

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION  
of the 111<sup>th</sup> Congress<sup>1</sup>**

[Date approved: May 3, 2010]<sup>2</sup>

**Bill No. and sponsor:** S. 2243 (Mrs. Diane Feinstein of California).

**Proponent name,<sup>3</sup> location:** 5.11, Inc., Modesto, California.

**Other bills on product (111<sup>th</sup> Congress only):** None.

**Nature of bill:** Temporary duty suspension through December 31, 2011.

**Retroactive effect:** None.

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

Flashlights incorporating rechargeable ultracapacitors, the foregoing not designed to incorporate batteries (provided for in subheading 8513.10.20).

**Check one:**      Same as that in bill as introduced.  
                   Different from that in bill as introduced (see Technical comments section).

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

The subject product is a flashlight that is powered by ultracapacitors (also known as advanced or double-layer capacitors), rather than by batteries. Ultracapacitors store energy electrostatically, while batteries store energy chemically. A flashlight with an ultracapacitor is designed to be recharged quite quickly and frequently, following its initial full charge. According to the proponent, its flashlight can be recharged in as little as 90 seconds and then can operate for as long as 23.5 hours, and it can be recharged up to 50,000 times—many more than a flashlight using rechargeable batteries. The primary source for imports of these flashlights is China.

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<sup>1</sup> Industry analyst preparing report: Andrew David (202-205-3368); Tariff Affairs contact: Jan Summers (202-205-2605).

<sup>2</sup> Access to an electronic copy of this memorandum is available at [http://www.usitc.gov/tariff\\_affairs/congress\\_reports/](http://www.usitc.gov/tariff_affairs/congress_reports/).

<sup>3</sup> The sponsor/proponent did not identify any additional beneficiaries of this bill.

**Estimated effect on customs revenue for the subject product classifiable in HTS subheading 8513.10.20:**

	2010	2011	2012	2013	2014
Col. 1-General rate of duty	12.5%	12.5%	12.5%	12.5%	12.5%
Estimated value <i>dutiable</i> imports <sup>a</sup>	\$2,150,000	\$2,580,000	\$3,096,000	\$3,560,400	\$4,094,500
Customs revenue loss <sup>b</sup>	\$268,750	\$322,500	\$387,000	\$445,050	\$511,813

a/ Dutiable import estimates were provided by industry sources.

b/ At the request of Congress, customs revenue loss is provided for 5 years, although the effective period of the proposed legislation may differ.

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

Name of firm/organization	Date contacted	Claim US makes same or competing product(s)?	Submission attached?	Opposition noted?
			(Yes/No)	
5.11, Inc. (Proponent) Jennifer Mulveny, 202-471-3234	01/12/2010	No	No	No
C. Crane Company, Inc. John Wilder, 800-522-8863	01/19/2010	No	No	No
Energizer Battery Company Jacqueline E. Burwitz, jacquelinee.burwitz@energizer.com	01/19/2010	No	No	No
HDS Systems, Inc. Henry Schneiker, Hschneiker@RaLights.com	02/02/2010	Yes	Yes	Yes
Heliotek, Inc. Bill Storey, customerservice@heliotekinc.com	01/28/2010	No	No	No
Leupold & Stevens, Inc. Patrick Mundy, pmundy@Leupold.com	01/25/2010	No	No	No
Lowe's Companies, Inc. Scott Mason, Scott.D.Mason@Lowe.com	02/09/2010	No	No	No
Mag Instrument, Inc. Anthony Maglica, 909-947-1006	01/20/2010	Yes	Yes	Yes
NEMA (National Electrical Manufacturers Ass.) Craig Updyke, 703-841-3294	01/19/2010	No	No	No
Pelican Products, Inc. Kevin Deighton, 310-326-4700 ext. 1762	01/19/2010	Yes	Yes	Yes
Proctor & Gamble Co. Chuck O'Hara, ohara.cb@pg.com	01/19/2010	No	No	No
Smith & Wesson Holding Corp. Liz Sharp, 480-949-9700	01/26/2010	No	No	No
Spectrum Brands, Inc. Tracy S. Wrycha, 608-275-4404	01/31/2010	No	Yes	Yes

