

110TH CONGRESS
1ST SESSION

H. R. 3443

To amend the Tariff Act of 1930 to clarify the provisions relating to drawback for exported merchandise.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2007

Mr. THOMPSON of California (for himself, Mr. HERGER, Mr. McDERMOTT, Mr. REYNOLDS, Mr. CROWLEY, Mr. NUNES, and Mr. ISRAEL) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Tariff Act of 1930 to clarify the provisions relating to drawback for exported merchandise.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drawback Simplifica-
5 tion Act of 2007”.

6 **SEC. 2. DRAWBACK FOR EXPORTED MERCHANDISE.**

7 (a) IN GENERAL.—Section 313 of the Tariff Act of
8 1930 (19 U.S.C. 1313) is amended to read as follows:

1 **“SEC. 313. DRAWBACK FOR EXPORTED MERCHANDISE.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) BILL OF MATERIALS.—The term ‘bill of
4 materials’ means records kept in the ordinary course
5 of business that identify each component incor-
6 porated into an article.

7 “(2) DESTROYED.—The term ‘destroyed’ means
8 a process by which merchandise or an article loses
9 all commercial value. Merchandise or an article shall
10 be considered to be destroyed even if valuable mate-
11 rial is recovered from the merchandise or article.

12 “(3) DIRECTLY.—The term ‘directly’ means a
13 transfer of merchandise or an article from 1 person
14 to another person without any intermediate transfer.

15 “(4) FORMULA.—The term ‘formula’ means
16 records kept in the ordinary course of business that
17 identify the quantity of each element, material,
18 chemical, mixture, or other substance incorporated
19 into a manufactured article.

20 “(5) FUNGIBLE.—The term ‘fungible’ means
21 goods that are commercially identical to 1 another in
22 all instances.

23 “(6) GOOD SUBJECT TO CHILE FTA DRAW-
24 BACK.—The term ‘good subject to Chile FTA draw-
25 back’ has the meaning given that term in section

1 203(a) of the United States-Chile Free Trade Agree-
2 ment Implementation Act (19 U.S.C. 3805 note).

3 “(7) GOOD SUBJECT TO NAFTA DRAWBACK.—
4 The term ‘good subject to NAFTA drawback’ has
5 the meaning given that term in section 203(a) of the
6 North American Free Trade Agreement Implemen-
7 tation Act (19 U.S.C. 3333(a)).

8 “(8) HTS.—The term ‘HTS’ means the Har-
9 monized Tariff Schedule of the United States (19
10 U.S.C. 1202).

11 “(9) INCORPORATED INTO.—The term ‘incor-
12 porated into’ means any operation by which mer-
13 chandise or an article becomes classifiable in a dif-
14 ferent 8-digit HTS subheading number.

15 “(10) INDIRECTLY.—The term ‘indirectly’
16 means a transfer of merchandise or an article from
17 1 person to another person with 1 or more inter-
18 mediate transfers.

19 “(11) LINE ITEM.—

20 “(A) IMPORT ENTRY.—The term ‘line
21 item’ means, for an import entry filed pursuant
22 to section 484, the identification of a com-
23 modity from 1 country by net quantity, entered
24 value, HTS subheading number, and applicable
25 duties, fees, and taxes.

1 “(B) DESIGNATED EXPORT.—The term
2 ‘line item’ means, for a designated export, the
3 identification of a commodity by HTS sub-
4 heading number or Schedule B number, de-
5 clared value, and quantity.

6 “(12) NAFTA COUNTRY.—The term ‘NAFTA
7 country’ has the meaning given that term in section
8 2 of the North American Free Trade Agreement Im-
9 plementation Act (19 U.S.C. 3301).

10 “(13) SCHEDULE B.—The term ‘Schedule B’
11 means the Department of Commerce Schedule B,
12 Statistical Classification of Domestic and Foreign
13 Commodities Exported from the United States.

14 “(14) SECRETARY.—Except as otherwise pro-
15 vided, the term ‘Secretary’ means the Secretary of
16 Homeland Security.

17 “(15) SUBSTITUTE MERCHANDISE; SUBSTITUTE
18 ARTICLE.—The terms ‘substitute merchandise’ and
19 ‘substitute article’ mean—

20 “(A) a good that is classifiable within the
21 same 8-digit HTS subheading number as an-
22 other good (the Schedule B number may be
23 used to demonstrate this fact);

24 “(B) a good demonstrated to have been
25 classifiable within the same 8-digit HTS sub-

1 heading number as another good at some point
2 during the 5-year period beginning on the date
3 of importation of the designated imported mer-
4 chandise (the Schedule B number may be used
5 to demonstrate this fact); or

6 “(C) for goods classifiable under headings
7 2710 or 3901 through 3914 of the HTS, a
8 good demonstrated to have been classifiable
9 under the same 8-digit HTS subheading num-
10 ber as another good according to the HTS in
11 effect on January 1, 2000 (the Schedule B
12 number may be used to demonstrate this fact).

13 “(b) IN GENERAL.—

14 “(1) DRAWBACK.—If merchandise is imported
15 into the United States and that merchandise, or
16 substitute merchandise, is then exported, or is incor-
17 porated into an article that is exported, or a sub-
18 stitute article is exported, duties, fees, and taxes
19 paid upon entry or importation of the merchandise
20 shall be refunded as drawback pursuant to this sec-
21 tion notwithstanding any other provision of law.

22 “(2) ELIGIBILITY FOR DRAWBACK FOR MER-
23 CHANDISE INCORPORATED INTO MULTIPLE ARTI-
24 CLES.—Merchandise described in paragraph (1) that
25 is incorporated into an article that is exported shall

1 be eligible for drawback under this section regardless
2 of the number of times that the merchandise is in-
3 corporated into an article or an article is incor-
4 porated into another article.

5 “(c) ELIGIBILITY TO CLAIM DRAWBACK.—

6 “(1) PERSON MAKING CLAIM.—A person may
7 claim drawback under this section if the person—

8 “(A)(i) imports the merchandise on which
9 the claim is based; or

10 “(ii) obtains the importer’s permission to
11 claim the drawback; and

12 “(B) exports the merchandise or article on
13 which the claim is based or obtains the export-
14 er’s permission to claim drawback.

15 “(2) SPECIAL RULES.—

16 “(A) IN GENERAL.—When the exporter
17 and importer are not the same party, the ex-
18 porter shall have received the imported mer-
19 chandise, substitute merchandise, imported or
20 substitute merchandise incorporated into an ar-
21 ticle, or substitute article, directly or indirectly
22 from the importer.

23 “(B) RULES FOR TRANSFER.—The trans-
24 fer of drawback rights under this section shall
25 be a private transaction between parties that

1 shall not be required to be governed by this sec-
2 tion or by regulations promulgated under the
3 authority of this section, and U.S. Customs and
4 Border Protection of the Department of Home-
5 land Security shall not be required to verify any
6 transfer of merchandise or article under this
7 subsection.

8 “(3) CLAIM FOR DRAWBACK ON MERCHANDISE
9 INCORPORATED.—If drawback is claimed for mer-
10 chandise incorporated into an article, the person
11 making the claim shall submit a bill of materials or
12 formula identifying the merchandise and article by
13 the 8-digit HTS subheading number and the quan-
14 tity of the merchandise. Merchandise shall be
15 deemed incorporated into an article if the bill of ma-
16 terials or formula for that article includes such mer-
17 chandise.

18 “(4) ELECTRONIC FILING.—A claim for draw-
19 back under this section shall be made through an
20 electronic data interchange system authorized by the
21 Secretary. Such system may include an Internet-
22 based system.

23 “(5) TIME LIMIT FOR CLAIM.—Drawback may
24 be paid under this section only if the claim for draw-
25 back is filed within 5 years after the date the mer-

1 chandise was imported. If the merchandise has mul-
2 tiple dates of importation, the earliest date of impor-
3 tation shall be used for purposes of this paragraph.

4 “(d) AMOUNT OF DRAWBACK.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2) and except for drawback claims filed pur-
7 suant to subsection (g)(2), the amount of a draw-
8 back made pursuant to this section shall be the
9 number of units claimed times the lesser of—

10 “(A) the average of the duties, taxes, and
11 fees paid per unit of the designated import line
12 item, or

13 “(B) the average declared value per unit of
14 the designated export line item times the duties,
15 taxes, and fees that applied to the designated
16 import line item,

17 less 1 percent.

