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RICHARD J. DURBIN 332 DIRKSEN SENATE OFFICE BLDG.
ILLINOIS WASHINGTON, DC 20510-1304
(202) 224–2152
TTY (202) 224–8180
COMMITFEE ON APPROPRIATIONS 230 SOUTH DEARBORN, 38TH FL
CHICAGO, IL 60604
COMMITTEE ON THE JUDICIARY UNITED STATES SENATE (312) 353-4952
525 SOUTH EIGHTH STREET
COMMITTEE ON SPRINGFIELD, IL 62703
GOVERNMENTAL APFAIRS (217) 492-4062
SELECT COMMITTEE ON INTELLIGENCE 701 NORTH COURT STREET
MARION, IL 62959
(618) 998–8812
ASSISTANT DEMOCRATIC
FLOOR LEADER www.senate.gov/–durbin

October 17, 2003

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

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

I am writing to comment on TTB Notice 4, Flavored Malt Beverages (FMBs) and Related Proposals. In particular, I am concerned that FMB manufacturing businesses throughout the nation, including those in my state of Illinois, would be adversely impacted by the flavor standard proposed in the Notice.

Your Notice proposes a rule whereby approximately 90% of the alcohol in an FMB must be derived from malt fermentation and not more than 10% can be derived from flavors. The rule, however, recognizes that it is also legally permissible to allow 51% from malt and 49% from flavors. Therefore, I urge the Bureau to adopt a majority standard (51/49) because it would achieve the Bureau’s goals while minimizing the adverse impact on the FMB industry.

The 90/10 standard may affect the flavor and appearance of FMBs, which have already attained considerable consumer loyalty. Retrofitting the FMB manufacturing process to derive 90 percent of the alcohol in an FMB from a malt base would be tremendously costly, and could jeopardize the profitability of this burgeoning market sector.

My state is home to a beverage alcohol plant that produces a popular flavored malt beverage. The plant employs more than 290 workers who contribute approximately $28 million to the local economy through wages and taxes paid, services purchased and by other means. The unintended consequences of the rule that the Alcohol & Tobacco Tax & Trade Bureau (TTB) proposes could have a profound and devastating impact on the employees of this plant and on the municipality in which they are located.

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If the new formulation standards increase the costs of producing FMBs, and alter their taste such that consumers are reluctant to purchase them, the FMB market will decline. This decline in profitability will most surely drive some FMB manufacturers out of the market, and reduce competition in the marketplace. Consequently, it could cause a loss ofjobs in factories that produce FMBs, and most assuredly will increase costs to consumers.

As TTB has stated, it welcomes comments on a formulation standard that does not reach the 90 percent threshold if it is “consistent with the FAA definition of malt beverage, such as requiring that the alcohol content of a malt beverage be predominantly; i.e. at least 51% derived from fermentation at the brewery.” (See TTB Proposed Rule, 68 Fed. Reg. at 14296).

Given the costs that the 90/10 standard would impose on the FMB industry, in particular the employees of the facilities located in my state, I urge TTB to adopt a 51/49 standard for the formulation of FMBs. In addition, regardless of the formulation standard, the industry must be given an ample amount of time, not less than 18 months, to transition into a new formulation standard.

Sincerely,

Richard J. Durbin
United States Senator

RJD/mlk