

Drawback

A Refund for Certain Exports

U.S. CUSTOMS



DRAWBACK: A Refund for Certain Exports

What Is Drawback?

Drawback is the refund of Customs duties, certain Internal Revenue taxes, and certain fees that have been lawfully collected at importation. The refund is administered after the exportation or destruction of either the imported/substituted product or article that has been manufactured from the imported/substituted product. Drawback is recognized as the most complex commercial program the U.S. Customs Service administers because it involves every facet of Customs business, including both exports and imports.

Background

Drawback was originally established by the Continental Congress in 1789, and was limited to specific articles (e.g., salt used to cure meats) that were directly imported and exported. Drawback was initiated for the purpose of:

- Creating jobs
- Encouraging manufacturing
- Encouraging exports

Types of Drawback

Several types of drawback are authorized under Section 1313, Title 19, United States Code (U.S.C.), namely:

- **Direct Identification Manufacturing:** If articles manufactured in the United States with the use of imported merchandise are subsequently exported or destroyed then drawback not exceeding 99 percent of the duties paid on the imported merchandise may be recoverable. (*Section 1313(a)*)
- **Substitution Manufacturing:** If both imported merchandise and any other merchandise of the same kind and quality are used to manufacture articles, some of which are exported or destroyed before use, then drawback not exceeding 99 percent of the duty which was paid on the imported merchandise may be payable on the exported/destroyed articles. It is immaterial

whether the actual imported merchandise or the domestic merchandise of the same kind and quality was used in the exported/destroyed articles. This provision in the Code makes it possible for firms to obtain drawback without the expense of maintaining separate inventories for dutiable and other merchandise. *(Section 1313(b))*

- **Rejected Merchandise:** If merchandise is exported or destroyed because it does not conform with samples or specifications, or has been shipped without the consent of the consignee, or has been determined to be defective as of the time of importation, then 99 percent of the duties which were paid on the merchandise may be recovered as drawback. *(Section 1313(c))*
- **Internal Revenue Tax:** For certain products manufactured with the use of domestic alcohol and exported, a drawback of the Internal Revenue taxes paid on the domestic alcohol may be obtained. *(Section 1313(d))*
- **Salt (Fish):** If imported salt is used to cure fish, the duties on the salt may be remitted. *(Section 1313(e))*
- **Salt (Meat):** If imported salt is used to cure meat that is exported, a drawback, in amounts not less than \$100, of the duties paid on the salt may be obtained. *(Section 1313(f))*
- **Construction Materials:** If imported materials are used to construct and equip vessels built for foreign account and ownership, 99 percent of the duties paid on the materials may be recovered as drawback, even though the vessels are not, in the strict meaning of the word, exported. *(Section 1313(g))*
- **Repair Materials:** If imported merchandise is used in the United States to repair jet aircraft engines originally manufactured abroad, the duties paid on the imported merchandise may be recovered as drawback, in amounts not less than \$100, when the engines are exported. *(Section 1313(h))*
- **Unused Merchandise:** If imported merchandise is unused and exported or destroyed under Customs

supervision, 99 percent of the duties, taxes or fees paid on the merchandise by reason of importation may be recovered as drawback. (Section 1313(j)(1))

■ **Substitution Unused Merchandise:** If merchandise that is commercially interchangeable with imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law because of its importation, is exported or destroyed under Customs supervision and at the time of exportation or destruction has not been used, 99 percent of the duties, taxes or fees paid on the merchandise may be recovered as drawback. (*Section 1313(j)(2)*)

■ **Substitution of finished petroleum derivatives:** If exported articles meet the definition of a “qualified article” (19 CFR 191.172(a)), or are of the same kind and quality as qualified articles, then 99 percent of the designated duties paid or attributable to the eligible articles may be recovered as drawback. (*Section 1313(p)*)

■ **Packaging Material:** If imported packaging material is used to package merchandise exported or destroyed under section 1313(a), (b), (c), or (j), then 99 percent of the duties, taxes and certain fees paid on the packaging material may be recovered as drawback. (*Section 1313(q)(1)*)

■ **U.S.-Produced Packaging Material:** Packaging material produced in the United States that is used by the manufacturer or any other person on or for articles which are exported or destroyed under 1313(a) or (b), will be eligible for drawback of 99 percent of any duty, tax or fee imposed on the imported material used to manufacture or produce the packaging material. (*Section 1313(q)(2)*)

■ **Recovered Materials:** For purposes of drawback claimed under Sections (a), (b), and (c), the term “destruction” includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise. In determining the amount of duties to be refunded, the value of recovered materials (including the value of any

tax benefit or royalty payment) accruing to the drawback claimant will be deducted from the value of the imported merchandise that is destroyed, or from the value of the merchandise used, or designated as used, in the manufacture of the article. (*Section 1313 (x)*)

How to Obtain Drawback

The guidelines for completing a drawback claim are provided in the Customs Regulations, more specifically 19 CFR 191 Subpart E. Persons entitled to claim drawback are identified in 19 CFR 191.28 for manufacturing drawback, 19 CFR 191.33 for unused merchandise drawback, 19 CFR 191.42(b) for rejected merchandise drawback, and 19 CFR 191.82 for other drawback provisions.

