STATEMENT OF THE DUTY DRAWBACK COALITION
On
H.R. 1838 and S. 2120

Both Bills to Amend Sections 313 of the Tariff Act of 1930 (19 U.S.C. § 1313)
To effect technical corrections to the drawback laws

Before the Subcommittee on Trade, Committee on Ways and Means
U.S. House of Representatives
And
Subcommittee on International Trade, Committee on Finance
U.S. Senate

June 7, 2002

In response to the House Ways and Means Trade Subcommittee's request for written comments on miscellaneous trade and tariff legislation dated May 3, 2002, we hereby submit the following comments in support of H.R. 1838 (as listed in TR-9), introduced by Representative Kevin Brady of Texas and co-sponsored by Representative Bill Jefferson of Louisiana.[1] H.R. 1838, and the Senate companion bill S. 2120,[2] makes technical corrections to the drawback laws that simplify the process for both the industry and U.S. Customs, making the drawback laws more feasible to implement and ensuring the U.S. manufacturers and exports can remain competitive in this era of trade liberalization.

A. Summary of the Drawback Program

Drawback is the refund of U.S. Customs (Customs) duties, certain Internal Revenue taxes, and certain fees that have been lawfully collected at importation.[3] The refund is administered by Customs after the exportation or destruction of either the imported or substituted product, or the article that has been manufactured from the imported or substituted product.[4] The establishment of the duty drawback program, and the legislative policy underlying the program, is to ensure the

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[1] These comments are submitted on behalf of the Duty Drawback Coalition, which is an ad hoc coalition that includes Shell Oil Company, Valero Energy Corporation, BP America and Danzas AEI Drawback Services.

[2] Senators John Breaux and Mary Landrieu of Louisiana introduced a companion bill, S. 2120, in the Senate.

[3] See http://www.customs.ustreas.gov/impoexpo/impoexpo.htm.

[4] See Id. It is of interest to note that the World Trade Organization ("WTO") has commented that the effects of drawback programs in other countries create an export incentive, counteract the negative effects of high import tariffs, create a strong magnet for export-oriented foreign direct investment, benefit exporters and manufacturers, and remove a bottleneck to private sector development.

competitiveness of U.S. industry in the global market when competing against lower-priced exports from our trading partners. Customs states that

> The rationale for drawback has always been to encourage American commerce or manufacturing, or both. It permits the American manufacturer to compete in foreign markets without the handicap of including in his costs, and consequently in his sales price, the duty paid on imported merchandise.[5]

The drawback program also was initiated for the purpose of: creating jobs; encouraging manufacturing; and encouraging exports.[6] The Continental Congress first established drawback in 1789, and it was initially limited to specific articles, such as salt used to cure meats, that were directly imported and exported.[7] Since that time, drawback has been expanded to include numerous products.

B. This Bill Enjoys Industry-Wide Support

This bill enjoys industry-wide support from a number of companies and associations, including the Joint Industry Group. On February 15, 2002, Congressional staff, Customs and industry representatives met to discuss whether: (1) H.R. 1838 as written would accomplish its objective; and (2) any opposition exists with regard to the bill's inclusion this year in the miscellaneous trade package. At the end of the meeting, all parties agreed to certain changes to both bills that would remove any concern by Customs about its implementation and effectiveness, and there is no known opposition to the bill. Twenty-six people representing Congressional, industry and Customs' interests attended the meeting, and a copy of the attendance list is attached.

C. Summary of the Provisions within H.R. 1838/S. 2120

H.R. 1838 has seven provisions that propose changes to Sections 313 and 504 of the Tariff Act of 1930. The provisions change the drawback and other trade laws making their interpretation, administration and implementation less cumbersome for the Customs. More importantly, they will ease the regulatory and administrative burdens imposed by the current regulatory structure on U.S. companies by making them more competitive in the global marketplace when competing against foreign exports of similar or like products.

In sum, these provisions accomplish the above by: establishing a statutory time frame for the liquidation of drawback claims, as is already established for the liquidation of merchandise entered for consumption; allowing for drawback on products that are destroyed under Customs supervision; eliminating unnecessary paperwork when claiming drawback for the use of domestic merchandise acquired in exchange for imported merchandise of the same kind or quality; allowing for drawback on products returned to foreign suppliers due to a defect in the merchandise; clarifying when drawback can be claimed for packaging materials which become eligible for drawback when used and exported as part of a final product; and, correcting the inequity within current law by establishing a statute of limitations in regard to penalties for false drawback claims.

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[5] See Id.
[6] See Id.
[7] See Id.

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1. Section 101: Merchandise Not Conforming to Sample or Specification (19 U.S.C. § 1313(c)(1))

The provision simplifies the process of filing for duty drawback for commercially interchangeable products in two ways. First, it expands the scope of products eligible for drawback. Second, it allows for drawback on products that do not conform to the appropriate sample or specification as requested by the importer, or that are ultimately sold in the U.S. at retail and are returned to the foreign exporter/supplier for any reason, whether due to a manufacturing or other defect in the merchandise, regardless of whether the defect occurred prior to or after the importation. The end result is that drawback is provided and the product is treated as if it was never entered and sold in the U.S. market. However, the imported goods must be exported within one year of importation.

It also eliminates the need for drawback certificates if the: (1) drawback claimant and importer are the same person; or, (2) drawback claimant is a successor to the importer as defined in subsection (s) (3) of the current law.

