March 24, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON WAYS AND MEANS OF THE UNITED STATES HOUSE OF REPRESENTATIVES ON PROPOSED TARIFF LEGISLATION[1]

Bill no., sponsor, and sponsor's state: H.R. 2322 (105th Congress), Representative Castle (DE)

Companion bill: S. 1088 (105th Congress), Senator Roth (DE)

Title as introduced:

> To suspend the duty on the organo-phosphorus compound ACM until January 1, 2000.

Summary of bill:[2]

> Duty is suspended through December 31, 1999, on the subject chemical, Phosphenic acid, [3-(acetyloxy)-3-cyanopropyl]methyl-, butyl ester (more commonly called ACM).[3]
>
> Effective date: 15th day after enactment.
>
> Retroactive effect: None.

Statement of purpose:

Representative Castle made no statement in the *Congressional Record* at the time that this legislation was introduced. However, Senator Roth stated, in connection with the companion bill, that:[4]

> "ACM is an essential ingredient in the production of glufosinate ammonium, a patented non-selective, broad-spectrum herbicide, manufactured by AgrEvo USA under the brand name Liberty and used primarily in corn and soybean cultivation. The cost to import ACM currently comprises roughly 90 percent of the total cost of manufacturing glufosinate ammonium. Suspension of this duty will substantially lower AgrEvo's cost of production and thereby improve the company's competitiveness."

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[1] Industry analyst: Aimison Jonnard (205-3350); attorney: Leo Webb (205-2599).
[2] See appendix A for definitions of tariff and trade agreement terms.
[3] See technical comments section.
[4] *Congressional Record*, July 30, 1997, p. S8362.

Product description and uses:

Phosphinic acid, [3-(acetyloxy)-3-cyanopropyl]methyl-, butyl ester:

ACM, a common contraction of the above chemical name, will be utilized in the manufacture of glufosinate ammonium, a broad-spectrum, non-selective herbicide that is produced exclusively by AgrEvo Co. and its related entities overseas. ACM is an important raw material and intermediary product in the manufacture of this herbicide, in a new plant in Muskegon, MI, which will begin operating in 1998.

Tariff treatment:[5]

Product	HTS subheading	Col. 1-general rate of duty
Phosphinic acid, [3-(acetyloxy)-3-cyanopropyl]methyl-, butyl ester.	2931.00.90	3.7%

Chemical Abstracts Service Registry No. 167004-78-6

Structure of domestic industry (including competing products):

Phosphinic acid, [3-(acetyloxy)-3-cyanopropyl]methyl-, butyl ester:

ACM is the raw material that will be converted to glufosinate ammonium, a herbicide, or weed killer. These herbicides, around 100 in number, are produced by more than 30 U.S. companies. Evolution in product selection is rapid, since vegetation develops resistance to old products, and new chemicals are developed with less environmental problems, and other new chemicals are developed that attain the same or greater weed-killing power with much smaller application measured in pounds per acre.

There has been no U.S. production of either ACM or glufosinate. The importer, AgrEvo USA Co., has been constructing a plant in Muskegon, MI, that will begin producing glufosinate ammonium, a herbicide, later in 1998. Only then will the imported ACM be utilized.

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

Private-sector views:

The Commission contacted five companies which produce what may be competing herbicides.[6] None of these companies had submitted any written comments as of the date of preparation of this report.

U.S. consumption:

Phosphinic acid, [3-(acetyloxy)-3-cyanopropyl]methyl-, butyl ester:

	1994	1995	1996
	---------($1,000)---------		
U.S. production..........	0	0	0
U.S. imports[1]...............	0	0	0
U.S. exports...............	0	0	0
Apparent U.S. consumption............	0	0	0

Principal import sources: None.
Principal export markets: None.

[1]U.S. imports of this product are classified in a residual, or "basket," HTS subheading. Data were provided by a representative of AgrEvo.

