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TFTEA Duty Drawback Regulations

November 2019

Notices

The following information is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Presenter

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Drawback Agenda

- Overview
- Process
- Scenarios
- Drawback Reimagined

Drawback Overview

Drawback Overview

Drawback is the 99% refund of duties, taxes, and fees paid on import when a good is exported from the U.S. in an unused or manufactured state (or destroyed).

What are the types of drawback?

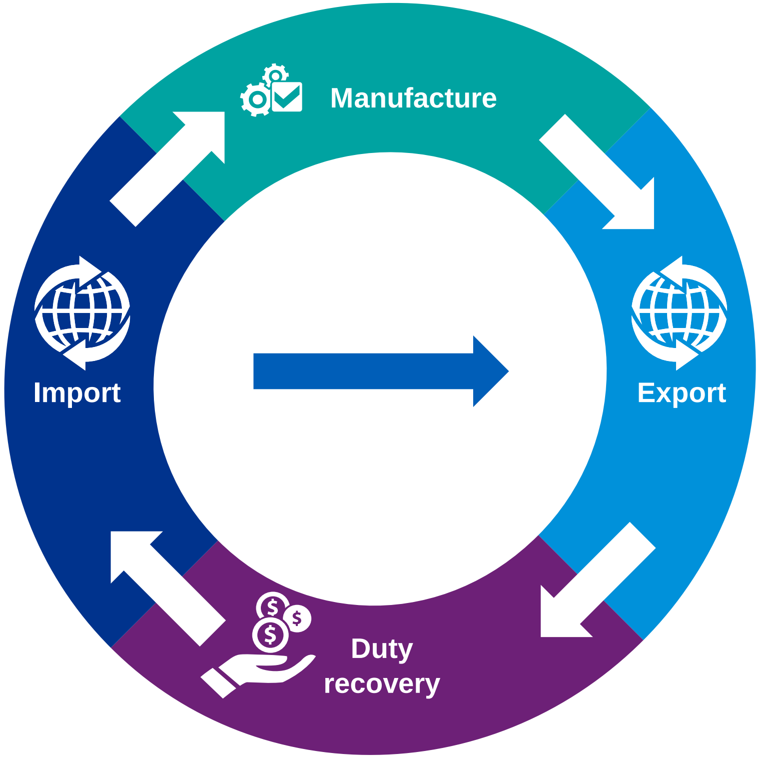
- *Unused Merchandise*
- *Manufacturing*
- *Rejected Merchandise*

Who can file?

- Drawback generally accrues to the Exporter of Record but the Importer, Manufacturer or Producer, or an intermediate 3rd Party may also file for drawback refunds with proper authorization and documentation

What support do you need?

- Documentation to support the import, export, and inventory movements must be maintained to support drawback claims



Duty Drawback: Section 301 Tariffs

Is Duty Drawback an available mitigation strategy?

YES					NO
Section 201	**Section 301**				**Section 232**
Harming U.S. industries	List 1 (25%)	List 2 (25%)	List 3 (25%)	List 4A (15%)	National security threat
TARGET					
Solar panels and washing machines	**$34B in products**	**$16B in products**	**$200B in products**	**$120B in products**	**Steel/Aluminum, Automobiles**
October 2017: Findings announced from earlier investigation and "global safeguard" restrictions recommended	**August 2017**: USTR initiated an investigation into China's technology and intellectual property policies regarding unfair trade practices; potential IP theft, tech transfer, & innovation. Section 301 authorizes the USTR to investigate and take action, subject to the direction of the President, for trade agreement violations or discriminatory trade practices. **July 2018:** CBP began collecting duties on China country of origin goods List 1 (7/6/18), List 2 (8/23/18), List 3 (9/24/18), List 4a (9/1/19), and will soon be collecting on List 4b (12/15/19).				**April 2017**: Investigation begins, and in March 2018, Trump announces tariffs on steel and aluminum. There are currently limited source country exemptions. **May 2018:** Second national security investigation launched and potential raise on imports of auto parts

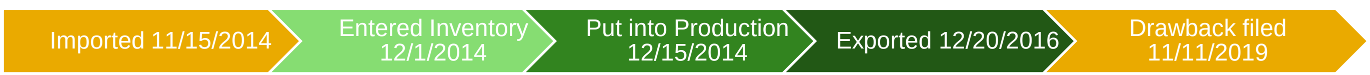
TFTEA Drawback Modernization

The Trade Facilitation and Trade Enforcement Act of 2015 “TFTEA,” became effective February 24, 2018 and simplified drawback. TFTEA regulations were made final on December 18, 2018.

