No. 332-284 was two-fold. First, whether a U.S. industry then existed which produced like or directly competitive articles to those imported from Mexico, and second, whether the level of U.S. imports of certain springs from Mexico then exceeded the statutory level thus making Mexico ineligible for redesignation for GSP preferential treatment. SMI concluded affirmatively to both issues noting, inter alia, that springs, including helical springs, and leaves for springs, formerly classified under the Tariff Schedules of the

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1/ On November 15, 1985, SMI filed statements in opposition to the waiver of competitive need limitations for springs and leaves for springs of base metal from Mexico pursuant to ITC Investigation No. 332-218 and to Case No. GR-W-135 before the U.S. Trade Representative, Trade Policy Staff Committee. Thereafter, imports of springs and leaves for springs for motor vehicle suspension from Mexico were denied redesignation. (See TSUS 652.84, Trade Act of 1974, §504 at Annex IV, amended by Trade and Tariff Act of 1984, 19 U.S.C. §2462 (1984 & Supp. 1989).

U.S. ("TSUS") 652.84 and, as of January 1, 1989, classified under H.S. 7320.10.00 and 7320.20.10, are still produced domestically.[2/]

II. THE RECLASSIFICATION OF SPRINGS FROM TSUS TO THE HARMONIZED SYSTEM

Prior to January 1, 1989, the U.S. Department of Commerce tracked imports according to the TSUS classification system. Under this former system, U.S. imports of springs, and leaves for springs for motor vehicle suspension, from Canada were reported under TSUS 652.85,[3/] while all other U.S. imports of springs and leaves for springs for motor vehicle suspension were reported under TSUS 652.84. The breakdown simply designated TSUS 652.85, for Canadian imports, and TSUS 652.84, for all other U.S. imports of springs.

On January 1, 1989, the Harmonized System was implemented by the U.S. Department of Commerce as the new classification system for imports, previously reported under the TSUS system. The new system, however, was not a one-for-one replacement of TSUS as to the imports of springs. Under the Harmonized System, leaf springs and leaves for

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2/ SMI respectfully refers the Commission to those portions of the SMI Dec. 15, 1989 Statement, regarding the reclassification of items under the new Harmonized System, which are equally applicable to this Investigation.

3/ Such imports were specifically provided for under the Automotive Parts Trade Agreement ("APTA") between the U.S. and Canada.

springs are now reported under H.S. 7320.10.00 and helical springs are now reported under H.S. 7320.20.10, for all U.S. imports (including Canadian imports in both categories). Imports under APTA are no longer reported separately. Instead, the segregation is now made by the type of spring rather than the geographic source of the spring.

Notwithstanding the category redesignation under the Harmonized System and the elimination of a Canadian designation, it appears that Canadian imports in 1989 continued to be primarily recorded in the category for helical springs for motor vehicle suspension (H.S. 7320.20.10), rather than in the category for leaf springs and leaves therefor for motor vehicle suspension (H.S. 7320.10.00). From January through September 1989, Canadian imports of helical springs were valued at $100,395,000 and Canadian imports of springs and leaves therefor were valued at $29,661,000. Similarly, during 1988, Canadian imports under TSUS 652.84 were valued at $12,329,000, while Canadian APTA imports under TSUS 652.85 were valued at $128,939,000. (See Tables 1,2, and 3 attached). Thus, what appears to be a beneficial redesignation is, in at least this initial nine-month experience, not yet a fully operational redesignation.

III. SUGGESTED MODIFICATIONS TO THE HARMONIZED SYSTEM AS IT RELATES TO SPRINGS AND LEAVES THEREFOR.

SMI is generally in accord with the thrust of the new system of reporting by type of item. For example, the

Harmonized System breaks out imports of springs and leaves for springs for motor vehicle suspension from imports of helical springs for motor vehicle suspension. The Association does not believe, however, that the current Harmonized System goes far enough.

As noted above, a substantial percent of the domestic industry supplies the automotive market (46%). At present, the Harmonized System distinguishes springs, including leaves for springs (H.S. 7320.10.00) from helical springs (H.S. 7320.20.10). It would be more beneficial to the industry if the imports could be reported under four H.S. classifications, similar to those employed by the U.S. Department of Commerce, Census of Manufactures' Standard Industrial Classification ("SIC") system.

Under this proposed expanded classification system, import tracking would conform to SIC 3493, "Steel Springs, Except Wire" and its subparts and SIC 3495, "Wire Springs" and its subparts, and could be broken out as follows:

(1) Hot formed springs;

(2) Leaf springs;

(3) Cold formed springs; and,

(4) Precision mechanical wire springs.

These modifications would provide the industry with more-detailed information and data comparable to other

U.S.-generated data. Similarly, the Association's Annual Market Summary [4/] identifies sales by type of product:

Type	Percent of Total Dollars
Wire Forms	8.6%
Compression	37.3%
Extension	8.2%
Torsion	8.5%
Flat Coil and Power	6.9%
Flat Springs (i.e., load carrying tempered)	12.4%
Constant Force	1.4%
Stampings (low carbon)	4.7%
Hot Formed	1.8%
Other Products Related to Spring Industry	10.2%
	100.00%

A more detailed breakout of the Harmonized System into even the four above-mentioned classifications, would be a significant improvement to the current system.

4/ SMI Dec. 15, 1989 Statement, Appendix, 1988 Annual Market Summary at 2.