Effect on customs revenue:[7]

Future (1998-1999) effect: According to AgrEvo, the prospective importer, the average annual revenue loss is expected to be about $500,000 during 1998-99.

Retroactive effect: None.

[6] Faxes were sent to Dow Chemical Co., Midland, MI; E.I. du Pont de Nemours and Co., Wilmington, DE; Monsanto Co., St. Louis, MO; Riverdale Chemical Co., Gillenwood, IL; and Zeneca Corp., Wilmington, DE, on Feb. 18, 1998.

[7] Actual revenue loss may be understated in the event of a significant increase in imports over the duty suspension period. In this instance, starting from zero in 1997, the imports are expected to be increasing very rapidly as soon as the new production facility goes on stream.

Technical comments:

Although ACM is stated to be a methylpropyl ester in this bill, U.S. Customs has informed the Commission that for the given CAS Registry number, the correct name is--

Phosphinic acid, [3-(acetyloxy)-3-cyanopropyl]methyl-, butyl ester.[8]

The HTS number referred to in the proposed article description should be amended to read--

2931.00.90

[8] Memorandum from Thomas P. Brady, U.S. Customs Service, to Commission staff, Mar. 3, 1998.

APPENDIX A

TARIFF AND TRADE AGREEMENT TERMS

In the **Harmonized Tariff Schedule of the United States** (HTS), chapters 1 through 97 cover all goods in trade and incorporate in the tariff nomenclature the internationally adopted Harmonized Commodity Description and Coding System through the 6-digit level of product description. Subordinate 8-digit product subdivisions, either enacted by Congress or proclaimed by the President, allow more narrowly applicable duty rates; 10-digit administrative statistical reporting numbers provide data of national interest. Chapters 98 and 99 contain special U.S. classifications and temporary rate provisions, respectively. The HTS replaced the Tariff Schedules of the United States (TSUS) effective January 1, 1989.

Duty rates in the **general** subcolumn of HTS column 1 are most-favored-nation (MFN) rates, many of which have been eliminated or are being reduced as concessions resulting from the Uruguay Round of Multilateral Trade Negotiations. Column 1-general duty rates apply to all countries except those enumerated in HTS general note 3(b) (Afghanistan, Cuba, Laos, North Korea, and Vietnam), which are subject to the statutory rates set forth in **column 2**. Specified goods from designated MFN-eligible countries may be eligible for reduced rates of duty or for duty-free entry under one or more preferential tariff programs. Such tariff treatment is set forth in the **special** subcolumn of HTS rate of duty column 1 or in the general notes. If eligibility for special tariff rates is not claimed or established, goods are dutiable at column 1-general rates. The HTS does not enumerate those countries as to which a total or partial embargo has been declared.

The **Generalized System of Preferences** (GSP) affords nonreciprocal tariff preferences to developing countries to aid their economic development and to diversify and expand their production and exports. The U.S. GSP, enacted in title V of the Trade Act of 1974 for 10 years and extended several times thereafter, applies to merchandise imported on or after January 1, 1976 and before the close of June 30, 1998. Indicated by the symbol "A", "A*", or "A+" in the special subcolumn, the GSP provides duty-free entry to eligible articles the product of and imported directly from designated beneficiary developing countries, as set forth in general note 4 to the HTS.

The **Caribbean Basin Economic Recovery Act** (CBERA) affords nonreciprocal tariff preferences to developing countries in the Caribbean Basin area to aid their economic development and to diversify and expand their production and exports. The CBERA, enacted in title II of Public Law 98-67, implemented by Presidential Proclamation 5133 of November 30, 1983, and amended by the Customs and Trade Act of 1990, applies to merchandise entered, or withdrawn from warehouse for consumption, on or after January 1, 1984. Indicated by the symbol "E" or "E*" in the special subcolumn, the CBERA provides duty-free entry to eligible articles, and reduced-duty treatment to certain other articles, which are the product of and imported directly from designated countries, as set forth in general note 7 to the HTS.

