

§ 191.0

APPENDIX A TO PART 191—GENERAL MANUFACTURING DRAWBACK RULINGS
APPENDIX B TO PART 191—SAMPLE FORMATS FOR APPLICATIONS FOR SPECIFIC MANUFACTURING DRAWBACK RULINGS

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

§ 191.62 also issued under 18 U.S.C. 550, 19 U.S.C. 1593a;

§ 191.84 also issued under 19 U.S.C. 1514;

§§ 191.111, 191.112 also issued under 19 U.S.C. 1309;

§§ 191.151(a)(1), 191.153, 191.157, 191.159 also issued under 19 U.S.C. 1557;

§ 191.182–191.186 also issued under 19 U.S.C. 81c;

§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

SOURCE: T.D. 98–16, 63 FR 11006, Mar. 5, 1998, unless otherwise noted.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§ 191.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter shall be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§ 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§ 191.2 Definitions.

For the purposes of this part:

(a) *Abstract.* *Abstract* means the summary of the actual production records of the manufacturer.

(b) *Act.* *Act*, unless indicated otherwise, means the Tariff Act of 1930, as amended.

(c) *Certificate of delivery.* *Certificate of delivery* (see § 191.10 of this part) means

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Customs Form 7552, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer from one party (transferor) to another (transferee) of:

(i) Imported merchandise;

(ii) Substituted merchandise under 19 U.S.C. 1313(j)(2);

(iii) A qualified article under 19 U.S.C. 1313(p)(2)(A)(ii) from the manufacturer or producer to the exporter or under 1313(p)(2)(A)(iv) from the importer to the exporter; or

(iv) Drawback product;

(2) The identity of such merchandise or article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the merchandise or article transferred from the transferor to the transferee.

(d) *Certificate of manufacture and delivery.* *Certificate of manufacture and delivery* (see § 191.24 of this part) means Customs Form 7552, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer of an article manufactured or processed under 19 U.S.C. 1313(a) or 1313(b) from one party (transferor) to another (transferee);

(2) The identity of such article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the article transferred from the transferor to the transferee.

(e) *Commercially interchangeable merchandise.* *Commercially interchangeable merchandise* means merchandise which may be substituted under the substitution unused merchandise drawback law, § 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)) (see § 191.32(b)(2) and (c) of this part), or under the provision for the substitution of finished petroleum derivatives, § 313(p), as amended (19 U.S.C. 1313(p)).

(f) *Designated merchandise.* *Designated merchandise* means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the

basis for drawback under 19 U.S.C. 1313(p).

(g) *Destruction.* *Destruction* means the complete destruction of articles or merchandise to the extent that they have no commercial value.

(h) *Direct identification drawback.* *Direct identification drawback* means drawback authorized either under §313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed, or under §313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under Customs supervision, without having been used in the United States (see also §§313(c), (e), (f), (g), (h), and (q)). Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in §191.14 of this subpart.

(i) *Drawback.* *Drawback* means the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d) (see also §191.3 of this subpart).

(j) *Drawback claim.* *Drawback claim* means the drawback entry and related documents required by regulation which together constitute the request for drawback payment.

(k) *Drawback entry.* *Drawback entry* means the document containing a description of, and other required information concerning, the exported or destroyed article on which drawback is claimed. Drawback entries are filed on Customs Form 7551.

(l) *Drawback product.* A *drawback product* means a finished or partially finished product manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under Customs supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which

case drawback would be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become “drawback products” when applicable substitution provisions of the Act are met. For purposes of §313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (see §1313(b)). For a drawback product to be designated as the basis for drawback, the product must be associated with a certificate of manufacture and delivery (see §191.24 of this part).

(m) *Exportation; exporter.* (1) *Exportation.* *Exportation* means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are laden upon qualifying aircraft or vessels as aircraft or vessel supplies in accordance with §309(b) of the Act, as amended (19 U.S.C. 1309(b)) (see §§10.59 through 10.65 of this chapter).

(2) *Exporter.* *Exporter* means that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. In the case of “deemed exportations” (see paragraph (m)(1) of this section), the exporter means that person who, as the principal party in interest in the transaction deemed to be an exportation, has the power and responsibility for determining and controlling the transaction (in the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), the party who has the power and responsibility for lading the vessel supplies on the qualifying aircraft or vessel).