The locations for filing a drawback claim are at the Customs port offices having a Drawback unit, namely, Boston, Mass.; Chicago, Ill.; Houston, Tex.; Los Angeles, Calif.; Miami, Fla.; New Orleans, La.; Newark, N.J.; and San Francisco, Calif.

A drawback entry and all documents necessary to complete a claim generally must be filed within three years after exportation or destruction of the articles. To avoid being time-barred by the statute of limitations, a manufacturing claim can be filed before a manufacturing drawback ruling is effective; however, no payments will be made until the manufacturing drawback ruling is approved. Approval of a letter of intent to operate under a general manufacturing ruling may be obtained promptly if the letter of intent complies with the drawback law and regulations. A specific manufacturing ruling, however, can take on average one to two years for approval, depending on the complexity and nature of the request.

Frequently Used Drawback Types

As most claimants are interested in sections 1313(a), (b), (c), and (j) only, the procedures for obtaining drawback under these provisions are discussed below.

■ Manufacturing-Drawback Rulings

The manufacturing drawback process, under 19 U.S.C. 1313(a) and (b), requires the use of the import-

ed merchandise and the export of a new and different article within five years of the importation of the imported article. In addition, under 19 U.S.C. 1313(b), the designated imported merchandise must be used and the exported article must be made with either the imported or substituted merchandise. Manufacturing operations must take place within three years after receipt by the manufacturer of the designated imported merchandise. This three-year period must be within the five-year, import-to-export period.

■ **General Manufacturing Drawback Ruling**

A manufacturing drawback ruling issued to a manufacturer authorized to operate under a drawback provision is a prerequisite to drawback payment. There are currently several general manufacturing drawback rulings available, e.g., orange juice, steel, sugar, component parts, and greige (not bleached or dyed; unfinished textile goods) that eliminate the need for submission of an application for a specific manufacturing drawback ruling of certain commodities. Also available is a general drawback ruling, which generally applies to 19 U.S.C. 1313(a) direct identification drawback.

General manufacturing drawback rulings are contained in Appendix A to Part 191 of the Customs Regulations. Any drawback claimant that can comply with the conditions of any published ruling may notify the Customs drawback center where it intends to file its drawback claims of its intent to operate under the ruling. The drawback center will provide an acknowledgement letter authorizing the manufacturer to operate under the identified general manufacturing ruling.

Procedural instructions for the submission of a written intent to operate under the ruling and the requirements to obtain an approval from a drawback center are included in Appendix A to Part 191 of the Customs Regulations. General questions regarding the instructions for the letter of intent can be directed to any of the eight drawback centers.

■ **Specific Manufacturing Drawback Ruling**

Unless it operates under a general manufacturing drawback ruling, a manufacturer that wishes to claim

drawback under 19 U.S.C. 1313(a), (b), or a combination of the two, must prepare a drawback application for a specific manufacturing drawback ruling and file it with the Duty and Refund Determination Branch, Customs Headquarters.

Samples of specific manufacturing drawback formats can be found in Appendix B to Part 191 of the Customs Regulations. Applications for a specific manufacturing drawback ruling must be sent to:

U.S. Customs Service
Duty and Refund Determination Branch
Office of Regulations and Rulings
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

If it is determined that the manufacturer's application is consistent with the drawback law and regulations, Customs Headquarters will issue an approval letter to the Port Director where the applicant will file claims. The applicant will receive a copy of this approval letter. Together, the manufacturing drawback ruling application and approval constitute a manufacturing drawback ruling.

A synopsis of specific manufacturing drawback rulings approved by Customs Headquarters is published in *Customs Bulletin and Decisions*. If a manufacturer desires to have a manufacturing drawback ruling changed, they should file a new application for a specific manufacturing drawback ruling following the procedure described above.

