

Pro Trade Group

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August 15, 2006

Via E-mail: mtb2006@finance-rep.senate.gov

Senator Charles Grassley
Chairman
Senate Finance Committee
Attn : MTB
219 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Amendments to the Harmonized Tariff Schedule of the United States
S. 3129, 3190, 3192, 3193, 3194, 3195 and 3229

Dear Chairman Grassley:

On behalf of the Pro Trade Group (PTG), a coalition of U.S. exporters, importers, retailers, consumer groups and trade association, I would like to express PTG support for certain changes to the Harmonized Tariff Schedule of the United States (HTS). This submission is that of the PTG, and does not necessarily represent the views of each individual participant.

Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3005) directs the U.S. International Trade Commission (USITC) to keep the HTS under continuous review and to recommend to the President modifications to the HTS when: (a) amendments to the International Convention on the Harmonized Description and Coding System (Harmonized System), and the Protocol thereto, are recommended by the World Customs Organization (WCO); and (b) as other circumstances warrant. The USITC is responsible for identifying necessary changes in the HTS that are needed to maintain conformity between the HTS and the International Harmonized System, as well as WCO decisions. In accordance with section 1206 of the 1988 Act (19 U.S.C. 3006), the President may proclaim the tariff modifications recommended by the USITC, after consideration by the Congress.

As the Committee knows, on Sept. 8, 2004, the USITC instituted Inves. No. 1205-6, Proposed Modifications to the Harmonized Tariff Schedules of the United States, resulting in a series of USITC Reports since then.

The PTG generally supports implementation of such changes in order to increase conformity between the HTS and the International Harmonized System. We are aware that 19 U.S.C. 3005 also authorizes changes "as other circumstances warrant." One such

circumstance of which we are aware relates to litigation before the U.S. Court of International Trade, Case No. 98-360, regarding the proper customs classification of high-density, fiberboard-core laminate. In the old TSUS, laminate boards had a separate customs classification, without restriction as to density, but when the TSUS was converted to the HTS in 1987 (after consultation with Customs), a laminate provision was included, but only for medium-density laminate. This was because high-density laminate was a later-developed product, first sold in the United States in 1994. Yet the HTS is supposed to have been designed to cover later-developed products. Our trading partners include full product coverage for laminate panels.

Certain miscellaneous tariff bills now are before the Committee which were introduced by Senators Chambliss, Lautenberg, Lott, Menendez and Specter. These bills (s. 3129, 3190, 3229, 3192, 3193, 3194, 3195 and other, related bills) are designed to correct this 1987 Congressional/Customs oversight.

The PTG strongly supports the goal of conformity between the HTS and the International Harmonized System. We urge serious consideration of this sensible legislation by the Committee as it would help to harmonize the HTS with the tariff schedules of our trading partners.

Respectfully submitted,

Edward J. Black

Chair, Pro Trade Group
President, Computer & Communications Industry Association

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Via Email: mtb2006@finance-rep.senate.gov

August 15, 2006

Senate Finance Committee

ATTN: MTB

219 Dirksen Senate Office Building

Washington, DC, 20510

RE: Statement on the Amendment of Harmonized Tariff Schedule to Provide New Tariff Rate for High Density, Fiberboard-core Laminate Panels: Senate Bill Numbers: S. 3129, S. 3190, S. 3192, S. 3193, S. 3194, S. 3195, S. 3229, and Related Bills

Dear Chairman Grassley:

On behalf of our clients, Mannington Mills, Inc., of Salem New Jersey (with manufacturing facilities in Alabama, Georgia and North Carolina), and Witex, USA, of Kennesaw, Georgia, this letter responds to the Committee's July 11, 2006 request for comments on Miscellaneous Tariff Bills being considered by the Committee in the current Congress.

For the reasons discussed below, we strongly urge the Senate passage, and enactment into law, of S. 3129, S. 3190, S. 3192, S. 3193, S. 3194, S. 3195, and S. 3229, and related bills (e.g., S. 3326, S. 3327, S. 3328, S. 3329, S. 3330, S. 3331, S. 3332, S. 3334, S. 3335, S. 3336, S. 3337, S. 3339, S. 3340, S. 3341, S. 3342, S. 3343, etc.).