Name of firm/organization	Date contacted	Claim US makes same or competing product(s)?	Submission attached?	Opposition noted?
		(Yes/No)		
Streamlight, Inc. John Gregory, jgregory@streamlight.com	02/16/2010	Yes	Yes	Yes
SureFire, LLC Ron Canfield, 714-545-9444	01/20/2010	No	No	No
Target Brands, Inc. Toni Dembski, 612-696-2573	02/01/2010	No	No	No
Tektite Industries, Inc. Scott Mele, 609-656-0600	01/27/2010	Yes	Yes	Yes
Terralux, Inc. Erik Milz, 303-442-4960	01/25/2010	No	No	No
Underwater Kinetics Alan Uke, auke@uwkinetics.com	01/20/2010	Yes	Yes	Yes
Wal-Mart Stores, Inc. Adam Hemphill, 202-434-0748	01/27/2010	No	No	No

**Technical comments:<sup>4</sup>**

It is suggested that the article description of the proposed heading be amended to read as shown on page 1. Although the text of this HTS heading refers to flashlights powered by batteries, the Explanatory Notes suggest that a flashlight could have any independent power source while remaining classified in the heading. The proponent has indicated that no Customs ruling has been issued on the subject product.

<sup>4</sup> 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.

Consideration of S.2243  
From: Alan Uke [auke@uwkinetics.com]  
Sent: Wednesday, January 20, 2010 12:42 PM  
To: David, Andrew  
Subject: Consideration of S.2243

Dear Andrew,

We strongly object to consideration of S.2243

The ultra capacitor based flashlights are a variation of using rechargeable batteries, which are presently produced. There are ultra capacitor manufacturers in the US, as well as a large number of high-end flashlight manufacturers. Presently, US manufacturers still make the vast majority of flashlights supplied to the law enforcement market. 511's reputation is of an importer providing goods to the US law enforcement market. They have a reputation for being very aggressive, and I consider their asking for a duty suspension to help wipe out the presently US manufacturer dominated market an affront. In fact, we should be considering raising the duties to protect the market.

What is the trigger that causes duty fees to be "temporarily" suspended, and what is the trigger to "re-instate" a duty? What is the motive to "temporarily" give a foreign manufacturer a free ride into the US market? As a US manufacturer, we understand and accept the international cost of doing business by being subject to duty fees with virtually every country that we export to. Why does it make sense to allow a foreign company a suspension of fees that all manufacturers are faced with? We export half our production to over 60 countries. I don't know of one which doesn't charge duties for our exporting into their country.

What is the benefit to the US to suspend duties to a foreign manufacturer? How does this assist the US in pursuing a reduction in the trade deficit? Who, or what entity, is benefiting from this bill? Knowing how esoteric this industry is, I find it remarkable that Ms. Feinstein is taking the time to focus on this market with the intent to extend free duty into the largest flashlight market in the world. The only motivation I can see is that a flood of foreign produced products are allowed to come into the US and Ms. Feinstein is contemplating a higher duty fee some time in the future. In today's extraordinarily tough market conditions, giving any foreign manufacturer a competitive "leg-up" against US companies in the US market makes no sense. As US companies suffer, not only does the US lose income by extending free duty fees to a foreign manufacturer, but the already declining tax revenues from our recession-hit manufacturers, and the resultant negative impact on our economy, will be accelerated. This is a lose-lose proposition.

Please contact Maglite, Streamlight, Surefire and Pelican Products. They are all domestic manufacturers and together they provide 90+% of the flashlight sales to the domestic market. I would put the market at \$50+ million dollars per year. Maglite, pelican Products and our company, Underwater Kinetics are all based in California and would loose jobs, because of this bill. California and the Federal Government will loose tax revenue.

Be aware of one more thing. Ultra capacitors are inherently VERY DANGEROUS. Since they can be charged almost instantly, they can discharge almost instantly. Unless they are carefully implemented, they can cause fires and explosions. Sale of these items from sources which are inherently judgment proof will invite safety issues to law enforcement personnel.

We have no relationship to 511.

Regards,  
Alan Uke  
President  
Underwater Kinetics



**MAG INSTRUMENT, INC.**

2001 South Hellman Avenue  
P.O. Box 50600  
Ontario, CA 91761-8019  
Telephone: (909) 947-1006  
Fax: (909) 947-3116  
www.maglite.com

**Via Mail & Fax**

**January 20, 2010**

**Andrew David  
U.S. International Trade Commission  
500 E. Street, SW  
Washington, DC 20436  
Fax (202) 205-2018**

**Re: ITC Review S.2243**

**Dear Mr. David:**

**Thank you for your January 19, 2010 letter. Mag Instrument strongly opposes S.2243.**

**Mag Instrument is the only major flashlight company that continues to manufacture flashlight products in the United States and is committed to remaining a United States manufacturer.**

**Mag Instrument has its offices in Ontario, California where it maintains a state of the art 700,000 plus square foot facility. Mag Instrument employs more than 700 employees in California.**

