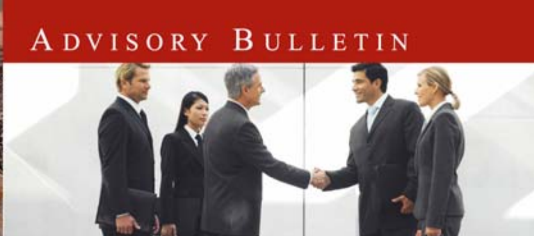

ADVISORY BULLETIN

THOMPSON HINE

June 2008

INTERNATIONAL TRADE & CUSTOMS UPDATE

Congress Approves 2007 Farm Bill

On June 18, the U.S. Congress overturned for the second time President Bush's veto of the Food, Conservation, and Energy Act of 2008 – H.R. 6124, also known as the 2007 U.S. Farm Bill (hereafter referred to as the "2007 Farm Bill" or "Farm Bill"). The 2007 Farm Bill reflects bipartisan efforts to modify elements of the current Farm Bill first implemented in 2002. The primary modifications of the new bill increase spending on various U.S. food programs and encourage the production of advanced biofuels, such as corn-based ethanol. However, the 2007 Farm Bill markedly reduces the subsidies fuel blenders presently receive under the 2002 Farm Bill – a change that could potentially impact the market for imported ethanol.

Impact on Imported Ethanol

The United States currently imposes a supplementary tariff of 54 cents per gallon on imported ethanol. Under the previous Farm Bill, this tariff would expire on December 31, 2008. The passage of the 2007 Farm Bill extends the supplementary tariff for two years, until December 31, 2010.

Separately, the Farm Bill reduces the domestic blending credit from 51 cents per gallon to 45 cents per gallon beginning in 2009. This credit applies regardless of whether the blend uses domestic or imported ethanol. U.S. fuel blenders have historically used this credit to offset the supplementary tariff on imported ethanol. This secondary tariff on imported ethanol was first introduced in 1980 to protect U.S. producers of corn-based ethanol from international competitors shipping sugar cane-based ethanol that is cheaper to produce but not manufactured in the United States. Under the new Farm Bill, a reduction in the credit is expected to increase costs for fuel blenders using imported ethanol. However, the reduction will not take effect until the first calendar year after the year in which 7.5 billion gallons of ethanol have been produced in the United States. This level of production is not anticipated until 2010.

Large producers of sugar cane-based ethanol, such as Brazil, already face a 2.3 percent ad valorem primary tariff in addition to the secondary tariff of 54 cents. The difference in cost between these ethanol tariffs and the lower blending subsidy might create trade distortion effects given the overall increased net cost of using imported ethanol in comparison to domestic ethanol.

The Farm Bill also eliminates duty drawback on re-exports that do not contain ethanol. Specifically, any duty paid on imports of ethyl alcohol or a mixture of ethyl alcohol may not be refunded if the re-exported article upon which a drawback claim is based does not contain ethyl alcohol or a mixture of ethyl alcohol. Currently the drawback applies even if the re-exported article contains no ethyl alcohol (*e.g.*, jet fuel).

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Overall, these provisions of the Farm Bill aim to benefit domestic production, despite the announced reduction in the subsidy for ethanol blending, by impeding imports of ethanol.

For More Information

Please contact Matt Nicely (**Matthew.Nicely@ThompsonHine.com**) or Mark Ludwikowski (**Mark.Ludwikowski@ThompsonHine.com**) of our **International Trade & Customs** group with any questions about the 2007 Farm Bill.

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