What Every Member of the Trade Community Should Know About:

Drawback

U.S. CUSTOMS and BORDER PROTECTION

AN INFORMED COMPLIANCE PUBLICATION

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "***informed compliance***" and "***shared responsibility***," which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the Commercial Rulings Division, ORR, is an informed compliance publication that describes and/or explains drawback generally. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Michael T. Schmitz,
Assistant Commissioner
Office of Regulations and Rulings

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I. BACKGROUND AND INTRODUCTION.

Drawback is a refund of duty paid on imported merchandise that is linked to an exportation (or destruction) of an article. In the U.S., drawback dates back practically to the dawn of the Republic.

Drawback in the U.S. has changed greatly since its initial enactment, in section 3 of the second Act of Congress, the Act of July 4, 1789. That first drawback law provided for a drawback of 99% of duties paid on merchandise (except distilled spirits) if exported within a year after duty was paid or security given for duty. Between the 1789 Act and the Tariff Act of 1930, various provisions were added to the drawback law, providing for drawback on such diverse subjects as imported salt used for curing meat and fish and various kinds of imported merchandise used to construct vessels in this country.

Drawback of duty and some taxes generally is provided by 19 USC 1313. Drawback of certain excise taxes that is administered by the U.S. Customs and Border Protection (CBP) is covered by 26 USC 5062.

Generally, except for the limitation on drawback imposed as a result of the North American Free Trade Agreement (NAFTA), the CBP regulations that implement the statutory provisions are in Part 191 of Title 19 (19 CFR Part 191). The regulations on the NAFTA limitation are in subpart E of Part 181 of Title 19 (19 CFR Part 181 E).

Changes, or adjustments, continued to be made to the drawback law, making it ever more complicated. In 1980, drawback was permitted on the exportation of imported merchandise if the condition of the merchandise was unchanged and it was not used in the U.S. In 1984, the concept of substitution was added for same condition drawback and exchange, or tradeoff, of domestic merchandise for imported merchandise was added for manufacturing drawback. A special provision for drawback for petroleum derivatives was added in 1990 and was amended in 1993 and 1999.

There are three categories of drawback: manufacturing drawback; unused merchandise drawback and rejected merchandise drawback. Within each category, there are variations such as the ability to substitute the imported article, and specific time limits to manufacture or export articles.

This informed compliance publication describes and/or explains drawback generally. Also included is a document, originally intended for publication with the drawback regulations as an Appendix to Part 191, pertaining to recordkeeping for drawback in which the types of records required for drawback are reviewed. Finally, there is a list of Customs rulings published, as Customs Service Decisions (CSD's) and Treasury Decisions (TD's) since 1978 in the *Customs Bulletin*, with an indication as to whether the Mod Act and amended regulations are believed to have affected the rulings.

II. SPECIFIC DRAWBACK PROVISIONS

A. MANUFACTURING DRAWBACK.

1. General.

Manufacturing drawback is provided for in subsections (a) and (b) of the drawback law (19 U.S.C. 1313(a) and (b)). Subsection 1313(a) provides for what is called "direct identification" manufacturing drawback, in which substitution of the imported merchandise is not permitted. Subsection 1313(b) provides for substitution manufacturing drawback, in which substitution for the imported merchandise is permitted, subject to certain conditions. In both cases, drawback is available when imported or an eligible substitute merchandise is used to manufacture an article which is exported or destroyed within 5 years of import. Drawback is limited to 99% of the duties paid on the imported merchandise designated for drawback. In substitution manufacturing drawback, any other merchandise, whether imported or domestic, of the same kind and quality as the imported merchandise may be substituted for the imported merchandise and drawback is granted on the export or destruction of articles made from the imported merchandise, the substituted merchandise, or any combination of them. In substitution manufacturing drawback, the imported merchandise and the substituted merchandise must be used in manufacture by the manufacturer within 3 years of receipt of the imported merchandise. In both cases, the manufactured article may not be used in the U.S. after manufacture. (See 19 CFR 191, Subpart B.)

a. Destruction in lieu of exportation; restriction on use in U.S. after manufacture; recycling

Destruction under Customs supervision in lieu of exportation of the manufactured articles is permitted. In a related provision, the statute explicitly prohibits use in the U.S. of manufactured articles after their manufacture and before their exportation or destruction. The restriction on the use in the U.S. of manufactured articles before exportation or destruction is not intended to prevent a manufacturer from testing or other post-production operations.

In the definition section of the regulations (19 CFR 191.2(g)), destruction is defined as meaning complete destruction so that the merchandise or articles have no commercial value (*see American Gas Accumulator Co. v. U.S.*, TD 43642). However, subsection 1313(x) expanded the definition of destruction. Destruction includes the process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise. Any value acquired by the claimant of those recoverable materials must 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. (For purposes of convenience in this publication, references to exportation also include destruction unless the context indicates otherwise.)

b. Substitution under 1313(b); any other merchandise.

Substitution, under subsection 1313(b), of any other merchandise (whether imported or domestic), instead of only duty-free or domestic merchandise, is permitted. (See 19 CFR 191.22.)

c. Successorship; one manufacturer rule.

Corporate successorship is allowed for in substitution manufacturing drawback. Subsection 1313(b) requires the imported merchandise and the other (substituted) merchandise to be used in the manufacture or production of articles by the manufacturer or producer, that is by the same person or entity.

Under subsection 1313(s), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession. Subsection 1313(s) provides for drawback succession in two situations. If the purported successor was a division, plant, or other business unit of the predecessor, there may be drawback succession only if in the transfer of that business unit the value of the transferred assets (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights. The person asserting the right of successorship must present a statement of those respective values to Customs. If instead of being the transfer of a division, plant, or other business unit, the transfer is of all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor, then no such weighing of the comparative value of the drawback and non-drawback rights is required. In either instance, the transfer must be by written agreement, merger, or corporate resolution. (See 19 CFR 191.22(d).)

d. Agricultural products subject to over-quota duty.

Subsection 1313(w) provides that no drawback is available with respect to an agricultural product subject to an over-quota rate of duty established under a tariff-rate quota, with two exceptions. One of those exceptions is that drawback is available under subsection 1313(a) with respect to any tobacco subject to the over-quota rate of duty. The regulations make it clear that subsection 1313(w) operates to preclude drawback when the identified merchandise, the designated imported merchandise, or the substituted other merchandise (when applicable) consists of an agricultural product which is duty-paid at the over-quota rate of duty, with the exceptions provided in the statute. (See 19 CFR 191.3(c).)

3. Regulatory Definitions and Provisions.

a. "Manufacture or Production"

"Manufacture or production" is defined as the process by which merchandise is made into a new and different article having a distinctive name, character or use. 19 CFR 191.2(q). Also, it is a process in which although merchandise is not made into such a new and different article, the merchandise is made fit for a particular use. (See *e.g.*, *Anheuser-Busch Brewing Assoc. v. United States*, 207 U.S. 556 (1907), *United States v. International Paint Co.*, 35 CCPA 87 (1948), *et al.*).

b. "Same kind and quality"

Under "substituted merchandise or articles," "same kind and quality" means that the imported merchandise or drawback products and the other substituted merchandise must be capable of being used interchangeably in the manufacture or production of the exported articles with no substantial change in the manufacturing or production process (19 CFR 191.2(q)). Same kind and quality determinations may be obtained under a general ruling or under the procedures for binding rulings in 19 CFR Part 177. A manufacturer who determines that it can comply with the criteria set in a general ruling may claim under that general ruling by following the procedures set in 19 CFR 191.7 and discussed below.

c. General and specific manufacturing drawback rulings

General manufacturing drawback rulings are set forth in Appendix A of Part 191. A manufacturer or producer may operate under a general ruling by submitting a letter of notification of intent to operate under that general ruling to a drawback office which, if the letter complies with the regulations, the drawback office acknowledges. There are general manufacturing drawback rulings under subsection 1313(a) generally, under subsection 1313(a) or (b) for agents, under subsection 1313(a) for burlap or other textile material, flaxseed, fur skins or fur skin articles, and woven piece goods, and under subsection 1313(b) for component parts, orange juice, petroleum or petroleum derivatives, piece goods, raw sugar, steel, and sugar. Sample formats for specific manufacturing drawback rulings are provided in Appendix B of Part 191. There are sample formats for specific manufacturing drawback rulings under subsections 1313(a) and (b) (combination) and subsections 1313(b), 1313(d), and 1313(g). A manufacturer or producer applies for a specific manufacturing drawback ruling by sending an application, using the appropriate sample format, to Customs Headquarters for approval.

Acknowledged or approved general or specific manufacturing drawback rulings remain in effect indefinitely, subject to the provision for modifying rulings in 19 U.S.C. 1625 and the provisions applicable to rulings in 19 CFR part 177, unless not used for a 5 year period, after which notice of termination is published in the *Customs Bulletin*. Drawback claims may be filed before acknowledgment of a letter of intent to operate

under a general manufacturing drawback ruling or approval of a specific manufacturing drawback ruling.

Letters of notification of intent to operate under a general manufacturing drawback ruling and applications for a specific manufacturing drawback ruling may be signed by any individual legally authorized to bind the person (corporation, partnership, or otherwise) intending to operate under the general or specific ruling. In this regard generally, the regulations distinguish between documents which are included within Customs business (*e.g.*, drawback entries, certificates of delivery or of manufacture and delivery) and must be signed by an official or employee, or authorized Customs broker, of the corporation, partnership, or other entity, and other documents (*e.g.*, letter of notification of intent to operate under a general ruling or application for a specific ruling).

d. Principal-agency operations.

A principal may be treated as a manufacturer or producer for drawback purposes if an agent performs the manufacture or production for the principal in a principal-agent relationship meeting the requirements in the regulations (19 CFR 191.9). Those requirements are that the principal must be the owner of the merchandise, there must be a contract between the principal and agent addressing the matters provided for in the regulations, both the principal and the agent must have appropriate manufacturing drawback rulings, and the principal must be able to establish compliance with all requirements by records.

Principal-agency principles may be used for manufacturing drawback under section 1313(a) or (b) and are not limited to situations such as that in which the imported merchandise was used in manufacture or production by the principal and the substituted merchandise was used by the agent (*i.e.*, to meet the “one manufacturer” rule). In a principal-agent drawback operation, no certificate of delivery is required for the transfer of imported merchandise from the principal to the agent and no certificate of manufacture and delivery is required from the agent to the principal for the transfer of the article or drawback product manufactured or produced by the agent. However, a principal using the principal-agent procedures is required to certify that it can establish the information that would have been required in a certificate of manufacture and delivery. This certificate and information are subject to the requirement that they be maintained for 3 years from the date of payment of a drawback claim.

In a principal-agency drawback operation, the inventory records of the principal and agent must demonstrate compliance with the applicable manufacturing drawback statute. The records must show, for example, that the agent received the raw materials from its principal before the agent began to process any of those raw materials asserted to have been owned by the principal.

e. Tradeoff.

Domestic merchandise acquired in exchange for imported merchandise may be designated as imported merchandise for drawback under section 1313(a) or (b), under the conditions and procedures in the law and the regulations (19 CFR 191.11). This procedure, called "tradeoff," is authorized by subsection 1313(k), added by Public Law 96-609 (1980). No certificate of delivery is issued with respect to the imported merchandise exchanged for the domestic merchandise. The records of the person who exchanged the imported merchandise for the domestic merchandise must demonstrate than no certificate of delivery was issued to any person for the imported merchandise (*e.g.*, by showing that records of merchandise transferred on certificates of delivery were kept in the ordinary course of business and that the imported merchandise is not recorded as having been transferred on a certificate of delivery in the records). The imported and domestic merchandise must be of the same kind and quality and non-same kind and quality merchandise may not be included in the exchange (*e.g.* cash payments by one of the parties may not be part of the exchange). Unlike under the previous regulations, the quantities of domestic and imported merchandise may be different. However, if the quantities are different, the lesser quantity only is the quantity available for drawback. If the domestic merchandise received is the greater quantity, the merchandise identified for drawback is the quantity first received.

4. Other manufacturing drawback requirements.

a. Substitution of "drawback products"

"Drawback products" continue to be defined as finished or partially finished products manufactured or produced in the U.S. under drawback procedures (19 CFR 191.2(l)). In addition to being exported or destroyed to qualify for drawback, drawback products may be used in further manufacture or production of other drawback products under drawback procedures. In the latter instance, drawback products may be designated as the basis for drawback or be deemed to be the substituted merchandise. If a drawback product is designated as the basis for drawback in a further manufacture or production, a separate 3-year period for use in manufacture or production of the drawback product and other substituted merchandise is commenced (CSD85-7), limited by the 5-year period from import to export.

b. Multiple products; relative value.

Drawback is available on exports of multiple products produced from the same manufacture or production. If two or more products necessarily are concurrently produced from a manufacture or production (*e.g.*, flaxseed is refined to produce linseed oil and linseed husks), drawback is distributed among the products on the basis of their relative value at the time of separation. If only one of the products is exported, drawback is limited accordingly (19 CFR 191.22(e), 191.2(u)).

c. Waste.

Drawback is not available on the exportation of waste. Criteria applied to produced material to determine if it is a multiple product or valuable waste are its composition, comparative value, use, tariff status if imported, and recognition as a commodity in commerce, and whether it must be processed to make it salable. (See 19 CFR 191.23.)

d. Methods of claiming drawback; abstract or schedule.

The three methods of claiming, or calculating, drawback are "used in," "appearing in," and "used in less valuable waste" (19 CFR 191.23). In the first method, drawback is claimed on the quantity of imported or substituted merchandise used to produce the exported article; that is, irrecoverable or valueless waste does not reduce the amount of drawback claimed. For example, if 10 units are used to produce an export and 1 unit "goes up the smokestack," drawback could be claimed on the 10 units. The used in method must be used when there are multiple products and no valuable waste.