OVERVIEW

The legislation that Mannington and Witex support is designed to settle a dispute between the U.S. laminate panel industry (including, among others, such firms as Armstrong, Congoleum, Faus, Mannington and Witex, all of whom support this legislation) and the U.S. Customs Service (Customs). At issue is whether imported

laminated panels have been and are properly classified, for import duty purposes, as “tileboard” at 0% duty (tileboard is a finished product whose HTSUS classification is for finished goods whose description fits our products) or as “fiberboard” at 6% duty (fiberboard is an unfinished product that forms the coreboard of laminated panels). The texts of the competing HTSUS provisions are attached as App. No. 1.

The U.S. laminated panel industry maintains that these products have been and are entitled to duty-free treatment as tileboard. Customs has maintained that they are properly classified as fiberboard at 6% duty.

Over the past decade, four (4) different Complaints were filed at the U.S. Court of International Trade (CIT) challenging Customs’ position. These Complaints resulted in a trial at the CIT in October 2005, the most telling part of which was the Court’s cross-examination of Customs’ own designated witness on the classification issue. As the transcript of this exchange (attached as App. No. 2) makes perfectly clear, the Court did not accept Customs’ attempted justification of the fiberboard 6% duty classification. As a result of the Court’s rejection, and the CIT judge’s active encouragement of a settlement, Customs joined Mannington and Witex in a Motion to Stay the case, filed with the CIT earlier this year. The CIT granted this Stay through Nov. 30, 2006 on March 21, 2006, and in its Order made it clear that it did so to permit enactment of Miscellaneous Tariff Legislation designed to compromise the dispute and settle the case. That Order is attached as App. No. 3.

Specifically, the CIT urged that the HTSUS classification for medium density fiberboard-core laminated panels be copied and grafted onto the high density section of the fiberboard sections of the HTSUS. This legislation is designed to accomplish exactly that, and is based on (and indeed copies) precedents provided to us by Customs itself. Medium-density, fiberboard-core laminated panels have a core panel with a density of between 0.5g/cm³ and 0.8g/cm³. High-density, fiberboard-core laminated panels are identical but have a core density of over 0.8 g/cm³.

The U.S. laminated panel industry supports this compromise legislation (which would establish the equivalent of just over a 3% duty vs. the likely 0% duty if the CIT is forced to rule). This compromise position is because such major U.S. firms as Mannington have built U.S. plants during the past decade to manufacture these products. They consequently want unfairly high duties to be refunded but also want continued import protection in the form of a principled duty rate based on the medium density fiberboard-core laminated panel provision.

We understand that the U.S. International Trade Commission (USITC) recently reported to the Committee its favorable evaluation of this legislation, noting that it will result in increased revenue (by avoiding a complete refund of past duties paid and also avoiding a duty-free future).

It is important to note that this legislation is designed to correct two (2) Congressional/Customs oversights/errors:

(a) a decision in 1987 to carry forward in the new HTSUS the TSUS provision for laminate boards for medium-density, fiberboard-core laminate panels but not for high density laminate, apparently under advice from Customs, because they were not sold in sufficient quantity at the time, despite the fact that it is well established that the HTSUS is designed to cover later developed products (such as high-density laminate);

(b) an omission by Congress to provide a substantive definition of the term “tileboard” when it created the duty-free tileboard exemption from the 6% fiberboard classification in a Miscellaneous Tariff Bill in 1989 and Customs’ subsequent decision to ignore the statute and limit applicability of the exception to wall panels.

DISCUSSION

S 3129, S. 3190, S. 3229

These three bills are almost identical: S. 3129 – introduced by Senator Chambliss; S. 3190 – introduced by Senators Menendez and Lautenberg; and S. 3229 – introduced by Senator Lott. We support the basic premise of these bills, which is to amend the Harmonized Tariff Schedule of the United States to provide for a new tariff rate line specifically for high-density fiberboard. The specific language of each of these bills is slightly different, thus we have been contacted by and have cooperated with the USITC in its investigation and worked with the staff to craft language that addresses the desires of the proposed change.

