

DRAWBACK BASICS

INTRODUCTION

An importer may be entitled to a refund of most or all of the duties and fees when imported goods, or their commercial equivalents, are exported or destroyed. This benefit is known as “drawback.” An importer may also recoup Merchandise Processing Fees, but not Harbor Maintenance Fees. The imported goods, or their commercial equivalents, are not exported or destroyed, there is no drawback. Each drawback claim must relate to an importation (i.e., when the duties were paid).

PENALTIES FOR DRAWBACK VIOLATIONS

CBP may impose penalties for filing false or incorrect drawback claims. The maximum penalty for fraud is up to three times the loss of revenue. For negligence, the maximum penalty is twenty percent of the loss of revenue for the first violation, thirty percent of the loss of revenue for the first repetitive violation, or 100% of the loss of revenue for the second and each subsequent repetitive violation. By filing a prior disclosure, the importer may reduce or eliminate penalties. In addition to paying penalties (whether or not a prior disclosure is filed), the importer must also return any money it received under the importer drawback claims, along with any accrued interest.

TYPES OF DRAWBACK CLAIMS

- **Substitution Drawback for Petroleum Derivatives (Manufacturing-Substitution)**

This type of drawback allows duty refunds based on imported raw materials or components when the importer later exports or destroys those goods, goods that can be produced from the imported goods, or goods that are commercially interchangeable with the imported goods. The test for commercial interchangeability is objective and requires that a hypothetical reasonable competitor would accept either the imported or exported goods for their commercial purpose.

- **Unused Merchandise-Substitution Drawback**

An importer can claim this type of drawback if, after importation, it decides to substitute U.S.-origin raw material or components in the manufacturing process. The importer may request a refund of duties on the imported raw materials or components that were not used and were either exported or destroyed under CBP supervision. The substituted goods must be commercially interchangeable with the imported goods. The substituted goods must be in the importer's possession before exportation or destruction.

- **Unused Merchandise-Direct Identification Drawback**

This type of drawback may be claimed for goods that are not used in the U.S. and are either exported or destroyed under CBP supervision.

- **Rejected Merchandise Drawback**

An importer may file this type of claim when it receives defective goods, goods not conforming to order specifications, or goods that were shipped without the importer's consent. The importer may reject the goods and obtain a refund of duties and fees for goods exported or destroyed under CBP supervision.

- **Manufacturing-Direct Identification Drawback**

This program provides a refund of duties paid on imported goods that are partially or totally used in the manufacture of an exported article. The imported goods must be used in the manufacturing process and exported within five years from the date of importation of the goods.

WHEN CLAIMS MUST BE FILED

The drawback claimant must use both the original materials or components and their substitutes in a manufacturing process within three years from arrival of the original imports at the production site. The substituted materials or components must be exported or destroyed within five years of the date the original materials or components were imported. Drawback claims must be filed within three years of the date of exportation of the merchandise. This period may be extended for an additional eighteen months for special circumstances, but such extensions are rarely granted.

RECORD-KEEPING

Claimants are required to keep and maintain all records relating to each drawback claim for at least three years after payment of the refund to the drawback claimant; even after the five-year document retention period for import entry documents has passed. If a claimant fails to keep or to timely produce the documents upon a request by Customs, the claimant may not only forfeit its drawback claim, but may also be subject to hefty civil penalties.

Gonzalez Rolon Valdespino & Rodriguez, LLC, Attorneys
Toll-Free: (800) 256-2013
Phone: (214) 720-7720
Fax: (214) 720-6076
info@exportimportlaw.com
www.exportimportlaw.com
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