

**§ 181.41**

be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director shall give written notice of the denial and the reason therefor to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

**Subpart E—Restrictions on Drawback and Duty-Deferral Programs**

**§ 181.41 Applicability.**

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 303 of the NAFTA and applies to any good that is a “good subject to NAFTA drawback” within the meaning of 19 U.S.C. 3333. Except in the case of § 181.42(d), the provisions of this subpart apply to goods which are imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001. The requirements and procedures set forth in this subpart for NAFTA drawback are in addition to the general definitions, requirements and procedures for all drawback claims set forth in part 191 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for NAFTA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

**§ 181.42 Duties and fees not subject to drawback.**

The following duties or fees which may be applicable to a good entered for

**19 CFR Ch. I (4–1–03 Edition)**

consumption in the Customs territory of the United States are not subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff rate quotas or tariff preference levels;

(c) Fees applied under section 22 of the U.S. Agricultural Adjustment Act; and

(d) Customs duties paid or owed under unused merchandise substitution drawback. There shall be no payment of such drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

**§ 181.43 Eligible goods subject to drawback.**

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(j)(1));

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(a)); or

(c) Substituted by a good of the same kind and quality as defined in § 181.44(c) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(b)).

**§ 181.44 Calculation of drawback.**

(a) *General.* Except in the case of goods specified in § 181.45 of this part, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a NAFTA drawback claim under this subpart, on the lower amount of:

(1) The total duties paid or owed on the good in the United States; or

(2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Individual relative value and duty comparison principle.* For purposes of this section, relative value shall be determined, and the comparison between the duties referred to in paragraph

(a)(1) of this section and the duties referred to in paragraph (a)(2) of this section shall be made, separately with reference to each individual exported good, including where two components or materials are used to produce one exported good or one component or material is divided among multiple exported goods.

*Example.* Upon importation of Chemical X into the United States, Company A entered Chemical X and paid \$2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, \$1.00 in duty is attributable to Product Y and \$1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US\$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the \$1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the \$1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US\$ equivalent duty paid to Mexico.

(c) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a).* Upon presentation of the NAFTA drawback claim under 19 U.S.C. 1313(a), in which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback refunded shall not exceed 99 percent of the duty paid on such imported merchandise into the United States.

*Example 1.* Upon the importation of Product X to the United States from Japan, Company A paid \$2.00 in duties. Company A manufactured the imported Product X into Product Y, and subsequently exported it to Mexico. Mexico assessed the equivalent of US\$11.00 in duties upon importation of Product Y. Upon presenting a drawback claim in the United States, in accordance with 19 U.S.C. 1313(a), Company A would be entitled to a refund of 99 percent of the \$2.00, or \$1.98. The \$2.00 paid by Company A (less 1 percent) on the importation of Product X into the United States is a lesser amount of duties than the total amount of customs duties paid to Mexico (the equivalent of US\$11.00) on Product Y.

*Example 2.* Upon the importation of Product X into the United States from Hong Kong, Company A entered Product X and paid \$5.00 in duties. Company A manufactured Product X into Product Y, sold it to Company B in Mexico and subsequently exported it to Mexico. Company A reserved its right to drawback. Upon Product Y's importation, Company B was assessed a free rate of duty. Company A's claim for drawback will be denied because Company A is entitled to zero drawback for the reason that, as between the duty paid in the United States and the duty paid in Mexico, the duty in Mexico was zero.

(d) *Substitution manufacturing drawback under 19 U.S.C. 1313(b).* Upon presentation of a NAFTA drawback claim under 19 U.S.C. 1313(b), on which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported. For purposes of drawback under this subpart, the term "same kind and quality" used in §1313(b) (see §191.2(x)(1) of this chapter) shall have the same meaning as the term "identical or similar good" used in Article 303 of the NAFTA except that there shall be no requirement that the good be manufactured in the same country.

