March 27, 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. 2583 (105th Congress), Representative Cunningham (CA).

Companion bill: None.

Title as introduced: To amend the Tariff Act of 1930 with respect to the marking of finished golf clubs and golf club components.

Summary of bill:[2]

The bill would amend section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) to exempt from country-of-origin marking requirements both golf club components, imported for processing into finished golf clubs in the United States, and U.S.-manufactured golf clubs. Section 304 requires that "every article of foreign origin" or its container be marked conspicuously and permanently in order to "indicate to an ultimate purchaser" the English-language name of its country of origin, which is generally the location where the last substantial transformation occurred. If a good is imported for further manufacturing or processing, the issue of who is an "ultimate purchaser" is a case-by-case determination made pursuant to Customs regulations. The regulations further treat goods of Canada or Mexico under the North American Free Trade Agreement (NAFTA) separately, because of the so-called "marking rules" that determine when a good that originates in the NAFTA region will be accorded the special duty rate applicable to Canadian goods or that covering Mexican goods.[3]

Thus, if a component is imported from a non-NAFTA country, the ultimate purchaser will generally be "the last person in the United States who will receive the article in the form in which it was imported, while for components from a NAFTA country the ultimate purchaser is "the last person in the United States who purchases the good in the form in which it was imported.[4] If a manufacturer will substantially transform the imported component, or will carry out a process that results in one of the changes listed in the NAFTA marking rules, he will often be the ultimate purchaser. If instead only a minor process is executed which does

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[1] Industry analyst: Adam Topolansky (205-3394); attorney: Jan Summers (205-2605).

[2] See appendix A for definitions of tariff and trade agreement terms.

[3] Annex 302.2.12 and 13 to the NAFTA specify that when an originating good "qualifies to be marked" as a good of Canada or of Mexico, it shall receive the corresponding rate of duty, "without regard to whether the good is marked." Thus, it could be argued that using what were intended as "choice of duty rate" rules to dictate how a good is to be marked (whether it is to be marked at all and if so whether it must be marked in a manner different than would apply to a non-NAFTA shipment) may go beyond the legal obligations imposed by the NAFTA; moreover, the NAFTA does not suggest that these "marking rules" should be used with respect to non-NAFTA shipments.

[4] See 19 CFR sec. 134.1(d).

not comply with the NAFTA marking rules or "which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the 'ultimate purchaser.'"[5] Both section 304 and the regulations provide for certain exemptions from the marking requirements upon proper request.

Effective date: The date of enactment.

Retroactive effect: None.

Statement of purpose:

Representative Cunningham stated in the *Congressional Record*:[6]

> . . . The U.S. golf club industry has been able to cope with the U.S. Customs regulations prior to implementation of the NAFTA marking rules. But the new country of origin marking requirements have become real trade and economic barriers. Contrary to their stated purpose, the new requirements are less understandable, more subjective, and more burdensome than previous marking requirements . . . The marking problems can be resolved by recognizing that the process of manufacturing of golf clubs in the United States is clearly a substantial transformation . . . The U.S. golf club industry is a significant domestic employer that deserves to be treated fairly by trade laws . . . By enacting legislation that reflects current job practices, we restore trade fairness to the U.S. golf club industry, preserve American jobs, and enhance our trade competitiveness . . ..

Product description and uses:

There are three major components of a golf club: the head, the shaft, and the grip. The distance the ball is hit and the loft of the carry during flight are influenced by the shape of the golf club head, the angle of the head, the specifications of the grooves in the face of the head, the material that the head is made from (steel, titanium, or wood), the length and flexibility of the shaft, and the material that the shaft is made from (steel or graphite). Grips are usually made of leather and/or high-quality rubber and involve delicate cutting, sewing, and gluing operations.

Under long-standing Customs practice, if either the head or the shaft was domestically made, and such component was assembled in the United States together with imported components to form a complete golf club, the assembly constituted substantial transformation and marking of the imported parts was not necessary. Thus, golf club heads imported for assembly with U.S.-made shafts were not required to be marked with the country of origin, because Customs had held (HRL 735192) that the assembly accomplished a substantial transformation and the country of origin for the assembled club was the United States. Customs had also held (HRL 724901) that imported grips used in the assembly of golf clubs were not required to be marked with the country of origin so long as the shaft in the assembled club was of U.S. origin. However, if all of the components, or just the head and the shaft (regardless of the origin of other components), being

[5] 19 CFR sec. 134.1(d)(2).