In the "appearing in" method, drawback is claimed on the quantity of imported or substituted merchandise in the exported article; that is, irrecoverable or valueless waste does reduce the amount of drawback claimed. In the example above, drawback could only be claimed on the 9 units in the exported article. The advantage of this method is that waste records need not be kept unless required to establish the quantity of merchandise appearing in the exported article. In the other methods, waste records are required. This method may not be used if there are multiple products.

In the "used in less valuable waste" method, drawback is claimed on the quantity of imported or substituted merchandise used to produce the exported article, less the quantity of merchandise that the value of the waste would replace. For example, if 10 units are used to produce an export and 1 unit results in waste equal in value to .2 unit, drawback could be claimed on 9.8 units. This method must be used when there are multiple products and valuable waste.

There are two ways in which a claimant may show the quantity of material used or appearing in an exported article; by an "abstract" or by a "schedule." An abstract is a summary of the manufacturer's actual production records and shows the total quantity used or appearing in the articles during the period covered by the abstract; the abstract shows the actual quantity for the period involved. A schedule is the predicted production from the raw materials and shows the quantity of merchandise per unit of product. For example, a schedule could show that for every 10 pound unit of exports, 4 pounds of imported or substituted merchandise were used in its production, or appear in it. Unless a claimant indicates otherwise in regard to its general or specific manufacturing drawback ruling, the abstract method is used. Regardless of the method selected, the claimant must be able to demonstrate that the abstract or schedule accurately reflects the actual production. (See 19 CFR 191.23)

5. Other Manufacturing Drawback

a. Drawback on Tax-Paid Alcohol

Section 1313(d) (19 USC 1313(d)) permits drawback of the U.S. Internal Revenue tax on alcohol if that alcohol is used to make flavoring extracts, medicinal preparations or toilet preparations such as perfumes and is exported. Subpart J of Part 191 contains the implementing regulations. In addition to the general manufacturing drawback regulations, the manufacturer must certify whether a drawback claim was or will be filed with the Trade and Tax Bureau (formerly Bureau of Alcohol, Tobacco and firearms) and file that statement with that Agency and with the claim filed with CBP. The claim and certification statement must identify the alcohol used by the serial number of the package from which the alcohol was withdrawn.

b. Imported Salt

Sections 1313(e) and 1313(f) (19 USC 1313(e) and (f)) provide for drawback of duty on imported salt that is used to cure fish or meat, respectively, upon export of that fish or meat. The regulations implementing the general manufacturing drawback provisions in subparts B and L of Part 191 cover these provisions. The limitation on drawback imposed as a result of NAFTA is set forth in subpart E of Part 181, in particular sections 181.44(e) and 181.47(b)(2)(iv). The statutory limitation is set forth in 19 USC 1313(n).

c. Materials used to construct or equip foreign-owned vessels and aircraft.

Section 1313(g) (19 USC 1313(g)) provides for drawback of duty on imported material that is used in the construction of and as equipment for vessels and aircraft built for foreign ownership provided that the vessel or aircraft is for foreign ownership, export of the vessel is not required. The regulations in subpart M of Part 191 and the regulations in subpart B of Part 191 implement this provision. Section 1313(o) (19 USC 1313(o)) contains the NAFTA limitations on this provision. By the regulations in subpart M, CBP limits the application of this provision to original construction and major conversion of a vessel or aircraft. That regulation proscribes eligibility for materials used for vessel repair or an alteration that does not amount to a major conversion. Major conversion means a substantial change in the dimensions or carrying capacity, a change in the type, a change that substantially prolongs the life and a change that essentially creates a new vessel or aircraft.

d. Jet Aircraft Engines

Section 1313(h) (19 USC 1313(h)) provides for drawback of duty on imported merchandise used in the U.S. to overhaul, repair, rebuild or recondition a foreign-made jet aircraft engine. The regulations in subparts B and N of Part 191 (19 CFR Parts 191 B and N) implement this provision. The NAFTA limitations on this provision are all set

forth in 19 USC 1313(n) and 19 CFR Part 181 E, particularly sections 181.43(f) and 181.47(b)(2)(v).

e. Packaging Materials

Section 1313(q) (19 USC 1313(q)) permits drawback of duty, tax or fees on packaging material used on, or for merchandise that is exported under 19 USC 1313(a), (b), (c) or (j) and on packaging material made in the U.S. that is used on, or for, a U.S. made article that is exported or destroyed under 19 USC 1313(a) or (b). The NAFTA limitations on this provision are set in 19 USC 1313(n).

B. REJECTED MERCHANDISE DRAWBACK.

1. General.

Rejected merchandise drawback is provided for in subsection (c) of the drawback law (19 U.S.C. 1313(c)). Drawback is available when imported merchandise not conforming to sample or specifications, shipped without consent, or determined to be defective at the time of import is returned to Customs custody within 3 years of the date of import and is exported or destroyed. The merchandise may be established to be defective at the time of import by presenting evidence of the agreement of the foreign shipper and the importer acknowledging that fact. (See 19 CFR 191, Subpart D.)

2. Statutory Provisions.

As is true of manufacturing drawback, destruction under Customs supervision in lieu of exportation of the rejected articles is permitted. The time within which merchandise must be returned to Customs custody is 3 years from the date of release from Customs custody and there is no authority for extension. As an additional basis for drawback under this subsection, that merchandise which is determined to be defective as of the time of importation may qualify for drawback. An importer and foreign supplier may meet this basis for drawback by simply agreeing that the merchandise was defective and presenting evidence of that agreement to Customs. (See 19 CFR 191.41, 191.42.)

3. Regulatory Provisions.

At least 5 working days before the intended return to Customs custody of merchandise to be exported or destroyed for drawback under subsection 1313(c), the claimant, or exporter or destroyer, must file notice of intent to export or destroy on CF 7553. Within 2 working days after receipt by Customs of such a notice, Customs notifies the party of its decision to examine the merchandise or waive examination. If Customs gives timely notice of its intent to examine the merchandise to be exported or destroyed, the merchandise to be examined is required to be promptly presented to Customs. If it is exported without being presented to Customs, drawback is denied. If

Customs waives examination of the merchandise or if Customs fails to provide timely notification of a decision to examine or waive examination, the merchandise may be exported or destroyed without delay and is deemed to have been returned to Customs custody (19 CFR 191.42).

Destruction in lieu of exportation for drawback under this subsection is subject to the general provisions for destruction (19 CFR 191.71). There is no procedure for waiver of notice of intent to return to Customs custody, as for waiver of prior notice of intent to export for unused merchandise drawback (19 CFR 191.42(c), 191.35-36, 191.91).

4. Unmerchantable Alcoholic Beverages

a. Statutory Provision.

Section 5062(c) of the Internal Revenue Code (26 U.S.C. 5062(c)) authorizes CBP to refund taxes paid on alcoholic beverages that are unmerchantable if those beverages are exported or destroyed. The importer must provide evidence that tax was paid on the exported or destroyed beverages and that the beverages are unmerchantable.

b. Regulatory Provisions.

The regulations that implement the statute are in subpart P of Part 191 of the regulations (19 CFR Part 191 P). The regulations require the importer to describe in detail how the alcoholic beverages became unmerchantable. CBP must have sufficient information in order to verify the assertion that the alcoholic beverages were unmerchantable. The regulations also require that CBP have the opportunity to examine the alcoholic beverages before they are exported or destroyed in order to insure compliance with the law.

c. Time Limits.

There is no time limit for the beverages to become unmerchantable or be exported or destroyed. However, the beverages must be exported or destroyed within 90 days from the date that the claim is filed. CBP may grant an extension of not more than 90 days upon a written request. Failure to comply will result denial of the claim.

C. UNUSED MERCHANDISE DRAWBACK.

1. General.

Unused merchandise drawback is provided for in subsection (j) of the drawback law (19 U.S.C. 1313(j)). Drawback is available when imported merchandise is exported or destroyed within 3 years of import without being used in the U.S. Domestic or other merchandise which is commercially interchangeable with the imported merchandise

may be substituted for the imported merchandise and drawback is granted on the export or destruction of the substituted merchandise, imported merchandise, or any combination if the exported merchandise was not used in the U.S. and was possessed by the drawback claimant. (See 19 CFR 191, Subpart C.)

2. Statutory provisions.

a. Use.

Subsection 1313(j)(3) provides that the performing of any operation or combination of operations (with a list of exemplars) not amounting to manufacture or production for drawback purposes is not a "use." The processing operation is either a manufacture for drawback purposes or, if not such a manufacture, the processing operation does not preclude unused merchandise drawback. (See 19 CFR 191.31(c), 191.32(e).)

c. Commercial interchangeability.

Commercially interchangeable imported and other merchandise may be substituted under subsection 1313(j)(2), instead of requiring fungibility for substitution. This change was intended to permit substitution of merchandise when it is "commercially interchangeable" rather than when it is "commercially identical." In determining commercial interchangeability, Customs is to evaluate the critical properties of the merchandise and in that evaluation factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value. (See 19 CFR 191.32(c), 191.2(x).)

d. Possession.

Possession of exported merchandise is required by the party claiming drawback for substitution unused merchandise drawback under subsection 1313(j)(2). Possession includes ownership while in bailment, leased facilities, transit, or in any other manner under operational control of the merchandise owner. (See 19 CFR 191.32(b)(1), 191.2(s).)

e. Claimant.

In the case of non-substitution unused merchandise drawback under subsection 1313(j)(1), the drawback claimant may be the exporter or destroyer, or the right to claim drawback may be endorsed by that party to the importer or any intermediate party. For substitution drawback under subsection 1313(j)(2), the drawback claimant may be the importer of the imported merchandise or a person who received from the importer (who must have paid any duty) a certificate of delivery transferring the imported merchandise, commercially interchangeable merchandise, or any combination thereof. (See 19 CFR 191.33.)

f. Successorship.

Analogous to the provision for corporate successorship in substitution manufacturing drawback, subsection 1313(s) permits a drawback successor to designate imported merchandise imported by a predecessor or substituted merchandise for which the predecessor received a certificate of delivery under subsection 1313(j)(2) when the drawback successor possessed the merchandise (*i.e.*, due to the corporate successorship, the importer or deliveree on the certificate of delivery is not the same entity as the possessor).

As stated in regard to manufacturing drawback, subsection 1313(s) provides for drawback succession in two situations. If the purported successor was a division, plant, or other business unit of the predecessor, there may be drawback succession only if in the transfer of that business unit the value of the transferred assets (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights. The person asserting the right of successorship must present a statement of those respective values to Customs. If instead of being the transfer of a division, plant, or other business unit, the transfer is of all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor, then no such weighing of the comparative value of the drawback and non-drawback rights is required. In either instance, the transfer must be by written agreement, merger, or corporate resolution. (See 19 CFR 191.33(f).)

g. Agricultural products subject to over-quota duty.

Subsection 1313(w) provides that no drawback is available with respect to an agricultural product subject to an over-quota rate of duty established under a tariff-rate quota, with two exceptions. In addition to the exception for tobacco under subsection 1313(a) (above), drawback under subsection 1313(j)(1) is excepted. The regulations make it clear that subsection 1313(w) operates to preclude drawback when the identified merchandise, the designated imported merchandise, or the substituted other merchandise (when applicable) consists of an agricultural product which is duty-paid at the over-quota rate of duty, with the exceptions provided in the statute. (See 19 CFR 191.3(c).)

3. Regulatory provisions.

a. Rulings on commercial interchangeability; fungibility.

Procedures for obtaining a determination of commercial interchangeability are provided (a formal ruling may be obtained from Customs headquarters, or all documentation necessary to make the determination may be filed with the drawback claim) (19 CFR 191.32(c)). In addition, a party may seek a nonbinding predetermination on the issue from the appropriate drawback office. Because commercial interchangeability is no more restrictive than fungibility as a standard for substitution,

prior unrevoked fungibility rulings may be relied on for commercial interchangeability (62 F.R. 3085).

Evidence relating to the factors to be used in determining commercial interchangeability (including, but not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value) is needed to obtain a ruling on this issue. Copies of the applicant's purchase and sales contracts and of inventory records demonstrating applicability of the above factors should be submitted with any ruling request or drawback claim, as appropriate. (See 19 CFR 191.32(c).)

b. Multiple transfers; substitutions; 1313(j)(2).

Only one substitution is permitted under subsection 1313(j)(2). Multiple transfers (either before substitution or after substitution) of the imported or substituted merchandise are permitted and are effected by a certificate of delivery. (See 19 CFR 191.33, 191.34.)

c. Notice of exportation or destruction.

Generally, notice of intent to export or destroy merchandise which may be the subject of unused merchandise drawback is required prior to export or destruction, to give CBP the opportunity to examine the merchandise. At least 2 working days before the intended date of exportation, the claimant, or exporter, must file notice of intent to export or destroy on CF 7553. Within 2 working days after receipt by Customs of such a notice, Customs notifies the party of its decision to examine the merchandise or waive examination. If Customs gives timely notice of its intent to examine the merchandise to be exported, the merchandise to be examined is required to be promptly presented to Customs and Customs examines the merchandise within 5 working days after presentation. If the merchandise is exported without being presented to Customs, drawback is denied. If Customs waives examination of the merchandise or, if Customs fails to provide timely notification of a decision to examine or waive examination, the merchandise may be exported without delay (19 CFR 191.35). Destruction in lieu of exportation for drawback under this subsection is subject to the general provisions for destruction (19 CFR 191.71).

The regulations provide for waiver of this requirement for notice prior to exportation or destruction. A claimant may apply to the drawback office where claims will be filed under the procedures in 19 CFR 191.91, and based on the information required to be provided and the applicant's record with Customs, the waiver will be approved or denied. An applicant may file for waiver of prior notice alone, or for waiver of prior notice, accelerated drawback, and/or certification in the drawback compliance program in one application, subject to the requirements for each. Approval of a waiver is prospective and applicable in all drawback offices. Limited successorship, for a 1-year period, for approvals of waiver of prior notice is provided for when all rights, privileges, immunities, powers, duties, and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor. Customs may stay

an approval of a waiver for a specified reasonable period by providing notice by registered or certified mail. Such a stay is effective 2 working days after the date of receipt for the registered or certified mail. Subject to notice, challenge, and appeal procedures, Customs may revoke the waiver of prior notice.

