



COMSTOCK  
HOLT

# 19 USC 1313: DRAWBACK STATUTE

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## **(a) Articles made from imported merchandise**

Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction, an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury under subsection (l) shall be refunded as drawback, except that duties shall not be so refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

## **(b) Substitution for drawback purposes**

### **(1) In general**

If imported duty-paid merchandise or merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise is used in the manufacture or production of articles within a period not to exceed 5 years from the date of importation of such imported merchandise, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury under subsection (l), but only if those articles have not been used prior to such exportation or destruction.

### **(2) Requirements relating to transfer of merchandise**

#### **(A) Manufacturers and producers**

Drawback shall be allowed under paragraph (1) with respect to an article manufactured or produced using imported merchandise or other merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise only if the manufacturer or producer of the article received such imported merchandise or such other merchandise, directly or indirectly, from the importer.

#### **(B) Exporters and destroyers**

Drawback shall be allowed under paragraph (1) with respect to a manufactured or produced article that is exported or destroyed only if the exporter or destroyer received that article, directly or indirectly, from the manufacturer or producer.

#### **(C) Evidence of transfer**

Transfers of merchandise under subparagraph (A) and transfers of articles under subparagraph (B) may be evidenced by business records kept in the normal course of business and no additional certificates of transfer or manufacture shall be required.

### (3) Submission of bill of materials or formula

#### (A) In general

Drawback shall be allowed under paragraph (1) with respect to an article manufactured or produced using imported merchandise or other merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise only if the person making the drawback claim submits with the claim a bill of materials or formula identifying the merchandise and article by the 8-digit HTS subheading number and the quantity of the merchandise.

#### (B) Bill of materials and formula defined

In this paragraph, the terms “bill of materials” and “formula” mean records kept in the normal course of business that identify each component incorporated into a manufactured or produced article or that identify the quantity of each element, material, chemical, mixture, or other substance incorporated into a manufactured article.

### (4) Special rule for sought chemical elements

#### (A) In general

For purposes of paragraph (1), a sought chemical element may be—

- (i) considered imported merchandise, or merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, used in the manufacture or production of an article as described in paragraph (1); and
- (ii) substituted for source material containing that sought chemical element, without regard to whether the sought chemical element and the source material are classifiable under the same 8-digit HTS subheading number, and apportioned quantitatively, as appropriate.

#### (B) Sought chemical element defined

In this paragraph, the term “sought chemical element” means an element listed in the Periodic Table of Elements that is imported into the United States or a chemical compound consisting of those elements, either separately in elemental form or contained in source material.

### (c) Merchandise not conforming to sample or specifications

#### (1) Conditions for drawback

Upon the exportation or destruction under the supervision of the Customs Service of articles or merchandise—

- (A) upon which the duties have been paid,
- (B) which has been entered or withdrawn for consumption,
- (C) which is—
  - (i) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation, or

- (ii) ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer, and
- (D) which, within 5 years after the date of importation or withdrawal, as applicable, has been exported or destroyed under the supervision of U.S. Customs and Border Protection,
- an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury under subsection (I) shall be refunded as drawback.

## **(2) Designation of import entries**

For purposes of paragraph (1)(C)(ii), drawback may be claimed by designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (1)(A) and (B) under the supervision of U.S. Customs and Border Protection. The merchandise designated for drawback must be identified in the import documentation with the same eight-digit classification number and specific product identifier (such as part number, SKU, or product code) as the returned merchandise.

## **(3) Evidence of transfers**

Transfers of merchandise under paragraph (1) may be evidenced by business records kept in the normal course of business and no additional certificates of transfer shall be required.

## **(d) Flavoring extracts; medicinal or toilet preparations; bottled distilled spirits and wines**

Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits and wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

### **(e) Imported salt for curing fish**

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

### **(f) Exportation of meats cured with imported salt**

Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than \$100.

### **(g) Materials for construction and equipment of vessels built for foreigners**

The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

### **(h) Jet aircraft engines**

Upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, there shall be refunded, upon satisfactory proof that such imported merchandise has been so used, the duties which have been paid thereon, in amounts not less than \$100.

