

June 16, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

MEMORANDUM TO THE COMMITTEE ON FINANCE OF THE UNITED STATES
SENATE ON PROPOSED TARIFF LEGISLATION¹

Bill no., sponsor, and sponsor's state: S. 1944 (105th Congress), Senator Feinstein (CA).

Companion bill: H.R. 3386 (105th Congress), Representative Matsui (CA).

Title as introduced: To suspend temporarily the duty on certain chemicals used in the formulation of anti-cancer drugs.

Summary of bill:²

Temporarily suspends the most-favored-nation rate of duty for U.S. imports of (S)-N-[[5-[2-(2-Amino-4,6,7,8-tetrahydro-4-oxo-1H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl]-2-thienyl]carbonyl]-L-glutamic acid through December 31, 1999.

Effective date: 15th day after enactment.

Retroactive effect: None.

Statement of purpose:

Senator Feinstein stated in the *Congressional Record*:³

“The legislation we introduce would suspend the tariff until the international agreement goes into effect in 2000. These chemical compounds have been added to the zero tariff international agreement, but we should take off the tariff now to speed up the development of the AIDS and cancer drugs.

These chemicals are not available in the United States from domestic manufacturers and are not used for other products. Consequently, the zero tariff does not undermine domestic chemical manufacturers. In fact, these chemicals' eligibility for the zero tariff has been reviewed and approved by the chemical industry advisory committee, which advises the administration on trade policy.

¹ Industry analyst: David G. Michels (205-3352); attorney: Leo Webb (205-2599).

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

³ *Congressional Record*, Apr. 3, 1998, pp. S3219-3221.

This legislation only reduces the tariff for these chemical compounds that will receive a zero tariff under the international agreement. The zero tariff for these chemical compounds has, literally, been approved by both the United States and the international negotiators.”

Product description and uses:

(S)-N-[[5-[2-(2-Amino-4,6,7,8-tetrahydro-4-oxo-1H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl]-2-thienyl]carbonyl]-L-glutamic acid:

According to an industry representative,⁴ the subject chemical is a synthetic organic chemical that will be incorporated in an anti-cancer drug. This drug is currently in phase I clinical trials and, according to its manufacturer, is directed toward advanced cancer with a high degree of selectivity for tumor cells with less significant bone marrow toxicity than other chemotherapeutic agents.

Tariff treatment:^{5,6}

<u>Product</u>	<u>HTS subheading</u>	Col. 1-general
		<u>rate of duty</u>
(S)-N-[[5-[2-(2-Amino-4,6,7,8-tetrahydro-4-oxo-1H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl]-2-thienyl]carbonyl]-L-glutamic acid.....	2934.90.90	6.8%

Structure of domestic industry (including competing products):

(S)-N-[[5-[2-(2-Amino-4,6,7,8-tetrahydro-4-oxo-1H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl]-2-thienyl]carbonyl]-L-glutamic acid:

According to Commission records and industry sources, there was no appreciable domestic production of this chemical during the past 5 years. Drugs produced by other pharmaceutical companies for the treatment of cancer are similarly derived from organic chemical intermediates, but different in composition from the subject chemical.

⁴Letter to Commission staff dated Apr. 13, 1998, from Mr. Robert Shapiro, of Barnes, Richardson, and Colburn, representing Agouron Pharmaceuticals, Inc.

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

⁶See technical comments section.

Private-sector views:

The Commission contacted four pharmaceutical companies that produce or are developing drugs for the treatment of cancer. They are: Merck & Co., Whitehouse Station, NJ; Eli Lilly & Co., Indianapolis, IN; Pfizer, Inc., New York, NY; and SmithKline Beecham Corp., Philadelphia, PA. None of the companies had submitted written comments as of the date of preparation of this report.

U.S. consumption:

(S)-N-[[5-[2-(2-Amino-4,6,7,8-tetrahydro-4-oxo-1H-pyrimido [5,4-b][1,4]thiazin-6-yl)ethyl]-2-thienyl]carbonyl]-L-glutamic acid:

	<u>1995</u>	<u>1996</u>	<u>1997</u>
U.S. production ¹	0	0	0
U.S. imports ¹	0	0	0
U.S. exports.....	0	0	0
Apparent U.S. consumption.....	0	0	0

¹According to a representative of Agouron, production and/or imports in these years were only to support research and clinical testing and were negligible in commercial terms.

Principal import sources: Japan (in future years).

Principal export markets: None.

Effect on customs revenue:⁷

Future (1998-1999) effect: 50 kg x \$4500/kg x .068 = about \$15,000 average annual revenue loss, based on industry estimates.

Retroactive effect: None.

Technical comments:

The Commission notes that the chapter 99 number may need to be revised when this bill is marked up depending upon the other proposed amendments to the HTS that are approved for mark-up.

⁷ Actual revenue loss may be understated in the event of a significant increase in imports over the duty suspension period should the anti-cancer drug be approved for use in the United States. Industry sources expect, however, that these intermediates will be added to the Pharmaceutical Appendix of the HTS during the second review of the pharmaceutical agreement enacted as a result of the Uruguay Round Agreement negotiations. If this happens, the imports of these products would enter the United States free of duty (possibly as early as 1999).

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
2D SESSION

S. 1944

To suspend temporarily the duty on certain chemicals used in the formulation of anti-cancer drugs.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 1998

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To suspend temporarily the duty on certain chemicals used
in the formulation of anti-cancer drugs.

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. TEMPORARY SUSPENSION OF DUTY.**

4 (a) IN GENERAL.—Subchapter II of chapter 99 of
5 the Harmonized Tariff Schedule of the United States is
6 amended by inserting in numerical sequence the following
7 new heading:

“	9902.32.25	(S)-N-[[5-[2-(2-amino-4,6,7,8-tetrahydro-4-oxo-1H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl]-2-thienyl]carbonyl]-L-glutamic acid (CAS No. 177575-17-6) (provided for in subheading 2934.90.90)	Free	No change	No change	On or before 12/31/1999	”.
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1 (b) **EFFECTIVE DATE.**—The amendment made by
2 this section applies with respect to goods entered, or with-
3 drawn from warehouse for consumption, on or after the
4 15th day after the date of enactment of this Act.

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