

Drawback Currents Newsletter

Volume 2: Issue No. 6: HR 3443: More Drawback Legislation Introduced!

Wine Industry Seeks Own Drawback Legislation

The *Drawback Simplification Act of 2007*, introduced by Congressman Mike Thompson of California, appears stalled in committee. With prospects diminished for the Simplification Act, the wine industry lobby decided to develop another legislative vehicle to pass a drawback friendly provision that specifically addresses a conflict that erupted with Customs over the interpretation of the [commercial interchangeability](#) as applied to wines.

H.R. 3443: The Tax Prevention Act of 2007 (track it here: [Government Track US](#)) was passed by the House to address the Alternative Minimum Tax (AMT) set to snare many more taxpayers in 2007 with additional tax liability. Buried in the this act to provide a temporary patch to the AMT dilemma is a drawback provision that defines commercial interchangeability for wines on the basis of color for color. This allows an exported California cabernet to be matched against an imported Chilean merlot for drawback purposes.



The internal revenue tax categories for wine does not distinguish between varietal in its standards for the identity of wine. Wine type determines the applicable tax category. A local Customs drawback office relied on this government standard as a reasonable basis for commercial interchangeability since CFR 191.32 (the Drawback Regulations) establishes "Governmental and recognized industry standard" as part of the criteria for determining commercial interchangeability.

For the past few years, substantial drawback refunds flowed to the wine industry based on this interpretation. Customs Headquarters suspended the program pending further review. Industry pressure played a role in the temporary reversal of this decision. The industry decided the most prudent route to avoid a future battles with Customs Headquarters over the matter was to establish an objective legal standard for commercial interchangeability.

The legislation also passed the Senate, but without many of the House amendments including the drawback portion. The next step requires a conference committee to resolve the differences between the two bills and present the final version to President Bush for signature.

A result of the new legislation may be to erode support wine industry for the Drawback Simplification Act of 2007 which could further jeopardize its passage in the foreseeable future.

To receive a copy of the proposed legislation or if you have questions, please email Alliance at alliance@alliancechb.com or call us at (415) 460-6500.

More Legislation: Domestic Producers Seek to Change Ethanol Drawback Rules

Trade Industry experts estimate that nearly two thirds of the annual \$226 million in duty paid on imported ethanol (mostly from Brazil) is refunded via very liberal drawback rules applicable to petroleum products.

Specifically, the drawback law, USC 1313(p), allows for substitution at the tariff classification level. Both unleaded gasoline and jet fuel fall under the same HTS number; consequently, exported jet fuel that departs the country on a foreign flight can be used to claim drawback against imported ethanol used in the production of unleaded gasoline sold domestically.



While domestic ethanol producers and corn farmers seek to eliminate the benefit via a provision included in recently proposed energy packages, importers and various petroleum interests intend to continue to block any efforts to change either the HTS number for gasoline or the petroleum products substitution rules. For the moment, the existing rules still apply.

For more information regarding this topic, please see the following link to the Des Moines Register: [Ethanol Article](#).

Ask the Expert: How Does Customs Define Commercially Interchangeable Drawback Merchandise?

The Customs Regulations, 19 CFR 191, list four primary criteria in determining whether merchandise is commercially interchangeable. Alliance ascertains which of the below categories applies to your organization as part of the full range of services provided. The criteria are as follows:

- **Industry Specifications-** Many commodities are covered by published industry standards utilized by buyers and sellers of the commodity to determine the quality or grade of a particular material. There are a variety of national and global organizations that have established industry wide specifications for numerous products including agricultural products, steel, and titanium, to name a few. Standards and specifications are published by the USDA, ASTM (American Society for Testing Materials), and ANSI.
- **Classification from the Tariff Schedule of the United States-** Both the imported and the exported merchandise must fall within the same HTS classification.
- **Part Numbers-** If both the import and the export carry the same part number, Customs will most likely consider them commercially interchangeable.
- **Relative Value -** The import and the export must sell for approximately the same price allowing of course for reasonable mark-up and other cost that are factored into the export sales price.