

Subpart B—Manufacturing Drawback

§ 191.21 Direct identification drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under Customs supervision, of articles which are not used in the United States prior to their exportation or destruction, and which are manufactured or produced in the United States wholly or in part with the use of particular imported, duty-paid merchandise and/or drawback product(s). Where two or more products result, drawback shall be distributed among the products in accordance with their relative value (see § 191.2(u)) at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 191.14 of this part.

§ 191.22 Substitution drawback.

(a) *General.* If imported, duty-paid, merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, then upon the exportation, or destruction under Customs supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), even though none of the imported, duty-paid merchandise may have been used in the manufacture or production of the exported or destroyed articles. The amount of drawback allowable cannot exceed that which would have been allowable had the merchandise used therein been the imported, duty-paid merchandise.

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 3 years after the date on which the material was received by the manufacturer or producer may be designated as the basis for drawback on articles manufactured or

produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor; 19 U.S.C. 1313(s)—(1) General rule.* Upon compliance with the requirements in this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A “drawback successor” is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence—(i) Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor’s records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor

are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3) (i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

(e) *Multiple products*—(1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback shall be distributed to each product in accordance with its relative value (see § 191.2(u)) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see § 191.2(u) of this part). Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(3) *Recordkeeping.* Records shall be maintained showing the relative value of each product at the time of separation.

§ 191.23 Methods of claiming drawback.

(a) *Used in.* Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (see paragraph (c) of this section).

(b) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. This method may not be used if there are multiple products also necessarily and

concurrently resulting from the manufacturing process.

(c) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(d) *Abstract or schedule.* A drawback claimant may use either the abstract or schedule method to show the quantity of material used or appearing in the exported or destroyed article. An abstract is the summary of records which shows the total quantity used in or appearing in all articles produced during the period covered by the abstract. A schedule shows the quantity of material used in producing, or appearing in, each unit of product. Manufacturers or producers submitting letters of notification of intent to operate under a general manufacturing drawback ruling (see § 191.7) and applicants for approval of specific manufacturing drawback rulings (see § 191.8) shall state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(e) *Recordkeeping*—(1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer shall keep records to show the market value of the merchandise or drawback products used to manufacture or produce the exported or destroyed articles, as well as the market value of the resulting waste, under the used in less valuable waste method (see § 191.2(u) of this part).

(2) *If claim for waste is waived.* If claim for waste is waived, only the “appearing in” basis may be used (see paragraph (b) of this section). Waste