



# The Gilman Group

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Honorable Benjamin A. Gilman  
Chairman and CEO  
Member of Congress 1973-2003  
Former Chairman  
House International Relations Committee

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November 20, 2012

The Honorable Dave Camp  
Chairman, Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, D.C. 20515

Re: Miscellaneous Tariff Bill; HR 5154 U.S. Laminate Wall and Floor Panel Industry

Dear Chairman Camp:

This is to request your personal intervention to ensure the survival in the Miscellaneous Tariff Bill of legislation which is vitally important to the U.S. laminate wall and floor panel industry. Among the companies affected by and/or supporting this legislation (20 of whom wrote letters to the Committee last Spring in support, and none in opposition) are Armstrong, Witex USA, Inc. and Mannington Mills, Inc. Mannington's headquarters are in Salem, NJ, in Rep. Frank LoBiondo's (R-NJ) district which has five plants across the United States and employing nearly 3,000 US workers.

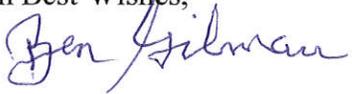
The legislation in question is a substitute for HR 5154. Given some concerns about administrability expressed by the Administration which Rep. LoBiondo has worked on with the offices of Reps. Pascrell and Thompson (who represents the Armstrong Co.) to develop substitute language for HR 5154 on which we have submitted to Neena Shenai of your staff. We feel that the Administration's comments pm HR 5153 are full of factual inaccuracies and unfounded concerns. Nonetheless, we have agreed to substitute language which we feel fully meets their stated concerns.

This legislation is necessary because U.S. Customs has failed to comply with a 2009 Court Order from the U.S. Court of Appeals for the Federal Circuit (CAFC) regarding the proper classification of laminate wall and floor panels. The CAFC ruled that fiberboard-core, medium or high density laminate wall and floor panels are properly classified as "builders joinery" now imposing an import duty of 3.2% ad valorem. This contrasted with the illegal classification by Customs of the subject merchandise as "fiberboard" at a 6% ad valorem duty. The CAFC decision resulted in a 12-15-12 Mandate to Customs from the U.S. Court of International Trade (CIT), which requires Customs to reliquidate all entries from January 1, 1994 through and including February 1, 2007 and to refund the difference between the 6% fiberboard duty collected and the then applicable duty rate for

builders joinery (now 3.2%). This is because Congress already lowered the duty on laminate panels to the equivalent of 2.8% ad valorem. This was prospective only as it was part of a periodic cleanup of the Harmonized Tariff Schedule every WTO member is required to do every five years. The reason why this happened was that the World Customs Organization ruled against Customs' use of the fiberboard classification, as then did the U.S. International Trade Commission and then the Senate Finance Committee. So the LoBiondo/Pascarell/Thompson substitute legislation for HR 5154, and HR 5154 itself, involves only a one time set of reliquidations and refunds. More important, it will force Customs to comply with the CIT Order, which to now it has, amazingly, failed to do. Specifically, Customs has only refunded to date 39% of what it owed to Mannington and Witex and only about half of what it owes to Armstrong. And fourteen (14) of the twenty-five (25) ports used by Mannington and Witex have refunded absolutely nothing at all. In short, for nearly three years, they have been in outright violation of the CIT Court Order. This in turn, costs taxpayers hundreds of thousands of dollars, increasing every day, since Customs is obliged, on an ongoing basis, to pay interest on what it owes. A bi-partisan group of members of Congress have sent two (2) letters on this problem to the Commissioner of Customs. The first was sent to former Customs Commissioner Bersin in August, 2010. The second was sent on October 22, 2012 to Acting Customs Commissioner Aguilar. The most recent of these letters is attached. This letter was signed by Reps. Pascarell and LoBiondo and by Sens. Chambliss, Lautenberg and Menendez.

Thanks for your attention to this. Please expect my call to follow up.

With Best Wishes,



Benjamin A. Gilman  
Former Member of Congress and  
Former Chairman of the House Foreign Affairs Committee

Cc: Bruce Aitkin, Esq.  
1050 17<sup>th</sup> St. N.W., Suite 520  
Washington, D.C. 20036

Enclosure

October 22, 2012

Mr. David V. Aguilar  
Acting Commissioner of Customs  
1300 Pennsylvania Avenue  
Washington, DC 20229

Dear Commissioner Aguilar:

We write to both express our concerns about the lack of obligatory action by the U.S. Customs and Border Protection (CBP) regarding a December 2009 mandate by the U.S. Court of International Trade (CIT) and to request you provide to us relevant CBP records related to the imports of high-density fiberboard core laminate floor and wall panels.

As you may know, based on the December 2009 CIT order, refunds are due to Mannington Mills, Inc., of Salem, NJ and its ongoing supplier, Witex USA, Inc. of Kennesaw, Georgia for laminate panels entered between Jan. 1, 1994 and Feb. 2, 2007. While CBP has made some progress in refunding import duties paid by these companies, several ports including Charleston, Charlotte, Richmond and Savannah have not sufficiently complied with the mandate or have made no refunds at all.

In August of 2010, some of us requested an explanation from CBP of the long delays for making refunds in accordance with the CIT mandate and a reply accompanied by copies of the electronic records of CBP related to imports of the aforementioned floor and wall panels. However, CBP's November 2010 response to this letter did not adequately address all of our concerns or include the requested electronic records.

We are again respectfully requesting your attention be given to this matter to ensure all relevant ports are complying with the 2009 CIT mandate. Further, we request a written explanation by November 19, 2012 from the Port Supervisors of all relevant ports that have failed to fully issue refunds, as to why they have made partial or no refunds as mandated by the December 2009 CIT order.

We look forward to your reply and thank you for your attention to this matter.

Sincerely,

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Frank R. Lautenberg  
United States Senator

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Robert Menendez  
United States Senator

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Saxby Chambliss  
United States Senator

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Bill Pascrell  
Member of Congress

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Frank LoBiondo  
Member of Congress

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Joseph Crowley  
Member of Congress