The language to implement these bills that we support is as follows:

“Laminate boards, tiles, or panels bonded in whole or in part, coated, or impregnated, with melamine or other synthetic resins”

We would prefer the Chambliss version of the bill (with the amended specific wording above) because it will automatically allow us to amend our entries of these products at the new tariff rate line from 1994 to the effective date of the bill. The Chambliss version of the bill, as amended, would remove the requirement for the other related bills to list specific covered entries that we have noted in this submission. These bills deal specifically with liquidation and reliquidation of entries that would be affected by this tariff rate line change.

Further, the amended Chambliss bill would include providing reliquidation for all entries up to the time of implementation of the bill. The other bills for reliquidation requests only cover through May 25, thus leaving a period from May 26 through the enactment of the legislation in which new reliquidation requests would have to be granted.

The new tariff rate line designation is needed because when the United States switched from the old system of classification to the new system, this product did not exist in a “high density” form.

A specific tariff rate line is provided in the new tariff classification system for “medium density” laminate fiberboard. These bills reflect the same tariff rate line provision as currently provided for in the HTSUS for medium density product. We seek that same tariff treatment for the high density version of that product.

This legislative action will in fact generate revenue. On a going forward basis, all imports will be subject to the specific rate set forth in these bills. In the absence of this new tariff rate line, the product may be allowed duty free entry into the United States, as a result of the likely CIT ruling should it be forced to rule in the absence of this legislation.

While this product is being manufactured in the United States, the capacity is significantly under the market demands and as the product increases in popularity, we believe that the institution of this tariff rate line will afford protection to domestic production.

Mannington and Witex employ over 3,300 people in the United States. Mannington has invested enormous sums in the United States due to its plants and Witex is planning to build a plant. Specific figures as to the very significant value of these investments are available upon request.

Medium-density, fiberboard-core laminate panels have a coreboard with a density of between 0.5 g/cm³ and 0.8 g/cm³. High-density fiberboard-core laminate panels are identical but have a coreboard density of over 0.8 g/cm³.

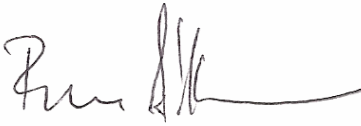
Customs conceded at the October, 2005 trial, under cross-examination from the Court, that the laminate panel provision for high-density laminate panels was not carried forward from the old TSUS to the new HTSUS in 1987 because at the time there were not significant commercial quantities of high-density laminate panels being sold. This is accurate in as much as Witex began its sale only in 1994. It is well established, however, that the enactment of the HTSUS in 1987 was not intended to make substantive changes to the TSUS duty rates. Accordingly, it appears that the omission of the “laminated boards” subheading for high-density laminate panels was simply a mistake in the HTSUS. The purpose of this legislation is to correct this mistake and assess the same duty rate on both the medium-density and high-density panels, just as provided for in the old TSUS.

Other Reliquidation Bills

The remaining bills highlighted above are specific reliquidation bills that will provide relief to our clients in the form of a refund of part of the duties on specific entries. While we support these bills as being part of the miscellaneous tariff bill, they suffer from being incomplete in that imports after May, 2006 are not covered. Further, they will be unnecessary if the Chambliss bill is enacted, along with the Lott or Menendez/Lautenberg bills, since the Chambliss bill covers all entries of this product since Jan. 1, 1994, when it was introduced to the U.S. market.

Please feel free to contact us with any questions via e-mail to beaitken@aol.com or by phone to 202-486-7472.

