

April 16, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON FINANCE OF THE UNITED STATES  
SENATE ON PROPOSED TARIFF LEGISLATION<sup>1</sup>

Bill no., sponsor, and sponsor's state: S. 1477 (105th Congress), Senator D'Amato (NY).

Companion bill: None.

Title as introduced:

To amend the Harmonized Tariff Schedule of the United States to provide that certain goods may be reimported into the United States without additional duty.

Summary of bill:<sup>2</sup>

The bill would amend subchapter I of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) by establishing a new HTS heading (similar to current HTS heading 9801.00.25) which provides duty-free treatment for an article assessed a duty during a previous importation, if the article was (1) exported within 3 years after the date of such previous importation; (2) sold for exportation and exported to individuals for personal use; (3) reimported without having been advanced in value or improved in condition by any process of manufacture or other means while abroad; (4) reimported as personal returns from those individuals, whether or not consolidated with other personal returns prior to reimportation; and (5) reimported by or for the account of the person who exported the article from the United States within 1 year of such exportation.

Effective date: The amendment applies to goods that are reimported into the United States on or after the date that is 15 days after enactment.

Retroactive effect: None.

Statement of purpose:

Senator D'Amato stated in the *Congressional Record*:

...I rise today to introduce legislation necessary to correct a problem faced by an important segment of the American exporting community, catalogue merchants. Catalogue merchants are multi-billion dollar export businesses in New York State

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<sup>1</sup> Industry analyst: James M. Brandon (205-3433); attorney: Leo Webb (205-2599).

<sup>2</sup> See appendix A for definitions of tariff and trade agreement terms.

and across the nation. Due to the anomaly in our customs law, some products sold by these merchants face double duties when the goods are returned to them by customers abroad. The bill I am introducing today seeks to correct this problem by making sure that duties are only assessed once--as the law intended--the first time a product comes into this country from abroad.

...Let me explain the problem by first telling you how the system is supposed to work. When a catalogue merchant imports a product directly from abroad, as the importer of record, he pays a duty on the product. Let's say a pair of trousers from Taiwan. A merchant in the United States takes direct delivery of a pair of pants from a company in Taipei, and pays duty to the U.S. Treasury on the trousers when they enter the United States. The merchant then sells the pants to a customer in Montreal, Canada. But, the pants are the wrong size, and the customer returns the same pair of trousers directly to the catalogue merchant in the U.S. In that case, properly, no duty is paid on the returned trousers.

...Now, take the same situation, but add a broker in the United States, (the way most catalogue merchants import merchandise into the United States) who is officially the importer of record. The trousers come into the United States from Taipei, but this time, instead of going directly to the merchant, they are imported by a U.S. distributor. The distributor, who is the importer of record, properly pays the duty on the pants, and then transfers the trousers to the catalogue merchant in the U.S. The catalogue merchant then sells the trousers to the customer in Montreal, who subsequently returns the trousers to the U.S. merchant (via a return clearinghouse in Canada, that is set up to ship returned products back to the U.S. in bulk). That is where the problem comes in. When the trousers come back to the United States (as part of a bulk shipment), duty has to be paid on the trousers a second time. Officially, that is because the catalogue merchant is not the original importer of record, and thus a second duty is assessed on the trousers.

...A second duty should not have to be paid on the same pair of trousers, just because the U.S. catalogue seller is not the original U.S. importer of record. What this says, essentially, is that it doesn't matter who the original importer of record is; as long as the proper duty is paid when an article first enters the U.S., a duty is not assessed the second time the article enters the U.S., when it re-enters the U.S. as a sales return.<sup>3</sup>

#### Product description and uses:

The proposed amendment covers a wide range of heterogeneous products; therefore, it is not possible to provide a description of products that will be covered.

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<sup>3</sup> Statement of Senator D'Amato, Congressional Record, Nov. 8, 1997, p. S12144.

Tariff treatment:<sup>4</sup>

<u>Product</u>	<u>HTS subheading</u>	<u>Col. 1-general rate of duty</u>
Articles, previously imported, with respect to which the duty was paid upon such previous importation if (1) exported within 3 years after the date of such previous importation, (2) reimported without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, (3) reimported for the reason that such articles do not conform to sample or specifications, and (4) reimported by or for the account of the person who imported them into, and exported them from, the United States. . . . .	9801.00.25	Free

Structure of domestic industry (including competing products):

A large number of industries produce goods that will be classified under the proposed heading. Since it is not possible to predict what goods will be imported or reimported, shipment and employment data of U.S. industries producing comparable products cannot be determined.

Private-sector views

The Commission contacted two of the largest domestic catalog merchants.<sup>5</sup> The companies had not submitted any written comments as of the date of preparation of this report.

U.S. consumption:

Due to the wide range of products covered by the bill and the uncertainty as to what products will be imported or reimported, it is not possible to estimate U.S. production, imports, exports, or consumption.

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<sup>4</sup> See appendix B for column 1-special and column 2 duty rates.

<sup>5</sup> Faxed copies of bill to June Nylin, Manager of Government Relations, Fingerhut Corporation, Feb. 13, 1998, and Carolyn Breem, Public Affairs, L.L. Bean Co., Feb. 18, 1998.

Effect on revenue:

Because of the uncertainty as to what products will be imported or reimported, it is not possible to provide an estimate of the bill's effect on future customs revenues.

Technical comments:

The Commission notes that the conditional requirement regarding aircraft parts under current HTS subheading 9801.00.30, which provides for duty-free entry to parts "reimported by or for the account of the person who exported the article from the United States," is essentially the same as the requirement specified in the proposed HTS amendment.

Line 7, page 1, should be amended to insert "heading" in lieu of "subheading".

## 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.)

105TH CONGRESS  
1ST SESSION

# S. 1477

To amend the Harmonized Tariff Schedule of the United States to provide that certain goods may be reimported into the United States without additional duty.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1997

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

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## A BILL

To amend the Harmonized Tariff Schedule of the United States to provide that certain goods may be reimported into the United States without additional duty.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REIMPORTATION OF CERTAIN GOODS.**

4 (a) IN GENERAL.—Subchapter I of chapter 98 of the  
5 Harmonized Tariff Schedule of the United States is  
6 amended by inserting in numerical sequence the following  
7 new subheading:

“	9801.00.26	Articles, previously imported, with respect to which the duty was paid upon such previous importation if (1) exported within 3 years after the date of such previous importation, (2) sold for exportation and exported to individuals for personal use, (3) reimported without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, (4) reimported as personal returns from those individuals, whether or not consolidated with other personal returns prior to reimportation, and (5) reimported by or for the account of the person who exported them from the United States within 1 year of such exportation .....	Free		Free	”.
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1           (b) EFFECTIVE DATE.—The amendment made by  
2 this section applies to goods described in subheading  
3 9801.00.26 of the Harmonized Tariff Schedule of United  
4 States (as added by subsection (a)) that are reimported  
5 into the United States on or after the date that is 15 days  
6 after the date of enactment of this Act.

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