Retroactive waiver of prior notice is eliminated, except that a one-time opportunity is given to file claims for which prior notice of exportation was not given to Customs. Claimants may apply for this one-time retroactive waiver with the drawback office where claims will be filed under the procedures in 19 CFR 191.36.

A claimant approved for waiver of prior notice as of April 6, 1998 was permitted to continue to operate under the prior waiver of prior notice for a period of 1 year after April 6, 1998. If such a claimant applied for waiver of prior notice under section 191.91 within this 1-year period, the claimant may continue to operate under its existing waiver of prior notice until Customs approves or denies the application under section 191.91, subject to the provisions for stay and revocation section 191.91.

D. PETROLEUM DERIVATIVES.

1. General.

Under subsection (p) of the drawback law (19 U.S.C. 1313(p)) and subject to the conditions therein, drawback is available when certain named petroleum derivatives are imported and at least the same quantity of a petroleum derivative described in the same 8-digit HTSUS classification is exported within 180 days of import. Also, if crude petroleum or petroleum derivatives are used to manufacture the named petroleum derivatives under the manufacturing drawback law, drawback is available on the export of at least the same quantity of a petroleum derivative described in the same 8-digit HTSUS classification as that manufactured, if the export is within 180 days of manufacture. (See 19 CFR 191, Subpart Q.)

2. Statutory provisions.

a. Petroleum derivatives; crude petroleum.

Before its amendment, subsection 1313(p), as enacted by Public Law 101-382, section 484A, permitted substitution of crude petroleum under this provision (by including articles described in heading 2709, HTSUS, in the definition of qualified articles). The amended subsection eliminates crude petroleum from the definition of qualified articles. (See 19 CFR 191.172(a).)

b. Exporter; export from common storage.

Formerly, subsection 1313(p) provided for drawback on articles withdrawn for export from common storage when imported or manufactured or produced (under subsection 1313(a) or (b)) crude petroleum or petroleum derivatives were stored in such common storage with other articles which were commercially interchangeable or described in the same 8-digit HTSUS classification (*i.e.*, exported articles were required to be withdrawn from common storage for export). According to the legislative history, because of this latter requirement, effective use of subsection 1313(p), as enacted by Public Law 101-382, had proven to be impracticable.

The amended subsection 1313(p) eliminates the requirement for withdrawal for export from common storage. Instead, in the case when the qualified article is an article manufactured or produced under subsection 1313(a) or (b), the exporter must have either manufactured the qualified article in a quantity equal to or greater than the quantity of the exported article or have purchased or exchanged, directly or indirectly, the qualified article from the manufacturer or producer in a quantity equal to or greater than the quantity of the exported article. When the qualified article is an imported article, the exporter must have either imported the qualified article in a quantity equal to or greater than the quantity of the exported article or have purchased or exchanged, directly or indirectly, the imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article. (See 19 CFR 191.173(c), 174(c).)

c. Same kind and quality.

The special definition for purposes of subsection 1313(p) of “same kind and quality,” which is the requirement for substitution under the subsection, is retained. That is, for purposes of subsection 1313(p), a same kind and quality article means an article which is commercially interchangeable with, or which is described in the same 8-digit HTSUS classification as, the article to which it is compared. For example, unleaded gasoline and jet fuel (naphtha or kerosene-type), both falling under the same 8-digit HTSUS classification (subheading 2710.11.15), would be considered of the same kind and quality for purposes of subsection 1313(p).

This definition of same kind and quality is for purposes of subsection 1313(p) only and is not applicable to subsection 1313 (b) or (k). (See 19 CFR 191.172(b).)

d. Claimant.

The claimant may be the exporter, refiner, producer, or importer, and any person eligible to file a drawback claim under subsection 1313(p) may designate another person to file the claim. (See 19 CFR 191.175(a).)

e. Limit on amount of drawback.

Subsection (p) limits drawback to the amount that would be attributable under subsection 1313(a) or (b) when the qualified article is manufactured or produced under one of those subsections, or that attributable to the imported merchandise under section 1313(j)(1). (See 19 CFR 191.173(e), 191.174(f).)

E. PROCEDURES.

1. Statutory Provisions.

a. Complete claim; time for filing.

Subsection 1313(r)(1) enacts into law the regulatory provision that a complete drawback claim must be filed within 3 years after the date of exportation. Claims not completed within that time will be considered abandoned, with the only provision for extension being if it is established that Customs is responsible for the untimely filing (19 CFR 191.51). Filing an incomplete claim does not suspend the running of the time period.

In addition, Public Law 104-295, section 7, added subsection 1313(r)(3), under which the time for filing a complete drawback claim may be extended up to 18 months in the instance of an event declared by the President to be a major disaster, subject to the conditions in the subsection (19 CFR 191.51(e)(2)).

b. Claim filed under wrong subsection.

Subsection 1313(r)(2) enacts into law a Customs interpretation under which a claim filed under the wrong subsection is deemed to be filed under the correct subsection, provided that each of the requirements for the correct subsection are met. The committee reports recognize that Customs will not interpret this provision as imposing a requirement on Customs to investigate all alternative subsections before liquidating a drawback claim as presented. A claimant may raise an alternative provision prior to liquidation or by protest (19 CFR 191.12).

c. Drawback claims and certificates; record retention.

Subsection 1313(t) provides that an issuer of a drawback certificate is required to retain records from the time of issuance of the certificate to 3 years after payment of drawback (see also 19 U.S.C. 1508). This obligation will require the certificate issuer and the claimant to coordinate with each other in order to comply with the statute. (See 19 CFR 191.15, 191.10(d), 191.26(f).)

Section 1508(c)(3) (19 USC 1508(c)(3)) requires a drawback claimant to retain records for any drawback claim for three years from the date of payment. The date of

payment includes the date that a claimant receives a payment under the accelerated payment procedure. See 19 CFR 191.92.

d. Exportation in only one claim.

Subsection 1313(v) provides that exported or destroyed merchandise may not be claimed in more than 1 drawback claim (unless proportionately attributed to different claims).

e. Regularly entered merchandise.

Subsection 1313(u) provides that imported merchandise that has not been regularly entered or withdrawn for consumption may not satisfy any requirement for use, exportation, or destruction under the drawback law. For example, merchandise entered under temporary importation bond (TIB) is subject to this limitation, as is merchandise exported from a Customs bonded warehouse or a foreign trade zone. (See 19 CFR 191.3.)

f. Electronic drawback entries.

Subsection 1313(l), generally authorizing drawback regulations, is amended to provide for the electronic submission of drawback entries. See 19 CFR 191.2(n), which defines "filing" to include electronic delivery of any document or documentation provided for in 19 CFR Part 191.

g. Recycling as destruction

Section 1313(x) (19 USC 1313(x)) includes within the concept of destruction to include situations in which materials are recovered from the merchandise. The provision applies only to claims under sections 1313(a), (b) and (c). The amount of duty available for drawback must be reduced if as a result of the recycling process any value on the recovered materials accrues to the drawback claimant. Value accruing to a claimant includes any tax benefit or royalty payment that might accrue as a result of the recycling.

2. Regulatory provisions.

a. Duties subject to drawback.

The definition of duties subject to drawback in 19 CFR 191.3 is expanded to include ordinary duties for which the import entry is finally liquidated, marking duties, and internal revenue taxes which attach upon importation and, under certain conditions, estimated duties, voluntary tenders, tenders of duties in connection with prior disclosure, and restored duties under 19 U.S.C. 1592(d). The conditions for the latter are specified in 19 CFR 191.81 and include the filing of a waiver of any right to payment or refund under other provision of law, to the extent that such payment or refund is

included in the drawback, as well as certain other requirements for tenders and other payments. Section 191.3 also lists duties and fees not subject to drawback (harbor maintenance fees (HMF), antidumping and countervailing duties, and, subject to certain duties on exceptions, agricultural products when the imported or substituted merchandise is subject to an over-quota rate of duty).

b. Accounting procedures to identify merchandise or articles.

General.

The regulation on identifying merchandise or articles for drawback purposes by an accounting procedure such as first-in, first-out (FIFO) is substantially changed. Identification by accounting method is used when the actual unit-for-unit identification of fungible merchandise or articles is lost (generally, when such merchandise or articles are commingled or recorded in a common inventory). Thus, identification by accounting method benefits drawback claimants in that, when such a method can be used, merchandise or articles do not have to be physically separated and tracked unit-by-unit.

Identification by accounting method is distinguished from substitution. In the case of the latter, the person claiming benefit of the substitution may substitute any unit or lot of merchandise or articles as long as the criteria and conditions for substitution are met (*i.e.*, same kind and quality for subsection 1313(b) and (k), commercial interchangeability for subsection 1313(j)(2), and same kind and quality for subsection 1313(p) (as specially defined therein)). In the case of the former, a unit or lot of merchandise or articles must be identified consistent with the accounting procedure used (*e.g.*, if FIFO is used, the oldest unit of merchandise or articles in the inventory is that identified regardless of whether identification of that unit is favorable or unfavorable to the person claiming the benefit of the accounting method).

Commingling.

Instead of requiring actual commingling of lots of merchandise or articles, if inventory records prepared and used in the ordinary course of business treat the merchandise or articles as being received into and withdrawn from the same inventory, even if the inventory is physically in different geographical locations, the merchandise and articles may be accounted for in the same records.

Methods.

Four accounting methods are authorized for general drawback purposes –first-in, first-out (FIFO), last-in, first-out (LIFO), average, and low-to-high. Inventory turn-over is authorized to determine the facts and dates of use in manufacture of imported and substitute merchandise and the fact and dates of manufacture of finished articles for purposes of subsections 1313(a) and (b). Under the FIFO and LIFO methods, withdrawals from the inventory are from, respectively, either the oldest (first-in) or the newest (last-in) merchandise or articles in the inventory at the time of withdrawal

(examples in 19 CFR 191.14(c)(1)(ii) and (2)(ii)). Under the average method, withdrawals from the inventory are attributed to all units in the inventory on the basis of the proportion of each receipt in the inventory to the total receipts in inventory at the time of withdrawal (example in 19 CFR 191.14(c)(4)).

In the case of the low-to-high method, three alternatives are provided. Under the ordinary low-to-high method, withdrawals from the inventory are from the merchandise or articles in the inventory at the time of withdrawal with the least drawback amount per unit, including merchandise or articles with no drawback attributable to them (example in 19 CFR 191.14(c)(3)(ii)(B)). Under the low-to-high method with established average inventory turn-over period, withdrawals from the inventory are from the merchandise or articles received into the inventory during the established average inventory turn-over period (as provided for in 19 CFR 191.14(c)(3)(iii)(C)) which have not already been identified (example in 19 CFR 191.14(c)(3)(iii)(D)). Under the low-to-high blanket method, withdrawals from the inventory are from the merchandise or articles received into the inventory during the period preceding the withdrawal equal to the statutory period for export for the kind of drawback involved (*e.g.*, 3 years for unused and rejected merchandise drawback, 5 years for manufacturing drawback) which have not already been identified (example in 19 CFR 191.14(c)(3)(iv)(C)).

All receipts, whether imported or not, and all withdrawals, whether or not for export, from the inventory must be accounted for in the accounting record in the case of all methods, except for the low-to-high method with established average inventory-turnover period and the low-to-high blanket method. In the case of those alternatives of the low-to-high method, domestic withdrawals (not for export) from the inventory need not be accounted for. The reason for this exception is that in those alternatives the identified merchandise or articles would always be those with the lowest (including zero) drawback attributable to them in the universe that could be in the inventory based on the inventory-turnover period or the applicable statutory period. In order not to be attributed in the calculation, merchandise or articles must be shown to have been exported, whether or not eligible for drawback or whether or not drawback was claimed on the export. Unless shown to have been exported or beyond the applicable time limits, each receipt into inventory will be used to calculate the lowest drawback-eligible merchandise available for attribution.

Any accounting method must be used without variation for at least 1 year. Records supporting any of the methods are subject to verification by Customs. The person using the method must be able to establish how, under generally accepted accounting procedures and the provisions in the regulation, the records account for all merchandise or articles in, all receipts into, and all withdrawals from, the inventory. (See also TD95-61.)

Same condition drawback; shipments to NAFTA Countries.

Formerly, the NAFTA regulations (19 CFR 181.45(b)(2)(i)) required the use of the accounting procedures in the Appendix of Part 181 (not including any of the low-to-high alternatives) to identify goods withdrawn from an inventory of fungible goods for export to Canada or Mexico and for which drawback is claimed under subsection 1313(j)(1). Under subsection 1313(j)(4), substitution unused merchandise drawback is unavailable for such exportations, with certain exceptions. Section 181.45(b)(2)(i) now permits the use of the accounting methods in 19 CFR 191.14 (including the low-to-high alternatives) for certain such exports.

Under the amended regulation, if all of the goods in a particular inventory are non-originating goods (for NAFTA purposes), identification is on the basis of one of the accounting methods authorized in 19 CFR 191.14, subject to the requirements and procedures in that section. If this is not the case (*i.e.*, if the goods in the inventory consist of originating and non-originating goods), determination of the origin and identification of the goods for drawback purposes must still be on the basis of the accounting procedures in the Appendix of Part 181. (See 19 CFR 191.14.)

c. Transfer of merchandise, articles, or drawback products.

Certificate of delivery.

Except in the case of transfers between principals and agents operating under drawback principal-agency procedures, a certificate of delivery is required to show the transfer of imported duty-paid merchandise, substituted merchandise under subsection 1313(j)(2), or an article manufactured or produced under subsection 1313(a) or (b) by a person other than the manufacturer or producer. A certificate of delivery documents the delivery of, and the assignment of drawback rights for, the merchandise or article. The certificate issuer is responsible for the accuracy of each fact stated in the certificate. The certificate issuer is responsible for retaining the evidence supporting the certificate. (See 19 CFR 191.10.)

