

§ 181.46

Agreement Implementation Act, if exported to Canada, are eligible for drawback without regard to the limitation on drawback set forth in §181.44 of this part.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98-16, 63 FR 11005, Mar. 5, 1998]

§181.46 Time and place for filing drawback claim.

(a) *Time of filing.* A drawback claim under this subpart shall be filed or applied for, as applicable, within 3 years after the date of exportation of the goods on which drawback is claimed. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing. Drawback shall be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim. A good subject to a claim for same condition drawback must be exported before the close of the 3-year period beginning on the date of importation of the good into the United States.

(b) *Place of filing.* A drawback claim must be filed at the drawback office(s) where the manufacturing drawback contract is on file, whether a general rate or specific rate, but exportation need not occur from that port. To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place (see §191.141(b)(3) (ii) and (iii) of this chapter). Customs must be notified at least 2 working days in advance of the intended date of exportation in order to have the opportunity to examine the goods.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98-16, 63 FR 11005, Mar. 5, 1998]

§ 181.47 Completion of claim for drawback.

(a) *General.* A claim for drawback shall be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to

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Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback shall be in accordance with the provisions of part 191 of this chapter; however, a drawback claim subject to the provisions of this subpart shall be filed separately from any part 191 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the 3-year period specified in §181.46 of this part shall be considered abandoned.

(b) *Complete drawback claim*—(1) *General.* A complete drawback claim under this subpart shall consist of the filing of the appropriate completed drawback entry form, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its supporting documents, certificate(s) of delivery, when necessary, or certificate(s) of manufacture and delivery, and a certification from the Canadian or Mexican importer as to the amount of duties paid. Each drawback entry form filed under this subpart shall be conspicuously marked at the top with the word “NAFTA”.

(2) *Specific claims.* The following documentation, for the drawback claims specified below, must be submitted to Customs in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim.* The following shall be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A completed Customs Form 331, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

(B) Customs Form 7501 or the import entry number;

(C) Exporter summary procedure, if applicable. For purposes of this subpart, the exporter summary procedure must include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred shall be submitted in order for the claim to be considered complete; and

(F) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's Certificate of Origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify Customs if he subsequently provides such an exporter's Certificate of Origin to any person.

(ii) *Same condition drawback claim under 19 U.S.C. 1313(j)(1)*. The following shall be submitted in connection with a drawback claim covering a good in the same condition:

(A) A completed Customs Form 7551. In addition, the tariff classification number of the imported goods shall be recorded on the form;

(B) Customs Form 7501. The form must show the entry number, date of entry, port of importation, date of importation, importing carrier, and importer of record or ultimate consignee name and Customs or taxpayer identification number. Explicit line item information shall be clearly noted on the Customs Form 7501 so that the subject goods are easily discernible;

(C) Customs Form 7505, if applicable, to trace the movement of the imported goods after importation;

(D) A certificate of delivery on Customs Form 7552, if applicable, for purposes of tracing the transfer of ownership of the imported goods from the importer to the claimant. This is re-

quired if the drawback claimant is not the original importer of the merchandise which is the subject of a same condition claim;

(E) Customs Form 7512, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(F) Notification of intent to export or waiver of prior notice;

(G) Evidence of exportation. Acceptable documentary evidence of exportation to Canada or Mexico shall include a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. Supporting documentary evidence shall establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(H) Waiver of right to drawback. If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred shall be required in order for the claim to be considered complete; and

(I) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim*. The following shall be submitted in the case of goods not conforming to sample or specifications or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c):

(A) Customs Form 7551, completed and submitted at the time the goods are returned to Customs custody;

(B) Customs Form 7501 to establish the fact of importation, the receipt of the imported goods and the identity of the party to whom drawback is payable (see §181.48(c) of this part);

(C) Documentary evidence to support the claim that the goods did not conform to sample or specifications or were shipped without the consent of the consignee. In the case of nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or telex or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(D) Customs Form 7512, if applicable; and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(G) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph shall be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of subpart N of part 191 of this chapter.

(c) *Evidence of exportation and of duties paid in Canada or Mexico.* For purposes of this subpart, evidence of exportation and satisfactory evidence of payment of duties in Canada or Mexico shall consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of impor-

tation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, referred to as the Canada Customs Invoice or B-3, presented with either the K-84 Statement or the Detailed Coding Statement. A Canadian customs document that is not accompanied by a valid receipt is not adequate evidence of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the "pedimento");

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, respecting the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on information received from the importer of the good in Canada or Mexico.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98-16, 63 FR 11005, Mar. 5, 1998]

§ 181.48 Person entitled to receive drawback.

(a) *Manufacturing drawback.* The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, shall be considered the exporter and entitled to manufacturing drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(b) *Nonconforming or improperly shipped goods drawback.* Only the importer of record or the actual owner of the merchandise or its agent may claim drawback under 19 U.S.C. 1313(c).

(c) *Same condition drawback.* The importer of record on the consumption entry is entitled to claim same condition drawback under 19 U.S.C. 1313(j)(1)