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J. DENNIS HASTERT
FOURTEENTH DISTRICT
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October 21, 2003

By Facsimile & First Class Mail

William Foster
Chief, Regulations and Procedures Division
Alcohol and Tobacco Tax and Trade Bureau
U.S. Department of the Treasury
ATTN: Notice Number 4
P0 Box 50221
Washington, DC 20091-0221

Re: TTB Notice 4. Flavored Malt Beverages and Related Proposals

Dear Mr. Foster:

We write to comment on TTB Notice Number 4, Flavored Malt Beverages and Related Proposals, and to urge TTB to adopt a “majority” flavored malt beverage (“FMB”) formulation standard instead of the 0.5% alcohol by volume limit proposed in Notice 4. We urge TTB to minimize any new regulations’ impact on businesses and workers in the brewing industry and to help preserve healthy competition in the malt beverage market.

Most FMBs on the market today were developed in reliance on longstanding policies of TTB and its predecessor, the Bureau of Alcohol, Tobacco, and Firearms. Those policies placed no limit on the amount of alcohol that flavors could contribute to products containing 6% alcohol by volume or less. In 1996 the Bureau suggested that rulemaking “in the near future” might limit the use of flavors in such products, but nothing flowed from that. Now Notice 4 seeks to change the rules midstream for some companies. Imposing limits for the first time on the amount of alcohol that flavors can contribute to an FMB containing 6% alcohol by volume or less would be a “significant change” to existing policies. We want to make sure that any change is weighed against the harm to some FMB producers at the expense of others.

Dramatic changes after reliance normally increase both cost and uncertainty. Notice 4 admits that the law supports a formulation standard requiring that a majority (more than 50%) of the alcohol in an FMB derive from its fermented beer base — a standard closer to the existing status quo than the 0.5% standard.

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We are troubled by the fact that Notice 4 may provide a significant competitive advantage to the companies that already dominate the U.S. malt beverage industry. Right now, the most successful FMB products are produced and marketed by companies that do not hold a large share of the greater malt beverage market. Large brewers possess a tremendous advantage over their competitors in terms of brewing resources and technology. Indeed, America’s (and the world’s) two largest brewers recently announced that they already possessed the capability to produce their FMBs under TTB’s 0.5% standard. It would be no surprise if those same companies were to favor the 0.5% standard.

Given these facts, we urge TTB to carefully consider the competitive aspects of a 0.5% standard on the U.S. beer market. Notice 4 admits that the law would support a majority standard yet TTB proposes to promulgate a more stringent standard that seems not in keeping with a cost/benefit analysis. A majority standard would address the consumer and state issues cited in the Notice as TTB’s reason for acting. We accordingly see no valve—beyond picking market winners and losers—for a 0.5% standard.

As a preliminary matter, we think it is important to note that since Prohibition ended, a fundamental premise upon which the regulation of the alcoholic beverage industry has been based is that the consumption of malt beverages, because of their lower alcohol by volume, is preferable to the consumption of high alcohol by volume products. There is no denying that these products are low alcohol content in the 5% by volume range and clearly state such on their label, thereby avoiding any “surprise” by a consumer seeking a low alcohol by volume product ending up with something that in reality is some sort of distilled spirits fortified fruit drink.

This concern is not just theoretical: a major beverage alcohol production facility is located in Plainfield, Illinois. It employs 290 people and contributes approximately $28 million to the local economy through wages and taxes paid, through services purchased, and by other means. Many of these good jobs in Plainfield rely on the production, bottling, and packing of a leading line of FMBs, and any regulation that threatens the market position of these products puts those jobs at risk. Many of those threatened workers reside in our districts.

Our staffs will continue to monitor this situation closely. If you would like more information on how Notice 4 threatens jobs in our districts, please contact Margaret Peterlin with Speaker Hastert at 202-225-0510 or Danielle English with Rep. Biggert at 202-225-3515.

Sincerely,

THE HONORABLE J. DENNIS HASTERT THE HONORABLE JUDY BIGGERT
SPEAKER OF THE HOUSE MEMBER OF CONGRESS

cc: The Honorable John Snow, Secretary of the Treasury