

August 7, 2006

Senate Finance Committee
ATTN: MTB
219 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Amendment of Harmonized Tariff Schedule to Provide New Tariff Rate for High Density Fiberboard Products (S. 3129, S. 3190, S. 3229, S. 3130, S. 3131, S. 3132)

Dear Mr. Chairman:

We are writing on behalf of our client, Faus Group, Inc., in support of a proposed amendment to the Harmonized Tariff Schedule of the United States (HTSUS), to provide for a new tariff rate that would apply to laminate flooring manufactured by Faus of high density fiberboard. The amendment has been proposed in three bills with very similar wording: S. 3129 (introduced by Senator Chambliss), S. 3190 (introduced by Senators Menendez and Lautenberg), and S. 3229 (introduced by Senator Lott). As explained below, we urge passage of Senator Chambliss's bill (S. 3129).

The Amendment Would Correct An Unintended Anomaly in the HTSUS

Faus is a small flooring company with about 35 employees located in Dalton, Georgia. For the past six years, Faus has sold laminate flooring panels imported into the United States from Spain. The flooring panels have a high-density fiberboard core bonded to a backing of reinforced melamine and a top surface consisting of a decorative color photograph of wood strips or ceramic tile, with a clear protective coating. The panels are tongued and grooved for easy assembly.

Because the Faus flooring has a fiberboard core, Customs has classified the flooring under the "Fiberboard" heading (HTSUS Heading 4411). There can be little question that if the Faus flooring were constructed using medium density fiberboard (*i.e.*, fiberboard with a density between 0.5 g/cm³ and 0.8 g/cm³), Customs would classify it in the subheading for tongued and grooved "[l]aminated boards bonded in whole or in part, or impregnated, with synthetic resins" (HTSUS 4411.29.20). However, the Faus product is constructed using high-density fiberboard (*i.e.*, fiberboard with a density over 0.8 g/cm³), and no parallel subheading (expressly covering tongued and grooved laminated boards) currently exists for products made of high-density

fiberboard. As a result, Customs has classified the Faus product under the basket category subheading for high-density fiberboard (HTSUS Subheading 4411.19.40). The 6% duty rate applicable to this subheading is higher than the duty rate (1.9 cents/kg plus 1.5%) applicable to the analogous medium-density product. However, classification under the basket category is currently subject to a court challenge urging that laminate flooring should be classified in a duty-free subheading.

There is good reason to believe that the disparate treatment of medium-density and high-density laminated boards was a drafting oversight (appropriately corrected through a miscellaneous tariff bill) and not a purposeful choice. That is because the Tariff Schedule of the United States (TSUS) that preceded the HTSUS assigned the same subheading classification (and therefore the same duty rate) to both medium-density and high-density laminated boards. The TSUS duty was carried forward and applied to the new HTSUS classification for medium-density laminated boards, but the HTSUS contained no specific provision for high-density laminated boards as explained above. It is well established that the enactment of the HTSUS was not intended to make substantive changes in the TSUS duty rates. Accordingly, it appears that the omission of the "laminated boards" subheading for high-density fiberboard was simply a mistake in the HTSUS. The purpose of the proposed amendment is to correct this mistake and assess the same duty rate on both the medium-density and high-density products, just as it was under the TSUS.

We Urge Passage of Senator Chambliss's Bill (S. 3129)

There are two ways to make the legislative correction described above. The first would be to make the correction prospectively in one bill (S. 3190 (Senators Menendez and Lautenberg) or S. 3229 (Senator Lott)) and enact other bills that would reliquidate Faus's past entries that have not been finally liquidated (S. 3130, S. 3131, and S. 3132 (Senator Chambliss)). The second approach would be to make the correction in a single bill both retrospectively and prospectively (S. 3129 (by Senator Chambliss)). We support passage of S. 3129 because it is a simpler means of making the correction to the tariff schedule, and because there is no possibility of any gap between its prospective and retrospective coverage. Alternatively, we support the first type of legislative correction (through passage of S. 3130, S. 3131 and S. 3132, and S. 3190 or S. 3229).

Hon. Charles Grassley
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Sincerely,

Peter Buck Feller

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