

Drawback Currents Newsletter

Volume 3: Issue No. 6: Farm Bill Change to Drawback Law

Farm Bill Includes Drawback Legislation

The recently passed “Food Conservation and Energy Act of 2008” (H.R. 2419) commonly referred to as “The Farm Bill of 2007” included two drawback related provisions. The petroleum industry unfortunately lost a battle to maintain a controversial aspect of the drawback law that allowed the [substitution](#) imported ethanol against exported refined products. Under the previous statute, the industry was allowed to claim drawback on ethanol blended with gasoline when matched against exported jet fuel or other refined petroleum products that fall into the same general tariff classification.

Farm interests representing domestic producers of ethanol successfully convinced Congress that drawback on ethanol allowed petroleum companies to in essence circumvent the .54 per gallon and 2.5% duty on ethanol imported primarily from Brazil, thus, placing domestic producers at a competitive disadvantage at the expense of the US taxpayer. The counter argument holds that the duty on ethanol represents a market distorting barrier to competition that ultimately damages the consumer in the form of artificially higher prices while at the same time protecting inefficient domestic producers from competition.



Additionally, the legislation may face challenges in the World Trade Organization from economically developing nations claiming that elements contained in the Farm Bill violate trade agreements by unfairly subsidizing and protecting US agricultural interests from foreign competition.

The interests representing the **United States Wine Industry** fared much better in the **Farm Act** through the inclusion of a drawback provision that objectively defined the parameters for drawback substitution for wine. Previously, the industry benefited from a non-binding interpretation from a local Customs drawback office that established the internal revenue tax category as the primary criterion for matching imported and exported wine for drawback purposes.

The IR tax category relies upon the broader industry classifications when assessing internal revenue taxes, and does not distinguish between wine varietals. This standard, when applied to drawback, allowed for the matching of a domestically produced red wine of any variety exported from the United States against an import of the same color that fell into the same general category. The larger domestic wine companies many of which also maintain interest in foreign brands imported for distribution in the United States, used this standard to receive a refund of both duty and internal revenue tax when they exported domestically produced brands of the same color.

The Entry Ruling Branch of Customs and Border Protection located in Washington D.C. eventually weighed in on the issue last summer by directing the local Customs office that issued

the initial decision to revoke the non-binding rulings while it considered whether the interpretation complied with the drawback law and regulations for commercial interchangeability.

Soon thereafter, the wine industry initiated lobbying efforts and temporarily restored the non-binding rulings while it worked for a more permanent solution in the form of an objective legal standard. The lobbying initiative resulted in the successful inclusion of a provision in the Farm Bill that allows for the matching of exported and imported wine of the same color within a 50% wholesale price variance.

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.

Ask the Expert: Explain the Concept of Substitution as applied to Drawback

The regulations allow a company to match exports and imports of like material (merchandise of the same part number is considered substitutable for drawback purposes) within certain regulatory time frames. This method of matching imports to exports is called substitution and applies both to [manufacturing drawback](#) as well as [unused drawback](#).

Any time a company makes a duty-paid import, think of it as making a deposit into a drawback "bank account". To make a withdrawal, the company must export merchandise that is essentially the same as the merchandise in the "bank". The designated import must fall within the three-year period prior to the export date.

Additionally, the exported and imported merchandise must be commercially interchangeable in the case of unused substitution drawback and of the same kind and quality in the case of manufacturing drawback. Customs will only allow a company to match export to imports of like product.

The alternative to the substitution methodology of matching imports to exports is called direct identification. The direct ID provision of the regulations requires a company to match an export to its exact import through the use of a serial number or lot number or by using an acceptable accounting methodology. Direct ID is the only methodology that the NAFTA regulations allow for unused (same condition) exports to Canada and Mexico.