General Changes under TFTEA:

While the concept of drawback remains unchanged, the processes to file for drawback refunds has been changed to allow for electronic filling, simplified procedures, and streamlined claim validations and reporting to CBP.

— Timeline for filing a refund is five years from import date to the date of claim filing. (19 CFR 190.51)



— Retain records for three years from date of liquidation of drawback claim (19 CFR 190.15)

— Business records will support claims with 3rd party import data (formerly CD’s) (19 CFR 190.10)

— Joint liability for the claimant and Importer (19 CFR 190.63)

Additionally, all claims are now filed electronically in U.S. Customs and Border Protection’s (“CBP”) ACE; manual claims accepted on a very limited basis during the transition year.

TFTEA Drawback Modernization

Technical changes: To allow for simplified claims and to move drawback into the ACE electronic environment, technical changes were made within the regulations that impact how claims are calculated and filed.

Substitution Drawback	Methods for Calculating Drawback	First Filed Rule	Electronic Claim Filing in ACE
• <u>8 digit</u> HTSUS level matching for <u>Manufacturing</u> claims. • <u>8 digit HTSUS level matching for Unused claims unless "other"</u> classification; move to 10 digit level; if "other" precluded from substitution claims • "Lesser of" provision applies to all substitution claims • Substitution is not allowed for exports to NAFTA countries and Chile.	• CBP instituted a hybrid for calculating drawback based on drawback type • <u>Direct Identification uses transaction (or invoice) value</u>. Requires identification by item level and report invoice quantity and unit price • <u>Substitution uses per unit averaging</u>. The unit value is calculated with the quantity and value of a specific HTSUS line. Claims must be filed according to the unit of measure on the HTSUS line on the entry	• Claims are filed via HTSUS entry line and calculated for either <u>direct identification or substitution</u> • Each HTSUS entry line can only be filed by one drawback type and is determined by the first drawback type using that entry line • Any remaining balances cannot be used for the alternative drawback method	• Claim content is transmitted via ABI to ACE • Import data requires line specific detail • BOM must contain 8 digit HTSUS • Immediate response of acceptance or rejection • Supporting documents uploaded to ACE via DIS within 24 hours • Post entry adjustments affect how claim is transmitted • Amendments to claims filed in ACE

TFTEA Drawback Simplification Example

The new rules ease the requirement for <u>unused substitution drawback</u> by allowing a match to the 8-digit tariff classification (of the 10-digit classification) to the imported article. As a result, significantly more products will be eligible for unused substitution drawback.

8531		Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:		
8531.10.00		Burglar or fire alarms and similar apparatus		1.3%[11]
		Smoke detectors:		
	15	Battery powered	No.	
	25	Other	No.	
		Other:		
	35	Burglar alarms	No.	
	45	Other	No.	
8531.20.00		Indicator panels incorporating liquid crystal devices (LCD's) or light emitting diodes (LED)		Free[11]
	20	Incorporating LCD's	X	
	40	Other	X	
8531.80		Other apparatus:		
8531.80.15	00	Doorbells, chimes, buzzers and similar apparatus	kg	1.3%

However….there is an "other" clause for unused drawback that requires the classification be at the 10-digit tariff if the classification beings with "other" at the 8-digit level. If the 10-digit level is "other" substitution is not allowed.

8302.10.60		Other		3.5%[2]
	30	Suitable for interior and exterior doors (except garage, overhead or sliding doors)	kg	
	60	Suitable for furniture and cabinets	kg	
	90	Other	kg	
8302.10.90		Other		3.4%[2]
	30	Suitable for interior and exterior doors (except garage, overhead or sliding doors)	kg	
	60	Suitable for furniture and cabinets	kg	
	90	Other	kg	
8302.20.00	00	Castors, and parts thereof	kg	5.7%[2]
8302.30		Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:		
8302.30.30		Of iron or steel, of aluminum or of zinc		2%[2]

Drawback Process

Duty Drawback Process

Drawback Privilege Applications and Rulings:

Depending on the drawback type, there are certain privileges that are required to have on file with CBP prior to any claims being submitted