Certificate of manufacture and delivery.

With the same exception as above for principal-agency operations, whenever an article or drawback product manufactured or produced under a general or specific manufacturing drawback ruling is transferred from the manufacturer or producer to another party, a certificate of manufacture and delivery on CF 7553 must be prepared and certified by the manufacturer or producer. The information provided for in 19 CFR 191.24(b) is required on the certificate and the certificate is required to be filed with the drawback claim it supports, unless previously filed, in which case the certificate shall be referenced on the claim. The effect of a certificate of manufacture and delivery is to document the delivery of the article, identify the article as being one to which drawback potentially exists, and assign the drawback rights to the transferee. The certificate issuer is responsible for the accuracy of each fact stated in the certificate. The certificate issuer is responsible for retaining the evidence supporting the certificate. (See 19 CFR 191.24, 191.51.)

Principal-agency operations.

As stated above in regard to principal-agency operations in manufacturing drawback, in such operations, no certificate of delivery is required for the transfer of imported merchandise from the principal to the agent and no certificate of manufacture and delivery is required from the agent to the principal for the transfer of the article or drawback product manufactured or produced by the agent. However, a principal using the principal-agent procedures is required to certify that it can establish the information that would have been required in a certificate of manufacture and delivery. As is true of certificates of delivery and of manufacture and delivery, a principal making such a certification is responsible for retaining the evidence supporting the certification. (See 19 CFR 191.9(d).)

d. Exportation or destruction.

Exportation or destruction under Customs supervision is a basic requirement for drawback. (See II.B., above, for the requirement that merchandise must be returned to Customs custody before exportation or destruction for drawback under subsection 1313(c), and II.C.3.c., above, for the requirement for prior notice of intent to export or destroy (unless waived) for drawback under subsection 1313(j)).

When drawback is based on exportation, actual evidence of exportation or a Chronological Summary of Exports must be submitted with the drawback claim. Actual evidence of exportation consists of documentary evidence, such as an originally signed bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest. Certified copies of these documents, provided that the document which is copied was issued by the exporting carrier, may also be used as evidence of exportation. Evidence of exportation must always establish fully the date and fact of exportation and the identity of the exported merchandise or article and exporter. Special procedures are provided in the Customs Regulations for exportation by mail (19 CFR 191.74), exportation by the Government (19 CFR 191.75), and landing certificates (19 CFR 191.76).

As an alternative to submitting actual evidence of exportation with a drawback claim, a claimant may submit a summary of exports with the information provided for in 19 CFR 191.73. This procedure, the export summary procedure, may be used by any drawback claimant without prior approval. When the export summary procedure is used, the claimant, whether or not the exporter, is required to maintain the Chronological Summary of Exports and documentary evidence of exportation showing fully the date and fact of exportation and the identity of the exported merchandise or article and exporter.

Customs must be given prior notice of destruction so that Customs may witness the destruction if it chooses to do so. If Customs attends the destruction, the drawback claimant must file as part of the drawback claim the notice of destruction certified by the

Customs officer witnessing the destruction. If Customs chooses not to attend the destruction, the drawback claimant must file as part of the drawback claim evidence that the destruction took place in accordance with the approved notice of destruction. The evidence must be issued by a disinterested third party, such as a landfill operator, and must establish the destruction of the merchandise or article. (See 19 CFR 191, Subpart G, 191.2(g).)

e. Supplies for vessels or aircraft; 19 U.S.C. 1309.

In the definition of "exportation" added to the definitions for drawback purposes (19 CFR 191.2(m)), provision is made for "deemed" exportations under 19 U.S.C. 1309, when goods subject to drawback under the provision are laden upon qualifying aircraft or vessels. Also, a definition of "exporter" is added, in section 191.2(m), under which the exporter is the principal party in interest in the export transaction and has the power and responsibility for determining and controlling the exportation or the transaction which is deemed to be the exportation (under section 1309). As explained in the Background to publish in connection with the [final rule], the party deemed to be the exporter is the party entitled to claim drawback or to waive and assign the right to claim drawback to another authorized party.

Customs, pursuant to Court interpretations, considers the person in charge of the vessel or aircraft to be the agent of the exporter. It is the responsibility of the exporter to ensure that the person in charge of the vessel or aircraft provides any necessary evidence of verification to Customs which demonstrates the asserted fact of exportation. The failure to provide required evidence will result in the denial of drawback.

f. Export summary procedure; vessel supplies; foreign trade zones.

The export summary procedure, provided for in 19 CFR 191.73, may be used for drawback on supplies for vessels or aircraft under 19 U.S.C. 1309 (subject to the requirement in 19 CFR 191.112(d)(1) and (f)(1) requiring a notice of lading showing the name of the vessel or identity of the aircraft and having a "Declaration of Master or Other Officer" completed by the vessel or aircraft master or authorized representative) (19 CFR 191.112(b)). The regulations on drawback on merchandise or articles transferred to a foreign trade zone in zone-restricted status are also changed to permit the use of the export summary procedure (evidence of export under these regulations is the notice of zone transfer on CF 214, instead of CF 7514) (19 CFR 191.183).

g. HTSUS numbers on drawback entries and certificates.

The HTSUS tariff classification, to a minimum of 6 digits, for the designated imported merchandise is required to be stated on drawback entries, certificates of delivery, and certificates of manufacture and delivery (the requirement for the drawback entry may be met by provision of the HTSUS number on the certificate of manufacture and delivery, as that certificate is part of a drawback claim). The HTSUS number for

imported merchandise is provided from the entry summary and entry documentation when the drawback claimant is the importer of record and from the certificate of delivery and/or certificate of manufacture and delivery otherwise (in other words, no independent classification is required).

HTSUS numbers or Schedule B commodity numbers to the same level are also required to be stated for merchandise transferred by a certificate of delivery when the transferred merchandise is substituted merchandise under the substitution unused merchandise drawback law (subsection 1313(j)(2)).

HTSUS numbers or Schedule B commodity numbers to the same level are required to be stated on drawback entries for the exported merchandise or articles. The HTSUS or Schedule B number for exported merchandise is provided from the Shipper's Export Declaration (SED) (if no SED is required, the number that would have been set forth on the SED is required) (in other words, as with imported merchandise, no independent classification is required). (See 19 CFR 191.10(b)(11) and (12); 191.24(b)(4) 191.51(c).)

h. Complete drawback claim; definition.

For purposes of the requirement in subsection 1313(r)(1) that a drawback entry and all documents necessary to complete a drawback claim must be filed within 3 years of export (with certain exceptions), a complete drawback claim is defined. A complete drawback claim consists of a correctly completed drawback entry on CF 7551, applicable certificates of manufacture and delivery on CF 7552 (if previously filed, an applicable certificate of manufacture and delivery must be referenced in the claim), applicable Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CF 7553, applicable import entry numbers, coding sheet unless data is filed electronically, and evidence of exportation or destruction. (Applicable certificates of delivery must be in possession of the claimant at the time of filing the claim.) (19 CFR 191.51(a))

If a drawback claim includes attachments, each attachment must contain the same information required in the relevant field of the applicable form and be clearly cross-referenced to the respective field and form. It is not sufficient to use the words "see attached" if the claim contains more than one attachment.

i. Rejecting a drawback claim.

If, upon review of a drawback claim, Customs determines that it is incomplete, Customs rejects the claim. The claim may be completed and refiled, but the claim must be completed and filed within the 3-year period for filing a complete claim (19 CFR 191.52(a)).

j. Amending or perfecting a drawback claim.

Unliquidated drawback claims may be amended. Such amendments must be made within the 3-year period for filing a complete claim. Drawback entries which have been liquidated may not be amended; they may be protested under 19 U.S.C. 1514. A timely completed drawback claim may be perfected outside the 3-year period for filing a complete claim.

Perfection of a claim occurs when Customs determines that the claim is complete but that additional evidence or information is required. Customs will notify the drawback filer of the evidence or information needed and that party is required to furnish the evidence or information within 30 days, subject to an extension of 30 additional days upon written request.

The distinction between amending and perfecting a claim is as follows. A claim is perfected when the claimant makes minor changes to the claim (*e.g.*, addition of a missing signature, correction of numbers added incorrectly, replacement of information placed in the wrong part of the form, etc.) or provides documentation in support of the claim. A claim is amended when a basic change must be made to the claim in order to be eligible for drawback (*e.g.*, designation of a different import entry or the claiming of a different export) (see 62 Fed. Reg. 3087). (See 19 CFR 191.52(c).)

k. Accelerated payment of drawback.

The regulations continue to provide for accelerated payment of drawback (payment of estimated drawback before liquidation of the drawback entry). A claimant may apply to the drawback office where claims will be filed under the procedures in 19 CFR 191.92 and, based on the information required to be provided and the applicant's record with Customs, the application will be approved or denied. An applicant may file for accelerated drawback alone, or for accelerated drawback, waiver of prior notice, and/or certification in the drawback compliance program in one application, subject to the requirements for each. Approval is effective as of the date of notice and is applicable in all drawback offices. After approval, accelerated drawback will be available for previously filed drawback claims, provided that the claimant furnishes a properly executed single transaction bond covering the claim. Limited successorship, for a 1-year period, for approvals of accelerated drawback is provided for when all rights, privileges, immunities, powers, duties, and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor. Subject to notice, challenge, and appeal procedures, Customs may revoke the approval of accelerated drawback.

Accelerated drawback is paid for approved applicants who have filed the required bond only if Customs preliminary review of the request for accelerated drawback in the drawback claim does not find omissions from, or inconsistencies with, the drawback law and regulations. Conforming requests and claims are certified for payment within 3

weeks after filing, if an implemented component for electronic filing has been used, and within 3 months if the claim is filed manually.

A claimant approved for accelerated drawback under the previous regulations as of April 6, 1998 was permitted to operate under the prior approval of accelerated drawback for a period of 1 year after April 6, 1998. If such a claimant applied for accelerated drawback under section 191.92 within this 1-year period, the claimant may continue to operate under its approval until Customs approves or denies the application under section 191.92, subject to the provisions for revocation in section 191.92.

l. Effect on protests and requests for reliquidation.

A protestant under 19 U.S.C. 1514 and a party requesting reliquidation under 19 U.S.C. 1520(c)(1) are required to state, to the best of the protestant's or party's knowledge, using reasonable care, whether the entry protested or for which reliquidation is requested (if an entry is involved) is the subject of a drawback claim or has been referenced on a certificate of delivery or certificate of manufacture and delivery (19 CFR 173.4(c), 174.13(a)(9)).

m. Restructuring a claimant's drawback claims.

In the interest of administrative efficiency, Customs may require drawback claimants to restructure their drawback claims (for example, if a claimant filed 100 simple, small claims a day for the same kind of merchandise, operation, and drawback, it could be more efficient to consolidate the claims into one claim for the drawback activity over a period of time). The criteria which Customs will follow in making such a determination are stated, as are criteria under which a claimant may be exempt from restructuring (19 CFR 191.53).

III. PENALTIES AND DRAWBACK COMPLIANCE PROGRAM

A. PENALTIES.

1. General.

The Customs Modernization Act also added a new section 593A to the Tariff Act of 1930 (codified as 19 U.S.C. 1593a) containing administrative penalties for the filing of false or fraudulent drawback claims, and provisions establishing a drawback compliance program under which participants may receive reduced penalties and/or warning letters for non-fraud violations. The penalty provisions and the administrative procedures for enforcing them are based on 19 U.S.C. 1592, the section which penalizes negligent or fraudulent practices in connection with the importation of merchandise. The drawback compliance program is similar to the recordkeeping compliance program established under 19 U.S.C. 1509(f).

The penalties statute provides that no person, by fraud, or negligence may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of-

- any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

- any omission which is material.

The statute also penalizes any person who aids or abets any other person to violate the statute. Clerical errors or mistakes of fact are not violations of the statute unless they are part of a pattern of negligent conduct. Penalties are stated as a percentage of the loss of revenue:

- for the 1st negligent violation: an amount not to exceed 20 percent of the actual or potential loss of revenue;
- for a repeat negligent violation relating to the same issue: an amount not to exceed 50 percent of the total actual or potential loss of revenue;
- for each succeeding repetitive negligent violation: an amount not to exceed the actual or potential loss of revenue.
- for a non-repetitive negligent violation committed by the same party: an amount not to exceed 20 percent of the actual or potential loss of revenue;
- for fraudulent violations: an amount not to exceed 3 times the actual or potential loss of revenue.

In addition to paying any penalties, the violating party must also restore any duties or taxes lost by the government as a result of the violation.

2. Prior Disclosure.

The statute also contains a **"Prior Disclosure"** provision which provides that if the person concerned discloses the circumstances of a violation before, or without knowledge of the commencement of, a formal investigation of such violation the monetary penalty assessed may not exceed–

- for fraud: an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or
- for negligence: an amount equal to interest.

The person seeking to make a prior disclosure must tender the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as Customs may provide), after notice by Customs of its calculation of the amount of the overpayment.

B. DRAWBACK COMPLIANCE PROGRAM.

The regulations governing the drawback compliance program established under 19 U.S.C. 1593a are found in 19 CFR 191.191 *et seq.* Participation in the drawback compliance program is voluntary and is open to any drawback claimant, Customs broker who assists claimants in filing claims, or other parties in interest (for example, importers, manufacturers, subcontractors, and exporters, among others). Claimants should file their letter applications to participate with the office where they file drawback claims. Other applicants may submit their letter applications to any drawback office. A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and Customs. Certification requirements take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it--

- understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;
- has in place procedures that explain the Customs requirements to those employees involved in the preparation of claims, and the maintenance and the production of required records;
- has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to Customs;
- has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;
- has in place a record maintenance procedure approved by Customs regarding original records, or, if approved by Customs, alternative records or recordkeeping formats for other than the original records; and
- has procedures for notifying Customs of variances in, or violations of, the drawback compliance program or other alternative negotiated drawback compliance program, and for taking corrective action when notified by Customs of violations and problems regarding such program.

