

Destroy, or Return Merchandise for Purposes of Drawback (see paragraph (c) of this section), Customs will notify, in writing, the party designated on the Notice of Customs decision to either examine the merchandise to be exported or destroyed, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (f) of this section), but the merchandise is exported or destroyed without having been presented to Customs for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and shall be deemed to have been returned to Customs custody.

(f) *Time and place of examination.* If Customs gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if Customs fails to timely examine the merchandise after presentation to Customs, and in such case the merchandise shall be deemed to have been returned to Customs custody. If the examination is completed at a port other than the port of actual exportation or destruction, the merchandise shall be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (see § 191.51(b) of this part). The procedures for restructuring a claim (see § 191.53 of this

part) shall apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* The claimant shall export the merchandise and shall provide documentary evidence of exportation (see subpart G of this part). The claimant may establish exportation by mail as set out in § 191.74 of this part.

[T.D. 98-16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

§ 191.43 Unused merchandise claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

§ 191.44 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain rejected merchandise drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

Subpart E—Completion of Drawback Claims

§ 191.51 Completion of drawback claims.

(a) *General*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part shall consist of the drawback entry on Customs Form 7551, applicable certificate(s) of manufacture and delivery, applicable Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, applicable import entry number(s), coding sheet unless the data is filed electronically, and evidence of exportation or destruction under subpart G of this part.

(2) *Certificates.* Additionally, at the time of the filing of the claim, the associated certificate(s) of delivery must be in the possession of the party to whom the merchandise or article covered by the certificate was delivered. Any required certificate(s) of manufacture and delivery, if not previously filed with Customs, must be filed with the claim. Previously filed certificates

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of manufacture and delivery, if required, shall be referenced in the claim.

(b) *Drawback due*—(1) *Claimant required to calculate drawback*. Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the import duties eligible for drawback. (For example, if \$1,000 in import duties are eligible for drawback less 1 percent (\$10), the amount claimed on the drawback entry should be for \$990.) Claims exceeding 99 percent (or 100% when 100% of the duty is available for drawback) will not be paid until the calculations have been corrected by the claimant. Claims for less than 99 percent (or 100% when 100% of the duty is available for drawback) will be paid as filed, unless the claimant amends the claim in accordance with § 191.52(c).

(2) *Merchandise processing fee apportionment calculation*. Where a drawback claimant seeks unused merchandise drawback pursuant to 19 U.S.C. 1313(j), or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), for a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that merchandise that provides the basis for drawback when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

(i) *Relative value ratio for each line item*. The value of each line item of entered merchandise subject to a merchandise processing fee is calculated (to four decimal places) by dividing the value of the line item subject to the fee by the total value of entered merchandise subject to the fee. The resulting value forms the relative value ratio.

(ii) *Merchandise processing fee apportioned to each line item*. To apportion the merchandise processing fee to each line item, the relative value ratio for each line item is multiplied by the merchandise processing fee paid.

(iii) *Amount of merchandise processing fee eligible for drawback per line item*. The amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to

each line item that is eligible for drawback.

(iv) *Amount of merchandise processing fee eligible for drawback per unit of merchandise*. To calculate the amount of a merchandise processing fee eligible for drawback per unit of merchandise, the line item amount that is eligible for drawback is divided by the number of units covered by that line item (to two decimal places).

Example 1:

Line item 1—5,000 articles valued at \$10 each total \$50,000
Line item 2—6,000 articles valued at \$15 each total \$90,000
Line item 3—10,000 articles valued at \$20 each total \$200,000
Total units = 21,000
Total value = \$340,000
Merchandise processing fee = \$485 (for purposes of this example, the fee cap of \$485, as per 19 U.S.C. 58c(a)(9)(B)(i), is applicable)

Line item relative value ratios. The relative value ratio for line item 1 is calculated by dividing the value of that line item by the total value ($\$50,000 \div \$340,000 = .1470$). The relative value ratio for line item 2 is .2647. The relative value ratio for line item 3 is .5882.

Merchandise processing fee apportioned to each line item. The amount of fee attributable to each line item is calculated by multiplying \$485 by the applicable relative value ratio. The amount of the \$485 fee attributable to line item 1 is \$71.295 ($.1470 \times \$485 = \71.295). The amount of the fee attributable to line item 2 is \$128.3795 ($.2647 \times \$485 = \128.3795). The amount of the fee attributable to line item 3 is \$285.277 ($.5882 \times \$485 = \285.277).

Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee eligible for drawback for line item 1 is \$70.5821 ($.99 \times \71.295). The amount of fee eligible for drawback for line item 2 is \$127.0957 ($.99 \times \128.3795). The amount of fee eligible for drawback for line item 3 is \$282.4242 ($.99 \times \285.277).

Amount of merchandise processing fee eligible for drawback per unit of merchandise. The amount of merchandise processing fee eligible for drawback per unit of merchandise is calculated by dividing the amount of fee eligible for drawback for the line item by the number of units in the line item. For line item 1, the amount of merchandise processing fee eligible for drawback per unit is \$.0141 ($\$70.5821 \div 5,000 = \$.0141$). If 1,000 widgets form the basis of a claim for drawback under 19 U.S.C. 1313(j), the total amount of drawback attributable to the merchandise processing fee is \$14.10 ($1,000 \times \$.0141 = \14.10). For line item 2, the amount of fee eligible for drawback per unit is \$.0212 ($\$127.0957 \div 6,000 =$

\$.0212). For line item 3, the amount of fee eligible for drawback per unit is \$.0282 ($\$282.4242 \div 10,000 = \$.0282$).