2. Section 102: Time Limitation on Exportation or Destruction (19 U.S.C. § 1313(i))

The provision expands the products that are eligible for drawback to include those that are destroyed under Customs' supervision. Duty drawback must be collected within five years of the destruction or exportation of the eligible imported products. Thus, for those products that are destroyed and have no commercial value to the importer or a third party, drawback (or the duties paid) can be refunded as if the product was not sold in the U.S. market.

3. Section 103: Use of Domestic Merchandise Acquired in Exchange for Imported Merchandise of Same Kind or Quality (19 U.S.C. § 1313(k))

The provision clarifies when domestic products can be exchanged for drawback products (*i.e.,* domestically produced products that are manufactured with imported merchandise that is subject to drawback) and thus when drawback can be obtained on drawback products using the same kind or quality imported merchandise in the manufacturing process. The provision adds to the current statute a second paragraph that permits the use of any domestic merchandise, acquired in exchange for a "drawback product" of the same kind or quality, to be treated as the use of the drawback product if no certificate of delivery or certificate of manufacture and delivery is issued for the drawback product.

4. Section 104: Packaging Material (19 U.S.C. § 1313(q))

The new provision allows U.S. exporters to claim drawback for imported packaging materials that are filled with or used to contain (*i.e.,* package) U.S. products when both the packaging materials and the products are exported as a single end product. Currently, when packaging materials are imported and not physically changed or used in the manufacture of a domestic product, but are used simply as packaging materials and then exported with the finished product, Customs does not allow drawback on the imported packaging material. Thus, such packaging materials are currently not eligible for drawback even though they are re-exported and consumed outside of the U.S. The new provision would correct this problem by allowing duty drawback when the packaging materials are used to "package" a U.S. product and then are re-exported as part of the final product.

5. Section 105: Limitation on Liquidation (19 U.S.C. § 1504)

The provision clarifies limitations on liquidation by establishing a statutory time frame for the liquidation of drawback claims. Existing law only sets forth a time line for the liquidation of import entries and currently does not require the liquidation of drawback claims within a statutory time frame. As a result, drawback claims are generally not liquidated by Customs and thus remain outstanding for years. Thus, without liquidation, a liability for U.S. businesses (*i.e.,* drawback claimant) is created for the amount of each drawback claim because Customs can challenge the drawback amount or value of the goods for which drawback was claimed until liquidation occurs.

If drawback claims are never liquidated, for an open-ended time period the drawback claimant's claim unfairly remains subject to challenge by Customs. This creates an unwarranted liability and the possibility that the claimant will have to reimburse the U.S. Treasury any drawback monies paid to the claimant - even several years from when the claim was actually made and money was paid to the drawback claimant. This change would remove such liability overhanging drawback claimants by requiring the Customs (1) to liquidate existing drawback claims, and (2) to liquidate future drawback claims within a reasonable period of time, as the Customs already does for merchandise entered for consumption.

Customs' main concern was that this section as currently written does not require that the underlying import entry be liquidated prior to liquidation of the drawback entry or claim. If language were added that provides for liquidation of the underlying import entry prior to liquidation of the drawback entry, Customs would have no objection to the provision. Meeting participants agreed to add such language to the provision.

6. Section 106: Penalties for False Drawback Claims (19 U.S.C. § 1593a(h))

Creates a limit of three years on the length of time that a repetitive negligent violation can be counted against an offender. Currently, the regulations do not provide for a time period in which a first or second negligent violation expires and the process beings anew. This provision would correct that inequity as compared to other subsections within 1593a by establishing a "statute of limitations" on how long a negligent violation would "remain on the books".

7. Section 201: Provision Providing for the Re-liquidation of Certain Import Entries

This provision re-liquidates certain entries after re-designating those entries as imported under the General Rate of Duty (Column 1 on the Harmonized Tariff Schedule of the U.S. - "HTSUS"). Prior to being notified by Customs and made aware of the fact that drawback cannot be claimed for certain products entered under a Special Rate of Duty (*i.e.,* NAFTA preference as listed in Column 2 on the HTSUS), importers designated certain products imported from a NAFTA country, products that were later exported from the U.S., under the Special Rate of Duty resulting in a denial of drawback. This new provision entitles importers of certain products to re-designate certain entered goods (that were later exported) under the General Rate of Duty, rather than the Special Rate of Duty. This would have the effect of re-liquidating the entries and allowing the importers to claim drawback for the re-export of such goods. Such re-designation is consistent with current law.

D. Conclusion

The changes made by these bills to § 1313 of the Tariff Act of 1930 would ensure the continued application of the drawback program as intended by Congress, allowing U.S. manufacturers and exporters to compete on a level playing field with foreign producers for sale of goods in the global marketplace. These technical changes are necessary to clarify the application of certain provisions within the drawback laws, and ease existing administrative upon U.S. manufacturers, exporters and Customs in implementing the laws.

We appreciate your consideration of our comments and we hope that Congress will act favorably on this legislation at the earliest opportunity. If you have any questions or require additional information, please contact either Marc Hebert at (202) 828-5838, or Mike Pate at (202) 828-5841, at Bracewell & Patterson, L.L.P.

Cc: Senator John Breaux

Senator Mary Landrieu

Congressman Sam Johnson

Congressman William Jefferson

United States International Trade Commission
Office of Tariff Affairs and Trade Agreements