■ **Rejected Merchandise Drawback**

Importers of merchandise not conforming to a sample or specifications, shipped without consent of the consignee, or defective as of the time of importation, may recover the duties paid as drawback if the merchandise is exported or destroyed under Customs supervision within the three-year statutory period. Rejected merchandise drawback is provided for in 19 U.S.C. 1313(c). Merchandise not returned to Customs custody will result in claims being denied if not returned within three years after the date the merchandise was

originally released from Customs custody. A Customs Form (CF) 7553, Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, must be filed with the intended port of export prior to the intended date of redelivery. Procedures are found in Subpart D of 19 CFR 191.

■ **Unused Merchandise Drawback**

Any duty, tax, or eligible fee (including merchandise-processing fee) paid by reason of importation on merchandise that is not used prior to exportation or destruction is recoverable as drawback. Unused merchandise drawback can be claimed under the direct identification provision of 19 U.S.C. 1313(j)(1) or under the substitution provision under 19 U.S.C. 1313(j)(2). The three-year time limit for the merchandise to be exported or destroyed under Customs supervision begins on the date of importation of the imported merchandise.

Allowable incidental operations, such as testing, cleaning, inspecting, etc., on the imported item that do not amount to a manufacture or production are not treated as use of the merchandise. For unused merchandise drawback, no manufacturing drawback ruling is required; however, applicants should contact the local Customs port office for the specific procedural requirements prior to exportation or destruction.

■ **Commercial Interchangeability**

Merchandise that is “commercially interchangeable” may be substituted under the substitution unused merchandise drawback law, 19 U.S.C. 1313(j)(2). In order to establish that the substituted merchandise is commercially interchangeable, a claimant may obtain a determination from Customs in one of three ways, as described below:

1. Request a non-binding predetermination of commercial interchangeability directly from the appropriate drawback center;
2. Request a formal ruling from the Duty and Refund Determination Branch, Office of Regulations and Rulings, Washington, D.C.; or,

3. Submit all of the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed.

Customs will determine commercial interchangeability by evaluating the critical properties of the substituted merchandise. Factors considered include, but are not limited to, governmental and recognized industry standards, part numbers, tariff classification, and value.

Conditions Surrounding Exportation, Destruction or Return

■ Export Procedure

In the case of unused merchandise drawback, it is necessary for a drawback claimant to establish that the merchandise was exported or destroyed within a three-year period after the importation of the merchandise that serves as the basis for the drawback claim. In the case of rejected merchandise drawback, the claimant must establish that the merchandise was returned to the Customs custody within three years after it was originally released from Customs custody. In the case of manufacturing drawback, the claimant must establish that manufactured articles on which drawback is being claimed were exported within five years after importation of the imported merchandise that serves as the basis for the drawback claim.

The methods used to demonstrate exportation are described in Sections 191.72 through 191.75 of the Customs Regulations. Before exporting, a future claimant should make certain that steps necessary to comply with one of these methods are taken. Supporting documentary evidence must establish the date and fact of exportation as well as the exporter.

■ Notice of Intent to Export, Destroy, or Return Unused, Manufactured Articles, or Rejected Merchandise for Purposes of Drawback

For claims filed under 19 U.S.C. 1313(j) unused, and 19 U.S.C. 1313(c) rejected, the exporter/destroyer must file, at the port of intended examination, a CF 7553. The CF 7553, also known as the Notice of

Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, is the instrument that notifies Customs prior to exportation or destruction.

- Under 19 U.S.C. 1313(j), the CF 7553 must be filed with Customs at least two working days prior to the date of intended exportation unless Customs approves another filing period or the claimant has been granted a Waiver of Prior Notice.
- For merchandise or manufactured articles that are to be destroyed, as provided under 19 CFR 191.71, the CF 7553 must be filed at the port where the destruction is to take place at least seven working days prior to the intended date of destruction. Customs will notify the claimant within four working days of its determination to witness or not witness the destruction.

When Customs does not witness the destruction, the claimant must submit evidence that destruction took place in accordance with the approved CF 7553. The evidence must be issued by a disinterested third party. The type of evidence depends on the method and place of destruction, but must establish the fact that the merchandise was destroyed and that no articles of commercial value remained after the destruction.

- Under 19 U.S.C. 1313(c), the CF 7553 must be filed at least five working days prior to the date of intended return to Customs custody for export.

■ **Waiver of Prior Notice of Intent to Export**

Applicants with prospective exportations of unused merchandise drawback may be eligible for Waiver of Prior Notice under Section 191.91 of the Customs Regulations. The approval is based on the submission of an application and compliance with the regulations.

Exporters failing to give Customs prior notice of intent to export under Section 191.35 of the Customs Regulations may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j). The exporter may file a written application with the drawback office

where the drawback claims will be filed. The application requirements are listed in Section 191.36 of the Customs Regulations. Upon compliance with the conditions of this procedure, the exporter will be able to claim drawback on eligible prior exportations.

