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## NJ/NY Senators Introduce Bill to Create Mandatory Security Standards for Containers, Inc. – Broker Power, Inc.



On June 20, 2008, New Jersey and New York Senators Lautenberg, Menendez, Clinton, and Schumer introduced a new port security bill, the *Port Authority Implementation Act of 2008* (S. 3174).

According to Senator Lautenberg's press release, S. 3174 comes after a June 16, 2008 Congressional hearing<sup>1</sup> where government officials acknowledged they would be unable to meet a 2012 deadline to scan 100% all containers coming into America's ports.

The bill is also based on the findings of a Port Authority of New York and New Jersey task force.

(See ITT's Online Archives or 06/16/08 news, (Ref: [08061620](#)), for BP summary of GAO's testimony at this hearing. See ITT's Online Archives or 06/24/08 news, (Ref: [08062405](#)), for BP summary of CBP report on 100% scanning, with link to CBP's hearing testimony on this report.)

The press release identifies the following key provisions of the bill:

**Mandatory Container Security Standards:** Required for international cargo containers entering the U.S. Current Bush Administration security policy relies on shippers taking voluntary measures to improve security. Container shipments that fail to meet these new minimum standards will be denied entry into the U.S.

**Regional Response and Recovery Plans:** Required for each port, so that there is a process to restore order to the commerce in our region after a major incident or disruption occurs.

**Standardized Risk Assessment Tools:** Requires the use of a standardized risk assessment tool so that the Department of Homeland Security (DHS) can more accurately determine risks to ports and surrounding communities and businesses, and port security grants can be prioritized accordingly.

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Authorization for Law Enforcement to Confiscate Falsified IDs: Provides authority for any federal, state or local law enforcement official to confiscate a suspected fraudulent or otherwise tampered with federal Transportation Worker Identification Credential (TWIC) at locations where there is no Coast Guard presence (such as the Port Authority’s airports, bridges and tunnels).

Designation of Security Officials on Foreign Ships: Requires each foreign vessel entering a U.S. port to designate a “Security Individual” who would be responsible for responding to a transportation security incident while it is docked at a U.S. port, on behalf of the ship’s owner/operator.

Inclusion of Unregulated Ships in Federal Security Regime: Brings ships that are largely unregulated today, such as those used in essential port services like supply vessels, launch vessels, and bunker and fuel delivery ships, under federal security requirements. These ships have been identified as posing some risk to maritime security.

The hearing was held by the Senate Commerce, Science and Transportation Committee’s Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security

(The text of S. 3174 is expected to be available soon at <http://thomas.loc.gov/> (search by bill number).)

*S. Lautenberg’s press release on S. 3174 (dated 06/23/08) available at <http://lautenberg.senate.gov/newsroom/record.cfm?id=299585&>*



### **DHS Notices: User Fee Airports; TWIC Rollout –**

*By Sandler Travis & Rosenberg PA*

**User Fee Airport List Updated.** U.S. Customs and Border Protection has issued a final rule effective June 23 amending its regulations to reflect the designation of Capital City Airport in Lansing, Mich., and Kelly Field Annex in San Antonio, Texas, as user fee airports.

User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the CBP commissioner to receive, for a fee, the services of CBP officers for the processing of aircraft, their passengers and cargo entering the U.S. The type of airport that would usually seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

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### **CBP Commissioner Says No Further Action on First Sale Rule at Finance Committee Hearing** - *by Sandler Travis & Rosenberg*

At a June 24 hearing before the Senate Finance Committee, U.S. Customs and Border Protection Commissioner Ralph Basham said that his agency is not going forward with any further action to implement its proposal to revoke the First Sale Rule (FSR) or otherwise change the interpretation of the rule before 2011. Basham’s remarks are consistent with a provision in the recently-passed Farm Bill that

forestalled any immediate CBP action on the rule. The committee hearing also addressed a range of issues related to the oversight of trade functions at CBP and other agencies.

The FSR allows import duties to be assessed on the value of the first sale when an import transaction involves a series of sales (e.g., from the factory to the middleman and then to the buyer). In late January, however, CBP proposed to eliminate the FSR and trade groups actively fought this proposal, arguing that it would increase consumer costs and raise concerns on issues such as supply chain security, business predictability, agency authority and trade policy.