**Competing against other flashlight manufacturers who employ cheap foreign labor is extremely difficult for Mag Instrument. Mag Instrument is only able to compete by reinvesting profits from its sales into new modernized equipment and facilities designed to maximize the efficiency of its manufacturing and product facilities.**

**In response to the specific questions in your letter, Mag Instrument responds as follows:**

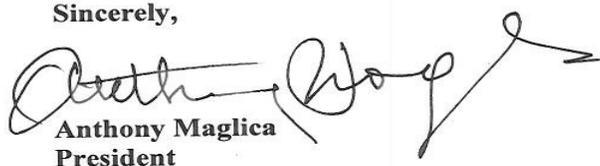
- 1. Mag Instrument has an interest in the proposed duty suspension legislation, S.2243 and strongly opposes it;**

**Andrew David**  
**January 19, 2010**  
**Page -2-**

- 2. Mag Instrument manufactures competing rechargeable flashlights, the Mag Charger™ System, even though it does not use ultra capacitors;**
- 3. Mag Instrument's rechargeable flashlights, like all of Mag Instrument's flashlight products, are manufactured in Ontario, California; and**
- 4. Mag Instrument will not benefit from the bill and, if it passes, it will further disadvantage Mag Instrument against foreign flashlight manufacturers.**

**Please contact me if you need any additional information.**

**Sincerely,**



**Anthony Maglica**  
**President**

**cc: Jim Zecchini**  
**cc: Committee on Finance**

From: Scott Mele [scottm@tek-tite.com]  
Sent: Wednesday, January 27, 2010 4:43 PM  
To: David, Andrew  
Subject: Re: ITC review S. 2243

We would appreciate it very much if you could please advise us in regard to:

1. Do you have an interest in the proposed duty suspension legislation and, if so, do you support, oppose, or are you neutral to S. 2243?

**I oppose the suspension of the duties.**

1. Is there U.S. production of the products described in the bills or U.S. production of a competing product?

**I believe so.**

1. Could you please let me know if your company (or if you know of any other companies) that manufacture a similar or competitive product in the U.S. or if you import this product into the U.S.? If there are imports, what countries are the major sources of imports for this product?

**We do not produce or import**

1. Will you benefit from this bill?

**NO**

2. If so, can you provide me an estimate of the value of imports that will benefit from this bill in each of the next five years?

**N/A**

3. And, if so, do you have any relationship with 5.11 Inc., the proponent of this bill?

**NO**

Best regards,

Scott Mele  
President  
Tektite Industries, Inc.  
309 North Clinton Ave.  
Trenton, NJ 08638-5122

From: Wrycha, Tracy [tracy.wrycha@spectrumbrands.com]  
Sent: Sunday, January 31, 2010 2:37 PM  
To: David, Andrew  
Cc: Ryan, Lorrie  
Subject: RE: ITC review S. 2243

Importance: High

Dear Andrew:

Please see the following responses to your questions, generally. Let me know if you need this on company letterhead and signed by me, in which case I can make such arrangements.

We would appreciate it very much if you could please advise us in regard to:

1. Do you have an interest in the proposed duty suspension legislation and, if so, do you support, oppose, or are you neutral to S. 2243? **We oppose.**
2. Is there U.S. production of the products described in the bills or U.S. production of a competing product? **We are not aware of U.S. production of a light incorporating this exact technology and are not aware of any significant U.S. production of flashlights generally – most are manufactured overseas.**
3. Could you please let me know if your company (or if you know of any other companies) that manufacture a similar or competitive product in the U.S. or if you import this product into the U.S.? If there are imports, what countries are the major sources of imports for this product? **We do not manufacture a light incorporating this exact technology. We are not aware of U.S. production of a light incorporating this exact technology. We import many flashlights into the U.S. for resale. The major non-U.S. sources of imports of flashlights are China and Malaysia.**
4. Will you benefit from this bill? If so, can you provide me an estimate of the value of imports that will benefit from this bill in each of the next five years? And, if so, do you have any relationship with 5.11 Inc., the proponent of this bill? **We will not benefit from this bill.**

I really hope this feedback assists you in your analysis.

Let me know if I can be of further assistance.

Best regards,

Tracy S. Wrycha  
Vice President & Assistant General Counsel  
Spectrum Brands, Inc.  
601 Rayovac Drive  
Madison, WI 53711

From: Henry Schneiker [HSchneiker@RaLights.com]  
Sent: Tuesday, February 02, 2010 5:14 PM  
To: David, Andrew  
Subject: Re: ITC review S. 2243

Andrew,

Thank you for sending this information and providing me the opportunity to comment.