Example 2: This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

Line item 1—700 meters of printed cloth valued at \$10 per meter (total value \$7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)

Line item 2—15,000 articles valued at \$100 each (total value \$1,500,000)

Line item 3—10,000 duty-free articles valued at \$50 each (total value \$500,000)

The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

Line item 2— $1,500,000 \div 2,000,000 = .75$ (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).

Line item 3— $500,000 \div 2,000,000 = .25$.

If the total merchandise processing fee paid was \$485, the amount of the fee attributable to line item 2 is \$363.75 ($.75 \times \$485 = \363.75). The amount of the fee attributable to line item 3 is \$121.25 ($.25 \times \$485 = \121.25).

The amount of merchandise processing fee eligible for drawback for line item 2 is \$360.1125 ($.99 \times \363.75). The amount of fee eligible for line item 3 is \$120.0375 ($.99 \times \121.25).

The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is \$.0240 ($\$360.1125 \div 15,000 = \$.0240$). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is \$.0120 ($\$120.0375 \div 10,000 = \$.0120$).

If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is \$24.00 ($\$.0240 \times 1,000 = \24.00).

(c) *HTSUS number(s) or Schedule B commodity number(s) of imports and exports*—(1) *General.* Drawback claimants are required to provide, on all drawback claims they submit, the Harmonized Tariff Schedule of the United States (HTSUS) number(s) for the designated imported merchandise and the HTSUS number(s) or the Schedule B commodity number(s) for the exported article or articles.

(2) *Imports.* For imports, HTSUS numbers shall be provided from the entry summary(s) and other entry documentation, when the claimant is the importer of record, or from the certificate of delivery and/or the certificate of manufacture and delivery, other-

wise. Manufacturing drawback claimants filing drawback claims based on certificate(s) of manufacture and delivery filed with the claims or previously filed with Customs (see paragraph (a) of this section), may meet this requirement with the HTSUS number(s) for the designated imported merchandise on such certificate(s).

(3) *Exports.* For exports, the HTSUS number(s) or Schedule B commodity number(s) shall be from the Shipper's Export Declaration(s) (SEDs), when required. If no SED is required (see, e.g., 15 CFR 30.58), the claimant shall provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED.

(4) *6-digit level for HTSUS and Schedule B commodity numbers.* The HTSUS numbers and Schedule B commodity numbers shall be stated to at least 6 digits.

(5) *Effective date.* For imports, HTSUS numbers are required for merchandise entered, or withdrawn from warehouse, for consumption on or after April 6, 1998. For exports, HTSUS numbers or Schedule B commodity numbers are required for exported merchandise or articles exported on or after the date 1 year after April 6, 1998.

(d) *Place of filing.* For manufacturing drawback, the claimant shall file the drawback claim with the drawback office listed, as appropriate, in the general manufacturing drawback ruling or the specific manufacturing drawback ruling (see §§191.7 and 191.8 of this part). For other kinds of drawback, the claimant shall file the claim with any drawback office.

(e) *Time of filing*—(1) *General.* A completed drawback claim, with all required documents, shall be filed within 3 years after the date of exportation or destruction of the merchandise or articles which are the subject of the claim. Except for landing certificates (see §191.76 of this part), or unless this time is extended as provided in paragraph (e)(2) of this section, claims not completed within the 3-year period shall be considered abandoned. Except as provided in paragraph (e)(2) of this section, no extension will be granted unless it is established that Customs was responsible for the untimely filing.

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(2) *Major disaster.* The 3-year period for filing a completed drawback claim provided for in paragraph (e)(1) of this section may be extended for a period not to exceed 18 months if:

(i) The claimant establishes to the satisfaction of Customs that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster, within the meaning given to that term in 42 U.S.C. 5122(2), on or after January 1, 1994; and

(ii) The claimant files a request for such extension with Customs within 1 year from the last day of the 3-year period referred to in paragraph (e)(1) of this section.

(3) *Record retention.* If an extension is granted with respect to a request filed under paragraph (e)(2)(ii) of this section, the periods of time for retaining records under 19 U.S.C. 1508(c)(3) shall be extended for an additional 18 months.

[T.D. 98-16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 01-14, 66 FR 8767, Feb. 2, 2001; T.D. 01-18, 66 FR 9649, Feb. 9, 2001; T.D. 02-39, 67 FR 48548, July 25, 2002; CBP Dec. 04-33, 69 FR 60083, Oct. 7, 2004]

§ 191.52 Rejecting, perfecting or amending claims.

(a) *Rejecting the claim.* Upon review of a drawback claim, if the claim is determined to be incomplete (see § 191.51(a)(1)), the claim will be rejected and Customs will notify the filer in writing. The filer shall then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 3 years.

(b) *Perfecting the claim; additional evidence required.* If Customs determines that the claim is complete according to the requirements of § 191.51(a)(1), but that additional evidence or information is required, Customs will notify the filer in writing. The claimant shall furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by Customs. Customs may extend this 30 day period for good cause if the claimant files a written request for such extension within the 30 day period. The evidence or information required under this paragraph may be filed more than 3 years after the date

of exportation or destruction of the articles which are the subject of the claim. Such additional evidence or information may include, but is not limited to:

(1) The export bill of lading or other actual evidence of exportation, as provided for in § 191.72(a) of this part, which shall show that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the party in whose name the articles were shipped which shall be attached to such bill of lading, showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated;

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed; and

(4) Certificate(s) of delivery upon which the claim is based (see § 191.10(e) of this part).

(c) *Amending the claim; supplemental filing.* Amendments to claims for which the drawback entries have not been liquidated must be made within three (3) years after the date of exportation or destruction of the articles which are the subject of the original drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in § 191.84 of this part and part 174 of this chapter.

§ 191.53 Restructuring of claims.

(a) *General.* Customs may require claimants to restructure their drawback claims in such a manner as to foster Customs administrative efficiency. In making this determination, Customs will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback