

109TH CONGRESS  
1ST SESSION

# H. R. 3363

To amend the Tariff Act of 1930 relating to drawback.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2005

Mr. BRADY of Texas introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Tariff Act of 1930 relating to drawback.

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. DRAWBACK.**

4 Section 313 of the Tariff Act of 1930 (19 U.S.C.  
5 1313) is amended to read as follows:

6 **“SEC. 313. DRAWBACK.**

7 **“(a) DRAWBACK FOR EXPORTED MERCHANDISE.—**

8 If merchandise is imported into the United States and  
9 that merchandise or its substitute, whether self-contained  
10 or contained in drawback merchandise, or drawback mer-  
11 chandise or its substitute, whether self-contained or con-  
12 tained in other drawback merchandise or its substitute,

1 is subsequently exported, drawback shall be granted if the  
2 following conditions are met:

3 “(1)(A) The exporter of the imported merchan-  
4 dise or its substitute imported the merchandise, or  
5 received the imported merchandise or its substitute  
6 directly or indirectly from the importer.

7 “(B) The exporter of the drawback merchandise  
8 or its substitute received drawback merchandise or  
9 its substitute, or produced drawback merchandise or  
10 its substitute directly or indirectly.

11 “(2) The exported merchandise or its substitute  
12 is classifiable within the same 8-digit HTS sub-  
13 heading as the imported merchandise. If the ex-  
14 ported merchandise or its substitute is not classifi-  
15 able within the same 8-digit HTS subheading as the  
16 imported merchandise, the claimant may show by  
17 records that—

18 “(A) the exported merchandise or its sub-  
19 stitute could be classifiable within the same 8-  
20 digit HTS subheading as the imported mer-  
21 chandise; or

22 “(B) the imported merchandise or its sub-  
23 stitute, or drawback merchandise or its sub-  
24 stitute, could be contained in, used in the pro-  
25 duction of, or in any other manner integrated

1           with, the exported merchandise or its sub-  
2           stitute.

3           “(b) DRAWBACK CLAIMANTS.—

4           “(1) IN GENERAL.—A drawback claimant may  
5           be any party, if the following conditions are met:

6           “(A) If the claimant is not the importer,  
7           the claimant has obtained permission from the  
8           importer to receive drawback for the designated  
9           import.

10          “(B) If the claimant is not the exporter,  
11          the claimant has obtained permission from the  
12          exporter to obtain drawback for the designated  
13          export.

14          “(2) JOINT AND SEVERAL LIABILITY.—Import-  
15          ers, up to the amount of duties, taxes, and fees on  
16          the designated import permitted by the importer for  
17          drawback by the claimant, and drawback claimants  
18          are jointly and severally liable for drawback claims.

19          “(c) TIME LIMITATION FOR FILING.—No drawback  
20          shall be paid unless the drawback claim is filed within 5  
21          years from the earliest date of importation of the mer-  
22          chandise that is designated on the claim.

23          “(d) AMOUNT OF DRAWBACK.—The drawback  
24          amount paid to the claimant shall not exceed the amount  
25          of duties, taxes, and fees paid on the designated line item.

1 The exclusive means for determining the amount of draw-  
 2 back to be paid to the claimant shall be as follows:

3 “(1) For drawback under paragraphs (1)(A)  
 4 and (2)(A) of subsection (a), the lesser of—

5 “(A) the amount of the duties, taxes, and  
 6 fees per unit on the line item designated for  
 7 drawback, based upon the entered value of that  
 8 line item, multiplied by the number of units  
 9 claimed; and

10 “(B) the amount of the duties, taxes, and  
 11 fees per line item unit that would have been im-  
 12 posed on the exported merchandise or its sub-  
 13 stitute had such merchandise been imported,  
 14 based upon the value of that exported merchan-  
 15 dise or its substitute, multiplied by the number  
 16 of units claimed.

17 “(2) For drawback under paragraph (1)(B) and  
 18 (2)(B) of subsection (a), the amount of the duties,  
 19 taxes, and fees per unit on the line item designated  
 20 for drawback, based upon the entered value of that  
 21 line item, multiplied by the number of units claimed.

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

24 “(1) NAFTA.—For purposes of subsections (a)  
 25 and (g), if merchandise that is exported to a

1 NAFTA country is a good subject to NAFTA draw-  
2 back, no customs duties on the merchandise may be  
3 refunded, waived, or reduced in an amount that ex-  
4 ceeds the lesser of—

5 “(A) the total amount of customs duties  
6 paid or owed on the merchandise on importa-  
7 tion into the United States; or

8 “(B) the total amount of customs duties  
9 paid on the merchandise to the NAFTA coun-  
10 try.

