

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 22, 2010]<sup>2</sup>

**Bill No. and sponsor:** S. 2643 (Mr. Jeff Sessions of Alabama).

**Proponent name,<sup>3</sup> location:** Rehau Incorporated, Leesburg, VA.

**Other bills on product (111<sup>th</sup> Congress only):** H.R. 2654 and H.R. 3815.

**Nature of bill:** Extension of temporary duty reduction through December 31, 2011.<sup>4</sup>

**Retroactive effect:** None.

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

Poly(ethylene-co-1-butene) (CAS No. 25087-34-7) (provided for in subheading 3901.20.50).

**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 member of a family of similar high molecular weight, high-density polyethylene copolymer powders that are used for the high pressure/high temperature extrusion of crosslinkable (PEX) pipes. The product is a specialty polymer, stabilized for transportation and storage. The crosslinking agent (e.g., peroxide) and necessary stabilizers must be added during the extrusion process known as the Engel method. The finished thermoset product produced by the proponent, RAUPEX® pipe, is a flexible pipe that is excellent for use in hot- and cold-water plumbing systems and carrier piping for underfloor radiant heating systems. These pipes resist corrosion and abrasion encountered during installation, are lightweight, and are substitutable with copper pipe and tubing. The subject BorPEX™ polyethylene resin is purchased and imported exclusively from a Borealis A/S plant in Sweden.

<sup>1</sup> Industry analyst preparing report: Robert Randall (202-205-3366); Tariff Affairs contact: David Michels (202-205-3440).

<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.

<sup>4</sup> Heading 9902.10.34 expired on December 31, 2009.

**Estimated effect on customs revenue for the subject product classifiable in HTS subheading 3901.20.50:**

|  | 2010        | 2011        | 2012        | 2013        | 2014        |
|--|-------------|-------------|-------------|-------------|-------------|
| Col. 1-General rate of duty                          | 6.5%        | 6.5%        | 6.5%        | 6.5%        | 6.5%        |
| Estimated value <i>dutiable</i> imports <sup>a</sup> | \$4,000,000 | \$4,000,000 | \$4,000,000 | \$4,000,000 | \$4,000,000 |
| Customs revenue loss <sup>b c</sup>                  | \$116,000   | \$116,000   | \$116,000   | \$116,000   | \$116,000   |

a/ Dutiable import estimates were based on official statistics of the U.S. Department of Commerce.

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

c/ The estimated customs revenue loss is based on a temporary reduction of the general rate of duty from 6.5 percent ad valorem to 3.6 percent ad valorem, a reduction of 2.9 percentage points.

**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)                                     |                      |                   |
| Rehau, Incorporated (Proponent)<br>Joseph Pinto, 703-779-4001, x-2809 | 1/4/2010       | No   | No                   | No                |
| Dow Chemical Co.<br>Max Turnipseed, 225-338-0310                      | 1/8/2010       | Yes  | Yes                  | Yes               |
| Uponor Wirsbo, Inc.<br>Dale Stroud, 952-891-4281                      | 1/5/2010       | No   | Yes                  | Yes               |

**Technical comments:<sup>5</sup>**

In conversation with Commission staff, Customs and Border Protection has expressed concern over whether the proposed article description is sufficient to distinguish the targeted products from others under the same subheading. It should be noted that the CAS number alone does not adequately define this specific BorPEX™ polyethylene resin HE1878 manufactured by Borealis, as several other grades are also defined by the same subject CAS number. Moreover, Customs cannot properly administer a duty provision that contains a proprietary trade name.

<sup>5</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.

**From:** Max Turnipseed [mailto:mctint@att.net]  
**Sent:** Friday, January 08, 2010 5:47 PM  
**To:** Nesbitt, Elizabeth  
**Cc:** Shepherdson, Daniel; Lisa Schroeter; Keith Cleason (KD)  
**Subject:** S. 2643 - Polyethylene "HE 1878" (CAS 25087-34-7)  
**Importance:** High

Elli,

Thanks for calling Dow's attention to S. 2643, a renewal duty suspension bill to extend the provisions provided in S. 3075 from the 109<sup>th</sup> Congress. As you know, Dow's earlier (July 20, 2006) objection to S. 3075 (companion bill H. R. 1752) was received to late to stop the duty suspension from being enacted. I also note in the USITC Report dated August 26, 2005 the objection noted by U. S. Customs.

**Dow continues to domestically produce several products directly competitive to "HE 1878" in a family of products we name "DOWLEX." The extension of a duty suspension for "HE 1878," as proposed in S. 2643, should not be granted since imports of "HE 1878" compete directly with products produced by Dow in the USA.. The detailed basis for Dow's objection provided in the July 20, 2006 email to Dan, David and Ed continues as strong today as then.**

**Please register Dow's strong objection to S. 2643.**

Max Turnipseed

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To: Randall, Robert  
Cc: Lennon, Rebecca  
Subject: Duty Suspension

Dear Robert,

It is my understanding that U.S. Senate Bill S. 2643 includes a provision for duty suspension for polyethylene resin being imported by Rehau from a Borealis operation in Europe. It is further my understanding that this resin is to be used in the manufacture of PEX (cross-linked polyethylene) pipe by Rehau in the U.S. Uponor (the company I work for) also manufactures PEX pipe in the U.S. using a very similar Borealis polyethylene resin that is currently imported from Europe. Uponor and Rehau both compete in the marketplace with our respective PEX pipe for identical applications. Hence, a retraction or reduction in duty for resin imported by Rehau could result in an unfair cost advantage for Rehau relative to Uponor. Consequently, Uponor is requesting that the duty suspension requested by Rehau not be granted, or similar duty suspension be afforded to Uponor.

Thank you in advance for your consideration,

Dale Stroud

Director of Business Development

Uponor, Inc.

Tel 952.997.4281

(Received 1/6/2010).

111TH CONGRESS  
1ST SESSION

# S. 2643

To extend temporarily the reduction of duty on polyethylene HE1878.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2009

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

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## A BILL

To extend temporarily the reduction of duty on polyethylene  
HE1878.

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. POLYETHYLENE HE1878.**

4 (a) IN GENERAL.—Heading 9902.10.34 of the Har-  
5 monized Tariff Schedule of the United States (relating to  
6 polyethylene HE1878) is amended by striking “12/31/  
7 2009” and inserting “12/31/2011”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 subsection (a) applies to goods entered, or withdrawn from

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- 1 warehouse for consumption, on or after the 15th day after
- 2 the date of enactment of this Act.

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