

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 108th Congress¹**

[Date approved: December 9, 2004]²

Bill No. and sponsor: H.R. 5033 (Rep. Shays).

Proponent name, location:

Association of Food Industries, Inc.
3301 RT 66, Ste. 205, Bldg. C
Neptune, NJ 07753
Phone: (732) 922-3008
Fax: (732) 922-3590

Other bills on product (108th Congress only): None.

Nature of bill: Temporary duty suspension through December 31, 2007.

Retroactive effect: None.

Suggested article description(s) for enactment (including appropriate HTS subheading(s)):

Preparations of protein concentrates and textured protein substances, the foregoing which are frozen (provided for in subheading 2106.90.99).

Check one: Same as that in bill as introduced
 Different from that in bill as introduced (explain differences in Technical comments section)

Product information, including uses/applications and source(s) of imports:

The subject group of frozen meat substitute or meatless foods spans a wide range of value-added processed food products that are not elsewhere specified in the HTS. Publicly available information from Customs rulings indicates that the primary products involved are various frozen meat substitutes or imitation meat products: soy-based or vegetable-based burgers and patties, nuggets, franks and cutlets, and other types of imitation meat products, food preparations, and pureed products.³ Other types of finished food products may include vegetable chili, veggie or bean burgers, and organic burgers and patties. Information from U.S. Customs rulings indicates that the United Kingdom, other European Union nations, Canada, Mexico and Israel are among the suppliers of these products.⁴ Another type of imitation

¹ Industry analyst preparing report: Renee Johnson (202-205-3313); Tariff Affairs contact: Jan Summers (202-205-2605).

² Access to an electronic copy of this memorandum is available at <http://www.usitc.gov/billrpts.htm>. Access to a paper copy is available at the Commission's Law Library (202-205-3287) or at the Commission's Main Library (202-205-2630).

³ Based on a review of recent Custom's rulings on these HTS subheadings at <http://rulings.customs.gov> (search: 2106.90.9995).

⁴ Ibid.

meat product that may be imported under this classification is made under the trademarked brand Quorn.⁵ Quorn products are made from myco-protein, which is a fungus-based meat substitute.⁶ Other prepared foods imported under this tariff category include frozen coconut juice from Thailand,⁷ dessert filling and icing from Canada,⁸ and various meatless international foods and preparations. The latter group has included products from Colombia,⁹ such as rellenos de platano maduro, which are pie-like products composed of layers of plantain slices with vegetable filling, and pasteles, which are dough formed from mashed bananas, plantains, and vegetable-based preparations. Other more specific information on the types of products imported under this basket category are not available.

In 2003, the value of total U.S. imports under HTS statistical reporting number 2106.90.9995 totaled \$12.1 million,¹⁰ compared to 1999 when imports were valued at \$7.3 million. By value, the top supplying nations include Canada, Thailand, the United Kingdom, Japan, and Taiwan, accounting for 85 percent of U.S. imports. Canada is the largest supplier of U.S. imports, accounting for about 38 percent of value imports in 2003 (\$4.6 million), with imports in the past 5-years rising more than five times that of imports in 1999. Thailand accounted for 17 percent of the value of imports (\$2.0 million), a twofold increase compared to 1999. The United Kingdom accounted for 11 percent of imports in 2003 (\$1.4 million), a fourfold increase compared to 1999. Combined, Japan and Taiwan accounted for another 19 percent of import value under this classification (\$2.3 million). Over the 5-year period (1999-2003), the value of imports from Japan decreased, whereas imports from Taiwan more than doubled.

The share of imports under HTS statistical reporting number 2106.90.9995 attributable to frozen imitation meat products versus other types of frozen meatless food preparations is not known. The retail value of the U.S. market for each of these broad product groupings is also not known. Frozen imitation meat products imported under this category may compete with similar or substitutable U.S.-produced products. These include major brand name products, such as products under the Morningstar Farms label produced by the Kellogg Company,¹¹ Boca Burgers produced by Boca Foods Company (a subsidiary of Kraft¹²), Garden Burgers,¹³ and the Hain Celestial Group's Yves Veggie Cuisine products,¹⁴ among other brand products. Each of these brands cover a wide range of frozen meat alternatives and products. Other private label brands are also available, some which may contain domestically-produced product or which may contain imported and repackaged product.

Most imitation meat products are soy based and made from soy protein. Other ingredients may include a wide range of vegetables, legumes, rice, seasonings, and other input products. Suppliers of soy protein

⁵ The Quorn brand name is registered to UK-based Marlow Foods Limited (see <http://www.quorn.com>). The ingredient in Quorn products is pending FDA approval in the United States.