In summary, SMI supports the ITC's efforts in this Investigation, and encourages the Commission to report to Congress and the President the need for the modifications to the Harmonized System which have been outlined herein.

Respectfully submitted,

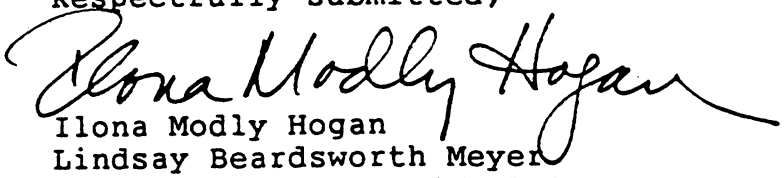

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TABLE 1

U.S. IMPORTS OF SPRINGS AND LEAVES FOR SPRINGS
UNDER TSUS AND THE HARMONIZED SYSTEM

(Customs Value in thousand dollars)

	TSUSA 652.84		TSUSA 652.85[1]	TOTAL
	Canada	All Sources	All Canada	All Sources
1982	6,897	41,432	68,843	110,275
1983	9,074	52,711	92,075	144,786
1984	15,056	83,791	124,464	208,255
1985	15,555	93,115	121,319	214,434
1986	10,816	91,028	123,701	214,729
1987	11,431	100,640	137,222	237,862
1988	12,329	92,595	128,939	221,534

[1] Imports under Automotive Parts Trade Agreement (APTA), all from Canada

		H.S. 7320.10.00		H.S. 7320.20.10		TOTAL	
		Canada	All Sources	Canada	All Sources	Canada	All Sources
Jan-Sep. 1989	Value	29,661	84,134	100,395	112,648	130,056	196,762
	Percent	35.3%	---	89.1%	---	66.1%	---

Source: U.S. Department of Commerce official trade statistics.

TABLE 2

U.S. IMPORTS OF SPRINGS, LEAVES FOR SPRINGS FOR MOTOR VEHICLE SUSPENSION, Jan.-Sep. 1989

(Custom Value in thousand dollars)

		Custom Value	Percent of Total Imports	Percent of Non-Canadian Imports
H.S.[1] 7320.10.00 (Leaf Springs & Leaves Therefor)	Canada	29,661	35.3%	—
	Mexico	23,548	28.0%	43.2%
	Venezuela	871	1.0%	1.6%
	Brazil	1,880	2.2%	3.5%
	Argentina	2,850	3.4%	5.2%
	Norway	34	0.0%	0.1%
	Finland	1	0.0%	0.0%
	U.K.	67	0.1%	0.1%
	France	315	0.4%	0.6%
	W. Germany	8,226	9.8%	15.1%
	Switzerland	6	0.0%	0.0%
	Poland	6	0.0%	0.0%
	Italy	127	0.2%	0.2%
	Yugoslavia	2	0.0%	0.0%
	India	597	0.7%	1.1%
	Thailand	589	0.7%	1.1%
	Malaysia	10	0.0%	0.0%
	PRC	1,501	1.8%	2.8%
	Korea	1,099	1.3%	2.0%
	Hong Kong	24	0.0%	0.0%
	Taiwan	205	0.2%	0.4%
	Japan	12,037	14.3%	22.1%
	Mozaimbique	31	0.0%	0.1%
	S. Africa	447	0.5%	0.8%
	Total	84,134		
	Total Less Canada	54,473		

[1] The U.S. Department of Commerce implemented the Harmonized System (H.S.) in January of 1989. Imports under TSUSA 652.84 and 652.85 are reported under both H.S. 7320.10.00 and 7320.20.10. Imports under the APTA are no longer reported separately.

Source: U.S. Department of Commerce official trade statistics.

TABLE 3

U.S. IMPORTS OF HELICAL SPRINGS FOR MOTOR VEHICLE SUSPENSION, Jan.-Sep. 1989

(Custom Value in thousand dollars)

		Custom Value	Percent of Total Imports	Percent of Non-Canadian Imports
H.S.[1] 7320.20.10 (Helical Springs)	Canada	100,395	89.1%	—
	Mexico	5,119	4.5%	41.8%
	Venezuela	27	0.0%	0.2%
	Brazil	144	0.1%	1.2%
	Argentina	26	0.0%	0.2%
	Sweden	24	0.0%	0.2%
	Finland	9	0.0%	0.1%
	U. K.	124	0.1%	1.0%
	Netherlands	8	0.0%	0.1%
	Belgium	19	0.0%	0.2%
	France	66	0.1%	0.5%
	W. Germany	1,544	1.4%	12.6%
	Austria	13	0.0%	0.1%
	Hungary	10	0.0%	0.1%
	Italy	87	0.1%	0.7%
	Yugoslavia	211	0.2%	1.7%
	India	15	0.0%	0.1%
	Thailand	123	0.1%	1.0%
	PRC	55	0.0%	0.5%
	Hong Kong	1	0.0%	0.0%
	Japan	4,224	3.7%	34.5%
	Australia	73	0.1%	0.6%
	New Zealand	8	0.0%	0.1%
	Mozambique	8	0.0%	0.1%
	South Africa	315	0.3%	2.6%
	Total	112,648		
	Total Less Canada	12,254		

[1] The U.S. Department of Commerce implemented the Harmonized System (H.S.) in January of 1989. Imports under TSUSA 652.84 and 652.85 are reported under both H.S. 7320.10.00 and 7320.20.10. Imports under the APTA are no longer reported separately.

Source: U.S. Department of Commerce official trade statistics.