Ranking member Charles Grassley, R-Iowa, also expressed concern over CBP's recent steps to change longstanding practices, such as the First Sale Rule, without first consulting the Finance Committee. Basham acknowledged that CBP did not conduct the proper consultation with the committee for its interpretation of the rule and stated that CBP could have done a much better job in consulting with stakeholders before it published the proposal.

Other issues that were raised at the June 24 hearing include the following.

**HTSUS 9801.** Timothy Skud, deputy assistant secretary for tax, trade and tariff at the Treasury Department, said that the HTSUS 9801 proposed rule is under review at the Treasury Department, but noted that a proposal to include language in the Miscellaneous Tariff Bill may render the issue moot. In January, CBP had proposed to revoke an interpretation regarding qualification under HTSUS 9801.00.20, which permits the duty-free return of certain previously-imported goods that have been exported pursuant to a lease or similar agreement.

**ACE.** Basham reported that CBP expects to fully implement the Automated Commercial Environment by 2011 and that the agency has sufficient funding to meet that requirement.

**Collection of AD and CV Duties.** Basham said that CBP has proposed a continuous bond to be set upon entry, which would give the agency a better opportunity to collect duties at a later date when the liquidation is determined. CBP is working closely with the Department of Commerce on collecting antidumping and countervailing duties. Basham said that CBP would like to work with the Finance Committee to develop a better process for collecting duties and fees. Skud said that CBP collects over 99 percent of duties due, but the figure drops below 50 percent for AD duty obligations that result from retroactive increases after entry. Skud attributed the problem to determining how to secure duties when they are assessed several years after entry.

**10+2 Cargo Data Proposal.** Basham said that CBP is currently working to finalize the importer security filing rulemaking for the collection of imported cargo data. The "10+2" rule would require additional data elements from importers and ocean carriers before oceanborne cargo is brought into the U.S. He said that the trade community helped CBP to identify the data elements needed to increase the transparency of the global supply chain and to improve the overall targeting process for containers destined for U.S. ports. Basham said that they hope to submit the rule to OMB by the end of the week and have it ready for publication by the end of the summer.

**International Trade Data System.** Skud reported that the federal agencies that participate in the International Trade Data System are unable to access other data CBP already collects electronically, and that the ACE team is looking for ways to make the information available.

**IPR Enforcement.** Committee Chairman Sen. Max Baucus, D-Mont., inquired about the agencies' progress on intellectual property rights enforcement. Basham said that the agencies are working together on the issue. Julie Myers, assistant secretary, Immigration and Customs Enforcement at the Department of Homeland Security, noted more cooperation from the Chinese and Indian governments on enforcement. She also added that ICE is asking for an additional \$4.6 million for commercial fraud and IPR in President Bush's fiscal year 2009 budget. Warren Maruyama, general counsel in the Office of the U.S. Trade Representative, noted a number of U.S.-initiated cases at the WTO, including a major case under way challenging China's IPR enforcement system.



### **Certain Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China -**

*by Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP*

**Type of Action:** Antidumping and Countervailing Duty Investigations

**Product:** The scope of this investigation includes tow behind lawn groomers ("TBLGs") - defined as lawn sweepers, aerators, dethatchers, and spreaders - and certain parts thereof.

All TBLGs are designed to be used in the care and maintenance of lawn and turf. TBLGs incorporate a hitch, of any design, which allows the product to be towed behind a garden tractor, all terrain vehicle ("ATVs"), utility type vehicle ("UTVs"), riding lawn mower, or similar vehicle. The scope of this petition includes TBLGs known as "convertible" groomers, which incorporate both a hitch and a push handle, of any type. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Also included in the scope of the investigation are modular units, consisting of a chassis - with or without wheels - and a hitch, which allow modules that perform dethatching, aerating, sweeping, or spreading operations to be interchanged. Modular units, imported with or without lawn grooming modules, with a net chassis weight of 150 pounds or less, and lawn grooming modules imported separately are included in the scope. In addition, TBLGs which are designed to perform multiple lawn grooming functions simultaneously - such as aerating soil and spreading fertilizer, or removing thatch and sweeping lawn debris - are also included in the scope of the petition. Finally, while TBLGs are usually composed primarily of steel, TBLGs of any material are included within the scope of this investigation.