Respectfully submitted,



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APPENDIX NO. 1

Harmonized Tariff Schedule of the United States (2006) (Rev. 2)

Annotated for Statistical Reporting Purposes

IX 44.14		Article Description	Unit of Quantity	Rates of Duty	
Heading/ Subheading	Stat Suf- fix			1	2
				General	Special
4411		Fiberboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances:			
4411.11.00		Fiberboard of a density exceeding 0.8 g/cm ³ :			
	05	Not mechanically worked or surface covered	m ²	Free	30%
	95	Medium density fiberboard	m ²		
		Other			
4411.19		Other:			
4411.19.20		Not surface covered (except for oil treatment)		Free	30%
	05	Medium density fiberboard	m ²		
	95	Other			
4411.19.30	00	Tileboard which has been continuously worked along any of its edges and is dedicated for use in the construction of walls, ceilings or other parts of buildings	m ³	Free	20%
4411.19.40	00	Other	m ³	6%	Free (A,AU,CA, CL,E,IL,J,JO,MA, MX,P) 1.5% (SG)
					45%
4411.21.00		Fiberboard of a density exceeding 0.5 g/cm ³ but not exceeding 0.8 g/cm ³ :			
	05	Not mechanically worked or surface covered		Free	30%
	95	Medium density fiberboard	m ²		
		Other	m ²		
4411.29		Other:			
		Tongued, grooved or rabbetted continuously along any of its edges and dedicated for use in the construction of walls, ceilings or other parts of buildings:			
4411.29.20	00	Laminated boards bonded in whole or in part, or impregnated, with synthetic resins	kg m ²	1.9¢/kg + 1.5%	Free (A,AU,CA, CL,E,IL,J,JO,MA, MX,P,SG) 33¢/kg + 25%
4411.29.30	00	Other	m ³	Free	20%
4411.29.60		Other:			
		Not surface covered (except for oil treatment)		Free	30%
	05	Medium density fiberboard	m ²		
	95	Other	m ²		
4411.29.90		Other		3.9%	Free (A,AU,CA, CL,E,IL,J,JO,MA, MX,P,SG) 45%
	10	Standard wood molding	m ³		
	90	Other	m ²		
4411.31.00		Fiberboard of a density exceeding 0.35 g/cm ³ but not exceeding 0.5 g/cm ³ :			
		Not mechanically worked or surface covered		Free	20%
	10	Impregnated with bitumen	m ²		
	90	Other	m ²		
4411.39.00		Other:		Free	20%
		Impregnated with bitumen	m ²		
	10	Other	m ²		
4411.91.00		Other:		Free	20%
		Not mechanically worked or surface covered			
	10	impregnated with bitumen	m ²		
	90	Other	m ²		
4411.99.00		Other:		Free	20%
		Impregnated with bitumen	m ²		
	10	Other	m ²		
	90	Other	m ²		

APPENDIX NO. 2

TRANSCRIPT (pages 123-127) of Oct. 26, 2005 CIT Trial: Court's Cross-Examination of Customs (Witness: National Import Specialist Garretto) re Laminate Panel Classification

THE WITNESS: Yes.

THE COURT: So if you start from the top we're dealing with fiberboard that has to be first of a density exceeding .8 grams per centimeter cubed. Then we have not mechanically worked or surface covered, and then other which is presumably mechanically worked or surface covered; correct?

THE WITNESS: Correct.

THE COURT: Then we have not surface covered and then other which is presumably surface covered; correct?

THE WITNESS: Correct.

THE COURT: So then we get tileboard which has been continuously worked along any of its edges and is dedicated for use in the construction of walls, ceilings, or other parts of buildings.

Now here's my difficulty. If as you have testified tileboard has to be bullnosed and it has to be worked along the edges in order to be tileboard --

THE WITNESS: Yes.

THE COURT: -- and if tileboard is used for walls or ceilings in order to be tileboard, then isn't all the language after tileboard, all the language that says which, et cetera, therefore unnecessary?

THE WITNESS: It certainly duplicates the characteristics of tileboard. I don't know if I would say it's unnecessary because it is clarifying, if you will, tileboard. So tileboard is clearly with the edges worked and so forth. So the language, I don't know if the language is really duplicating the term. To me, I will look at it as clarifying the term.

THE COURT: I hear that you would look at that as clarifying the term, but if I'm to accept your testimony and read those qualifications into tileboard itself --

THE WITNESS: Yes.