I am opposed to providing special favors to the company (5.11, Inc.) that is asking to be exempted. If an import tariff is to be removed, it should be for all products, it should be permanent and it should not favor a specific company. This legislation is specifically for one company and should not be approved. No one is sponsoring legislation to help my company. No one should be sponsoring legislation to specifically help theirs.

From a different perspective, the mentioned flashlight competes with our premium American made products. I have no desire to increase the competitiveness of foreign-made products. It just makes it more difficult to sell my products.

Thanks,

Henry.

HDS Systems, Inc. (dba Ra Lights)  
P.O. Box 42767  
Tucson, Arizona 85733



February 16, 2010

US International Trade Commission  
500 E Street, SW  
Washington, DC 20436

Re: Opposition to Senate Bill 2243

To Whom It May Concern:

This letter shall serve as Streamlight, Inc. ("Streamlight") strong and fervent objection in opposition to proposed Senate Bill 2243 ("S. 2243"), that provides, through December 31, 2011, for a temporary duty suspension on "flashlights incorporating rechargeable ultracapacitors power sources (provided for in subheading 8513.10.20)" to 511, Inc. ("511").

First of all, we appreciate the opportunity to comment and offer our opposition to this bill. We have an interest in this bill because the sole beneficiary of this action is a direct competitor. While its anti-competitive effects are seemingly obvious on their face, we welcome the opportunity to identify specific arguments against the proposed tariff suspension.

By way of background, Streamlight is a leading U.S. manufacturer of high performance hand held and portable lighting products, including flashlights, lanterns, headlamps and gun mounted lights, for the military, law enforcement, firefighters and other professional and sporting personnel. We have been in business for over 37 years and employ 250 people at our plant in Eagleville, Montgomery County, Pennsylvania. Close to 90% of Streamlight's products are designed and assembled here. Specifically, as may relate to the proposed legislation, Streamlight manufactures and sells several rechargeable flashlights which have been relied upon as professional illumination tools by policeman and like-professional end users that compare directly to the 511 flashlight for which this duty suspension is requested.

The issue is not whether Streamlight produces or sells an ultracapacitor flashlight. We do not. We have researched this means of recharging professional duty lights and we have determined that the need to frequently recharge the ultracapacitor

Heroes Trust Streamlight™

Streamlight, Inc.  
30 Eagleville Road  
Eagleville, PA 19403-3996  
www.streamlight.com  
(800) 523-7488 Toll-Free  
(800) 220-7007 Fax  
(610) 631-0600  
(610) 631-0712 Fax

light and the limited charge capacity of such a system represents a significant risk to the professional end users who use our lights. In other words, a policeman's life could be at risk if his light fails him in the field. The chances of this happening with a Streamlight are greatly reduced where the Streamlight rechargeable lights have a run time of 1 hour to 6.75 hours, depending on the mode of operation. Moreover, the Streamlight rechargeable light can be recharged up to a 1,000 times before replacement and the battery can be recycled conveniently according to the Federal Recycle program.

Therefore the issue is what impact the legislation will have on Streamlight's like product line. Streamlight's various rechargeable flashlight systems range in price from \$124.00 to \$162.00 (including charger(s)). A 12.5% duty waiver vis-à-vis the ultracapacitors would immediately and significantly affect the competitiveness of Streamlight's product line. Lights 5.11 currently sell for \$170.00 (approx.) and could easily be offered at \$150.00 or \$140.00, for example, thereby giving them a competitive advantage compared to the Streamlight product, which does not get the benefit any like cost reduction.

Performance notwithstanding, new technologies, such as the ultracapacitor flashlight, have a marked history of being able to lower manufacturing costs in short periods of time, sometimes dramatically. For example, flat screen TVs have come down in price considerably over a relatively short period of time. Why should 5.11 get a break out of the box, when they may not need it 6 months from now?

Perhaps, most importantly, if the proposed duty waiver was to be enacted, it would favor foreign flashlight producers and give them a marked unfair advantage over U.S. flashlight producers. They would be importing the entire flashlight duty free, which makes foreign flashlights more competitive with U.S.-produced flashlights. Instead of selling capacitors to U.S. producers of flashlights, the foreign producers are buying capacitors overseas and selling entire flashlights to the U.S., thereby causing U.S. capacitor producers to lose market share and U.S. flashlight producers to lose market share.

The waiver actually results in a disincentive for U.S. flashlight producers who might wish to consider assembling ultracapacitor flashlights in the U.S. - even from foreign components - when they can import the entire finished product duty free. The 12.5% rate reduction, therefore, will harm U.S. industry and cause a loss of U.S. jobs because it will make it more economical and profitable to import the complete flashlights. Moreover, this will have an adverse effect on the balance of trade because instead of importing ultracapacitors which are then assembled in the U.S. by American labor, the more costly finished flashlight will be imported.