11 “(2) CANADA.—If Canada ceases to be a  
12 NAFTA country and the suspension of the operation  
13 of the United States-Canada Free-Trade Agreement  
14 thereafter terminates, then for purposes of sub-  
15 section (a), the shipment to Canada during the pe-  
16 riod such Agreement is in operation of merchandise  
17 made from or substituted for, as appropriate, draw-  
18 back eligible merchandise under section 204(a) of  
19 the United States-Canada Free-Trade Implementa-  
20 tion Act of 1988 (19 U.S.C. 2112 note) does not  
21 constitute an exportation.

22 “(3) CHILE.—(A) For purposes of subsections  
23 (a) and (g), if merchandise that is exported to Chile  
24 is a good subject to Chile FTA drawback, no cus-  
25 toms duties on the merchandise may be refunded,

1 waived, or reduced, except as provided in subpara-  
2 graph (B).

3 “(B) The customs duties referred to in sub-  
4 paragraph (A) may be refunded, waived, or reduced  
5 by—

6 “(i) 100 percent during the 8-year period  
7 beginning on January 1, 2004;

8 “(ii) 75 percent during the 1-year period  
9 beginning on January 1, 2012;

10 “(iii) 50 percent during the 1-year period  
11 beginning on January 1, 2013; and

12 “(iv) 25 percent during the 1-year period  
13 beginning on January 1, 2014.

14 “(4) FUNGIBLE MERCHANDISE.—(A) The ex-  
15 portation to a NAFTA country of merchandise that  
16 is fungible with and substituted for imported mer-  
17 chandise, other than merchandise described in para-  
18 graphs (1) through (8) of section 203(a) of that Act,  
19 shall not constitute an exportation for purposes of  
20 subsection (a).

21 “(B) Beginning on January 1, 2015, the expor-  
22 tation to Chile of merchandise that is fungible with  
23 and substituted for imported merchandise, other  
24 than merchandise described in paragraphs (1)  
25 through (5) of section 203(a) of the United States-

1 Chile Free Trade Agreement Implementation Act,  
2 shall not constitute an exportation for purposes of  
3 paragraph (2). The preceding sentence shall not be  
4 construed to permit the substitution of unused draw-  
5 back under paragraph (2) of this subsection with re-  
6 spect to merchandise described in paragraph (2) of  
7 section 203(a) of the United States-Chile Free  
8 Trade Agreement Implementation Act.

9 “(5) TOTAL AMOUNT OF CUSTOMS DUTIES PAID  
10 OR OWED.—As used in this subsection, the total  
11 amount of customs duties paid or owed on the mer-  
12 chandise on importation into the United States  
13 means the duties, taxes, and fees per unit paid on  
14 the import line item designated for drawback.

15 “(f) MERCHANDISE FOR USE IN VESSELS.—The pro-  
16 visions of this section shall apply to merchandise imported  
17 and used in the construction and equipment of vessels  
18 built for foreign account and ownership, or for the govern-  
19 ment of any foreign country, notwithstanding that such  
20 vessels may not within the strict meaning of the term be  
21 exported.

22 “(g) AGRICULTURAL MERCHANDISE.—No drawback  
23 shall be available with respect to agricultural merchandise  
24 subject to over-quota rate of duty established under a tar-

1   iff-rate quota, except on a direct identification basis when  
 2   such merchandise has not been used in the United States.

3       “(h) PUERTO RICO.—Any drawback authorized  
 4   under this section shall be paid from the customs receipts  
 5   of Puerto Rico if the duties were originally paid into the  
 6   Treasury of Puerto Rico.

7       “(i) DESTRUCTION OF MERCHANDISE.—

8           “(1) IN GENERAL.—The exportation require-  
 9   ment contained in subsection (a) may be satisfied by  
 10   destroying merchandise, except that drawback mer-  
 11   chandise is destroyed in lieu of exportation only if—

12           “(A) the merchandise that was imported is  
 13   the actual merchandise that is destroyed; and

14           “(B) the claimant directly identifies the ac-  
 15   tual merchandise that is destroyed in lieu of ex-  
 16   portation.

17       “(2) AMOUNT OF DRAWBACK.—For claims filed  
 18   pursuant to this subsection, the drawback paid to  
 19   the claimant shall be the amount of the duties,  
 20   taxes, and fees per line item unit on the imported  
 21   merchandise designated for drawback, whether by  
 22   direct identification or by accounting method, multi-  
 23   plied by the number of units claimed.

24       “(j) LIMITATION ON EXPORTATION REQUIRE-  
 25   MENT.—Imported merchandise that has not been regu-



1 larly entered or withdrawn for consumption does not sat-  
 2 isfy the exportation requirement of this section.

3 “(k) CLAIMING EXPORTATION OR DESTRUCTION.—

4 An exportation or destruction may be claimed on only one  
 5 drawback claim, except that components or ingredients of  
 6 exported or destroyed merchandise that were not claimed  
 7 on one drawback claim covering a certain exportation or  
 8 destruction may be claimed on another drawback claim  
 9 covering that same exportation or destruction.

