

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 109th Congress¹**

[Date approved: July 26, 2005]²

Bill No. and sponsor: H.R. 1444 (Rep. Shays), 109th Congress.

Proponent name, location: Association of Food Industries, Inc.
Neptune, NJ 07753

Other bills on product (109th Congress only): None.

Nature of bill: Temporary duty suspension through December 31, 2008.

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 HTS 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 frozen meat substitute or meatless foods spans a wide range of processed food products that are not separately specified in the HTS. Public 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 meat product that may be imported under the same HTS provision bears 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

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

² A copy of this memorandum is available at http://usitc.gov/tata/hts/other/rel_doc/bill_reports/index.htm.

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.

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.

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 residual or “basket” category are not available.

In 2004, the value of total U.S. imports under HTS statistical reporting number 2106.90.9995 totaled \$17.4 million,¹⁰ compared to 2000 when imports were valued at \$7.1 million. The share of imports under HTS subheading 2106.90.9995 attributable to frozen imitation meat products versus other types of frozen meatless food preparations is not known. The top foreign suppliers to the U.S. market in 2004 were Canada, the United Kingdom, Thailand, Japan, and China, accounting for 75 percent of the value of U.S. imports. (Similar non-frozen products might also be imported under HTS subheading 2106.10, protein concentrates and textured protein substances. In 2004, imports under this classification were valued at \$10.9 million.)

Frozen imitation meat products imported under this category may compete with similar or substitutable U.S.-produced products. The value of U.S. sales of meat substitutes is not specifically reported, but published trade sources estimate sales of frozen or chilled meat substitutes at about \$200 million in 2003.¹¹ Most imitation meat products are soy based and are made from soy protein and soy isolates.¹² Other ingredients may include a wide range of vegetables, legumes, rice, seasonings, and other input products. Suppliers of soy protein ingredients for these products include Archer Daniels Midland Company, Cargill, Central Soya Company,¹³ and Solae Company (a DuPont Company joint venture¹⁴), among others. The U.S. frozen meatless burger market is dominated by major brand name products, including products under the Morningstar Farms label produced by the Kellogg Company (with its brand name Harvest Burger),¹⁵ Boca Burgers produced by Boca Foods Company (a subsidiary of Kraft¹⁶), Garden Burgers,¹⁷ and the Hain Celestial Group’s Yves Veggie Cuisine products,¹⁸ among other branded products. Each of these brands covers 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.

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.gov> 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 Nicole Garrison, *The Business Journal*, Minneapolis/St. Paul, MN, Sept. 8, 2003.

¹² U.S. shipments of soy isolates and concentrates, and other miscellaneous soybean products amounted to \$314 million in 2002, based on U.S. Census Bureau data (2002 *Economic Census: Soybean Processing*, NAICS code No. 3112.224.261, “other soybean products including isolates and concentrates”),

<http://www.census.gov/econ/census02/guide/INDRPT31.HTM>

¹³ “Soy Protein Product Suppliers” available at <http://www.soyfoods.com/manufacture/Suppliers.html>.

¹⁴ “DuPont pushes soy as the next teflon,” *The News Journal*, March 3, 2004, available at

<http://www.delawareonline.com/newsjournal/business/2004/03/03dupontpushesso.html> and retrieved on Oct. 13, 2004.

¹⁵ See http://www.kelloggcompany.com/kelloggco/our_brands/morningstar_farms/index.html

¹⁶ See <http://www.vegfamily.com/product-reviews/boca-burgers.htm>.

¹⁷ See <http://www.gardenburger.com/products/index.html>.

¹⁸ See <http://www.thesoydailyclub.com/Food/yves7292002.asp>.

Estimated effect on customs revenue:

The proposed legislative changes would temporarily suspend import duties through year-end 2008. For this analysis, U.S. imports for 2005-2009 are projected assuming a simple linear trend from reported import volumes for 1996 to 2004. Assumed per-unit import value is based on average 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.