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February 16, 2010  
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For the sake of argument, assume ultracapacitors for applications such as flashlights are a new technology and considered to be the wave of the future. If U.S. companies are not producing ultracapacitors here, then the U.S. and U.S. consumers will not benefit from the innovations that spring from actually manufacturing ultracapacitors. This could affect the viability of not only U.S. flashlight assemblers/producers, but other producers of articles that now incorporate ultracapacitors in their product or will be incorporating them into future products.

While we cannot speak for them, it is anticipated that companies such as Ioxus, Inc., of Oneonta, NY, is a prime example of a U.S. company which would be negatively impacted in such a manner by the proposed legislation. Ioxus website ([www.ioxus.com](http://www.ioxus.com)) states that all its products are 100% U.S. made. Ioxus makes ultracapacitors that could be incorporated into the 5.11 flashlight, and, yet, because of the incentive provided by the proposed legislation, 5.11 would be better off to import the entire flashlight system than to have the product made in the U.S. incorporating a U.S. made ultracapacitor.

Lastly, it is important to note that there is no good justification for the duty waiver. Simply reducing the price and making the units more available is not sufficient. Moreover, the waiver does not present any benefit(s) to the United States or U.S. consumers. Supporting this conclusion is the following: (a.) there are U.S. competitors who will be hurt and put at a significant disadvantage in the marketplace; (b.) there is no performance benefit to professional end users - in fact, it can be argued that the ultracapacitor lights are inferior to other rechargeable flashlights, such as Streamlight's; (c.) given that Streamlight's rechargeable flashlights can run for nearly 7 hours at a time and are rechargeable up to 1000 times, there are no greater "green" benefits to the use of ultracapacitor lights; (d.) there is no incentive for U.S. companies to invest in the relevant technologies and grow American business; (e.) the proposed legislation favors an off-shore balance of trade, all to the detriment of U.S. industry, at a time when jobs in the United States are at a premium.

In conclusion, we urge the U.S. International Trade Commission to advise Congress against passing the S. 2243 to suspend the 12.5% ad valorem tariff on 5.11, Inc.'s flashlights incorporating rechargeable ultracapacitors for the reasons stated herein. Please be advised that we are available to answer any questions you might have or to provide such additional materials as you or the Ways and Means and Senate Finance Committees might have.

Very truly yours,

**STREAMLIGHT, INC.**



John C. Gregory, Jr.  
General Counsel

**From:** Deighton, Kevin [mailto:Kevin.Deighton@Pelican.com]

**Sent:** Monday, March 01, 2010 1:05 PM

**To:** David, Andrew

**Subject:** S. 2243 temporary duty suspension on "flashlights incorporating rechargeable ultracapacitors power sources

Dear Sir:

Thank you for drawing our attention to the Congressional legislation related to flashlights incorporating rechargeable ultracapacitors in particular a temporary duty suspension on "flashlights incorporating rechargeable ultracapacitors power sources (provided for in subheading 8513.10.20).

Pelican Products Inc, a California based manufacturer of flashlights and equipment protector cases strongly protests this piece of legislation as we believe that it provides 5.11 with a significant price advantage over US manufactured products by allowing inexpensive foreign imports to enter the marketplace. Pelican Products, along with other US based flashlight manufacturers such as Surefire, MagLite, Inova and Streamlight design and assemble their flashlights here in the United States. By providing 5.11 with the benefit of importing their ultracapacitor products without duties, American manufacturing jobs are now placed at risk. At a time when our economy is struggling to recover, frankly speaking, we find such legislation baffling. Pelican Products urges that this legislation be revisited.

Respectfully,

Kevin Deighton

Vice President of Research and Product Development

Pelican Products Inc.

Office (310) 326 4700 x 1762

111TH CONGRESS  
1ST SESSION

# S. 2243

To suspend temporarily the duty on certain rechargeable ultracapacitor long life flashlights.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 2009

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To suspend temporarily the duty on certain rechargeable ultracapacitor long life flashlights.

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 RECHARGEABLE FLASHLIGHTS.**

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:

“	9902.01.00	Flashlights incorporating rechargeable ultracapacitors power sources (provided for in subheading 8513.10.20) ...	Free	No change	No change	On or before 12/31/2011	”.
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1       (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) applies to goods entered, or withdrawn from  
3 warehouse for consumption, on or after the 15th day after  
4 the date of the enactment of this Act.

○