(n) *Filing.* *Filing* means the delivery to Customs of any document or documentation, as provided for in this part, and includes electronic delivery of any such document or documentation.

(o) *Fungible merchandise or articles.* *Fungible merchandise or articles* means

merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

(p) *General manufacturing drawback ruling.* A *general manufacturing drawback ruling* means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation (see §191.7 of this subpart).

(q) *Manufacture or production.* *Manufacture or production* means:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive “name, character or use”; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

(r) *Multiple products.* *Multiple products* mean two or more products produced concurrently by a manufacture or production operation or operations.

(s) *Possession.* *Possession*, for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

(t) *Records.* *Records* include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data which pertain to the filing of a drawback claim or to the information contained in the records required by Chapter 4 of Title 19, United States Code, in connection with the filing of a drawback claim and which are normally kept in the ordinary course of business (see 19 U.S.C. 1508).

(u) *Relative value.* *Relative value* means, except for purposes of §191.51(b), the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by Customs, of each such product determined as of the time it is first sepa-

rated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback law requires the apportionment of drawback to each such product based on its relative value at the time of separation.

(v) *Schedule.* A *schedule* means a document filed by a drawback claimant, under §313(a) or (b), as amended (19 U.S.C. 1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed for drawback.

(w) *Specific manufacturing drawback ruling.* A *specific manufacturing drawback ruling* means a letter of approval issued by Customs Headquarters in response to an application, by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format used. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis being published under an identifying Treasury Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

(x) *Substituted merchandise or articles.* *Substituted merchandise or articles* means merchandise or articles that may be substituted under 19 U.S.C. 1313(b), 1313(j)(2), or 1313(p) as follows:

(1) Under §1313(b), substituted merchandise must be of the same kind and quality as the imported designated merchandise or drawback product, that is, the imported designated merchandise or drawback products and the substituted merchandise must be capable of being used interchangeably in the manufacture or production of the exported or destroyed articles with no substantial change in the manufacturing or production process;

(2) Under §1313(j)(2), substituted merchandise must be commercially interchangeable with the imported designated merchandise; and

(3) Under §1313(p), a substituted article must be of the same kind and quality as the qualified article for which it is substituted, that is, the articles

must be commercially interchangeable or described in the same 8-digit HTSUS tariff classification.

(y) *Verification*. *Verification* means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate Customs officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

[T.D. 98-16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998, as amended by T.D. 01-18, 66 FR 9649, Feb. 9, 2001]

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties and fees subject to drawback include:

(1) All ordinary Customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final, subject to the conditions and requirements of § 191.81(b) of this subpart; and

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 191.81(c) of this part, including:

(A) Voluntary tenders (for purposes of this section, a "voluntary tender" is a payment of duties on imported merchandise in excess of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions of this section and § 191.81 of this part are met);

(B) Tenders of duties in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4); and

(C) Duties restored under 19 U.S.C. 1592(d).

(2) Marking duties assessed under § 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c));

(3) Internal revenue taxes which attach upon importation (see § 101.1 of this chapter); and

(4) Merchandise processing fees (see § 24.23 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance fee (see § 24.24 of this chapter);

(2) Merchandise processing fees (see § 24.23 of this chapter), except where unused merchandise drawback is claimed; and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

(c) No drawback shall be allowed when the identified merchandise, the designated imported merchandise, or the substituted other merchandise (when applicable), consists of an agricultural product which is duty-paid at the over-quota rate of duty established under a tariff-rate quota, except that:

(1) Agricultural products as described in this paragraph are eligible for drawback under 19 U.S.C. 1313(j)(1); and

(2) Tobacco otherwise meeting the description of agricultural products in this paragraph is eligible for drawback under 19 U.S.C. 1313(j)(1) or 19 U.S.C. 1313(a).

[T.D. 98-16, 63 FR 11006, Mar. 5, 1998; 63 FR 27489, May 19, 1998, as amended by T.D. 01-18, 66 FR 9649, Feb. 9, 2001]

§ 191.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government*. A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section.

(b) *Allowance of drawback*. If the merchandise is sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or