10 “(l) REGULATIONS.—The Secretary of the Treasury  
 11 is authorized to promulgate regulations to carry out this  
 12 section.

13 “(m) FLAVORING EXTRACTS; MEDICINAL OR TOILET  
 14 PREPARATIONS; BOTTLED DISTILLED SPIRITS AND  
 15 WINES.—

16 “(1) FLAVORING EXTRACTS; MEDICAL OR TOI-  
 17 LET PREPARATIONS.—Upon the exportation of fla-  
 18 voring extracts, medicinal or toilet preparations (in-  
 19 cluding perfumery), manufactured or produced in  
 20 the United States in part from domestic alcohol on  
 21 which an internal revenue tax has been paid, there  
 22 shall be allowed a drawback equal in amount to the  
 23 tax found to have been paid on the alcohol so used.

24 “(2) DISTILLED SPIRITS.—Upon the expor-  
 25 tation of bottled distilled spirits and wines manufac-

1       tured or produced in the United States on which an  
2       internal revenue tax has been paid or determined,  
3       there shall be allowed, under regulations to be pre-  
4       scribed by the Commissioner of Internal Revenue,  
5       with the approval of the Secretary of the Treasury,  
6       a drawback equal in amount to the tax found to  
7       have been paid or determined on such bottled dis-  
8       tilled spirits and wines. In the case of distilled spir-  
9       its, the preceding sentence shall not apply unless—

10               “(A) the claim for drawback is filed by the  
11               bottler or packager of the spirits; and

12               “(B) the spirits have been stamped or re-  
13               stamped, and marked, especially for export,  
14               under regulations prescribed by the Commis-  
15               sioner of Internal Revenue, with the approval of  
16               the Secretary of the Treasury.

17       “(n) DEFINITIONS.—As used in this section:

18               “(1) DRAWBACK.—The term ‘drawback’ means  
19       a refund of 99 percent of applicable duties, taxes,  
20       and fees paid pursuant to Federal law upon impor-  
21       tation of merchandise, and not refunded under any  
22       other law, in a case in which—

23               “(A) the imported merchandise or its sub-  
24               stitute, or drawback merchandise or its sub-  
25               stitute, is exported; or

1           “(B) the imported merchandise is de-  
2           stroyed.

3           “(2) HTS.—The term ‘HTS’ means the Har-  
4           monized Tariff Schedule of the United States.

5           “(3) NAFTA COUNTRY; GOOD SUBJECT TO  
6           NAFTA DRAWBACK.—The terms ‘NAFTA country’  
7           and ‘good subject to NAFTA drawback’ have the  
8           meanings given those terms in sections 2(4) and  
9           203(a), respectively, of the North American Free  
10          Trade Agreement Implementation (19 U.S.C.  
11          3301(4) and 3333(a)).

12          “(4) GOOD SUBJECT TO CHILE FTA DRAW-  
13          BACK.—The term ‘good subject to Chile FTA draw-  
14          back’ has the meaning given that term in section  
15          203(a) of the United States-Chile Free Trade Agree-  
16          ment Implementation Act (19 U.S.C. 3805 note).

17          “(5) SUBSTITUTE.—Any merchandise may be  
18          substituted for any other merchandise when the two  
19          share the same 8-digit HTS subheading. When the  
20          two do not share the same 8-digit HTS subheading,  
21          they may be substituted for one another if a claim-  
22          ant can demonstrate that they were both classifiable  
23          within the same 8-digit HTS subheading during the  
24          period beginning on the date of importation of the  
25          merchandise designated for drawback to the date of

1 the drawback claim. To establish such a nexus, the  
2 claimant shall submit records with its claim that  
3 demonstrate the link from one 8-digit HTS sub-  
4 heading to the other 8-digit HTS subheading.

5 “(6) FUNGIBLE.—Merchandise is fungible when  
6 it is commercially identical to other merchandise in  
7 all instances.

8 “(7) LINE ITEM.—The term ‘line item’ means  
9 the line item on the entry summary or its equivalent  
10 and a reconfigured entry.

11 “(8) CONTAINED IN.—The term ‘contained in’  
12 means contained in, used in the production of, or in  
13 any other manner integrated with, other merchan-  
14 dise.

15 “(9) DRAWBACK MERCHANDISE.—The term  
16 ‘drawback merchandise’ means merchandise in which  
17 is contained imported merchandise or its substitute,  
18 or other drawback merchandise or its substitute.  
19 Drawback merchandise may be exported or de-  
20 stroyed with a claim for drawback, or it may be con-  
21 tained in other drawback merchandise or its sub-  
22 stitute.

23 “(10) DIRECTLY IDENTIFY.—The term ‘directly  
24 identify’ means to identify of merchandise by a

- 1 unique identifier such as a serial number or by the
- 2 use of an approved inventory accounting method.”.