When a party who has been certified as a participant in the drawback compliance program is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a), Customs will, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party within three years may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to Customs, is taken.

IV. DRAWBACK RECORDKEEPING.

A. INTRODUCTION.

1. Purpose.

The purpose of drawback recordkeeping is to enable Customs to verify drawback claims. Generally, records are used to follow the flow of goods from one stage to another, and to support certain regulatory requirements at certain points in the flow. These records provide traceability of the drawback merchandise and articles.

2. Frequently asked questions.

Questions most frequently asked about drawback recordkeeping requirements include: Who must keep records, what type of records are necessary, and how long must records be kept? These questions are addressed below. The main point to keep in mind is that there must be records linking and/or establishing the particulars of importation, manufacture (when applicable), exportation (or destruction under Customs supervision), and other drawback requirements.

3. Drawback activities subject to recordkeeping.

Parties engaged in drawback activity are required to keep records of such activity. Drawback activity may involve the importation, transfer, manufacture and/or exportation (or destruction) of merchandise or articles. A party may be involved in one, several or all of these stages. Where the tasks are divided, each party must maintain its own applicable records. This means that not only must manufacturers and exporters keep records, but also importers and intermediate transferors and transferees, and, if applicable, subcontractors. Intermediate transferors and transferees, which may appear to be only peripherally involved in the drawback process, would probably be required to be issuers and signatories of certificates of delivery, for purposes of identifying and tracking imported merchandise and articles or drawback products.

In the case of successorship, when drawback rights are transferred from a predecessor to a successor by written agreement, merger, or corporate resolution, the predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback.

It is important to note that issuers of certificates of delivery or of manufacture and delivery must keep records supporting the information on the certificates for 3 years after payment of drawback based thereon.

4. Different departments in the same entity; cooperation and coordination.

Parties that are required to keep records for drawback purposes may have several departments in their organization that produce the necessary records. Cooperation and coordination among these different departments is essential. The need for coordination becomes clear when one considers that the personnel responsible for drawback are seldom in charge of record retention. Those responsible for keeping records, usually accounting or operations department personnel, often have no knowledge of drawback recordkeeping requirements. Other departments, not usually involved in recordkeeping, may also need to keep records for drawback purposes. For example, if drawback is claimed under any of the substitution provisions (19 U.S.C. 1313(b), (j)(2), or (p)), it may be necessary to keep records such as engineering drawings, lab tests, or other records in order to show same kind and quality of merchandise used in manufacture or production (1313(b)), commercial interchangeability of merchandise (1313(j)(2)), or same kind and quality for purposes of subsection 1313(p). Evidence that substituted merchandise meets the standards for substitution is necessary. Ability to establish same kind and quality before manufacture of the exported article begins, or commercial interchangeability, whichever is applicable, is a requirement for drawback. In many cases, once these records are destroyed, there is no way to reconstruct them and a failure to provide verification of compliance will result in a denial of drawback.

5. Detail of records.

The types of records that must be kept to support drawback claims will be reviewed in depth in the next sections. However, the records that are retained must be sufficiently detailed to show that all drawback requirements are met.

6. Record retention period.

The records required to substantiate drawback claims must be retained for at least 3 years after payment of the claim (accelerated payment of a claim is considered such payment). This gives Customs time to verify the accuracy of a drawback claim, and to collect drawback improperly claimed in cases where accelerated drawback has been granted but the drawback entry has not been liquidated. Problems sometimes occur when a claimant, which may have had all the necessary records to support its drawback claims at the time merchandise was imported, exported, or manufactured, discards those particular records because they are not the type of records that companies ordinarily retain after the current period. Such records as receiving documents, and quite often production or use records, which show that the imports were actually received and placed into production by the claimant, may not be kept for more than a year. Without these documents, it may be impossible to verify that the merchandise was received and used in manufacture or production. For this reason, the importance of keeping records for the required period is stressed.

For most claimants on accelerated payment, payment is received shortly after the claims are filed. Even if the claimant receives accelerated payment, the time frames for drawback, from importation to 3 years after payment of the claim, can be quite extended. The maximum time frame for unused merchandise can be up to 9 years, and for manufacturing claims, up to 11 years, if accelerated payment is involved (if accelerated payment is not involved, the time frame may be virtually indefinite, depending on when drawback is paid). It is therefore imperative that each claimant review its record retention policy in light of these time frames, to ensure that key records, many of which cannot be duplicated, are not destroyed.

Although the recordkeeping retention period for drawback is 3 years from the date of payment of drawback, the same records may be subject to a different retention period. For example, import entry records are required to be retained for 5 years from the date of entry or filing of a reconciliation. Thus, import entry records could be required to be kept for just over 3 years for drawback purposes (if the export were immediately after the import and a drawback claim was promptly filed and paid), but for 5 years for other purposes (19 U.S.C. 1508).

If drawback records exist and more than 3 years have elapsed since payment of the underlying drawback claim, access to them may not be refused on the basis that 19 U.S.C. 1313(t) and 1508 only require retention for 3 years after the date of payment of drawback. Those statutes provide relief when the time period expires and the records no longer exist. If Customs starts the verification of a drawback claim before the expiration of the time period, the records must be maintained until completion of the verification.

B. RECORDKEEPING REQUIREMENTS FOR DIFFERENT KINDS OF DRAWBACK; DRAWBACK CERTIFICATES; EXPORT SUMMARY PROCEDURES.

The recordkeeping requirements for different types of drawback are set forth below (B.1. through B.8.). Each recordkeeping requirement thereunder is cross-referenced to the appropriate section in C.1 through C.7. which gives examples of the kinds of records containing the information which should satisfy the particular recordkeeping requirement. The parties who must keep records and the records they must keep are listed in D.1. through D.5.

1. Manufacturing drawback, direct identification, 1313(a).

The purpose of recordkeeping under subsection 1313(a) is to provide an audit trail from importation to raw material inventory to work in process; from work in process to finished goods inventory; from finished goods inventory to exportation or destruction, as support that the imported material was incorporated in the exported or destroyed goods. The statute does not permit substitution for the imported duty-paid merchandise. Specific occurrences or events to be shown are set forth below and

references to the types of records used are set forth in the parenthetical clause following the specific occurrences or events:

a. Evidence of importation and receipt of imported merchandise (C.1.);

b. Evidence of use of the imported merchandise in manufacture or production (C.2.). These records could satisfy this requirement by showing:

X Date or inclusive dates of manufacture or production;

X Quantity and identity of imported duty-paid merchandise or drawback products used in, or, if claim for waste is waived, and there are no multiple products, the quantity and identity of the imported merchandise or drawback products appearing in the articles manufactured or produced;

X Quantity and description of the articles manufactured or produced;

X Quantity and value of waste incurred (if claim for waste is waived and the "appearing in" basis is used, waste records need not be kept unless necessary to establish how much imported duty-paid merchandise or drawback products appears in the finished articles);

X Quantity of finished articles released from finished goods inventory for exportation or destruction, and claimed for drawback;

c. Evidence of exportation or destruction under Customs supervision of finished articles (C.6. or C.7.) These records could satisfy this requirement by showing that the finished articles on which drawback is claimed were exported or destroyed under Customs supervision within 5 years after the date of importation of the duty-paid merchandise.

2. Manufacturing drawback, substitution, 1313(b).

The purpose of recordkeeping under section 1313(b) is to: (1) provide an audit trail from importation to raw material inventory; and from raw materials to work in process, to support use of designated imports in manufacturing; and (2) provide an audit trail from exportation or destruction back to finished goods inventory; from finished goods inventory back to work in process; from work in process to raw materials, to support that either the designated imports or materials of the same kind and quality, or any combination of either, were used to manufacture or produce the exported or destroyed goods. Specific occurrences or events to be shown are set forth below and

references to the types of records used are set forth in the parenthetical clause following the specific occurrences or events:

a. Evidence of importation and receipt of imported merchandise (C.1.);

b. Records that will establish the identity and specifications of the merchandise designated by the drawback claimant as the basis for a 1313(b) drawback claim. This merchandise will either be imported duty-paid merchandise or drawback products (finished or partially finished products manufactured in the U.S. under a general or specific drawback ruling) (C.1.);

c. Evidence of manufacture or production of articles manufactured with the designated imported merchandise and of articles manufactured with the substituted domestic, duty-paid or duty-free merchandise (C.2.). These records could satisfy this requirement by showing:

X The quantity of merchandise of the same kind and quality as the designated merchandise used in (or appearing in) the exported or destroyed articles;

X That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used it in manufacture or production and that during the same 3-year period, it manufactured or produced the exported or destroyed articles;

X Amount and value of waste incurred (where “appearing in” basis is not used);

d. Evidence that the substituted merchandise that was used to produce the exported or destroyed articles was of the same kind and quality as the designated merchandise (C.3.);

e. Evidence that the completed articles were exported or destroyed under Customs supervision within 5 years after the date of importation of the designated merchandise (C.6. or C.7.).

3. Rejected Merchandise Drawback, 1313(c).

The purpose of recordkeeping under subsection 1313(c) is to provide an audit trail from importation to return to Customs custody of the imported merchandise and exportation or destruction of that merchandise, as well as establishing the basis for rejection of the merchandise. The statute does not permit substitution for the imported duty-paid merchandise. Specific occurrences or events to be shown are set forth below

and references to the types of records used are set forth in the parenthetical clause following the specific occurrences or events:

a. Evidence of importation and receipt of imported merchandise (C.1.);

b. Evidence that the imported merchandise did not meet specifications, was shipped without the consent of the consignee, or was defective as of the time of importation (C.5.);

c. Evidence that the imported merchandise was exported or destroyed under Customs supervision (C.6. or C.7.).

4. Unused merchandise drawback, direct identification, 1313(j)(1).

The purpose of recordkeeping under subsection 1313(j)(1) is to provide an audit trail from importation to inventory and from inventory to exportation or destruction, and to support that the exported or destroyed merchandise was, in fact, imported, and was not used in the U.S. The statute does not permit substitution for the imported duty-paid merchandise. Specific occurrences or events to be shown are set forth below and references to the types of records used are set forth in the parenthetical clause following the specific occurrences or events:

a. Evidence of importation and receipt of imported merchandise (C.1.);

b. Evidence that the imported merchandise has not been used in the U.S. (employed, or had performed on it any operation or combination of operations amounting to a manufacture or production for drawback purposes) prior to exportation or destruction (C.4.);

c. Evidence that the imported merchandise which is being used as the basis for a 1313(j)(1) claim was exported or destroyed under Customs supervision before the close of the 3-year period beginning on the date of importation (C.6. or C.7.).

5. Unused merchandise drawback, substitution, 1313(j)(2).

The purpose of recordkeeping under subsection 1313(j)(2) is to provide an audit trail showing that the claimant has imported merchandise or received from the importer and duty payer imported merchandise, commercially interchangeable merchandise or any combination thereof; and to provide an audit trail from exportation or destruction to inventory; and from inventory to receipt to show that the exported or destroyed merchandise is commercially interchangeable with the imported designated merchandise, and that the exported or destroyed merchandise was not used in the U.S.

Specific occurrences or events to be shown are set forth below and references to the types of records used are set forth in the parenthetical clause following the specific occurrences or events:

a. Evidence of importation and payment of duty on imported merchandise (C.1.);

b. Evidence that the substituted merchandise:

X Is commercially interchangeable with the imported merchandise (C.3.);

X Is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under Customs supervision (C.6. or C.7.);

X Before such exportation or destruction has not been used in the U.S. (employed, or had performed on it any operation or combination of operations amounting to a manufacture or production for drawback purposes) (C.4.);

X Was in possession of the claimant who must either be the importer who paid the duty on the imported merchandise, or the person who received the imported merchandise, commercially interchangeable merchandise or any combination thereof from the importer and duty-payer (C.1.).

6. Petroleum derivatives drawback, 1313(p).

The purpose of recordkeeping under subsection 1313(p) is to provide an audit trail from the importer of the imported merchandise (if the imported merchandise is a petroleum derivative) or from the manufacturer or producer of a petroleum derivative manufactured or produced from crude petroleum or a petroleum derivative under subsection 1313(a) or (b) to the exporter; to show that the exported article is either commercially interchangeable or described in the same eight digit HTSUS classification as the imported merchandise or manufactured or produced petroleum derivative; and to show that exportation was within the time allowed. Specific occurrences or events to be shown are set forth below (a. and b. below are alternatives) and references to the types of records used are set forth in the parenthetical clause following the specific occurrences or events:

a. Evidence of importation or receipt by the exporter of the imported qualified article (C.1.);

b. Evidence of manufacture or receipt by the exporter of the manufactured qualified article, including the identity of the specific

refinery or production facility where it was manufactured (C.2., C.1.);

c. Evidence that the exported article and the qualified article are of the same kind and quality (specifically, that they have the same 8-digit HTSUS tariff classification or are commercially interchangeable) (C.3.);

d. Evidence of exportation of the exported article within 180 days of importation of the imported qualified article or, if the qualified article was manufactured or produced under subsection 1313(a) or (b), during the period in which the qualified article was manufactured or produced or within 180 days after the close of that period (C.6.).