- I. **HTS classifications:** HTSUS: 8479.89.9897, 8432.80.0000, 8432.40.0000.
- II. **Countries:** The People's Republic of China
- III. **Date of Filing:** June 24, 2008
- IV. **Petitioners:** Agri-Fab, Inc (represented by Katten Muchin Rosenman LLP)
- V. **Alleged Dumping Margins:** 383.87% (AD); none provided for CVD.

Please contact our office for details of the products covered, names of exporters and importers, time line of the case, etc.



american apparel & footwear association

### **Affordable Footwear Act Reaches 145 Co-Sponsors in House**

*One-third of all U.S. Representatives Support the Elimination of the Shoe Tax for Hardworking Families When They Need it Most* - Arlington, VA (Thursday, June 19, 2008) – At a time when America’s hardworking families most need help, the *Affordable Footwear Act* (HR 3934/ S 2372) has reached yet another landmark on its way to final passage. Today, **American Apparel & Footwear Association (AAFA) President and CEO Kevin M. Burke** announced that one-third of the members of the U.S. House of Representatives are now co-sponsors of the legislation to eliminate the regressive, old-fashioned import duties known collectively as the “shoe tax.”

The *Affordable Footwear Act* eliminates the shoe tax on certain lower to moderately priced footwear and all children’s shoes. Because of the regressive nature of the shoe tax, these types of shoes typically carry the highest rate of duty – as high as 67.5 percent – despite being the lowest priced. The shoe tax can ultimately contribute to as much as 40 percent of the retail price.

“Thank you to our 145 co-sponsors in the House and 12 co-sponsors in the Senate,” said Burke. “You are answering the call from thousands of your constituents who are tired of paying too much because of the out-dated shoe tax.”

In recent months, thousands of Americans have visited the AAFA-sponsored website [www.EndTheShoeTax.org](http://www.EndTheShoeTax.org) to learn more about the shoe tax and the legislation to abolish it. Constituents can email their members of Congress from the site to urge them to support and co-sponsor the shoe tax relief legislation.

“For too long the shoe tax has endured as a hidden, unfair tax on Americans,” said Burke. “With 99 percent of all footwear sold in the United States imported, the shoe tax has worn out its purpose and remains as an unavoidable, harmful tax on something everyone must buy – shoes.”

“The footwear industry unanimously agrees that this bill will not harm domestic footwear manufacturers,” concluded Burke, “while granting significant tax relief to hard-working U.S. families at a time they need it most.”

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### **Keynote at International Crime Conference Focuses on CBP’s Partnerships to Combat Counterfeit Product Importation** –[CBP News Releases](#) (Thursday, June 26, 2008)

[http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/06262008.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/06262008.xml)

**Washington** – U.S. Customs and Border Protection’s Office of International Trade Assistant Commissioner Daniel Baldwin gave a keynote address today at the International Law Enforcement Intellectual Property Crime Conference in Halifax, Nova Scotia, Canada highlighting how partnerships are an integral part of CBP’s strategy to combat the illegal importation of counterfeit goods.

“All of us face a common threat from the international trafficking in counterfeit and pirated goods, Assistant Commissioner Baldwin told the group. “It is essential that we work in partnership to identify and disrupt the international distribution networks of these goods.”

Baldwin’s keynote address highlighted CBP’s intellectual property rights enforcement work emphasizing CBP’s partnerships with industry, trading partners and other U.S. government agencies to detect and seize counterfeit goods.

CBP continues to seize a wide range of counterfeit goods with an increasing focus on products that pose a safety threat and could harm consumers.

“At one time, we viewed fake goods primarily as a commercial threat to our economies. We now understand that the trade in fakes also presents equally serious threats to our national security and consumer safety,” said Baldwin.

CBP seizures of counterfeit and pirated goods have risen dramatically. In fiscal year 2007 CBP made 13,657 IPR seizures with a domestic value – the value of fake goods – of more than \$196 million, an increase of 27 percent by value over the previous year. In the last five years, CBP seizures of IPR infringing products has risen about 110 percent.

The conference was hosted by INTERPOL and the Royal Canadian Mounted Police in partnership with Underwriters Laboratories. It focused on law enforcement’s role in IPR enforcement, with the theme of “Working in Partnership Against a Common Threat.”

*U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the management, control and protection of our nation's borders at and between the official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws.*

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