

D U T Y   D R A W B A C K

# The Essentials: A Guide To The Basics Of Duty Drawback

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## SUMMARY

A comprehensive guide to the essentials and basics of Duty Drawback.

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## TERMINOLOGY AND KEY PLAYERS

### **Drawback Claimant:**

Refers to the company seeking refunds of Customs duties and taxes paid and filing a claim for Duty Drawback.

### **Importer of Record (IOR):**

Designates the legal entity that imported merchandise into the United States and paid Customs duties and taxes.

### **Exporter of Record (EOR):**

Identifies the legal entity that exported merchandise from the United States.

### **US Customs & Border Protection (CBP):**

CBP is a federal law enforcement agency that facilitates lawful international trade. It oversees the Duty Drawback program by administering regulations, processing drawback claims, and ensuring compliance with the laws and regulations.

### **Centers of Excellence and Expertise (CEE):**

Specialized units within CBP that focus on specific industries or trade sectors. Their primary goal is to enhance trade facilitation while ensuring compliance with Customs laws and regulations.

### **Drawback Service Provider:**

A company specialized in managing and filing duty drawback claims for the drawback claimant. Drawback service providers can offer program setup, consultation, audits, and technology solutions.

### **Drawback Software Provider:**

A specialized software provider offering solutions to facilitate and streamline the management of Duty Drawback programs

### **The Harmonized Tariff Code (HTS):**

This code establishes the tariff rates and statistical categories for all merchandise imported into the United States.

## WHAT IS DUTY DRAWBACK?

Duty Drawback serves as a mechanism for reclaiming duties, taxes, and fees paid on merchandise imported into the United States, subsequently exported, or destroyed.

Initially, the exporter of the goods holds the primary right to claim a drawback, although this entitlement can be transferred to the importer of record if waived.

Depending on their business requirements, Duty Drawback claimants leverage various regulatory provisions within Duty Drawback to file claims.

## HISTORY OF DUTY DRAWBACK

The history of Duty Drawback laws in the United States is a testament to the government's efforts to promote exports, encourage manufacturing, and stimulate job creation. These laws date back to 1789 when Congress enacted the first drawback law as part of the Act of July 4th, which provided a drawback of 99% of duties paid on merchandise (with some exclusions) if the merchandise was exported within one year after the duty was paid. The initial legislation set the stage for future developments in drawback policy, emphasizing the importance of promoting U.S. exports, and has evolved significantly to adapt to changing economic conditions and trade practices.

Over the following decades, additional provisions for drawback were introduced, culminating in the Tariff Act of 1930. Drawback was established as a privilege, not a right, and contingent upon compliance with prescribed rules and regulations administered by U.S. Customs and Border Protection (CBP).

The 1980's, 1990's and 2000's saw expansions of drawback provisions:

- Authorizing same-condition merchandise drawback
- Authorized substitution of exported products
- Simplification and improvement on the clarity of drawback procedures, particularly those related to manufacturing and unused merchandise.
- Clarified substitution drawback provisions for substituted exported products.

The most significant overhaul of drawback laws came in 2016 with the enactment of the Trade Facilitation and Trade Enforcement Act (TFTEA). TFTEA brought about significant changes, liberalizing standards for substituting merchandise, easing documentation requirements, extending and standardizing timelines for filing drawback claims, and mandating electronic filing. In December 2018, the final rule implementing TFTEA Modernized Drawback was published, and these changes represent the latest efforts to streamline and enhance the drawback process, ensuring it remains a vital tool for promoting trade and economic growth in the United States.

## PROGRAM BENEFITS

Duty Drawback has many benefits for its participants, including:

- Cost Savings via Duty and Tax Refunds
- Competitive Edge through Reduced Cost of Goods
- Enhanced Cash Flow
- Potential Growth in Exports and Global Sales
- Reduced Cost of Production
- Improved Compliance Health & Standards

## TYPES OF DUTY DRAWBACK

### Unused Merchandise – Provisions 19usc 1313 (J) (1) & 1313 (J) (2)

Allows for the refund of the import duty and tax on merchandise that exported in the unused condition. There are some operations that are allowable such as testing, cleaning, etc. for the merchandise to still be unused. If the merchandise has been used for its intended purpose in the United States, it's no longer considered unused.

#### **j (1) Direct identification**

The export is traced back to the import using lot number or serial number matching. If lot or serial numbers are not present, then the claimant must use one of the accepted accounting methods, such as FIFO or LIFO.

#### **j (2) Substitution**

The export is matched to the import using HTS-level substitution rules. To be eligible for substitution, both the 8-digit or 10-digit HTS cannot be classified as "Other," also known as a "basket provision." Additionally, exports to USMCA countries and Chile do not qualify for j(2), and Direct Identification matching must be used.

## **Manufacturing Drawback – Provisions 1313 (A) And 1313 (B)**

Allows for the refund on the import duty and tax on components that are imported into the United States and further manufactured into a new product with a new name, character use a.k.a. substantial transformation, and then exported.

### **1313 (a) Direct identification**

The imported component that is contained in the exported finished product is traced back to importation using a lot number or serial number, or an accepted drawback accounting methods, such as FIFO or LIFO, to comply with the requirements of Direct Identification.

### **1313 (b) Substitution**

Components used in the production of a finished good can be matched to the duty-paid imported component using HTS-level Substitution.

## **Rejected Merchandise Drawback – Provision 1313 (C)**

Enables refunds on import duties and taxes for merchandise that failed to meet specifications upon importation or for products shipped without the consignee's consent. Documentation substantiating these circumstances must accompany the claim filing, and the merchandise must not have been used in the United States for its intended purpose.

## DUTY DRAWBACK RECORDS

To support Duty Drawback claims, thorough records of imports, exports, and destructions are imperative. The requisite documentation encompasses a range of records, including but not limited to the following. It's important to note that CBP reserves the right to request supplementary documentation during the claim review process.

- Purchase Order
- Proof of Payment
- Import Commercial Invoices(s)
- Import Packing List(s)
- Import Bill of Lading
- CF7501 – Import Entry Summary
- CF7553 – Notice of Intent to Export (as required)
- Inventory Records
- Drawback Rights Waiver (as required)
- Certificate of Destruction (original may be required)
- Sales Orders
- Export Commercial Invoices
- Export Packing List
- Export Bills of Lading/Truck Bills (AES filing data, when applicable)
- B3 – Canada Customs Coding form for Exports to Canada
- Pedimento – Mexico's Customs Entry Form for Exports to Mexico



## DUTY DRAWBACK TIMEFRAMES

The Duty Drawback program allows a five-year timeframe from the date of merchandise importation to file the claim. Goods claimed for export or destruction must fall within this five-year window, occurring after the date of importation.

For exports or destructions to qualify for drawback, prior notice to CBP is necessary, unless a Waiver of Prior Notice (WPN) is obtained.

Refunds, contingent upon approval of the drawback claim, are typically issued upon claim liquidation. Without Accelerated Payment, this process generally takes around one year.



BOTTOM LINE

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