### **(i) Proof of exportation**

A person claiming drawback under this section based on the exportation of an article shall provide proof of the exportation of the article. Such proof of exportation—

- (1)** shall establish fully the date and fact of exportation and the identity of the exporter; and
- (2)** may be established through the use of records kept in the normal course of business or through an electronic export system of the United States Government, as determined by the Commissioner of U.S. Customs and Border Protection.

### **(j) Unused merchandise drawback**

**(1)** If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law upon entry or importation—

- (A)** is, before the close of the 5-year period beginning on the date of importation and before the drawback claim is filed—

- (i) exported, or
  - (ii) destroyed under customs supervision; and
- (B) is not used within the United States before such exportation or destruction; then upon such exportation or destruction an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury under subsection (l) shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.
- (2) Subject to paragraphs (4), (5), and (6), if there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law upon entry or importation, any other merchandise (whether imported or domestic), that—
  - (A) is classifiable under the same 8-digit HTS subheading number as such imported merchandise;
  - (B) is, before the close of the 5-year period beginning on the date of importation of the imported merchandise and before the drawback claim is filed, either exported or destroyed under customs supervision; and
  - (C) before such exportation or destruction—
    - (i) is not used within the United States, and
    - (ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party—
      - (I) is the importer of the imported merchandise, or
      - (II) received the imported merchandise, other merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, or any combination of such imported merchandise and such other merchandise, directly or indirectly from the person who imported and paid any duties, taxes, and fees imposed under Federal law upon importation or entry and due on the imported merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise); then, notwithstanding any other provision of law, upon the exportation or destruction of such other merchandise an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury under subsection (l) shall be refunded as drawback. Notwithstanding subparagraph (A), drawback shall be allowed under this paragraph with respect to wine if the imported wine and the exported wine are of the same color and the price variation between the imported wine and the exported wine does not exceed 50 percent. Transfers of merchandise may be evidenced by business records kept in the normal course of business and no additional certificates of transfer shall be required.



(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise in cases to which paragraph (2) applies, shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(4) (A) (i) Effective upon the entry into force of the USMCA, the exportation to a USMCA country of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of section 4534(a) of this title, shall not constitute an exportation for purposes of paragraph (2).

(ii) In this subparagraph, the terms “USMCA” and “USMCA country” have the meanings given those terms in section 4502 of this title.

(B) Beginning on January 1, 2015, the exportation to Chile of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, shall not constitute an exportation for purposes of paragraph (2). The preceding sentence shall not be construed to permit the substitution of unused drawback under paragraph (2) of this subsection with respect to merchandise described in paragraph (2) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.

(5) (A) For purposes of paragraph (2) and except as provided in subparagraph (B), merchandise may not be substituted for imported merchandise for drawback purposes based on the 8-digit HTS subheading number if the article description for the 8-digit HTS subheading number under which the imported merchandise is classified begins with the term “other”.

(B) In cases described in subparagraph (A), merchandise may be substituted for imported merchandise for drawback purposes if—

(i) the other merchandise and such imported merchandise are classifiable under the same 10-digit HTS statistical reporting number; and

(ii) the article description for that 10-digit HTS statistical reporting number does not begin with the term “other”.

(6) (A) For purposes of paragraph (2), a drawback claimant may use the first 8 digits of the 10-digit Schedule B number for merchandise or an article to determine if the merchandise or article is classifiable under the same 8-digit HTS subheading number as the imported merchandise, without regard to whether the Schedule B number corresponds to more than one 8-digit HTS subheading number.

(B) In this paragraph, the term “Schedule B” means the Department of Commerce Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States.

## (k) Liability for drawback claims

### (1) In general

Any person making a claim for drawback under this section shall be liable for the full amount of the drawback claimed.

### (2) Liability of importers

An importer shall be liable for any drawback claim made by another person with respect to merchandise imported by the importer in an amount equal to the lesser of—

(A) the amount of duties, taxes, and fees that the person claimed with respect to the imported merchandise; or

(B) the amount of duties, taxes, and fees that the importer authorized the other person to claim with respect to the imported merchandise.

### (3) Joint and several liability

Persons described in paragraphs (1) and (2) shall be jointly and severally liable for the amount described in paragraph (2).

## (l) Regulations

### (1) In general

Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe.

### (2) Calculation of drawback

#### (A) In general

Not later than the date that is 2 years after February 24, 2016, the Secretary shall prescribe regulations for determining the calculation of amounts refunded as drawback under this section.