[6] *Congressional Record* for Oct. 2, 1997, p. E1904.

assembled in the United States were imported, the club would not be accorded U.S. origin solely on the basis of local assembly, and each component would need to be marked with its origin.[7]

Under the NAFTA rules of origin set forth in general note 12(t) to the HTS, the assembly in a NAFTA country of golf clubs from imported components will only result in an originating good, and thus qualify it for a tariff preference, if in addition to the assembly the importer shows sufficient value added.[8] Assuming the requisite proof is supplied, the NAFTA "marking rules" are then applied to decide if the originating good is a good of Canada or a good of Mexico, despite the fact that the same NAFTA duty rate (free) applies in either case.

Part 102.0 of the Customs regulations specify that the marking rules are used "for determining the country of origin of imported goods for the purposes specified in paragraph 1 of Annex 311" of the NAFTA, including marking.[9] Under the rules for golf clubs of subheading 9506.31,[10] the assembly of golf clubs from imported components does not constitute a substantial transformation, even if the good has already been found to be eligible for a tariff preference. Therefore, the country of origin of each component must be marked thereon, including heads and grips, even if the shafts are of U.S. origin. According to information supplied by Customs, this requirement is applied to all NAFTA shipments and to all shipments where both the head and the shaft are imported into the country of assembly (for both NAFTA and other goods).

A company official estimated that the new marking requirements have increased the cost of production by $1 per club. The same official also stated that approximately 1.7 million clubs have to be marked each year that, prior to NAFTA, were exempt from country marking requirements.[11] The proposed legislation would permit any golf clubs assembled in the United States to be sold without a country of origin marking on any of the imported components.

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[7] See, for example, HRL 734256 (July 1, 1992) for an explanation of the marking treatment.

[8] See gneral note 12(t)/95.6 to the HTS.

[9] Annex 311.1 states that the parties to the NAFTA are required to establish rules "for determining whether a good is a good of a party...and for such other purposes as the Parties may agree." Given that the NAFTA was approved in the NAFTA Implementation Act (Pub.L. 103-182 of Dec. 8, 1993, 107 Stat. 2060), and assuming a trilateral agreement, the rules could arguably be extended to apply to goods of third countries.

[10] 19 CFR sec. 102.20 states in pertinent part for subheading 9506.31 (golf clubs) that origin would be accorded to the country of processing/assembly on the basis of a "change [of tariff classification due to processing] to subheading 9506.31 from any other subheading, except from subheading 9506.39 [including components].".

[11] See USITC, *Country of Origin Marking: Review of Laws, Regulations, and Practices*, Investigation No. 332-366, USITC publication 2975, July 1996, Post-Hearing Brief, April 22, 1996, p. 10.

Tariff treatment:[12]

| Product | HTS subheading | Col. 1-general rate of duty |
|---|---|---|
| Golf clubs and other golf equipment; parts and accessories thereof: | | |
| Golf clubs, complete . . . | 9506.31.00 | 4.5% ad val. |
| Other . . . . . | 9506.39.00 | 4.9% ad val. |

Structure of domestic industry (including competing products):

In recent years, the U.S. golf club and component manufacturing industry has become concentrated in the Carlsbad-San Diego, California area, with another clustering of manufacturers located in Florida. Industry shipments exceeded $2 billion in 1996. It is dominated by a handful of major producers/assemblers such as Fortune Brands (Titleist, Cobra, and Footjoy), Callaway, Taylor Made, and Ping. Research with respect to inputs and materials used to design and manufacture these components is performed in the United States. The assembly of golf clubs has been retained in the United States, while component manufacturing increasingly has been shifted to subsidiary plants in Mexico, or to independent suppliers in Taiwan, China, and elsewhere in East Asia.