18 “(2) EXCEPTION.—Where drawback is claimed
19 based upon imported merchandise or substitute mer-
20 chandise being incorporated into an article, the
21 drawback amount shall be the number of units of
22 merchandise claimed times the average duties, taxes,
23 and fees per unit of the designated import line item,
24 less 1 percent.

1 “(3) LIMITATION.—The amount of duties,
2 taxes, and fees to be refunded pursuant to this sub-
3 section for merchandise shall not include any duties,
4 taxes, and fees previously refunded to any person for
5 such merchandise.

6 “(e) REFUNDS, WAIVERS, OR REDUCTIONS UNDER
7 CERTAIN FREE TRADE AGREEMENTS.—

8 “(1) IN GENERAL.—If an article that is ex-
9 ported to a NAFTA country is a good subject to
10 NAFTA drawback, no customs duties on the good
11 may be refunded, waived, or reduced in an amount
12 that exceeds the lesser of—

13 “(A) the total amount of customs duties
14 paid or owed on the good on importation into
15 the United States; or

16 “(B) the total amount of customs duties
17 paid on the good on importation into the
18 NAFTA country.

19 “(2) SPECIAL RULE FOR CANADA.—If Canada
20 ceases to be a NAFTA country and the suspension
21 of the operation of the United States-Canada Free-
22 Trade Agreement thereafter terminates, then for
23 purposes of subsection (b), the shipment to Canada
24 during the period such Agreement is in operation of
25 an article made from or substituted for, as appro-

1 appropriate, a drawback eligible good under section
2 204(a) of the United States-Canada Free-Trade Im-
3 plementation Act of 1988 (19 U.S.C. 1212 note)
4 does not constitute an exportation.

5 “(3) SPECIAL RULE FOR CHILE.—

6 “(A) IN GENERAL.—For purposes of sub-
7 sections (b) and (g)(1), if an article that is ex-
8 ported to Chile is a good subject to Chile FTA
9 drawback, no customs duties on the good may
10 be refunded, waived, or reduced, except as pro-
11 vided in subparagraph (B).

12 “(B) AMOUNT OF CUSTOMS DUTIES.—The
13 customs duties referred to in subparagraph (A)
14 may be refunded, waived, or reduced by—

15 “(i) 100 percent during the 8-year pe-
16 riod beginning on January 1, 2004;

17 “(ii) 75 percent during the 1-year pe-
18 riod beginning on January 1, 2012;

19 “(iii) 50 percent during the 1-year pe-
20 riod beginning on January 1, 2013; and

21 “(iv) 25 percent during the 1-year pe-
22 riod beginning on January 1, 2014.

23 “(4) FUNGIBLE MERCHANDISE EXPORTED TO
24 NAFTA COUNTRY.—The exportation to a NAFTA
25 country of merchandise that is fungible with and

1 substituted for imported merchandise, other than
2 merchandise described in paragraphs (1) through
3 (8) of section 203(a) of the North American Free
4 Trade Agreement Implementation Act (19 U.S.C.
5 3333(a)), shall not constitute an exportation for
6 purposes of subsection (b).

7 “(5) FUNGIBLE MERCHANDISE EXPORTED TO
8 CHILE.—Beginning on January 1, 2015, the expor-
9 tation to Chile of merchandise that is fungible with,
10 and substituted for imported merchandise, other
11 than merchandise described in paragraphs (1)
12 through (5) of section 203(a) of the United States-
13 Chile Free Trade Agreement Implementation Act
14 (19 U.S.C. 3805 note), shall not constitute an ex-
15 portation for purposes of subsection (b). The pre-
16 ceding sentence shall not be construed to permit the
17 substitution of unused drawback under subsection
18 (b) of this section with respect to merchandise de-
19 scribed in paragraph (2) of section 203(a) of the
20 United States-Chile Free Trade Agreement Imple-
21 mentation Act.

22 “(f) PROOF OF EXPORTATION.—A person claiming
23 drawback under this section shall submit to the Secretary
24 proof of the exportation by submitting at least 1 of the
25 following:

1 “(1) The appropriate record from the United
2 States Government automated export system, or evi-
3 dence of the equivalent information if such system
4 was unable to report the exportation.