Payment of Drawback Claims

When a claim has been determined to be complete and satisfies all drawback requirements, the drawback amount is verified and the entry liquidated for the refund due. Drawback is payable to the exporter/destroyer unless the right to claim drawback has been transferred to a third party through a Certificate of Delivery and/or Manufacture. Furthermore, the exporter/destroyer must certify that drawback on the particular exportation or destruction will not be assigned to any other party.

■ Accelerated Payment

Accelerated payment of drawback under certain conditions is authorized by Section 192.92 of the Customs Regulations. Accelerated payment is a special privilege and approval for this procedure requires the submission of an application that satisfies all statutory and regulatory requirements. Under the accelerated payment procedure, eligible duties, taxes, and certain fees are refunded prior to the final review of a drawback claim and liquidation. Before refunds can be issued under the accelerated payment program, the claimant must first acquire and post a drawback bond type 1A with Customs in an amount that is sufficient to cover the anticipated drawback recovery amount.

A drawback claim that is determined to be complete and error free will be certified for payment within three weeks after it is electronically filed. Accelerated payment for manually prepared claims will be certified within three months after filing.

■ Manual Payments

Eligible duties, taxes, and certain fees for claims that are not authorized for accelerated payment will be paid upon final review and liquidation. Payment of a claim can range from a few months to several years following

the date that the claim was filed and depending upon the disposition of the related import entries and other conditions that may affect its liquidation.

Drawback Penalties

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057). Title VI of that Act contained provisions pertaining to Customs Modernization and Informed Compliance, commonly referred to as the Mod Act. Section 622 of the Mod Act amended the Tariff Act of 1930, as amended, by adding Section 593A, which prohibits the filing of false (fraudulent or negligent) drawback claims and prescribes the actions that Customs may take, including the assessment of monetary penalties, if such claims are filed. Section 593A was codified as 19 U.S.C. 1593a (hereinafter “the statute”).

The statute provides for the assessment of monetary penalties in amounts not to exceed a specific percentage of the actual or potential loss of revenue. The applicable percentage depends on the level of culpability, whether there have been prior violations involving the same issue, and whether the violator is a participant in the Customs drawback compliance program. The provisions of the statute apply only to drawback claims filed on and after November 25, 1998, (per T.D. 98-88) which were affected by the nationwide implementation by Customs of an automated drawback selectivity program which was implemented on August 29, 1998.

Drawback Compliance Program

The drawback compliance program is voluntary and allows Customs to review drawback participants by employing account-based, post-audit methods. A major benefit of participation, in the absence of fraud or repeated violations, is a written notice of violation in lieu of a monetary penalty or a reduction of monetary penalties for the first offense.

Participants are certified by Customs upon demonstration of core requirements that are outlined in Section

191.192 of the Customs Regulations. Any person, corporation or business entity providing drawback information or documentation to Customs may participate in the drawback compliance program. Certification for this program requires the submission of a written application that is cited in Section 191.193 of the Customs Regulations.

Effect of North American Free Trade Agreement (NAFTA) on Drawback

The NAFTA provisions on drawback apply to goods imported into the United States (and subsequently exported to Canada) after January 1, 1996. The NAFTA provisions on drawback also apply to goods imported into the United States and subsequently exported to Mexico on or after January 1, 2001.

For purposes of 19 U.S.C. 1313(a),(b),(f),(h),(p), and (q), an article exported to a NAFTA country is an item that may be subject to NAFTA duty drawback. In most cases, the amount of Customs duties that will be refunded, reduced or waived is the lesser of either:

- The total amount of Customs duties, taxes and certain fees paid or owed on the goods imported into the United States, or;
- The total amount of Customs duties paid on the finished goods imported into the NAFTA country.

A NAFTA drawback claim filed under NAFTA drawback requirements in 19 CFR 181, in addition to the regulatory requirements of 19 CFR 191, must be filed separately from any drawback claim filed under Section 191 of the Customs Regulations.

Frequently Asked Drawback Questions

Q: *Do I have to file a "NOI" (CF 7553, Notice of Intent to Export or Destroy) for manufacturing drawback?*

A: No, it is only required if the manufactured merchandise is going to be destroyed rather than exported.