7. Transfer of merchandise or articles; 19 CFR 191.10, 191.24, 191.9.

Certificates of delivery and certificates of manufacture and delivery are used for transfers of drawback merchandise or articles, except in the case of transfers between principals and agents in a drawback principal-agency relationship. The purpose of recordkeeping for these certificates, and for the special certificate provided for in the principal-agency situation, is to provide an audit trail for the merchandise or articles transferred and to establish the information provided in the certificate. Specific occurrences or events to be shown are set forth below (a., b., and c. below are alternatives) and references to the types of records used are set forth in the parenthetical clause following the specific occurrences or events:

a. Evidence for a certificate of delivery: to whom merchandise is delivered; date of delivery; import entry number; quantity delivered; total duty paid on, or attributable to, the delivered merchandise; date of issuance of certificate of delivery; date of importation; port where import entry filed; person from whom delivered; description of merchandise delivered; HTSUS number, with a minimum of 6 digits, for the designated imported merchandise; and, if the delivered merchandise is substituted for the designated imported merchandise under subsection 1313(j)(2), the HTSUS or Schedule B commodity number, with a minimum of 6 digits, for the delivered merchandise (C.1., C.3.).

b. Evidence for a certificate of manufacture and delivery: to whom article or drawback product is delivered; identification of the general or specific manufacturing drawback ruling relating to the manufacture or production of the article or drawback product; quantity, kind and quality of imported merchandise or drawback product designated; import entry number, HTSUS number to a minimum of 6 digits, and applicable duty amounts for imported

merchandise; date received at factory; date used in manufacture; value at factory (if applicable); quantity of waste, if any (if applicable); market value of any waste (if applicable); total quantity and description of merchandise appearing or used; total quantity and description of articles produced; date of manufacture or production of the articles; quantity delivered; and person from whom delivered (C.1., C.2.).

c. Evidence for transfers of merchandise and articles in a principal-agency operation: quantity, kind and quality of merchandise transferred from principal; date of transfer of merchandise from principal; date of manufacturing or production operations performed by agent; total quantity and description of merchandise appearing in or used in manufacturing or production operations performed by agent; total quantity and description of articles produced by agent; quantity, kind, and quality of articles transferred from agent; and date of transfer of articles from agent (C.1., C.2.).

8. Export summary procedure; 19 CFR 191.73.

A claimant using the export summary procedure is required to support the drawback entry with a chronological summary of the exports and any additional evidence required by Customs officers to establish fully the identity of the exported articles and the fact of exportation. The claimant is required to maintain complete and accurate records of exportation, including the identity and location of the ultimate consignee of the exported goods (*i.e.*, the person who files the summary, rather than the carrier, is the person responsible for the accuracy of the facts asserted in the summary). The ultimate consignee or the person to whom the goods were shipped must be known because that information serves as a basis for establishing the fact and date of exportation. The records required to support exportation using the export summary are generally the same as those that would be required to be submitted to Customs if the export summary procedure were not used (C.6.).

C. EXAMPLES OF RECORDS.

Examples of records used to support different drawback requirements are listed below. The examples are not all-inclusive; companies may keep other types of records which could also be used to support a drawback claim. The examples are listed in a hierarchy that generally lists first the most persuasive evidence and progresses therefrom. One item may not always suffice to establish the necessary fact. Similarly, not every listed record will always be required for drawback claims verification. In this regard the applicable regulations always should be consulted. The records must identify the merchandise or article, or the claimant must show a clear link between the record and the merchandise or article, or event.

1. Importation and receipt of imported merchandise.

a. Customs import documents such as a CF 7501 (Entry Summary) (for entry or withdrawal from warehouse for consumption) or a certificate of delivery supporting the receipt of imported merchandise;

b. Purchase order or contract of purchase, invoice, packing list, vendor confirmation;

c. Accounts payable, disbursements, letters of credit, payment documents;

d. Receivers, inventory records, (perpetual or physical) transaction log, stores control;

e. Import bill of lading, delivery records from point of import to plant.

2. Manufacture or production.

a. Inventories - raw material, work in process, finished goods, or in certain large assembly operations, a comprehensive inventory control system, wherein receipt, and shipment of the product are shown by receiving and shipping documents. The inventory records should include references traceable to the source of the material and traceable to the material's destination. Use is shown by a bill of materials which identifies what raw materials are required, the raw materials withdrawals that show what materials were “used in” or “appear in” the finished goods, the labor routing or travelers that show which department performed the manufacturing operation, and finished goods inventory reduction, which shows that those goods were withdrawn from inventory. Due care must be given to maintain evidence of more than mere direction, *i.e.*, the bills of material must be dated and current, and inventories must be reconciled periodically;

b. Bills of material, formulas, scrap or waste records (to the extent that the claimant can show that the bill of materials or formula demonstrate manufacture or production of the manufactured article in question);

c. Job or work orders, inventory picks, travelers, serial or lot number control records, particularly in the case of subsection 1313(a) direct identification manufacturing;

d. Inventory methodologies (*e.g.*, inventory turnover rates or "turns," FIFO (first-in , first-out), or other inventory identification methods as provided in 19 CFR 191.14);

e. Stores requisition, work in process records showing that production occurred.

3. Criteria for substitution.

The records showing compliance with the criteria for substitution include records used to verify that the imported and substituted merchandise were of the same kind and quality for purposes of subsection 1313(b) or (k), that the imported and substituted merchandise were commercially interchangeable for purposes of subsection 1313(j)(2), or that the qualified article and the exported article were of the same kind and quality for purposes of subsection 1313(p). The records must describe the compared merchandise with adequate specificity to ensure that the requirements for substitution are met. Generally, these records should reflect and be related to the particular requirement for substitution. For example, for commercial interchangeability under subsection 1313(j)(2), the factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification, and value (see 19 CFR 191.32(c)). Therefore, the records for commercial interchangeability under subsection 1313(j)(2) should reflect the specifications for the Governmental and/or recognized industrial standards, part numbers if applicable, HTSUS classification, and value or cost of the imported and substituted merchandise, as well as any other records relating to commercial interchangeability of the particular kind of merchandise.

a. Certifications regarding grade, specifications, content (Government certificates like USDA or FDA or industry or independent certifications such as weighers or gaugers);

b. Sales contracts, customer purchase order specifications, commercial invoices, inventories;

c. In-house lab reports, engineering specifications, commercial invoices, inventories;

d. Bills of Material, description of the manufacturing process; flow charts for the manufacturing process (for substitution under subsection 1313(b));

e. Import entry documentation (entry and entry summary) and export documentation (Shipper's Export Declaration (S.E.D.)).

4. Use, 1313(j).

These records are used to show that the imported merchandise or the commercially interchangeable substituted merchandise, under subsection 1313(j), has not been used in the United States before exportation or destruction. As stated above, “use” for purposes of this restriction, includes employment of the merchandise or performance on the merchandise of any operation or combination of operations amounting to a manufacture or production for drawback purposes. The records include inventories, material requisitions, travelers or labor routing sheets, or other material movement documents, or other records that show that the claimed merchandise was not used prior to exportation or destruction. For example, records of receipt into a storage warehouse and withdrawal from that storage warehouse could provide evidence of non-use.

5. Non-conformance, shipped without consent, or defective, 1313(c).

These records are used to show that the imported merchandise did not conform to sample or specifications, was shipped without the consent of the consignee, or was determined to be defective as of the time of importation. Because no substitution is provided under this subsection, merchandise must be traceable to receipts, inventory or other accounting records and exports must be correlated with imports.

a. A signed agreement between the importer and the foreign supplier that the imported merchandise was defective at the time of importation;

b. Purchase orders, contracts, sales confirmations, and specifications (in each case, linked to the specifications of the merchandise);

c. A signed statement from the consignee attesting to the fact that the merchandise had been shipped without his consent.

6. Exportation.

Records used to show exportation must include one or more items from a., below, and be reconcilable with some of the items listed in b. through e., below. To support the exportation of a particular item, a paper trail is needed to trace the item from the finished goods or other inventory to the vessel, air carrier, or land carrier that actually takes the merchandise out of the U.S. The trail must include a bill of lading or other document that is issued by the exporting carrier, or other third party such as foreign customs, and include the time and fact of exportation. Generally, a bill of lading will reference an invoice or other document that can be traced to withdrawal of the goods from the claimant's inventory.

a. An originally signed bill of lading, air or freight waybill, Canadian Customs manifest, cargo manifest, notice of foreign trade zone transfer, foreign Customs document, landing certificate, delivery

record from plant to export, captain's loading ticket, loading report, shipping release, or certified copies thereof (see 19 CFR 191.72);

b. Sales invoice, packing list, customer purchase order/sales contracts;

c. Receivables, cash receipts;

d. Warehouse withdrawals, inventory pick lists, finished goods inventories, transaction log;

e. Especially for Canada or Mexico (due to the predominant use of trucks and unique circumstances at these border crossings) coordination with the appropriate drawback center as to what evidence is acceptable may avoid evidence of exportation problems when drawback claims are filed:

Canadian Exports - Exported merchandise to Canada has its "Canada Customs Invoice," stamped upon entry, and a stamped copy marked "importer/owner/broker" is returned to the party conducting the transaction, which may serve as acceptable evidence of exportation. The Canadian entry document, known as the B-3, and the K-84 statement, or the "Detailed Coding Statement" may serve as alternate evidence of export.

Mexican Exports - For exports to Mexico, documents from Mexican Customs, or other non-customs Mexican documents may serve as acceptable evidence of importation. In a related party transaction, receiving, inventory, and other related records of the Mexican firm that correspond to similar records of the U.S. shipping firm may be acceptable. A declaration under limited circumstances may also be acceptable from a customer receiving goods in Mexico, but it should reference an "audit trail" between U.S. and Mexican carriers stating in writing: "I picked up XXX number of boxes." The recipient should state: "I received XXX number of boxes containing so many items," with sufficient detail to lend credibility. Customs may also accept a "Pedimento" from Mexico at the border (an entry document for goods entering Mexico; it acts as a supporting document to establish evidence of exportation from the U.S.). Customs could also accept an original signed letter, translated into English, from those persons destined to receive the merchandise in support of an assertion that the goods were exported.

7. a. Destruction.

Records used to show destruction must specifically identify the merchandise or articles destroyed. As with exportation, to support the destruction of a particular item, a paper trail is needed to trace the item from the finished goods or other inventory to the place of actual destruction. The trail must include documents of transfer, receipt, and transportation (including inventory withdrawals and/or financial records which can be related to the destroyed merchandise or articles), and must include the time and fact of destruction.

a. Affidavits from disinterested third parties, such as wrecking companies and landfill operators attesting as to what they witnessed, *e.g.*, "... the goods were crushed and then ground up into one inch diameter pebbles," or whatever the actual destruction process was and what happened to any residue or remainder, *e.g.*, buried or incinerated;

b. Photographs, which depict destruction, to accompany affidavits;

c. Reports from other Government agencies, *e.g.*, EPA, certifying destruction.

b. Recovered Materials; Recycling.

If destruction is claimed under 19 U.S.C. 1313(x) records as to the disposition of the recovered materials must be provided. In addition, records which show the amount of value received as a result of the recovery, such as records of a tax benefit or royalty payment, must be maintained.

D. WHO MUST KEEP RECORDS.

1. Importer.

The importer is required to keep importation documents (C.1.). If the importer transfers the imported merchandise to another party, the importer must certify delivery on a certificate of delivery and maintain records supporting the information it provided on that certificate (B.7.). A certificate of delivery is retained by the party to whom the merchandise or article was delivered under the certificate.

2. Intermediate transferor.

A party, other than the manufacturer or importer (see above), who transfers substituted commercially interchangeable merchandise (under subsection 1313(j)(2)), drawback products, or manufactured articles must certify delivery on a certificate of delivery and maintain records supporting the information it provided on that certificate

(B.7.). A certificate of delivery is retained by the party to whom the merchandise or article was delivered under the certificate.

Customs does not consider a wholly-owned subsidiary to be a part of the parent corporation if the subsidiary is a separate corporation, notwithstanding the closeness of their relationship; consequently, a transfer between a parent corporation and its separately incorporated subsidiary would require the execution of a certificate of delivery. Such documentation is not required between unincorporated divisions of the same corporation.

3. Manufacturer or producer.

Each manufacturer or producer, for drawback purposes under subsection 1313(a) or (b), is required to keep records of the manufacture or production (B.1., B.2., C.2.). A manufacturer or producer who does not directly export the manufactured articles, but delivers them to another party for further manufacture, exportation, and/or any other reason, must complete and sign a certificate of manufacture and delivery (B.7.).

If the manufacturer or producer performs the manufacture or production by means of an agent under the drawback principal-agency procedures (19 CFR 191.9), the principal is required to certify that it can establish certain facts pertaining to the principal-agency operation (B.7.). Either or both the principal and/or agent may keep the records listed in C.2., but the principal is responsible for providing the records to Customs upon request (19 CFR 191.9).

4. Exporter or destroyer.

Unless an exporter or destroyer of articles or merchandise upon which a drawback claim is based is also the claimant, the exporter or destroyer is not required to keep records of the exportation or destruction. Instead, the claimant must obtain those records and keep them. In the case of destruction, the claimant (whether or not also the destroyer) is required to submit evidence of the destruction (either a CF 7553 certified by a Customs official witnessing the destruction or, if Customs does not attend the destruction, independent evidence of the destruction) (C.7.). In the case of exportation, the claimant (whether or not also the exporter) is required to either: (1) file the actual evidence of the exportation with the drawback claim; or (2) if the export summary procedure is used, maintain the Chronological Summary of Exports and the supporting evidence of exportation necessary for Customs to establish fully the identity of the exported articles and the fact of exportation (19 CFR 191.71 through 191.73) (C.6., C.8.).

5. Claimant.

Depending on the individual circumstances and the type of drawback involved, the claimant may be the importer, manufacturer, exporter, or intermediate party

(transferee), or a combination thereof. As stated above, the claimant is required to keep records of the exportation or destruction upon which the claim is based. Otherwise, the claimant must keep the records applicable to its status.