⁶ See, e.g., "The tariff classification of imitation meat products from England" (Custom ruling NY H82523, CLA-2-21:RR:NC:2:228 H82523, June 26, 2001) found at <http://rulings.customs> and retrieved on Oct. 13, 2004.

⁷ See, e.g., "The tariff classification of frozen coconut juice from Thailand" (Custom ruling NY C89990, CLA-2-21:RR:NC:2:228 C89990, Jul. 31, 1998) found at <http://rulings.customs> and retrieved on Oct. 5, 2004.

⁸ See, e.g., "Tariff classification of a dessert filling from Canada" (Custom ruling NY 808212, CLA-2-21:S:N:7:228 808212, Apr. 6, 1995) and "Tariff classification of icing from Canada" (NY B83770, CLA-2-21:RR:NC:2:228 B83770, Apr. 14, 1997). NY I85197, CLA-2-16:RR:NC:2:228 I85197, Sept. 12, 2002) found at <http://rulings.customs.gov> and retrieved on Oct. 5, 2004.

⁹ See, e.g., "The tariff classification of prepared foods from Colombia" (Custom ruling NY I85197, CLA-2-16:RR:NC:2:228 I85197, Sept. 12, 2002) found at <http://rulings.customs.gov> and retrieved on Oct. 5, 2004.

¹⁰ Based on import data from official U.S. Government statistics. Because this HTS subheading is a residual or "basket" tariff category, volume imports are not discussed in this report.

¹¹ See http://www.kelloggcompany.com/kelloggco/our_brands/morningstar_farms/index.html

¹² See <http://www.vegfamil.com/product-reviews/boca-burgers.htm>.

¹³ See <http://www.gardenburger.com/products/index.html>.

¹⁴ See <http://www.thesoydailyclub.com/Food/yves7292002.asp>.

ingredients for these products include companies such as Archer Daniels Midland Company, Cargill, Central Soya Company,¹⁵ and Solae Company (a DuPont Company joint venture¹⁶), among others.

Estimated effect on customs revenue:

The proposed legislative changes would temporarily suspend import duties through year-end 2007. For this analysis, U.S. imports for 2004-2008 are projected assuming a simple linear trend from reported import volumes for 1996 to 2003. Assumed per-unit import value is based on the reported 2-year average of imports from 2001 to 2003. Estimates of customs revenue loss assume duty-free access would be available to all imports from Canada and Mexico under the North America Free trade Agreement, as well as to eligible shipments from other countries where duty-free access applies. Because the proposed legislation would suspend duties through 2007 only, there is no estimated revenue loss for 2008.

HTS subheading: 2106.90.9995					
	2004	2005	2006	2007	2008
Col. 1-General rate of duty (AVE) <u>1/</u>	6.4 percent				
Estimated value <i>dutiable</i> imports <u>2/</u>	\$7.3 million	\$7.9 million	\$8.5 million	\$9.0 million	\$9.6 million
Customs revenue loss <u>3/</u>	\$470,000	\$500,000	\$540,000	\$580,000	\$0

1/ The AVE is the ad valorem equivalent of a specific or compound duty rate expressed as a percent, using the most recent import data available. The rate shown is the “general” or normal trade relations rate. Preferential rates may apply to countries entitled to “special” tariff treatment, including duty-free access for eligible products of certain countries under negotiated free trade arrangements and of some countries under the Generalized System of Preferences.

2/ Source of estimated dutiable import data: Commission estimates using official U.S. Government statistics.

3/ Assumes that tariffs are suspended on imported product for the calendar years 2004, 2005, and 2006. Rounded to the nearest \$10,000.

¹⁵ “Soy Protein Product Suppliers” available at <http://www.soyfoods.com/manufacture/Suppliers.html>.

¹⁶ “DuPont pushes soy as the next teflon,” The News Journal, March 3, 2004, available at <http://www.delawareonline.com/newsjournal/business/2004/03/03dupontpushessoy.html> and retrieved on Oct. 13, 2004.

