

Congress of the United States
Washington, DC 20515

December 8, 2009

The Honorable Timothy Geithner
U.S. Department of Treasury
Washington, D.C. 20220

The Honorable Janet Napolitano
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretaries Geithner and Napolitano:

We would like to express our concern with the two Notices of Proposed Rulemaking published on October 15th by the Bureau of Customs and Border Protection and the Alcohol and Tobacco Tax and Trade Bureau.¹ These proposed rules ignore the clear intent of Congress under 19 USC 1313(j)(2) entitling exporters to obtain drawback of all duties, taxes and fees paid upon entry or importation when a substitute product is exported. Additionally, these proposed rules would significantly undercut the export programs of many U.S. businesses, including the wine industry, whose exports have grown to over \$1 billion in sales, in large part due to the availability of the (j)(2) drawback program enacted by Congress.

Drawback is about promoting American exports and jobs, and reversing the drawback of federal taxes on wine would reduce wine exports and the overall international competitiveness of the American wine industry. Over the past decade, the drawback program has enabled the domestic wine industry to dramatically increase exports despite competing with far greater government subsidies provided to its foreign competitors.

In 2004, Congress' intent in amending the Customs Modernization and Informed Compliance Act of 1993 (the "1993 Mod Act," the stated basis for the proposed rules) could not be more clear. In that 2004 statute, Congress reaffirmed the right to drawback of duties, taxes and fees in the face of a court decision that questioned that right.² The law is unambiguous, and there is no basis for a contrary administrative rulemaking on the issue. Moreover, the two 1993 Mod Act provisions cited by the agencies as legal support for the proposed rules (i.e., 19 USC 1313(u) and (v)) do not appear to directly apply to the issue sought to be addressed by those rules.

Notwithstanding this, legislation introduced in both houses of Congress over the past three years once again restates long-standing Congressional intent – the right of exporters

¹ Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Notice of Proposed Rulemaking, Drawback of Internal Revenue Taxes, 74 Fed. Reg. 52937 (October 15, 2009); Bureau of Customs and Border Protection, Department of Homeland Security, and Department of the Treasury, Notice of Proposed Rulemaking, Drawback of Internal Revenue Excise Tax, 74 Fed. Reg. 52928 (October 15, 2009).

² 19 U.S.C. 1313(j)(2) (2004) ("...if there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law upon entry or importation, any other merchandise (whether imported or domestic), ... then, notwithstanding any other provision of law, upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback under this subsection.")

to claim drawback of federal taxes paid on imports. The agencies have been heard many times on this issue and can continue to comment as Drawback Simplification makes its way through Congress. Noticing the proposed rules at this time amounts to challenging Congress by initiating a rulemaking that will run concurrently with Congressional action on the same subject in the context of pending CBP reauthorization legislation. We view these proposed rules as an attempt by the administering agencies to change existing law via rulemaking, pre-empting and negating the role of Congress.

We, therefore, respectfully urge both agencies to withdraw these proposed rules.

Thank you for your attention, and we look forward to your prompt reply.

Sincerely,



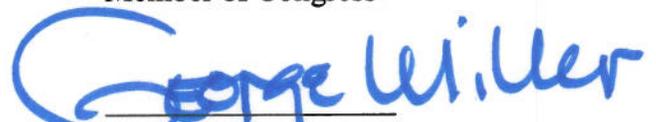
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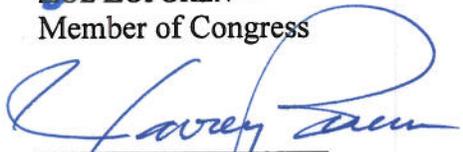
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Member of Congress



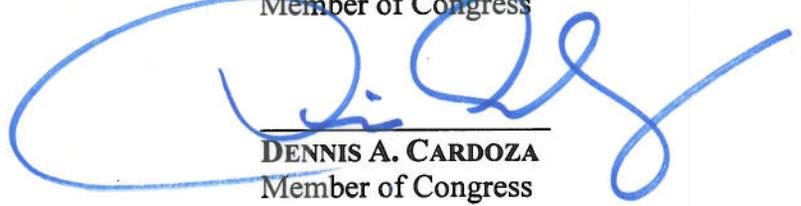
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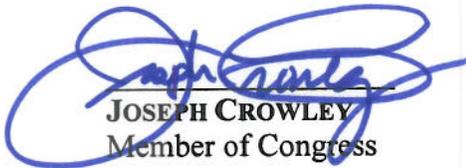
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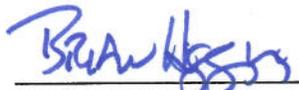
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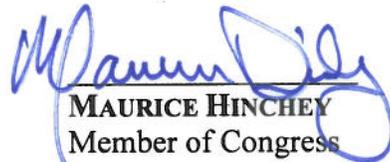
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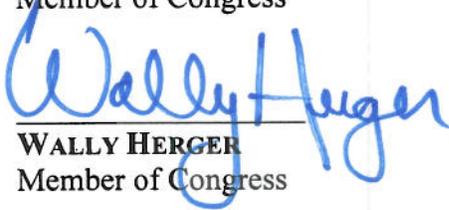
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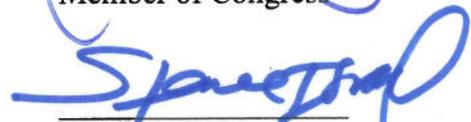
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