All producers of golf clubs purchase shafts and grips from independent suppliers. A small number of club producers also manufacture their own heads. Most golf club producers, however, outsource all three major components from either domestic or international suppliers. Because of the labor-intensive manufacturing process required to produce heads and grips for golf clubs, most are imported, while the majority of the shafts used by the U.S. industry are U.S.-made. One of the largest manufacturers of golf club heads is Coastcast Corporation (Rancho Dominguez, CA). Significant shaft producers include Aldila (U.S.-owned), Fujikura (Japanese-owned), HST (U.S.-owned), and Unifiber (U.S.-owned). An important manufacturer of grips is Lamkin Leather and Rubber Company (San Diego, CA). The largest assembler of finished golf clubs nationwide is Callaway (Carlsbad, CA).

Private-sector views:

The Commission contacted 3 companies that produce and/or assemble and import these products. Also contacted were the industry's legal representatives and the Sporting Goods Manufacturers Association.[13] The Commission received submissions from Lamkin Corporation and from Taylor Made Golf; copies are attached to this memorandum.

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

[13] During the period Feb. 2-18, 1998, USITC staff contacted Callaway (Feb. 5, 1998), Taylor Made (Feb. 6, 1998), Coastcast (Feb. 9, 1998), and Carston Manufacturing, which markets clubs under the Ping brand (Feb. 18, 1998). Staff also consulted with Stein Shostak Shostak & O'Hara, the legal representative of the golf industry in Washington, DC, regarding this bill. In addition, staff contacted the Sporting Goods Manufacturers Association and the National Golf Foundation for advice on Feb. 19, 1998.

U.S. consumption:

HTS 9506.31.0000 (complete golf clubs)

| | 1994 | 1995 | 1996 |
|---|---|---|---|
| | ---------(Million dollars)--------- | | |
| U.S. production..... | 1,310 | 1,630 | 1,945 |
| U.S. imports..... | 42 | 33 | 29 |
| U.S. exports..... | 262 | 326 | 389 |
| Apparent U.S. consumption..... | 1,090 | 1,337 | 1,585 |

Principal import sources: Japan, Taiwan, Mexico.
Principal export markets: Japan, Korea, United Kingdom, and Canada.

HTS 9506.39.0060 (parts of golf clubs)

| | 1994 | 1995 | 1996 |
|---|---|---|---|
| | ---------(Million dollars)--------- | | |
| U.S. production..... | 650 | 890 | 960 |
| U.S. imports..... | 368 | 420 | 471 |
| U.S. exports..... | 130 | 178 | 192 |
| Apparent U.S. consumption..... | 888 | 1,132 | 1,239 |

Principal import sources: Mexico, China, and Taiwan.
Principal export markets: Mexico, Japan, United Kingdom, and Canada.

Effect on customs revenue:[14]

This legislation does not affect rates of duty and therefore would have no direct effect on customs revenues.

[14] Actual revenue loss may be understated in the event of a significant increase in imports over the duty suspension period.

Technical comments:

We note that the marking requirements of section 304 already do not apply to U.S.-origin goods (that is, those made wholly of U.S. inputs and those where only one major component--the head or the shaft--is imported). Thus, we suggest that new subdivision (f)(2) be amended by deleting "produced" and by inserting in lieu thereof "assembled using imported components."

## 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.)

**APPENDIX C**

**OTHER ATTACHMENTS**

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

I

105TH CONGRESS
1ST SESSION

# H. R. 2583

To amend the Tariff Act of 1930 with respect to the marking of finished golf clubs and golf club components.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 1997

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

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# A BILL

To amend the Tariff Act of 1930 with respect to the marking of finished golf clubs and golf club components.

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

**SECTION 1. MARKING OF FINISHED GOLF CLUBS AND GOLF CLUB COMPONENTS.**

Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) is amended—

(1) by redesignating subsections (f) through (k) as subsections (g) through (l), respectively; and

(2) by inserting after subsection (e) the following new section:

''(f) MARKING OF FINISHED GOLF CLUBS AND GOLF CLUB COMPONENTS.—The marking requirements of subsections (a) and (b) shall not apply to—

''(1) golf club components that are imported for processing into finished golf clubs in the United States; and

''(2) golf clubs that are produced in the United States.''.

**SEC. 2. EFFECTIVE DATE.**

The amendments made by section 1 apply to goods entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act.

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