- Q:** *When will the export summary procedure (ESP), accelerated payment, and waiver of prior notice special privileges issued under the previous regulations expire?*
- A:** All privileges issued under the previous regulations expired on April 6, 1999, and must have been re-applied for under the new guidelines as outlined in Sections 191.36, 191.91, and 191.92 of the Customs Regulations. Regarding the ESP, this is no longer a special privilege. ESP is now available to all claimants.
- Q:** *What is the exporter's summary procedure under the current regulations?*
- A:** The exporter's summary procedure is a reporting feature that allows claimants to summarize their exports chronologically utilizing the format identified in Section 191.73 of the Customs Regulation. When using this procedure, claimants do not have to attach evidence of exportation to the drawback claim. However, adequate evidence of exportation must be maintained in the claimant's file and may be requested by Customs personnel at a later date.
- Q:** *Can evidence/proof of export be sent in separately after filing a drawback entry, CF 7551?*
- A:** No. Proofs of export are no longer sent in separate from the drawback entry. If ESP is not used, the proofs of export must be attached to the drawback entry, CF 7551.
- Q:** *If, after filing a notice of intent to export, Customs notifies me of its decision to examine the merchandise then how do I arrange for that exam?*
- A:** You must contact the inspection personnel in the port at which you filed your CF 7553.
- Q:** *If I am filing via the Automated Broker Interface (ABI), must I file a paper claim?*
- A:** Yes. The paper claim is the legal claim.

Q: *What is the date of entry on an ABI claim?*

A: The date of entry on any claim is the date that Customs formally accepts the legal paper claim as valid.

For additional information about Drawback, please contact the Customs Drawback Center that is most convenient to your operation or log onto the U.S. Customs web site at **www.customs.gov** and click on the Importing and Exporting icon.

Internet Addresses for Drawback Information

1. What Every Member of the Trade Community Should Know About Drawback — A Basic Level Informed Compliance Publication of the U.S. Customs Service

<http://www.customs.gov/imp-exp1/comply/icp023.pdf>

2. Drawback General Information

<http://www.customs.gov/imp-exp2/export/dback.htm>

3. Drawback Center Locations

<http://www.customs.gov/imp-exp2/export/address.htm>

4. Form and Completion Instructions

<http://www.customs.gov/imp-exp2/export/dforms.htm>

- **Drawback Entry – CF 7551**

<http://www.customs.gov/imp-exp2/export/cf7551a.htm>

<http://www.customs.gov/download/forms/pdf/7551.pdf>

(view form)

- **Delivery Certificate for Purposes of Drawback – CF 7552**

<http://www.customs.gov/imp-exp2/export/cf7552a.htm>

<http://www.customs.gov/download/forms/pdf/7552.pdf>

(view form)

- **Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback – CF 7553**

<http://www.customs.gov/imp-exp2/export/cf7553a.htm>

<http://www.customs.gov/download/forms/pdf/7553.pdf>

(view form)

5. Instructions for Filing 1313(p) Drawback Claims in Accordance with Public Law 106-36

<http://www.customs.gov/imp-exp2/export/1313p.htm>

6. Application Procedures for Special Privileges

<http://www.customs.gov/imp-exp2/export/dapplica.htm>

7. ABI Error Message Dictionary

<http://www.customs.gov/imp-exp2/auto-sys/dictionary.htm>

8. Texport

<http://www.customs.gov/imp-exp2/export/texport.htm>

9. Frequently Asked Drawback Questions

<http://www.customs.gov/imp-exp2/export/drbkfaq.htm>

10. Drawback ABI Changes for Mexico NAFTA

<http://www.customs.gov/imp-exp2/export/abimex.htm>

11. Drawback Diskette Processing Changes for Mexico NAFTA

<http://www.customs.gov/imp-exp2/export/dsk.htm>

12. Penalties for False Drawback Claims

<http://www.customs.gov/news/fed-reg/notices/drwbpen2.htm>

Drawback Centers

U.S. Customs Service
10 Causeway Street, Room 801
Boston, MA 02222-1056

U.S. Customs Service
610 S. Canal Street, Room 602
Chicago, IL 60607-4523

U.S. Customs Service
2350 N. Sam Houston Parkway East, Suite 1000
Houston, TX 77032

U.S. Customs Service
Port of Los Angeles – Seaport
301 E. Ocean Boulevard
Long Beach, CA 90802

U.S. Customs Service
P.O. Box 025280
Miami, FL 33102-5280

U.S. Customs Service
423 Canal Street, Room 303
New Orleans, LA 70130

U.S. Customs Service
1210 Corbin Street
Elizabeth, NJ 07201

U.S. Customs Service
555 Battery Street, Room 107
San Francisco, CA 94126



U.S. Customs Service
Washington, D.C. 20229

Please visit the U.S. Customs Web Site at <http://www.customs.gov>

TO REPORT DRUG SMUGGLING
1 (800) BE ALERT

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