#### (B) Claims with respect to unused merchandise

The regulations required by subparagraph (A) for determining the calculation of amounts refunded as drawback under this section shall provide for a refund of equal to 99 percent of the duties, taxes, and fees paid on the imported merchandise, which were imposed under Federal law upon entry or importation of the imported merchandise, and may require the claim to be based upon the average per unit duties, taxes, and fees as reported on the entry summary line item or, if not reported on the entry summary line item, as otherwise allocated by U.S.

Customs and Border Protection, except that where there is substitution of the merchandise, then—

(i) in the case of an article that is exported, the amount of the refund shall be equal to 99 percent of the lesser of—

(I) the amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(II) the amount of duties, taxes, and fees that would apply to the exported article if the exported article were imported; and

(ii) in the case of an article that is destroyed, the amount of the refund shall be an amount that is—

(I) equal to 99 percent of the lesser of—

(aa) the amount of duties, taxes, and fees paid with respect to the imported merchandise; and

(bb) the amount of duties, taxes, and fees that would apply to the destroyed article if the destroyed article were imported; and

(II) reduced by the value of materials recovered during destruction as provided in subsection (x).

#### **(C) Claims with respect to manufactured articles into which imported or substitute merchandise is incorporated**

The regulations required by subparagraph (A) for determining the calculation of amounts refunded as drawback under this section shall provide for a refund of equal to 99 percent of the duties, taxes, and fees paid on the imported merchandise incorporated into an article that is exported or destroyed, which were imposed under Federal law upon entry or importation of the imported merchandise incorporated into an article that is exported or destroyed, and may require the claim to be based upon the average per unit duties, taxes, and fees as reported on the entry summary line item, or if not reported on the entry summary line item, as otherwise allocated by U.S. Customs and Border Protection, except that where there is substitution of the imported merchandise, then—

(i) in the case of an article that is exported, the amount of the refund shall be equal to 99 percent of the lesser of—

(I) the amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(II) the amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported; and

(ii) in the case of an article that is destroyed, the amount of the refund shall be an amount that is—

(I) equal to 99 percent of the lesser of—

(aa) the amount of duties, taxes, and fees paid with respect to the imported merchandise; and

(bb) the amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported; and

(ll) reduced by the value of materials recovered during destruction as provided in subsection (x).

#### (D) Exceptions

The calculations set forth in subparagraphs (B) and (C) shall not apply to claims for wine based on subsection (j)(2) and claims based on subsection (p) and instead—

(i) for any drawback claim for wine based on subsection (j)(2), the amount of the refund shall be equal to 99 percent of the duties, taxes, and fees paid with respect to the imported merchandise, without regard to the limitations in subparagraphs (B)(i) and (B)(ii); and

(ii) for any drawback claim based on subsection (p), the amount of the refund shall be subject to the limitations set out in paragraph (4) of that subsection and without regard to subparagraph (B)(i), (B)(ii), (C)(i), or (C)(ii).

#### (3) Status reports on regulations

Not later than the date that is one year after February 24, 2016, and annually thereafter until the regulations required by paragraph (2) are final, the Secretary shall submit to Congress a report on the status of those regulations.

#### (m) Source of payment

Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

#### (n) Refunds, waivers, or reductions under certain free trade agreements

(1) For purposes of this subsection and subsection (o)—

(A) the term “USMCA country” has the meaning given that term in section 4502 of this title; ;

(B) the term “good subject to USMCA drawback” has the meaning given that term in section 4534(a) of this title;

(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (o) is subject to section 4534(e) of this title; and

(D) the term “good subject to Chile FTA drawback” has the meaning given that term in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.

(2) For purposes of subsections (a), (b), (f), (h), (p), and (q), if an article that is exported to a USMCA country is a good subject to USMCA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of—

(A) the total amount of customs duties paid or owed on the good on importation into the United States, or

(B) the total amount of customs duties paid on the good to the USMCA country.

(3) If Canada ceases to be a USMCA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q), the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988 does not constitute an exportation.

(4) (A) For purposes of subsections (a), (b), (f), (h), (j)(2), (p), and (q), if an article that is exported to Chile is a good subject to Chile FTA drawback, no customs duties on the good may be refunded, waived, or reduced, except as provided in subparagraph (B).