Contacts with domestic firms/organizations (including the proponent):

Name of firm/organization	Date contacted	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
		(Yes/No)		
Steve Hofmann, Sandler, Travis & Rosenberg, 1300 Pennsylvania Ave., Ste 400, Washington, DC 20004, Ph: 202-216-9307 <u>Representing:</u> Association of Food Industries, Inc., 301 RT 66, Ste. 205, Bldg. C, Neptune, NJ 07753, Ph: 732-922-3008.	Sept. 28, 2004	No	Yes	No
David Wilson, Quorn Foods Inc., 3 Stamford Landing, 46 Southfield Ave., Stamford, CT 06902, Ph: 203-353-0271 ext. 3105.	Oct. 12, 2004	Yes (food processor / importer)	Yes	No
Len Condon, Altria/Kraft Foods, Three Lakes Dr., Northfield, IL 60093, Ph: 202-354-1500.	Oct. 1, 2004	Yes (food processor)	Yes	Yes
Tiffany Moore, Kellogg Co., 1 Kellogg Sq., Battle Creek, MI 49017, Ph: 202-354-1500.	Oct. 1, 2004	Yes (food processor)	No	n/a
Ellen Doitch, Hain Celestial Food Group, 58 S. Service Rd, Melville, NY 11747, Ph: 631-730-2200.	Oct. 1, 2004	Yes (food processor)	No	n/a
Scott Wallace, Gardenburger Authentic Foods Co., P.O. Box 160427, Freeport Center, Clearfield, UT 84016, Ph: 949-255-2020.	Oct. 1, 2004	Yes (food processor)	Yes	Yes
Garnell Pidgin, Solae Co., P.O. Box 88940, St. Louis, MO 63102, Ph: 314-982-2528.	Oct. 1, 2004	Yes (food ingredient supplier)	No	Yes
Greg Webb, Archer Daniels Midland Co., 4666 Faries Pkwy., Decatur, IL 62526, Ph: 800-510-2178.	Oct. 1, 2004	Yes (food ingredient supplier)	No	
Susan Siemietkowski, American Frozen Food Institute, 2000 Corporate Ridge, Ste. 1000, McLean, Virginia 22102, Ph: 703-821-0770	Oct. 5, 2004	No	Yes	Yes
Anna Pavlova, American Soybean Assoc. 12125 Woodcrest Exec. Dr., Ste. 100, St. Louis, MO 63141, Ph: 202-969-8900	Sept. 30, 2004	No	Yes	Yes
Soyfoods Association of North America, 1001 Connecticut Ave. N.W., Ste. 1120, Washington, D.C. 20036, Ph: 202-986-5600	Sept. 30, 2004	No	No	n/a

Michael Jacobson, Center for Science in the Public Interest, 1875 Connecticut Ave. N.W., Washington, D.C. 20009, Ph: 202-332-9110.	Sept. 29, 2004	No	No	n/a
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See the appendices to this report for copies of submissions received by the Commission.

Technical comments:¹⁷

We would suggest that the proposed article description use more tariff-consistent language such as that quoted above; accordingly, we have suggested (based on the terms of available Customs rulings) that the new provision cover preparations that have the essential character of the types of protein products falling in HTS subheading 2106.10.00 (an international or Harmonized System category for the subject protein substances, such as powder or flour). We would be happy to consult with Customs and the proponents concerning the description.

The proposed language would be as follows: Preparations of protein concentrates and textured protein substances, the foregoing which are frozen (provided for in subheading 2106.90.99).

¹⁷ The Commission may express an opinion on the HTS classification of a product to facilitate consideration of the bill. However, by law, only the U.S. Customs Service is authorized to issue a binding ruling on this matter. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.

APPENDIX A

**SELECTED PORTIONS OF THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

[Note: Appendix may not be included in the electronic version of this memorandum.]

APPENDIX B

STATEMENTS SUBMITTED BY THE PROPONENTS

[Note: Appendix B may not be included in the electronic version of this memorandum posted on the Commission's website if an electronic copy of the statement was not received by the Commission.]

APPENDIX C

STATEMENTS SUBMITTED BY OTHER FIRMS/ORGANIZATIONS

[Note: Appendix C may not be included in the electronic version of this memorandum posted on the Commission's website if an electronic copy of the statement was not received by the Commission.]



Association of Food Industries, Inc.

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www.afi.us.org • afi@afi.us.org

October 12, 2004

Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 E. Street SW
Washington DC 20436

Dear Ms. Johnson,

The Association of Food Industries is composed of more than 400 U.S. companies involved in importing food products to the United States. One of AFI's members, Quorn Foods, specializes in meat-free cuisine. It imports products such as chicken-style nuggets and patties, lasagna, beef-style grounds, meat-free dogs, sausage-style links and frozen entrees that are made with "mycoprotein," a patented process derived by fermenting a naturally occurring fungus and combining it with other ingredients to create the food product.

Meatless food products are imported into the United States under Harmonized Tariff Schedule 2106.90.99.95, which provides for general frozen food preparations. Currently, this category faces a 6.4 percent duty rate in the United States.