THE COURT: -- then I think I have to conclude that that language is unnecessary.

THE WITNESS: If they left it out and just said tileboard, which might have been a better option, it would have worked out the same way.

THE COURT: Well, the other option is that they actually meant something other than what you mean tileboard to mean.

THE WITNESS: I could personally say that they did not because I was directly involved in the actual --

THE COURT: I understand it's your testimony and belief that they did not. I understand that. But you weren't in the minds of Congress when they passed this; were you?

THE WITNESS: No. The International Trade Commission and Customs, we did talk, consulted as to what we were trying to provide or what they were trying to provide. The idea was we were trying to provide it for a product such as the JJ Barker product which had been entering free of duty under the TSUS and that's what we were trying to capture. That was a proposal, that's what they were trying to capture.

THE COURT: You sure you captured that product. That is not a problem. The question in my mind is as I look at this language don't I have to read that to conclude that you captured more than that product because otherwise all that language after tileboard is unnecessary?

THE WITNESS: I don't agree because the tileboard term and the product tileboard was known then and was the product that we have discussed. So that was the product --

THE COURT: I think that's very important, your point. But isn't it also the case, Mr. Garetto, that the harmonized system has to be drafted to cover products that don't exist at the time of its drafting?

THE WITNESS: Yes. They will look at the future or if the future brings in new products which may not be fully described within that, yes.

THE COURT: Isn't it the case as you have testified that the product that's at issue here didn't exist at the time of this drafting?

THE WITNESS: That's correct.

THE COURT: So now just take it the next step down with me to fiberboard that is of a lower density between .5 grams per cubic centimeter but not exceeding .8 grams per cubic centimeter.

THE WITNESS: Yes.

THE COURT: There it seems to me we have a parallel structure, that is we have not mechanically worked or surface covered. Then we have other which is presumably mechanically worked or surface covered. Then we have tongue grooved or rabbited continuously along any of its edges and dedicated for use in construction of walls, ceilings, or other parts of buildings, laminated boards. Then other. In other words, we have a clear distinction between laminated boards and non-laminated boards.

THE WITNESS: Yes.

THE COURT: Can you explain to us the history of that distinction?

THE WITNESS: The distinction there was made because of the TSUS. You had two provisions for building boards. One was 24580 which provided for laminated or impregnated boards and you have other buildings, other, which provided for any other type of building boards. That's TSUS, and that language is present today under these provisions.

THE COURT: Do you have any idea why that parallel structure that was used for fiberboard of a density exceeding .5 grams per cubic centimeter but not exceeding .8 grams per cubic centimeter, why that same structure wasn't carried up into the higher density boards?

THE WITNESS: I can give you what I believe it was. When the transfer from TSUS to HTS was done, there were two types of parallel tables if you will. A lot of the times if you had a provision which had very little quantity or value in it, it would have been eliminated as not being necessary. So the ITC would have said, you know, we don't need this particular number. If they found anything like that under the .8 and above which was too low to really capture, they could have eliminated it. So that could have been the reason why they didn't want to create both places. Most of the building boards could have been manufactured with a density below .8.

THE COURT: So at that point in all likelihood the laminated boards that existed, as opposed to the non-laminated boards, were of that medium density and we hadn't yet gotten to laminated boards of the higher density?

THE WITNESS: Or there was not enough of them.

THE COURT: Okay. I think that's all I need to ask you about this. Thank you, Mr. Garetto. Either of you want to ask any other questions?


APPENDIX NO. 3

UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE THE HONORABLE DONALD C. POGUE, JUDGE

WITEX, U.S.A., INC., ET AL.,)	
)	
Plaintiff,)	
)	Consol.
v.)	Court No. 98-00360
)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

PLAINTIFF'S CONSENT MOTION TO STAY PROCEEDINGS

In accordance with Rule 7 of the Rules of the United States Court of International Trade, Witex U.S.A. Inc, et al ("Witex"), hereby moves this Court to stay proceedings until and including November 30, 2006 in this action pending plaintiffs' attempt to have Congress enact legislation that would create a new tariff provision for high density fiberboard laminate panels. Plaintiff will submit a status report after the current session of Congress has terminated, by  November 15, 2006.