(B) The customs duties referred to in subparagraph (A) may be refunded, waived, or reduced by—

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

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

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

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

## (o) Special rules for certain vessels and imported materials

(1) For purposes of subsection (g), if—

(A) a vessel is built for the account and ownership of a resident of a USMCA country or the government of a USMCA country, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to USMCA drawback, the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the USMCA country.

(2) If Canada ceases to be a USMCA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988.

- (3) For purposes of subsection (g), if—
  - (A) a vessel is built for the account and ownership of a resident of Chile or the Government of Chile, and
  - (B) imported materials that are used in the construction and equipment of the vessel are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, no customs duties on such materials may be refunded, waived, or reduced, except as provided in paragraph (4).
- (4) The customs duties referred to in paragraph (3) may be refunded, waived or reduced by—
  - (A) 100 percent during the 8-year period beginning on January 1, 2004;
  - (B) 75 percent during the 1-year period beginning on January 1, 2012;
  - (C) 50 percent during the 1-year period beginning on January 1, 2013; and
  - (D) 25 percent during the 1-year period beginning on January 1, 2014.

## (p) Substitution of finished petroleum derivatives

### (1) In general

Notwithstanding any other provision of this section, if—

- (A) an article (hereafter referred to in this subsection as the “exported article”) of the same kind and quality as a qualified article is exported;
- (B) the requirements set forth in paragraph (2) are met; and
- (C) a drawback claim is filed regarding the exported article; drawback shall be allowed as described in paragraph (4).

### (2) Requirements

The requirements referred to in paragraph (1) are as follows:

- (A) The exporter of the exported article—
  - (i) manufactured or produced a qualified article in a quantity equal to or greater than the quantity of the exported article,
  - (ii) purchased or exchanged, directly or indirectly, a qualified article from a manufacturer or producer described in subsection (a) or (b) in a quantity equal to or greater than the quantity of the exported article,
  - (iii) imported a qualified article in a quantity equal to or greater than the quantity of the exported article, or
  - (iv) purchased or exchanged, directly or indirectly, a qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.
- (B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.
- (C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or

(A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.

(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.

(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).

(F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.

(G) The manufacturer, producer, importer, transferor, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.

### (3) "Qualified article" defined, etc.

For purposes of this subsection—

(A) The term "qualified article" means an article—

(i) described in—

(I) headings 2707, 2708, 2709.00, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902, and subheadings 2903.21.00, 2909.19.14, 2917.36, 2917.39.04, 2917.39.15, 2926.10.00, 3811.21.00, and 3811.90.00 of the HTS, or

(II) headings 3901 through 3914 of such Schedule (as such headings apply to the primary forms provided under Note 6 to chapter 39 of the HTS), and

(ii) which is—

(I) manufactured or produced as described in subsection (a) or (b) from crude petroleum or a petroleum derivative,

(II) imported duty-paid, or

(III) an article of the same kind and quality as described in subparagraph (B), or any combination thereof, that is transferred in a quantity not greater than the quantity of articles purchased or exchanged.

(B) An article, including an imported, manufactured, substituted, or exported article, is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the HTS as the qualified article. If an article is referred to under the same eight-digit classification of the HTS as the qualified article on January 1, 2000, then whether or not the article has been reclassified under another eight-digit classification after January 1, 2000, the article shall be deemed to be an article that is referred to under the same eight-digit classification of such Schedule as the qualified article for purposes of the preceding sentence.

(C) The term “drawback claimant” means the exporter of the exported article or the refiner, producer, or importer of either the qualified article or the exported article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.

#### (4) Limitation on drawback

The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article—

(A) manufactured or produced under subsection (a) or (b) by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

(B) imported under clause (iii) or (iv) of paragraph (2)(A) had the claim qualified for drawback under subsection (j).

#### (5) Special rules for ethyl alcohol

For purposes of this subsection, any duty paid under subheading 9901.00.50 of the HTS on imports of ethyl alcohol or a mixture of ethyl alcohol may not be refunded if the exported article upon which a drawback claim is based does not contain ethyl alcohol or a mixture of ethyl alcohol.

### (q) Packaging material

#### (1) Packaging material under subsections (c) and (j)

Packaging material, whether imported and duty paid, and claimed for drawback under either subsection (c) or (j)(1), or imported and duty paid, or substituted, and claimed for drawback under subsection (j)(2), shall be eligible for drawback, upon exportation, in an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury under subsection (l).