V. PUBLISHED RULINGS (CSD'S AND TD'S) ON DRAWBACK SINCE 1978.

There follows a list of rulings published in the *Customs Bulletin* as Customs Service Decisions (CSD) or Treasury Decisions (TD) since 1978. Short summaries of the issues in the rulings are included, and the rulings are listed in chronological order (by TD or CSD number). Those TD or CSD numbers marked with an asterisk (*) are rulings which may have been affected by the amendments to the drawback law made by section 632 of the NAFTA Implementation Act or the amendments effected to the Customs Regulations on drawback (19 CFR Part 191) by [Final Rule].

Users of this list are cautioned that the summaries for the rulings are only summaries provided for the convenience of the public; they do not purport to describe all issues considered with legal precision. Further, the indication of whether a ruling has been affected by the Mod Act or the recent amendments to the drawback regulations is not definitive; it is based on an expedited review of the rulings by one individual. Any reliance on the rulings listed is subject to the conditions and requirements in 19 U.S.C. 1625 and 19 CFR Part 177.

TD or CSD No.	Brief Summary or Description
TD78-96	Treatment of import fees on sugar, sirup, and molasses as "duties" (see also TD78-325)
TD78-281*	Eligibility of rapidly depreciating and obsolete equipment; sec. 1313(c)
TD78-283	Evidence of exportation
TD78-312	Merchandise exported to foreign corporation owned by U.S. corporation; sec. 1313(g)
TD78-313	Requirement that both principal and agent have drawback authorizations
TD78-325	Treatment of import fees on sugar, sirup, molasses (see also TD78-96)
TD78-328	Criteria for establishing same kind and quality for tires of large mining machines
TD78-342*	"Manufacture" for drawback defined; agency
TD78-354	Valuation of exported products
TD78-359	Substitution of refined coconut oil

TD or CSD No.	Brief Summary or Description
TD78-371	Steel balls consumed in the process of grinding iron ore
TD78-378	Amorphous carbon electrodes used in the manufacture of various chemicals as tools
TD78-402	Carbon anodes used and consumed in manufacture of aluminum
TD78-405	Principal-agency relationship of corporate claimants
TD78-419	Quantity of merchandise designated for claim under sec 22.6 (g-1), C.R. (Now Gen. Manufacturing Ruling for Petroleum and Petroleum Derivatives (TD84-49))
TD78-422	Railway cars constructed from imported steel sheet and exported
TD78-459	Whether exportation occurs when products are shipped to the Northern Mariana Islands
TD78-465	Substitution of steel with different “m” factor
CSD79-19	Date of importation of warehoused merchandise for drawback purposes
CSD79-21	Supplies used on U.S. vessels
CSD79-27*	Designation of imported material on a FIFO basis under sec. 22.4(f), C.R.
CSD79-39*	Accelerated payment prior to initial audit
CSD79-40	Whether testing and assembly of wrist-watches is a manufacture or production
CSD79-42	Statement for steel with different “m”factors (see also TD78-465)
CSD79-52	Sugar; determination of market values for products refined from imported sugar; whether toll processed sugar is to be included in calculation of drawback
CSD79-65	Exportation of non-conforming merchandise without returning to Customs custody
CSD79-72*	Methods for proving exportation of merchandise on which drawback is claimed
CSD79-77	Articles produced in Guam and later exported; articles shipped to Guam
CSD79-79	Copying machines disassembled and reassembled as kits
CSD79-87	Importation of articles manufactured abroad with the use of drawback articles

TD or CSD No.	Brief Summary or Description
CSD79-88	Substitution of mischmetal (Modified by CSD81-235)
CSD79-92	Whether the reduction in proof of distilled spirits is a manufacture or production
CSD79-200	Gloves exported and advanced in value abroad precluded from entry under item 804.20, TSUS
CSD79-252*	Whether commingled fungible merchandise may be identified for drawback purposes on a FIFO basis
CSD79-253	Substituted domestic merchandise of same kind and quality; component of a chemical blend
CSD79-254	Use of company invoices to substantiate exportation of merchandise (clarified by CSD82-59)
CSD79-257	Whether the right to claim drawback is a transferable right
CSD79-295	Sec. 1313(c) cannot be used by an importer to correct incorrect or erroneous specifications in ordering merchandise
CSD79-301*	FIFO inventory turnover records; “Use in manufacture” under sec. 1313(b)
CSD79-330	Canadian automotive products for which drawback has been allowed
CSD79-339	Imported raw peas “manufactured or produced”under sec. 1313(a)
CSD79-354	Transfer of right to claim drawback from one corporation to another
CSD79-363	Facsimile signature of a district director or his designee on a Notice of Exportation (CF 7511) will suffice to certify that form
CSD79-367*	Diamonds examined in a bonded warehouse and then entered may not later be exported with drawback on basis that they do not conform to sample or specifications (sec. 1313(c)) (explained and distinguished by CSD81-47)
CSD79-394	Persons who may file Certificates of Delivery
CSD79-399*	Filing proof of exportation under the Uncertified Notice of Exportation Procedure
CSD79-402	Whether an examination of accounting and financial records is necessary to verify drawback claims
CSD79-405	Duty paid on imported merchandise determines the amount of drawback when a “drawback product” is designated; chilled or frozen orange juice is not same kind and quality as orange juice from concentrate

TD or CSD No.	Brief Summary or Description
CSD79-408	Unmarketability due to patent infringement not grounds for sec. 1313(c) drawback
CSD79-409	Concentrated orange juice for manufacturing is not same kind and quality as concentrated tangerine juice for manufacturing
CSD79-411	Return to Customs custody under sec. 1313(c)
CSD79-445	Public Law 95-410 does not prescribe a time limit within which Customs must liquidate or complete drawback entries
CSD79-446	Domestic Torak technical with dialifor content of 75-90% purity range is not same kind and quality as imported Torak technical which has a dialifor content of 90-93% purity range
CSD79-448*	FIFO accounting principles
CSD79-468	Date drawback entry considered filed
CSD79-472	“Abstract of Manufacturing Records” defined
CSD79-473	Refund of internal revenue taxes; sec. 1313(a) and (b)
CSD80-58	Manufacture or production defined for drawback
CSD80-63	Obligation to keep required records; sec 22.4(g), C.R.
CSD80-67	Destruction of foreign trade zone (FTZ) restricted-status merchandise for drawback purposes
CSD80-68	Distribution of drawback among products resulting from manipulation of imported merchandise
CSD80-73	Timeliness of claims; delay by Customs as a basis for reliquidation
CSD80-99	Use of perforated signatures under the Uncertified Notice of Exportation procedure; sec. 22.7, C.R.
CSD80-102	Certificate of Delivery; sec. 22.15(b), CR
CSD80-107	Approved manufacturing period limited to a harvesting period
CSD80-132*	Use of low-to-high designation principle by drawback claimants
CSD80-137	Whether drawback is allowable on valuable waste incurred in manufacture
CSD80-156	Schedules; formulas; stock-in-process; non-specification
CSD80-160*	Certificate of Delivery requirements; sec. 22.15 (a) and (b), C. R.

TD or CSD No.	Brief Summary or Description
CSD80-162	Reduction of degree Brix of orange juice concentrate not a manufacture for drawback
CSD80-171	Designation of same kind and quality merchandise; tinplate coils
CSD80-180*	Landing certificate as proof of exportation; sec. 22.17 (a) and (b), C. R.
CSD80-183	Manufacture or production for drawback purposes (injectables)
CSD80-187	Existence of defective part in one machine as evidence that similar machine fails to meet specifications
CSD81-7	Recasting of metal in gold chains into ingots; manufacture or production under sec. 1313(a)
CSD81-32	Exportation of aircraft for drawback purposes by entry of aircraft into international traffic
CSD81-42	“Appearing in” method as a basis of claim for drawback; records of waste
CSD81-44	Effect of machining/threading of stainless steel fittings in FTZ
CSD81-47	Effect of pre-entry examination of merchandise on claims under sec. 1313(c)(CSD79-367 explained & distinguished)
CSD81-65	Filling, sewing, and labeling of bags as a manufacture or production under sec. 1313(a)
CSD81-76	Requirements of the principal-agent relationships established by TD 55027(2) and 55207(1)
CSD81-81	Commingling of foreign and domestic orange juice concentrates as a manufacturing process for drawback
CSD81-96	Whether orange juice as extracted from fresh oranges is same kind and quality as concentrated orange juice under sec. 1313(b)
CSD81-131	Substitution of domestic reconstituted tobacco scrap for flue-cured scrap tobacco
CSD81-138*	Extension of time period for the return to Customs custody of rejected merchandise
CSD81-141	Undershipment of ordered quantity of merchandise shipped without consent; sec. 1313(c)
CSD81-142	Applicability of drawback for merchandise used in an assembly operation to manufacture an article under drawback conditions

TD or CSD No.	Brief Summary or Description
CSD81-143	Cargo containers manufactured in U.S. with foreign components
CSD81-146	Timely filing of application; retention of records
CSD81-150	Communications satellites stored in FTZ
CSD81-153	Chemical milling of titanium offcuts constitutes manufacture under sec. 1313(a)
CSD81-167	Cable transported to and laid between foreign countries and/or their possessions is exportation
CSD81-173	Denial of drawback when claimant fails to make timely submission of proof of exportation or certificate of manufacture; sec. 22.13(a), C.R.
CSD81-176	Ordered merchandise doesn't conform to pre-importation standards or specifications; sec. 1313(c)
CSD81-179*	Machining a casting during a repair or assembling parts into an article renders the imported article imported article ineligible for same condition drawback
CSD81-190*	Applicability of sec. 1313(c) to 7 or 9 year old whiskey
CSD81-203*	Parameters for same condition drawback
CSD81-207	Whether Customs may demand repayment of drawback legally obtained if articles are returned to the U.S. under temporary importation bond (TIB), later breached
CSD81-210*	CF 7543 contains required information for drawback claim; FIFO under sec. 1313(j) claims
CSD81-215	Two or more consumption entries covering the same merchandise may be designated as basis for drawback
CSD81-218	“Use” requirement as to members of an incorporated agricultural cooperative marketing association
CSD81-219	Cutting rolls of fabric permitted under sec. 1313(j);cut to sized pieces a manufacture under sec.1313(a) and (b)
CSD81-220*	Accounting procedures when sec. 22.4, C.R. is applicable
CSD81-222*	Boxes, cans, and bottles not eligible for same condition drawback when imported for packaging of merchandise
CSD81-225	Trucks imported into Puerto Rico from the U.S. Virgin Islands and then returned to the islands; sec. 1313(j) (clarified by CSD82-48)

TD or CSD No.	Brief Summary or Description
CSD81-235	Shearing of mischmetal chunks into smaller pieces and bagged is a manufacture (CSD79-88 modified)
CSD81-240	Use of through bill of lading issued by other than the exporting carrier does not satisfy sec. 22.7(c), C.R.
CSD82-7*	Repair/rework/adjustment after testing or inspecting not allowed under sec. 1313(j)
CSD82-30	Claimant may exercise the option of reconstructing records owing to accidental loss or by providing necessary proof of records
CSD82-35*	Use of FIFO for identification for drawback on fungible merchandise belonging to several persons and commingled in storage (TD67048(1) revoked)
CSD82-37	Three-year time limitation in which a drawback entry and certificate of manufacture shall be filed commences the first day the articles are exported for drawback
CSD82-38	Customs auditor does not have the absolute right under sec. 22.43(c), C.R., to examine financial records of a drawback claimant
CSD82-40	Amendment to the general rates for sec. 1313(a) 1313(a) and 1313(b) steel drawback (TD81-234 & TD81-74 amended)
CSD82-44	Customs is not required to perpetuate an error caused by erroneous information submitted by a drawback claimant
CSD82-48	Merchandise imported duty-paid from the Virgin Islands are eligible for return of those duties under same condition (CSD81-225 clarified)
CSD82-59*	Unsigned bills of lading bearing indication of receipt and export by the exporting carrier are sufficient to support Notices of Exportation (CF7511) (CSD79-254 clarified)
CSD82-63*	Substitution of domestic palm kernel oil for foreign palm kernel oil is not allowed under same condition drawback law
CSD82-67	Transformation of common cotton terry towels into refresher towels constitutes a manufacture (Limited to facts; CIE1086/62 not affected)
CSD82-71	Members of an incorporated agricultural cooperative association regarded as partners for purposes of the “use” requirement under sec. 1313(b)

TD or CSD No.	Brief Summary or Description
CSD82-83	Properly and accurately maintained records which are kept for drawback purposes would be sufficient to show use of the designated merchandise as required under sec. 22.5(a)(2), C.R.
CSD82-93*	Articles imported as entireties disassembled for shipping purposes may be eligible for sec. 1313(j) drawback
CSD82-96	Whether substandard finished semi-conductor devices constitute a product for drawback purposes; applicability of relative value procedure; use of “appearing in” basis
CSD82-111	Drawback claimant may identify a commercial lot of imported duty-paid merchandise as domestic merchandise for purposes of sec. 1313(b)(extended by TD84-95)
CSD82-127	Applicability of the value of waste in determining the amount by which the designated merchandise is reduced during the computation of drawback
CSD82-135*	Imported engines which are assembled into machinery or vehicles for use in U.S. not eligible for drawback under sec. 1313(j); engines imported assembled which are disassembled for testing/review must be reassembled prior to exportation for sec. 1313(j) drawback
CSD82-138*	Blanket identification method of sec. 22.4(f), C.R., may be used by same condition claimants
CSD82-143*	Waiver of certificates of delivery and certificates of manufacture and delivery
CSD82-154	Whether exportation occurs when a company sends watches manufactured in the U.S. to distribution center in Canada for storage and sale therefrom to purchasers
CSD82-155	Shipment of merchandise abroad for disassembly with intent that the components be returned to the U.S. is not an exportation for purposes of sec. 1313 and regulations
CSD82-160	Application of drawback and item 807.00, TSUS to the use of fabricated wafers used in the foreign assembly of semiconductor devices imported into the U.S.
CSD83-1*	Applicability of same condition drawback to medicinals erroneously shipped to consignees
CSD83-2*	Repacking or repackaging for retail sale is permissible for drawback under sec. 1313(j)