There are no U.S. companies that domestically manufacture products that compete with Quorn's imports. Nonetheless, Quorn Foods pays a significant amount in duties every year. AFI and Quorn are seeking to eliminate this duty because it does not protect any domestic manufacturers of meat-free products. In order to do this, a new HTS number will have to be created specifically for Quorn's product, since it now falls under a general basket of frozen food categories.

AFI is writing to express its support for HR 5033, a bill introduced by Congressman Christopher Shays, that would eliminate the duty on this product. As stated above, the duty currently paid does not protect a domestic industry. It does, however, needlessly raise costs to consumers and impacts Quorn's profitability. Congressman Shays' bill will take these needless costs out of the system.

I look forward to working with you and your office on this issue. Thank you.

Sincerely,

Bob Bauer
President



12125 Woodcrest Executive Drive, Suite 100, St. Louis, MO 63141, Phone: (314) 576-1770, Fax: (314) 576-2786

October 25, 2004

Honorable Marilyn R. Abbott
Secretary, United States International Trade Commission
500 E Street, SW
Washington DC 20436

Subject: HR 5033, changes to HTS Heading 2106.90.9995 --Written Comments

Dear Secretary Abbott:

Thank you for seeking comment regarding the investigation of changes to the Harmonized Tariff Schedule (HTS) of the United States, tariff line 2106.90.9995. The American Soybean Association (ASA) is a membership-driven, grassroots policy organization representing over 25,000 U.S. soybean producers. U.S. soybean farmers have an enormous stake in making sure duty reductions and trade negotiations and concessions are consistent with the economic interests of U.S. soybean farmers and the U.S. soy industry.

In reviewing the potential change to heading 2106.90.9995, it appears that it would allow a manufacturer to import frozen soy protein products (such as soy hamburgers, soy hotdogs, etc.) under a zero duty rate as opposed to the current 6.4 percent duty.

The United States is the largest soybean producer in the world, and our soy foods industry is the largest in the world. The market for textured soy protein and soy protein concentrate widely used in food products containing soy is valued at approximately US \$1 billion. These high value products are consumed in the U.S., but are also exported all over the world, including several countries where the U.S. has developed and sustained a 100% market share for these products.

Given the widespread domestic supply of soybeans and soy protein products for the food industry, we see no need to enact legislation to temporarily lower the duty on frozen food products containing soy protein. Additionally, we believe that any reduction in import duties of soy protein products should only occur as part of comprehensive WTO negotiations or through free trade agreements. The unilateral reduction of duties on products reduces U.S. leverage in the negotiations and undermines the incentive for other countries to make reciprocal market-opening offers in the negotiations. Therefore, we are opposed to the temporary duty reduction of tariff line 2106.90.9995.

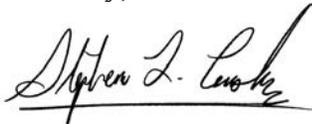
We urge you not to modify the heading 2106.90.9995 as it pertains to all frozen products containing any soybean ingredient or soybean product. The immediate and long-term possible

financial gain by an international manufacturer should not jeopardize the access to an established market that U.S. soybean producers and U.S. industry have so diligently developed.

Please do not hesitate to contact me if you have any questions about the U.S. soybean's industry's interests in changes to the Harmonized Tariff Schedule.

Thank you for your consideration and assistance.

Sincerely,

A handwritten signature in black ink, reading "Stephen L. Censky". The signature is written in a cursive style with a horizontal line underneath the name.

Stephen Censky

CEO

American Soybean Association



October 1, 2004

Ms. Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 E. Street SW
Washington DC, 20436

Dear Ms Johnson:

Gardenburger, Incorporated appreciates the opportunity to provide comments for the U.S. International Trade report regarding H.R. 5033. Gardenburger opposes the passage of this bill. The basis for our opposition is outlined below:

1. Meatless frozen food product unit sales declined 5.5% in U.S. Grocery Stores for the 12 week period ending August 21, 2004 as measured by the AC Nielsen Company. This decline in unit sales is generally attributed to the recent increase in popularity of low carbohydrate diets many of which encourage higher meat consumption.
2. Meatless frozen food product manufacturers, which include Kraft (Boca Burger brand) and Kellogg (Morningstar Farms brand), have refocused efforts on gaining market share in an effort to maintain growth. Both Kraft and Kellogg have increased price promotion as the primary strategy to increase market share. Kellogg specifically has fielded a \$10 million "investment plan" that includes Catalina Checkout coupons of values up to \$1.50 off one purchase (+40% off average retail price) distributed to consumers when they purchase certain Gardenburger products.
3. In addition to heightened price competition, Gardenburger has experienced raw materials costs increases, new operating costs associated with executing a government-mandated allergen program and higher public company costs to comply with Sarbanes Oxley section 404.
4. The current environment of lower demand, heightened competition and higher operating costs has caused Gardenburger to significantly reduce costs companywide. Among the numerous cost reductions the Company is executing is a reduction in force of 35 persons or approximately 20% of our workforce at our Clearfield, Utah production facility.
5. Bill H.R. 5033 seems to primarily benefit Quorn, a UK-based producer of meatless frozen food products, while providing no apparent benefit to consumers and putting additional financial pressure on US producers.

Please contact me if the above information raises any questions or requires further elaboration.

Respectfully,

Scott C. Wallace
Chairman, President and CEO

GARDENBURGER, INC.
15615 Alton Parkway, Suite 350, Irvine, California 92618
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**Altria**

Leonard W. Condon
Director, International
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Altria Corporate Services, Inc.
101 Constitution Avenue, NW, Suite 400 W
Washington, DC 20001

202 354-1500
202 354-1563 direct
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October 14, 2004

Ms. Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 E Street, S.W., Room 514
Washington, DC 20436

Dear Ms. Johnson:

Kraft Foods is a member of the Altria family of companies. On behalf of Kraft Foods, I appreciate the opportunity to comment on H.R. 5033, a bill that would suspend the present 6.4 percent duty on product that enters the United States under subheading 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). The bill proposes that through December 31, 2007, there would be no tariffs collected on goods that currently enter under this HTSUS subheading.

In February 2000, Kraft Foods acquired Boca Burger, Inc., a company specializing in the production and marketing of a meatless hamburger alternative. Boca Foods Company, a subsidiary of Kraft Foods, was established in Madison, Wisconsin. The company today produces and markets a variety of meatless products, competing with several other firms for a share of this innovative and growing consumer foods sector.

Kraft Foods does not import any products in the HTSUS subheading for which the tariff would be suspended under the proposed legislation – neither for our Boca Foods Company nor for any other affiliated unit. However, we are aware of competing meatless items that are manufactured from products imported under this subheading. For that reason, we oppose H.R. 5033. We believe that suspension of this tariff would provide an unfair benefit to our competitors who use imported ingredients.

As you know, the United States and 147 other member-nations of the World Trade Organization are currently involved in global trade negotiations. A key objective of these talks is to achieve a blanket reduction in global tariffs, including the tariff that is the focus of H. R. 5033. The Altria family of companies strongly supports the global trade negotiations. We see the successful conclusion of the Doha Development Agenda as a vehicle for achieving our company's broad objectives as well as a more appropriate tool for pursuing the narrower purpose of this bill.

Sincerely,

Leonard W. Condon



Renee Johnson
U.S. International Trade Commission
Office of Industries, Agriculture Division
500 E. Street SW
Washington DC 20436

Dear Ms. Johnson,

On behalf of Quorn Foods, I am writing to you to express our support for HR 5033 pertaining to duty suspension for certain meatless frozen food products. The bill was introduced by: Congressman Christopher Shays of Connecticut.

Quorn Foods, which specializes in meat-free cuisine, imports products such as chicken-style nuggets and patties, chicken-style tenders, beef-style grounds, meat-free dogs, sausage-style links and frozen entrees that are made with "mycoprotein," which is a patented process derived by fermenting a naturally occurring fungus and combining it with other ingredients to create their food product.

The goal of the duty is to protect domestic production from being hurt by imports. In this case, there is no domestic production. That means Quorn Foods pays an unnecessary duty of 6.4 percent that results in higher costs for us and higher costs for consumers.

I look forward to working with you and your office on this issue.

Sincerely,

David Wilson
Vice-President and General Manager

108TH CONGRESS
2D SESSION

H. R. 5033

To suspend temporarily the duty on certain meatless frozen food products.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2004

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

A BILL

To suspend temporarily the duty on certain meatless frozen food products.

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. CERTAIN FROZEN MEATLESS PRODUCTS.**

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:

“	9902.21.07	Frozen meatless preparations or frozen meat substitutes (provided for in sub-heading 2106.90.99)	Free	No Change	No Change	On or Before 12/31/2007	”.
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1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) applies to articles entered, or withdrawn
3 from warehouse for consumption, on or after the 15th day
4 after the date of the enactment of this Act.

○