#### (2) Packaging material under subsections (a) and (b)

Packaging material that is manufactured or produced under subsection (a) or (b) shall be eligible for drawback, upon exportation, in an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury under subsection (l).

#### (3) Contents

Packaging material described in paragraphs (1) and (2) shall be eligible for drawback whether or not it contains articles or merchandise, and whether or not any articles or merchandise it contains are eligible for drawback.

#### (4) Employing packaging material for its intended purpose prior to exportation

The use of any packaging material for its intended purpose prior to exportation shall not be treated as a use of such material prior to exportation for purposes of applying subsection (a), (b), or (c), or paragraph (1)(B) or (2)(C)(i) of subsection (j).



## (r) Filing drawback claims

- (1) A drawback entry shall be filed or applied for, as applicable, not later than 5 years after the date on which merchandise on which drawback is claimed was imported. Claims not completed within the 5-year period shall be considered abandoned. No extension will be granted unless it is established that U.S. Customs and Border Protection was responsible for the untimely filing.
- (2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.
- (3) (A) U.S. Customs and Border Protection may, notwithstanding the limitation set forth in paragraph (1), extend the time for filing a drawback claim for a period not to exceed 18 months, if—
  - (i) the claimant establishes to the satisfaction of U.S. Customs and Border Protection that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster on or after January 1, 1994; and
  - (ii) the claimant files a request for such extension with U.S. Customs and Border Protection—
    - (I) within 1 year from the last day of the 5-year period referred to in paragraph (1), or
    - (II) within 1 year after October 11, 1996, whichever is later.
- (B) If an extension is granted with respect to a request filed under this paragraph, the period of time for retaining records set forth in section 1508(c)(3) of this title shall be extended for an additional 18 months or, in a case to which subparagraph (A)(ii) applies, for a period not to exceed 1 year from the date the claim is filed.
- (C) For purposes of this paragraph, the term “major disaster” has the meaning given that term in section 5122(2) of title 42.
- (4) All drawback claims filed on and after the date that is 2 years after February 24, 2016, shall be filed electronically.

## (s) Designation of merchandise by successor

- (1) For purposes of subsection (b), 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.
- (2) For purposes of subsection (j)(2), a drawback successor may designate—
  - (A) imported merchandise which the predecessor, before the date of succession, imported; or

(B) subject to paragraphs (5) and (6) of subsection (j), imported merchandise, other merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, or any combination of such imported merchandise and such other merchandise, that the predecessor received, before the date of succession, from the person who imported and paid any duties, taxes, and fees due on the imported merchandise; as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.

(3) For purposes of this subsection, the term “drawback successor” means an entity to which another entity (in this subsection referred to as the “predecessor”) has transferred by written agreement, merger, or corporate resolution—

(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor’s records) certifies that the transferred merchandise was not and will not be claimed by the predecessor.

## **(t) Repealed**

Pub. L. 114–125, title IX, § 906(l), Feb. 24, 2016, 130 Stat. 233

## **(u) Eligibility of entered or withdrawn merchandise**

Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

## **(v) Multiple drawback claims**

Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

## **(w) Limited applicability for certain agricultural products**

### **(1) In general**

No drawback shall be available with respect to an agricultural product subject to the over-quota rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1).

## **(2) Application to tobacco**

Notwithstanding paragraph (1), drawback shall also be available pursuant to subsection (a) with respect to any tobacco subject to the over-quota rate of duty established under a tariff-rate quota.

## **(x) Drawbacks for recovered materials**

For purposes of subsections (a), (b), (c), and (j), the term “destruction” includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise. In determining the amount of duties to be refunded as drawback to a claimant under this subsection, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant shall 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.

## **(y) Articles shipped to the United States insular possessions**

Articles described in subsection (j)(1) shall be eligible for drawback under this section if duty was paid on the merchandise upon importation into the United States and the person claiming the drawback demonstrates that the merchandise has entered the customs territory of the United States Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

## **(z) Definitions**

In this section:

### **(1) Directly**

The term “directly” means a transfer of merchandise or an article from one person to another person without any intermediate transfer.

### **(2) HTS**

The term “HTS” means the Harmonized Tariff Schedule of the United States.

### **(3) Indirectly**

The term “indirectly” means a transfer of merchandise or an article from one person to another person with one or more intermediate transfers.