*Example 1.* Upon importation of Product X from Japan to the United States, Company A paid \$5.00 in duties. Company A substituted a same kind and quality domestic Product X for the Japanese Product X in its production of Product Y under its 19 U.S.C. 1313(b) drawback contract. Company A sold Product Y to Company B which subsequently exported it to Canada. On the importation of Product Y by Company B, Company B paid the equivalent of US\$2.00 in duties assessed by Revenue Canada and waived its right to drawback to Company A. Company A is entitled to obtain drawback under 19 U.S.C. 1313(b) in the United States in the amount of \$1.98 (or 99 percent of the US\$2.00 equivalent Company B paid in duty to Canada) since that \$2.00 was the lesser of the total amount of customs duties paid on the product to either Canada or the United States.

*Example 2.* Same facts as above example, but Company B paid the equivalent of US\$5.00 to Revenue Canada. Company A is entitled to obtain \$4.95 in drawback (a refund of 99 percent of \$5.00 paid to the United States). Since the same amount of duty was

## § 181.45

assessed by each country, drawback is allowable because the drawback paid does not exceed the lesser amount paid.

(e) *Meats cured with imported salt.* Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than \$100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (see 19 U.S.C. 1313(f)).

*Example.* Company Z produced Virginia smoked ham on its Smithfield, Virginia farm, using 4,000 pounds of imported salt in curing the meat. The salt was imported from an HTSUS Column 2 country, with a duty of \$200. Upon exportation of the hams to Mexico, Company Z pays the equivalent of US\$250.00 in duties to Mexico. Company Z is entitled to drawback of the full 100 percent of the \$200.00 in duties it paid on the importation of the salt into the United States because that \$200.00 is a lesser amount than the total amount of customs duties paid to Mexico on the exported meat.

(f) *Jet aircraft engines.* A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of duties paid on the imported merchandise in aggregate amounts of not less than \$100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

*Example.* A Swedish-made jet aircraft engine is repaired in the United States using imported parts from Korea on which \$160.00 in duties have been paid by Company W. The engine is subsequently exported to Canada by Company W and Company W pays the equivalent of US\$260.00 in duties to Canada. Upon showing the country in which the engine was manufactured and a description of the processing performed thereon in the United States on Customs Form 7551, appropriately modified, Company W is entitled to the full refund of the duties paid to the United States since that \$160.00 was a lesser amount than the duties paid on the engine to Canada.

(g) *Unused goods under 19 U.S.C. 1313(j)(1) that have changed in condition.* An imported good that is unused in the United States under 19 U.S.C. 1313(j)(1) and that is shipped to Canada or Mexico not in the same condition within the meaning of §181.45(b)(1) may be eligible for drawback under this section,

## 19 CFR Ch. I (4-1-03 Edition)

except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. 1313(j)(4).

*Example.* Upon importation of Product X from Spain to the United States, the U.S. importer pays \$10.00 in duties. While in the original package in the importer's warehouse, Product X becomes damaged. A Canadian purchaser buys Product X and imports it into Canada and pays the equivalent of US\$5.00 in duties assessed by Revenue Canada. The Canadian purchaser who exported Product X from the United States to Canada and who otherwise qualifies for drawback is entitled to drawback under 19 U.S.C. 1313(j)(1) in the amount of \$4.95 (99 percent of the US\$5.00 equivalent in duties paid to Canada). Eligibility for full drawback of the \$10.00 in U.S. duties under §181.45(b) would be precluded because Product X, although unused, was not exported to Canada in the same condition as when imported into the United States within the meaning of §181.45(b)(1).

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

### § 181.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in §181.44 of this part if that originating good is:

- (1) Subsequently exported to Canada or Mexico;
- (2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or
- (3) Substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

*Example.* Company A imports a dutiable (3 percent rate) Canadian originating good. During Company A's manufacturing process, Company A substitutes a German good of the same kind and quality (on which duty was paid at a 2.5 percent rate) in the production of another good that is subsequently exported to Canada. Company A may designate the dutiable Canadian entry and claim full drawback (99 percent) on the 3 percent duty paid under 19 U.S.C. 1313(b). (Note: NAFTA originating goods will continue to receive full drawback as they cross NAFTA borders