- Waiver of Prior Notice and Failure to File Waiver of Prior Notice – Unused Drawback Only
- Manufacturing Ruling, either Specific or General – Manufacturing Drawback Only
- Accelerated Payment – All Drawback Types
- CBP no longer requires Commercial Interchangeability rulings for substitution claims and have added Waiver of Prior Notice for Destruction

Duty Drawback Bonds

A Duty Drawback bond is required when you request U.S. Customs and Border Protection (“CBP”) to pay the refund in an accelerated manner

- Once approved for accelerated payment, CBP then pays the refund within 30 days of approval of the claim.
- Without accelerated payment approval (and the coinciding bond), the refund occurs when the drawback claim is liquidated. Liquidation of a drawback claim may take a year or more depending on when the underlying import entries designated on a drawback claim liquidate.

- **There are two types of drawback bonds, single and continuous** bond:
  - Value of the bond required to cover 100% of the expected refund (including duties, taxes or fees) rounded up to the closest dollar.
  - Continuous drawback bond. Bond effective for 1 year for a pre-determine drawback value. Requires claimant to estimate annual drawback filings for claims that will be filed against that drawback bond.

NOTE: Recommend to only secure a continuous bond once you obtain your accelerated payment approval from CBP. Continuous drawback bond only effective for claims filed against that bond on OR after the date of accelerated payment. For claims filed prior to obtaining accelerated payment approval, a continuous bond is not permitted.

- **Bonds for duty drawback are required to cover 100% of the expected refund**

Duty Drawback: Record Retention Requirements

The documents required to support a drawback claim include but are not limited to:

NOTE: Records must be maintained for 3 years after liquidation of the drawback claim (19 CFR § 190.15).

- Purchase Order
- Commercial Invoice (import)
- Packing List (import)
- Bill of Lading (import)
- CF-7501
- Warehouse Receipt Record
- Proof of payment to foreign supplier
- Manufacturing and Inventory Withdrawal Records
- Inventory Trial Balance
- Commercial Invoice (export)
- Packing List (export)
- Export Bill of Lading (i.e. Canadian B3, Mexican Pedimento, master vessel bill of lading, master airwaybill)
- Proof of payment from foreign customer

Customs Review and Desk Audits

CBP routinely conducts random desk reviews of drawback claims.

Upon effect of the new TFTEA regulations, CBP appears to now be conducting desk reviews of submitted drawback claims. Therefore, the level of detail and volume of documents requested is unknown at this time. However, under the old drawback law, CBP would typically request the following information. We anticipate that the level of review under the new law may increase over and above what is listed below.

- **CBP typically selected 1 import transaction to review**
- **The importer was generally required to provide a full document trail to CBP for the selected entry**
  - The document trail provided must be able to illustrate that the regulations for duty drawback are being followed
  - Import and export documents that should be provided for the selected entry include:
    - Customs Entry documents (CBP Form 7501, Commercial Invoice, Bill of Lading)
    - Export documents (Commercial Invoice, Packing List, Bill of Lading, Canadian B3, etc.)
  - Additional documents include:
    - Warehouse Receipt Record
    - Manufacturing and Inventory Withdrawal Records

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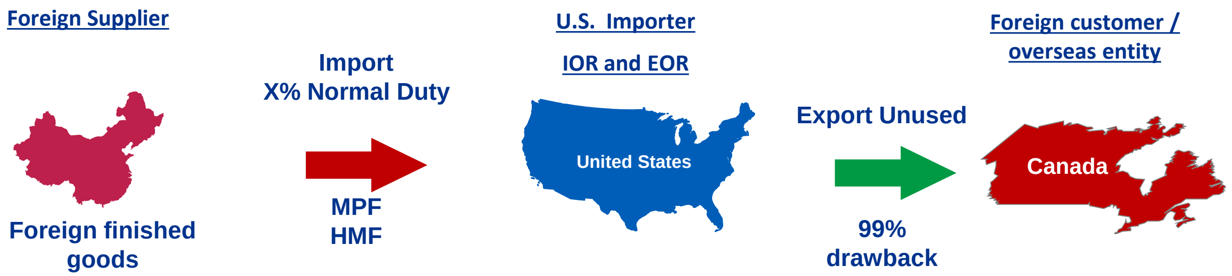
Drawback Scenarios

Drawback Scenarios - Unused Direct Identification – Only Exports to Canada, Mexico & Chile

FTA regulations apply in addition to the drawback regulations and impose additional limitations for these countries.