TD or CSD No.	Brief Summary or Description
CSD83-7	Calculation of drawback using a mathematical formula in lieu of actual measurement in the production of orange juice
CSD83-10	Broker may not continue to file claims for drawback and receive monies for the bankrupt claimant unless the contract between the broker and the claimant is assumed by the trustee in bankruptcy, or the latter, with the approval of the bankruptcy court, enters into a new agreement with the broker concerning the filing of claims
CSD83-16	Interpretation of the requirements set forth in the rejected merchandise drawback statute
CSD83-17	Use of living quarters by the captain of a yacht being offered for sale does not render the yacht ineligible for sec. 1313(j) drawback
CSD83-19*	Failed manufacture or production process is ineligible for sec. 1313(j) drawback
CSD83-23*	Accidental damage or destruction after importation renders the damaged or destroyed merchandise ineligible for sec. 1313(j) drawback
CSD83-26*	Several same condition drawback issues discussed (application prior to export; documentation; accelerated payment; identity of merchandise; deterioration and damage)
CSD83-28*	Accelerated drawback claimants, after having established a drawback value for certain articles, may use that value for future claims for the same articles
CSD83-29*	Merchandise imported prior to 12/28/80, but not entered until that date or thereafter is eligible for sec. 1313(j) drawback upon compliance with the law and operating instructions
CSD83-54*	Identification procedure for drawback purposes where fungible material from various sources is commingled in storage (reaffirmed by CSD88-1)
CSD83-66	Failure to return merchandise for which drawback is sought to Customs custody as required by law; possible relief under sec. 1520(c)(1)
CSD83-68*	Failure to give prior notice of exportation under sec. 1313(j)
CSD83-70*	Denial of extension of time to file drawback entries under sec. 22.13(a), C.R.
CSD83-72*	Elements for principal and agent relationship under TD 55027(2) and TD 55207(1)

TD or CSD No.	Brief Summary or Description
CSD83-85	Applicability of drawback to foreign merchandise admitted into a FTZ and merchandise manufactured in the zone; sec. 1313(a)and (j) (modified by CSD85-33)
CSD83-90	Blending of cold-pressed orange peel oil with a batch of concentrated orange juice for manufacturing to mask the“cardboard off flavor” of the concentrate is a manufacture or production for drawback
CSD83-98	Delivery receipts signed by the driver of a company-owned truck involving transactions in which the exporter, carrier, and recipient are related, may be accepted by Customs for use by the claimant as proof of exportation under the Uncertified Notice of Exportation Procedure
CSD83-104*	Request for waiver of the requirement to export damaged merchandise to obtain drawback under sec. 1313(c)
CSD84-6	Non-consumable souvenir articles delivered to gift shops for sale to passengers on board cruise ships which depart from and return to U.S. ports are not exported for drawback
CSD84-7	Entries improperly handled as a result of the misinterpretation of the law cannot be corrected under sec. 1520(c)(1)
CSD84-16	Galvanized welded and seamless pipe; substituted merchandise; pipes of different sizes not same kind and quality
CSD84-19*	Where a claimant could qualify for drawback under either sec. 1313(a) or 1313(j), and the Customs region where the claim is processed believes that the claim was submitted under the incorrect provision, that office can process the claim as submitted
CSD84-28*	Nonregulatory procedural requirement is enforceable against drawback claimants who are shown to have had timely actual notice of the requirement (clarified by CSD84-51)
CSD84-51*	Claimant who had prior knowledge of, but failed to adhere to interim operational instructions for sec. 1313(j) drawback, denied drawback (CSD84-28 clarified)
CSD84-52*	Installation of a necessary component part by noncomplex means constitutes a manufacture or production under sec. 1313(j)
CSD84-58	Claimant must show evidence of compliance with former sec. 22.5(e), C.R., to establish drawback eligibility; application of sec. 1520(c)(1) in amending claim

TD or CSD No.	Brief Summary or Description
CSD84-63	Claimant must comply with the legal requirement of the drawback law, even though failure to comply with the law was attributed to a government regulation or ruling
CSD84-65*	Equipment which, when used, fails to operate because of defects does not render sec. 1313(j) inapplicable
CSD84-75	Applicability of an endorsement executed by a government transportation officer as documentation to prove exportation under the drawback law
CSD84-79*	Removal and replacement of a metal plate on a machine is an incidental operation permissible under sec. 1313(j)
CSD84-81	Programming of blank magnetic tapes for computer use constitutes a manufacture
CSD84-82*	Fungible input placed in commingled storage may be withdrawn on a high-to-low basis against the drawback input commingled therein; sec. 1313(k)
CSD84-95*	Claimant under sec. 1313(j) need not be the exporter of record for merchandise designated for drawback in order to be certified by Customs to operate under the exporter's summary procedure (modified by CSD88-14)
TD84-95*	Imported duty-paid merchandise may be considered as domestic merchandise under sec. 1313(b) (see CSD82-111)
CSD84-100*	Erroneous claim for rejected merchandise drawback may be changed to a claim under sec. 1313(j)
CSD84-110	Breach of an agreement in a purchase contract concerning the use of imported merchandise may be considered in a drawback claim under sec. 1313(c)
CSD85-7	In consecutive drawback operations the fact that the same manufacturer performs more than one of the operations does not result in a reduction of benefits over what would be available if a different person performed each manufacturing operation
CSD85-14	Chemicals used as catalysts in the manufacture or production of articles are eligible for drawback upon exportation of the articles
CSD85-23	Intermodal bill of lading may be used in conjunction with other evidence to prove the fact and time of exportation as required by sec. 191.52(c)(2), C.R. (CSD83-98 reiterated; modified by CSD89-21)

TD or CSD No.	Brief Summary or Description
CSD85-28	Fully formulated resin granules and additive mixtures are same kind and quality when substituted on a master batch for master batch basis; mixing by high intensity process and feed hopper are manufactures for drawback; “A” and “B” barefoot granules are not same kind and quality
CSD85-32	It is incumbent upon Customs and not the importer to determine drawback paid on merchandise exported by others and sought to be entered under the provisions of 804.20, TSUS
CSD85-33	Article manufactured in a FTZ with non-privileged foreign merchandise and which is withdrawn from FTZ with payment of duty and thereafter exported is eligible for drawback under 1313(a) or (b). (C.S.D. 83-85 modified)
CSD85-34*	Merchandise imported before 11/14/84, the effective date of the substitution same condition drawback law, may be designated under that law; an importer who sells imported merchandise but does not give the buyer a certificate of delivery or a certificate of manufacture and delivery may designate the imported merchandise for drawback under the substitution same condition drawback law; HQ will decide questions of fungibility and same condition under the substitution drawback law; the waiver provisions contained in 19 CFR 191.141(b)(2)(ii) apply to substitution same condition drawback (referred to by CSD85-51; supplemented by CSD86-26)
CSD85-35*	Permission to use the exporter's summary procedure under same condition drawback does not automatically remove the requirement of prior notice of intent to export for those exportations made before the date of permission was granted
CSD85-39	Attachment of metal can ends to metal cans constitutes a manufacture or production
CSD85-42	If two or more products, as defined by TD 66-16, are blended outside the refinery where they are produced after being assigned drawback factors, the claimant for drawback may follow the convention established by TD 66-16, provided this does not result in more drawback than otherwise would result (revoked by CSD88-3)
CSD85-48*	Temporary change in condition of a chemical substance for purposes of repacking does not negate sec. 1313(j) drawback

TD or CSD No.	Brief Summary or Description
CSD85-49	Privileged foreign and nonprivileged foreign merchandise, while stored in a FTZ and exempt from duty, does not constitute duty-free merchandise within substitution manufacturing drawback; articles manufactured therefrom, and then exported may not be subject of claims for drawback under sec. 1313(b)
CSD85-50*	“Lawful duties” paid pursuant to sec. 1592(d) legally constitute “duties” and are thus subject to drawback under sec. 1313
CSD85-51*	Drawback is allowed under same condition drawback law upon exportation of imported fungible substituted merchandise, assuming compliance with all requirements of the law and guidelines set out in CSD85-34
CSD85-52*	Ownership of a commodity is not necessarily possession of that commodity for purposes of same condition drawback (modified and clarified by CSD87-18)
CSD85-53*	Claimants under sec. 1313(c) must bring latent defects to Customs attention immediately upon discovery to be eligible for an extension of 90-day period for return of rejected merchandise to Customs custody; mere allegations of failure to meet Governmental standards are not sufficient to meet the burden of drawback claimants under sec. 1313(c)
CSD86-1	Drawback may be claimed on the exportation of articles manufactured or produced in US with merchandise imported under 807.00 TSUS
CSD86-8	Imported merchandise entered for warehouse is not eligible for drawback under the substitution provision of the same condition drawback law, if it is thereafter withdrawn from warehouse and exported
CSD86-11*	Successorship; a successor is allowed to designate, as the basis for drawback on articles manufactured by the successor after the date of succession, merchandise used by the predecessor prior to the date of succession (revoked by CSD89-12, holding 2)
CSD86-15	Imported merchandise initially transported under a special permit for immediate delivery to an importer's premises, and is thereafter entered for transportation and exportation and exported, is not eligible for drawback under sec. 1313(j)(3)
CSD86-24	Articles of domestic manufacture or production under sec. 1309(b) are not eligible for drawback under sec. 1313(j)(3) [now section 1313(j)(2)]
CSD86-25*	Failure to file a notice of intent to export before merchandise is exported, or to secure a waiver of that requirement, will invalidate a claim under sec. 1313(j)

TD or CSD No.	Brief Summary or Description
CSD86-26	Exportations and/or substitutions made prior to the effective date of sec.1313(j)(3) are not eligible for substitution same condition drawback (supplements CSD85-34)
CSD87-5	Customs user fees provided for under sec. 58(a) are not subject to the drawback laws
CSD87-6*	Crude degummed soybean oils; fungibility under sec. 1313(j)(2); an exporter must satisfy the possession requirements for both the imported duty-paid and fungible substituted merchandise
CSD87-14*	Fungibility of soybean meal under substitution same condition drawback law
CSD87-18*	Wholesale distributor, as the exporter-claimant may qualify as the legal entity to satisfy the possession requirements of substitution same condition drawback (CSD85-52 clarified and modified)
CSD87-19*	Substituted merchandise used in incidental operations prior to the effective date (10-22-86) of sec. 1888(2) Public Law 99-514 is not eligible for sec 1313(j)(2) & (4) drawback
CSD87-22	Non-conforming portions of imported merchandise may be separated from conforming portions and exported under sec. 1313(c), as long as the actual amount of duty paid on the rejected merchandise is identifiable from entry documents; requirements for return to Customs custody for exportation
CSD88-1*	Fungible products commingled in storage and withdrawn therefrom for drawback purposes may be identified against the drawback products commingled therein in the order of their receipt into storage (CSD83-54 reaffirmed)
CSD88-2*	Sec. 1520(d) does not authorize payment of interest on a drawback claim that was disallowed as a result of a protest under sec. 1514
CSD88-3	Blending of residual and distillate oils is a manufacture for drawback (CSD85-42 revoked)
CSD88-12*	Fungibility of anhydrous ethanol under sec. 1313(j)(2)
CSD88-14*	“Exporter/claimant” under sec. 1313(j) is the exporter (CSD84-95 & CSD86-25 modified)
CSD89-11	Timely protests under sec. 1514 and timely requests for reliquidation under sec. 1520(c)(1)

TD or CSD No.	Brief Summary or Description
CSD89-12*	"Use" requirement in sec. 1313(b) drawback (CSD86-11, holding 2, revoked)
CSD89-13*	Manufacture or production for drawback; stand-alone food processing machines converted into integrated food processing systems
CSD89-19	Sec. 1313(j)(1); product withdrawn from a bonded smelting warehouse under sec. 1312, duty paid, and exported in same condition
CSD89-20*	Use of a "weighted average value method" for calculating same condition drawback claims
CSD89-21	Intermodal bill of lading may be used in conjunction with other evidence to prove the fact and time of exportation under sec. 191.52(c)(2), C.R. (CSD85-23 modified)
CSD89-73*	Whether certain procedures performed on ultrasound units are incidental operations or a manufacture for drawback purposes
CSD89-86*	Frozen perishables; same condition drawback
CSD89-108*	Wheat; fungibility; same condition drawback
CSD89-126*	Fungibility of tobacco; use of USDA grade standards
CSD90-33*	Eligibility of mold and plastic blow molding machine for same condition drawback when imported assembled and exported separately
CSD90-34*	Certification on CF 4455 which is given to facilitate a return to the U.S. from abroad is not a substitute for a notice of exportation with intent to claim drawback
CSD90-36*	Fungibility of automobile tires for sec. 1313(j)(2)
CSD90-94*	Principal-agency relationship,successorship, under sec. 1313(b)
CSD91-3*	Fungibility of automotive gasolines under sec. 1313(j)(2)
CSD91-17	Use of ATF Form 2149/2150 certifying that tobacco products were received in an ATF bonded export warehouse is not sufficient evidence to establish actual exportation in lieu of the evidence to support the exportation for drawback
CSD91-18*	Same condition drawback; incidental operations; sec. 1313(j)(1) and 1313(j)(4) are not complementary
CSD91-21*	ASTM specs for aviation turbine fuels are useful guidelines in determining the fungibility of such fuels for sec. 1313(j)(2)

TD or CSD No.	Brief Summary or Description
CSD92-13*	Duty-paid, imported merchandise used in manufacture by a corporation prior to filing for bankruptcy may be designated as a basis for drawback on articles produced by the same corporation after the bankruptcy filing
CSD93-17*	Under the U.S.-Canada Free Trade Agreement, substitution same condition drawback can continue only for eligible goods as delineated in Article 404(8) of the CFTA

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is http://www.cbp.gov

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:…"* series. Check the Internet web site http://www.cbp.gov for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

"Your Comments are Important"

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

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