

TFTEA Drawback Implementation

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What is the purpose of the TFTEA drawback changes?

- Simplification
 - Streamline a process
 - Move to 8-digits
 - Make it user friendly and less complex
 - Decrease the cost and administrative burden for both CBP and importers/manufacturers/exporters

Effective Date

- When does the new law take effect?
- Subsection (q) of the new law states that the amendments made by Section 906 take effect
 - On the date of enactment, and
 - “apply to drawback filed on or after the date that is 2 years after such date of enactment.”
- However, there is a transition rule which says that for one year after the date that filings can be made under the new law, drawback claims can be filed under the new law (1313 as amended) or the old law (1313 prior to the amendments)
- February 24, 2018

What About Regulations?

- The new Subsection (l)(2) of Section 313 requires CBP to prescribe regulations:
 - Within 2 years after the date of enactment - February 24, 2018, and
 - That determine the calculation of amounts to be refunded as drawback under the new law.
- The new law is a statutory change, and CBP must prescribe regulations to implement the new law
 - Expect an NPRM, hopefully later this summer
 - The need for CBP and the Trade to work together in drafting
 - Congressional oversight will be part of the process
 - Not impacted by Trump moratorium on new regulations

Substitution Unused Merchandise Drawback 1313(j)

- Standard for substitution is 8-digit HTS, not commercial interchangeability
- Limitations if your 8-digit HTS starts with “other”
- 5 years import to claim
- No more Certificates of Delivery
- New rules for calculating drawback amount
- Consider value of exported/destroyed items- “lesser of” rule
- Drawback for recovered materials

Substitution Manufacturing Drawback

- Standard for substitution is 8-digit HTS, not “same kind and quality”
- No tracking of receipt date
- BOM at 8-digit HTS level
- 5 years import to claim
- No more Certificates of Manufacture and Delivery
- New rules for calculating drawback amount
- Consider value of substitute component/material used to manufacture- “lesser of” rule
- Drawback for recovered materials

Other Important Changes

- Electronic Claims Only
- Proof of Exportation- records kept in normal course of business
- Proof of Exportation- use of electronic export system
- Importer/Claimant have joint and several liability
- Longer recordkeeping timeframe- 3 years from date of liquidation

Where are the Regulations?

- CBP-Trade working group- late 2016, early 2017
- CBP draft circulated to agencies
- Currently under review by Treasury
- Issue NPRM and 30-60 day comment period
- Final Regulations?

Key Elements of Regulations

- Method to calculate drawback
- Export value to use in “lesser of” calculation
- Value of destroyed merchandise- “lesser of”
- Value of substituted manufacturing components- “lesser of”
- Taxes and fees recoverable in drawback
- Update to proof of exportation requirements
- Transfers in a world without CMs and CM&Ds

Where do we stand with ACE?

- Core ACE drawback developed and ready for deployment for months
- Tested only in certification
- Data limitations
- TFTEA programming currently in development- Draft CATAIR released 9/29/17
- TFTEA programming in certification by December?
- “Big Bang” deployment on 2/24/17- a perfect storm?
 - ACS turned off
 - ACE core drawback turned on for first time in production
 - TFTEA changes implemented
 - Numerous TFTEA claims to be filed
- Need contingency plan