Complexity: Medium to Difficult

Pros

- Import declaration into Canada and Mexico can serve as valid proof of export
- Can be used when excluded from substitution due to 'other' 'other' HTSUS codes
- Exact part to part matching to avoid substituting for items that could be of a much lesser value

Cons

- No substitution allowed
- Direct Identification required either by explicit id matching (i.e. lot number, serial number, VIN, number, etc.) or via inventory methodology such at FIFO, LIFO, and low to high.
- Additional inventory records are required and claims must be filed in date succession

Question: *If a Canadian B3 or a Mexican Pedimento cannot be obtained, are there any alternative documents that can be obtained to support that respective import?*

Answer: *Yes! If the merchandise is shipped by air, you will need the master airway bill with flight date and flight number. If the merchandise is shipped via express courier, you need proof of delivery. Please note that CBP prefers the B3 and Pedimento for drawback involving Canada and Mexico.*

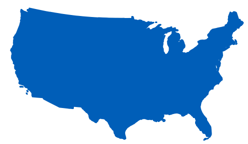
Drawback Scenarios - Unused Drawback Substitution - Exports to Rest of World

Foreign Supplier

Import
X% Normal Duty

U.S. Importer

IOR & EOR



Export Unused

Foreign customer / overseas entity

Drawback Filed

HTS 4011.94.40

Imported on 10/15/2018
Line 1 Value $12,956 for 20 units using 4% duty rate

Average Unit Value $12,956 / 20 = $647.80

HTS 4011.94.40

Exported on 11/27/2018
Quantity shipped 8 units total
Value $3,354.08

Substituted Unit Value $3,354.08 / 8 = $419.26

HTS 4011.94.40
Import Unit Value $647.80
Exported Unit Value $419.26
Quantity 8 units

Substituted Drawback Calculation for 'lesser of'

Recovery Amount = 419.26 X 8 = $3,354.08
4% Duty Rate = $134.16 x 99%= $132.82

Complexity: Medium to Low

Pros
- Import and export documents are controlled by drawback claimants under most circumstances – Accessibility
- Can benefit from substitution drawback (matching at 8-digit HTS with some exceptions)
- Less stringent U.S. Customs requirements

Cons
- Lesser of rule applies under TFTEA
- "other" Tariffs could eliminate HTS from substitution
- Exports to Canada, Mexico, and Chile are not allowed

Drawback Scenarios - Manufacturing Substitution - Exports to Non-NAFTA and not Chile countries

Similar to scenario 1 with the addition of Bill of Material / manufacturing process.

Complexity: Low

Pros

- Can benefit from substituting the raw materials at the 8-digit HTS in lieu of part level details
- Strategic filing to maximize recovery
- Can potentially be used to recover retaliatory tariffs

Cons

- Addition of Bills of Material (BOM) details required for processing
- Must account for scrap in processing (if applicable)
- Lesser of rule applies on the raw materials under TFTEA
- Manufacturing Ruling required

If claiming NAFTA the "lesser of" duties rule applies, and this does not apply to Chile FTA.

Drawback Reimagined

The Drawback Program of the Future

Be Prepared

In the ever changing global trade climate, it is important to know how new laws and regulations can impact drawback refund opportunity.

- Get your import and export data from CBP's ACE system
- Stay informed on regulatory changes
- Inform any service providers of changes to your supply chain activity
- Update your processes to address new guidelines (i.e., record retention)

Master Your Data

Data is the key issue to filing inaccurate claims and adding time and money to the duty drawback refund process!

- Preparing your brokers and third party providers to consistently include key elements within the data
- The best source of data may not be the easy source.
- Always validate the data
- Understand your processes and restrictions

Proactive Analysis

To enhance drawback benefits and to ensure compliant claims, proactive analysis of supply chain activity can lead to increased recovery.

- Determine claim method that fits best with business
- Identify any "missed" opportunities such as additional taxes and fees
- New acquisitions could bring additional opportunity for recovery
- New CBP regulations for substitution opened up opportunity for otherwise ineligible shipments

Innovate

Leverage automation and innovative tools to support your drawback program.

- Evaluate internal systems to support your drawback program
- Explore blockchain to support drawback claims
- Consider compliance bots and data analytics for effective management of your drawback program

Thank you

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