Pursuant to this stay of the proceedings, the parties have agreed that any interest payable on the reliquidation of the entries in this action would also be stayed from the date of this order until either: 1) November 30, 2006 if the legislation is not enacted; or 2) until reliquidation of the subject entries if the legislation is enacted.

Plaintiff has received consent from counsel for defendant the United States of America that this stay is amenable. For these reasons, plaintiff submits that good cause exists for entering a stay of proceedings in this action.

Wherefore, plaintiff respectfully moves this Court to stay this action until and including November 30, 2006 and for a status report to be filed by plaintiff on or before November 15, 2006.

Respectfully submitted,

s/ Curtis W. Knauss
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Dated: March 16, 2006

Restoration of High Density Fiberboard Classification: Identification of Customs' Errors Underlying the Dispute: S. 3129, 3190, 3229, 3192, 3193, 3194, 3195 and Related Bills: Summary Submitted for Mannington Mills and Witex USA

ACTION:

Restore a specific rate line designation in the HTSUS for high density

A. Summary

1. This paper responds to the Committee's request for a one pager describing Customs' errors which have led to the introduction of legislation included in the MTB by Sens. Chambliss, Lautenberg, Lott, Menendez and Specter (S. 3129, 3190, 3229, 3192, 3193, 3194, 3195), as well as related bills. Customs' fundamental error was to unilaterally and arbitrarily decide to limit the scope of the duty-free "tileboard" classification (HTSUS No. 4411.19.30), which was enacted in 1989 as an exception to the "fiberboard" provision with a 6% duty (under HTSUS 4411.19.40).
2. The language of both the underlying statute and the tileboard classification are identical: they provide for duty-free classification for fiberboard-core panels which have been continuously worked along any of its edges and is "dedicated for use in the construction of **walls, ceilings or other parts of buildings.**" Customs, decided on its own initiative, unsupported by any legislative history, to limit the application of this exception **only to** bathroom **wall panels** with a certain façade.
3. This resulted in litigation before the U.S. Court of International Trade, beginning in 1996 and culminating in an October, 2005 trial, during which the Court itself cross-examined Customs and disputed Customs interpretation (see Transcript of Civil Cause for Trial, Witex USA, Inc., et al v. United States, CIT 98-360, Oct. 26, 2005, Tr. at pp. 123. line 15 to 126, line 12. concluding: "in other words, we have a clear distinction between laminate and non-laminate boards," which distinction Customs then conceded. Following the trial, the Court strongly urged the parties to settle and guided the parties to duplicate the existing HTSUS classification for medium-density fiberboard-core laminate panels, which exists at HTSUS No. 4411.29.20. Customs then joined Plaintiffs Witex and Mannington Mills in a Motion to Stay the case in order to achieve enactment of such a classification for high-density laminate panels via a MTB, which Motion the Court signed on March 10, 2006. The Chambliss/Lautenberg/Lott/Menendez/Specter legislation is modeled on this. Customs' error was in treating finished laminate as unfinished fiberboard. Liquidation and reliquidation of entries subjected to this error clearly is justified.
4. This dispute results, in part, from an earlier apparent error by Customs. In 1987, the old TSUS was replaced by the HTSUS. In the process, the old laminate board provision (TSUS No. 245.80) was carried over only for medium-density fiberboard-core laminate panels, but not for high-density product, which was developed later. At the trial, Customs conceded that this likely was due to its advice to the USTIC and Congress (Tr. At 127, line 4) The Court asked, and Customs conceded that the HTSUS was designed "to cover products that don't exist at the time of drafting." (Tr. 1t 125, lines13-16.)

For a detailed discussion of these issues, see the full Submission of Mannington/Witex to the Committee. Please direct any questions to Bruce Aitken (202-486-7472) or Virginie Lecaillon (202-276-4539) at Aitken Berlin, or e-mail us at beaitken@aol.com. Submitted Aug. 15, 2006 to the Senate Finance Committee.