5 “(2) Export documentation issued in the nor-
6 mal course of business.

7 “(3) If the drawback claims filed pursuant to
8 paragraph (1), (2), or (4) of subsection (e), the Ca-
9 nadian or Mexican entry records.

10 “(4) For a deemed exportation, any record that
11 establishes the fact of deemed exportation that in-
12 cludes a description of the article or merchandise by
13 the 8-digit HTS subheading number (or equivalent
14 Schedule B number) under which the article or mer-
15 chandise would be classifiable, quantity, and de-
16 clared value.

17 “(g) SPECIAL ELIGIBILITY RULES.—

18 “(1) VESSELS BUILT FOR RESIDENTS OF A
19 FOREIGN COUNTRY.—Drawback under this section
20 may be claimed for materials imported and used in
21 the construction and equipment of vessels built for
22 foreign account and ownership, or for the govern-
23 ment of any foreign country, notwithstanding that
24 such vessels may not within the strict meaning of
25 the term be exported.

1 “(2) DESTROYED MERCHANDISE.—

2 “(A) ELIGIBILITY FOR DRAWBACK.—

3 Drawback under this section may be claimed
4 for—

5 “(i) imported merchandise,

6 “(ii) an article incorporating the im-
7 ported merchandise, or

8 “(iii) substitute merchandise,

9 that is not exported because it was destroyed.

10 “(B) AMOUNT OF DRAWBACK.—Subject to
11 subparagraph (C), the amount of drawback
12 paid for a claim filed pursuant to subparagraph
13 (A) shall be—

14 “(i) the average entered value per unit
15 of merchandise, multiplied by

16 “(ii) the duty, tax, and fee applicable
17 to the designated line item of the merchan-
18 dise, multiplied by

19 “(iii) the number of units claimed,
20 minus 1 percent.

21 “(C) OFFSETTING AMOUNTS.—The
22 amount of duties, taxes, and fees to be refunded
23 pursuant to this paragraph shall not include
24 any duties, taxes, and fees previously refunded
25 to an importer of record or the person claiming

1 drawback. The value of the imported merchan-
2 dise on which drawback is claimed shall be re-
3 duced by the value of any recovered materials
4 (including the value of any tax benefit or roy-
5 alty payment).

6 “(3) AGRICULTURAL PRODUCTS.—No drawback
7 under this section may be claimed for an agricul-
8 tural product subject to over-quota rate of duty es-
9 tablished under a tariff-rate quota, except under a
10 direct identification basis and when such product
11 has not been used in the United States.

12 “(4) MERCHANDISE NOT REGULARLY EN-
13 TERED.—Imported merchandise that has not been
14 regularly entered or withdrawn for consumption
15 shall not satisfy the exportation or destruction re-
16 quirements of this section.

17 “(5) FLAVORING EXTRACTS, MEDICINAL, OR
18 TOILET PREPARATIONS; DISTILLED SPIRITS AND
19 WINES.—

20 “(A) FLAVORING EXTRACTS, MEDICINAL,
21 OR TOILET PREPARATIONS.—Upon the expor-
22 tation of flavoring extracts, medicinal, or toilet
23 preparations (including perfumery) manufac-
24 tured or produced in the United States in part
25 from domestic alcohol on which an internal rev-

1 enue tax has been paid, there shall be allowed
2 a drawback equal in amount to the tax found
3 to have been paid on the alcohol so used.

4 “(B) DISTILLED SPIRITS AND WINES.—

5 “(i) IN GENERAL.—If distilled spirits
6 and wines are imported into the United
7 States and such spirits and wines, or sub-
8 stitute merchandise, are then exported, or
9 are incorporated into an article that is ex-
10 ported, or a substitute article is exported,
11 duties, fees, and taxes imposed upon entry
12 or importation shall be refunded as draw-
13 back pursuant to subsection (b) notwith-
14 standing any other provision of law.

