

of such products, inclusive of delivery charges.

(3) *Commercially available.* For purposes of paragraph (a)(2) of this section, *commercially available* means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(b) *Time of receipt of benefit.* In the case of a benefit described in paragraph (a)(1) of this section, the Secretary normally will consider the benefit to have been received as of the date on which the firm paid, or in the absence of payment was due to pay, for the product.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) benefits described in paragraph (a)(1) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.517 Exemption or remission upon export of indirect taxes.

(a) *Benefit.* In the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

(b) *Time of receipt of benefit.* In the case of the exemption or remission upon export of an indirect tax, the Secretary normally will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from the exemption or remission upon export of indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.518 Exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes.

(a) *Benefit—(1) Exemption of prior-stage cumulative indirect taxes.* In the case of a program that provides for the exemption of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a

benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, or if the exemption covers taxes other than indirect taxes that are imposed on the input. If the Secretary determines that the exemption of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the prior-stage cumulative indirect taxes that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(2) *Remission of prior-stage cumulative indirect taxes.* In the case of a program that provides for the remission of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the amount remitted exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the remission of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the difference between the amount remitted and the amount of the prior-stage cumulative indirect taxes on inputs that are consumed in the production of the export product, making normal allowance for waste.

(3) *Deferral of prior-stage cumulative indirect taxes.* In the case of a program that provides for a deferral of prior-stage cumulative indirect taxes on an exported product, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the taxes deferred. If the Secretary determines that a benefit exists, the Secretary will normally treat the deferral as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The

Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(4) *Exception.* Notwithstanding the provisions in paragraphs (a)(1), (a)(2), and (a)(3) of this action, the Secretary will consider the entire amount of the exemption, remission or deferral to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

(b) *Time of receipt of benefit.* In the case of the exemption, remission, or deferral of priorstage cumulative indirect taxes, the Secretary normally will consider the benefit as having been received:

(1) In the case of an exemption, as of the date of exportation;

(2) In the case of a remission, as of the date of exportation;

(3) In the case of a deferral of one year or less, on the date the deferred tax became due; and

(4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of the exemption, remission or deferral of prior-stage cumulative indirect taxes

to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.519 Remission or drawback of import charges upon export.

(a) *Benefit—(1) In general.* The term “remission or drawback” includes full or partial exemptions and deferrals of import charges.

(i) *Remission or drawback of import charges.* In the case of the remission or drawback of import charges upon export, a benefit exists to the extent that the Secretary determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste.

(ii) *Exemption of import charges.* In the case of an exemption of import charges upon export, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input.

(iii) *Deferral of import charges.* In the case of a deferral, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the import charges deferred.

(2) *Substitution drawback.* “Substitution drawback” involves a situation in which a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. Substitution drawback does not necessarily result in the conferral of a benefit. However, a benefit exists if the Secretary determines that:

(i) The import and the corresponding export operations both did not occur within a reasonable time period, not to exceed two years; or

(ii) The amount drawn back exceeds the amount of the import charges levied initially on the imported inputs for which drawback is claimed.