Free rates of duty in the special subcolumn followed by the symbol "IL" are applicable to products of Israel under the **United States-Israel Free Trade Area Implementation Act** of 1985 (IFTA), as provided in general note 8 to the HTS.

Preferential nonreciprocal duty-free or reduced-duty treatment in the special subcolumn followed by the symbol "J" or "J*" in parentheses is afforded to eligible articles the product of designated beneficiary countries under the **Andean Trade Preference Act** (ATPA), enacted as title II of Public Law 102-182 and implemented by Presidential Proclamation 6455 of July 2, 1992 (effective July 22, 1992), as set forth in general note 11 to the HTS.

Preferential or free rates of duty in the special subcolumn followed by the symbol "CA" are applicable to eligible goods of Canada, and rates followed by the symbol "MX" are applicable to eligible goods of Mexico, under the **North American Free Trade Agreement**, as provided in general note 12 to the HTS and implemented effective January 1, 1994 by Presidential Proclamation 6641 of December 15, 1993. Goods must originate in the NAFTA region under rules set forth in general note 12(t) and meet other requirements of the note and applicable regulations.

Other special tariff treatment applies to particular **products of insular possessions** (general note 3(a)(iv)), **products of the West Bank and Gaza Strip** (general note 3(a)(v)), goods covered by the **Automotive Products Trade Act** (APTA) (general note 5) and the **Agreement on Trade in Civil Aircraft** (ATCA) (general note 6), **articles imported from freely associated states** (general note 10), **pharmaceutical products** (general note 13), and **intermediate chemicals for dyes** (general note 14).

The **General Agreement on Tariffs and Trade 1994** (GATT 1994), pursuant to the Agreement Establishing the World Trade Organization, is based upon the earlier GATT 1947 (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786) as the primary multilateral system of disciplines and principles governing international trade. Signatories' obligations under both the 1994 and 1947 agreements focus upon most-favored-nation treatment, the maintenance of scheduled concession rates of duty, and national treatment for imported products; the GATT also provides the legal framework for customs valuation standards, "escape clause" (emergency) actions, antidumping and countervailing duties, dispute settlement, and other measures. The results of the Uruguay Round of multilateral tariff negotiations are set forth by way of separate schedules of concessions for each participating contracting party, with the U.S. schedule designated as Schedule XX.

Pursuant to the **Agreement on Textiles and Clothing** (ATC) of the GATT 1994, member countries are phasing out restrictions on imports under the prior "Arrangement Regarding International Trade in Textiles" (known as the **Multifiber Arrangement** (MFA)). Under the MFA, which was a departure from GATT 1947 provisions, importing and exporting countries negotiated bilateral agreements limiting textile and apparel shipments, and importing countries could take unilateral action in the absence or violation of an agreement. Quantitative limits had been established on imported textiles and apparel of cotton, other vegetable fibers, wool, man-made fibers or silk blends in an effort to prevent or limit market disruption in the importing countries. The ATC establishes notification and safeguard procedures, along with other rules concerning the customs treatment of textile and apparel shipments, and calls for the eventual complete integration of this sector into the GATT 1994 over a ten-year period, or by Jan. 1, 2005.

Rev. 8/12/97

APPENDIX B

SELECTED PORTIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

(Appendix not included in the electronic version of this report.)

I

105TH CONGRESS
1ST SESSION

H. R. 2322

To suspend the duty on the organo-phosphorus compound ACM until January 1, 2000.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1997

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

A BILL

To suspend the duty on the organo-phosphorus compound ACM until January 1, 2000.

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

SECTION 1. TEMPORARY SUSPENSION OF DUTY ON ACM.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.29.95	[3-(Acetoxy)-3-cyanopropyl] methylphosphinic acid, 2-methylproply ester (ACM INTERMEDIATE) in bulk (CAS No. 167004-78-6) (provided for in subheading 2931.00.90.30)	Free	No change	No change	On or before 12/31/99	".

SEC. 2. EFFECTIVE DATE.

The amendment made by this Act applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

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