HTS subheading: 2106.90.9995					
	2005	2006	2007	2008	2009
Col. 1-General rate of duty (AVE) ^{1/}	6.4%	6.4%	6.4%	6.4%	6.4%
Estimated value <i>dutiable</i> imports ^{2/}	\$ 10,100,000	\$11,000,000	\$11,800,000	\$12,600,000	\$13,400,000
Customs revenue loss ^{3/}	\$646,400	\$704,000	\$755,200	\$806,400	\$857,600

^{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 designated beneficiary countries under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, and the Andean Trade Preference Act.

^{2/} Source of estimated dutiable import data: U.S. Government statistics.

^{3/} Assumes that tariffs are suspended on imported product for the calendar years 2005 through 2008. Rounded to the nearest \$10,000.

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

The table below lists industry contacts and submissions received since late 2004, including those in response to similar Congressional bill reports completed for the 108th Congress. See H.R. 5033 (108th Congress, Rep. Shays) available at the Commission’s website.¹⁹

Name of firm/organization	Date contacted	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
		(Yes/No)		

¹⁹ Access to electronic copies of these memos is available at http://www.usitc.gov/tata/hts/other/rel_doc/bill_reports/108c.htm. Paper copies are available at the Commission’s Law Library (202-205-3287) or at the Commission’s Main Library (202-205-2630).

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.	9/28/2004	No	Yes	No
David Wilson, Quorn Foods Inc., 3 Stamford Landing, 46 Southfield Ave., Stamford, CT 06902, Ph: 203-353-0271 ext. 3105.	10/12/2004 5/19/2005	Yes (food processor/importer)	Yes	No
Len Condon, Altria/Kraft Foods, Three Lakes Dr., Northfield, IL 60093, Ph: 202-354-1500.	10/1/2004	Yes (food processor)	Yes	Yes
Tiffany Moore, Kellogg Co., 1 Kellogg Sq., Battle Creek, MI 49017, Ph: 202-354-1500.	10/1/2004	Yes (food processor)	No	n/a
Ellen Doitch, Hain Celestial Food Group, 58 S. Service Rd, Melville, NY 11747, Ph: 631-730-2200.	10/1/2004	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.	10/1/2004	Yes (food processor)	Yes	Yes
Garnell Pidgin, Solae Co., P.O. Box 88940, St. Louis, MO 63102, Ph: 314-982-2528.	10/1/2004	Yes (food ingredient supplier)	No	Yes
Greg Webb, Archer Daniels Midland Co., 4666 Faries Pkwy., Decatur, IL 62526, Ph: 800-510-2178.	10/1/2004	Yes (food ingredient supplier)	No	No
Susan Siemietkowski, American Frozen Food Institute, 2000 Corporate Ridge, Ste. 1000, McLean, Virginia 22102, Ph: 703-821-0770	10/5/2004	No	Yes	Yes
Anna Pavlova, American Soybean Assoc. 12125 Woodcrest Exec. Dr., Ste. 100, St. Louis, MO 63141, Ph: 202-969-8900	9/30/2004	No	Yes	Yes
Soyfoods Association of North America, 1001 Connecticut Ave. N.W., Ste. 1120, Washington, D.C. 20036, Ph: 202-986-5600	9/30/2004	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	Yes	Yes

See the appendices to this report for copies of submissions received by the Commission.

Technical comments:²⁰

It is suggested that the proposed article description use more tariff-consistent language such as that quoted above; accordingly (based on the terms of available Customs rulings), the new provision should 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). The Commission can consult with Customs and the proponents concerning the article 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).”

We also suggest that the words “change” and “before” in the special duty rates subcolumn, rate column 2, and the expiration date column not be capitalized, to be consistent with other tariff provisions.

²⁰ 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.

109TH CONGRESS
1ST SESSION

H. R. 1444

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

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 12/31/2008	”.
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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.

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