15 “(ii) TAX ON BOTTLED DISTILLED
16 SPIRITS AND WINES.—Upon the expor-
17 tation of bottled distilled spirits and wines
18 manufactured or produced in the United
19 States on which an internal revenue tax
20 has been paid or determined, there shall be
21 allowed, under regulations to be prescribed
22 by the Commissioner of Internal Revenue,
23 with the approval of the Secretary of the
24 Treasury, a drawback equal in amount to
25 the tax found to have been paid or deter-

1 mined on such bottled distilled spirits and
2 wines. In the case of distilled spirits, the
3 preceding sentence shall not apply unless
4 the claim for drawback is filed by the
5 bottler or packager of the spirits and un-
6 less such spirits have been stamped or re-
7 stamped, and marked, especially for ex-
8 port, under regulations prescribed by the
9 Commissioner of Internal Revenue, with
10 the approval of the Secretary of the Treas-
11 ury.

12 “(h) PROHIBITION ON OTHER CLAIMS FOR DRAW-
13 BACK.—Merchandise that is exported or destroyed to sat-
14 isfy any claim for drawback shall not be the basis of any
15 other claim for drawback, except that appropriate credit
16 and deductions for claims covering components or ingredi-
17 ents of such merchandise shall be made in computing
18 drawback payments.

19 “(i) LIABILITY FOR CLAIM.—Importers, up to the
20 amount of duties, taxes, and fees on the designated import
21 permitted by the importer for drawback by the claimant,
22 and drawback claimants, for the full amount of the claim,
23 are jointly and severally liable to the United States for
24 drawback claims. In implementing this section, the Sec-
25 retary shall provide by regulation that the United States

1 attempt to recover from the drawback claimant before at-
2 tempting to recover from the importer.

3 “(j) PAYMENT FROM RECEIPTS OF PUERTO RICO.—
4 A drawback under this section for merchandise shall be
5 paid from the customs receipts of Puerto Rico if the duties
6 for such merchandise were originally paid into the Treas-
7 ury of Puerto Rico.”.

8 (b) REPORT.—

9 (1) IN GENERAL.—Not later than 1 year after
10 the date the drawback processing module is oper-
11 ational and the Automated Commercial Environment
12 becomes the exclusive system of record nationally for
13 drawback entries, the Commissioner of the Bureau
14 of Customs and Border Protection shall submit to
15 the Committee on Finance of the Senate and the
16 Committee on Ways and Means of the House of
17 Representatives a report that evaluates the utiliza-
18 tion of direct identification in drawback claims, in-
19 cluding measurement of the number of non-NAFTA,
20 nondestruction claims filed using direct identifica-
21 tion, and the impact on personnel allocation within
22 the Bureau.

23 (2) AUTOMATED COMMERCIAL ENVIRONMENT
24 DEFINED.—In this subsection, the term “Automated
25 Commercial Environment” means the automated

1 trade processing system designed to collect, process,
2 and analyze commercial import and export data to
3 facilitate international trade and travel.

4 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) REFUNDS.—Section 505(b) of the Tariff
6 Act of 1930 (19 U.S.C. 1505(b)), is amended by
7 adding at the end the following: “Refunds of excess
8 moneys deposited, as determined on a liquidation or
9 reliquidation, shall be reduced by any amount paid,
10 on an accelerated basis or otherwise, to a drawback
11 claimant pursuant to section 313.”.

12 (2) REVIEW OF PROTESTS.—The second sen-
13 tence of section 515(a) of the Tariff Act of 1930 (19
14 U.S.C. 1515(a)) is amended by striking the period
15 at the end and inserting “in accordance with section
16 505.”.

17 (d) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the amendments made by this section
20 shall take effect on the date that the Commissioner
21 of the Bureau of Customs and Border Protection
22 publishes a finding that the Automated Commercial
23 Environment (as defined in subsection (b)(2)) is the
24 exclusive system of record in the United States for
25 entry summaries and shall apply to drawback claims

1 designating import entry summaries or reconfigured
2 entries that are filed on or after that date.

3 (2) EXCEPTION.—Subsection (a)(15) of section
4 313 of the Tariff Act of 1930 (relating to definitions
5 of the terms “substitute merchandise” and “sub-
6 stitute article”), as added by subsection (a) of this
7 section, shall take effect on the date of the enact-
8 ment of this Act and shall apply for purposes of de-
9 termining commercial interchangeability for unused
10 merchandise drawback claims filed pursuant to sub-
11 section (j)(2) of such section on or after the date of
12 the enactment of this Act but before the effective
13 date described in paragraph (1).

○