

DRAWBACK:

HOW NAFTA HAS AFFECTED DRAWBACK TO CANADA AND MEXICO

Drawback to Canada is a complex matter. This complexity is a direct result of NAFTA (North American Free Trade Agreement). There are a number of different regulations that come into play on goods exported to Canada. The current regulations have mandated changes of Drawback when the articles are exported from the United States to Canada. Two changes have already taken place. As of January 1, 1994, exports to Canada cannot claim Drawback under Same Condition Drawback - Substitution (1313)(j)(2). After January 1, 1996, Exports to Canada may claim Drawback other than Same Condition Substitution, but the claim may be limited to the lesser of 99% of the duties paid in the United States or in Canada. There are some exceptions to this Regulation.

Exception 1: If the goods originated in Canada (or Mexico) and are subsequently exported back to Canada, used as a material in the production of another article that is subsequently exported to Canada or 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 (1313(b) Manufactured Drawback, Substitution).

Exception 2: You may also export to Canada for full Drawback refund, goods under 1313(j)(l) (Same Condition Drawback-direct Identification).

Exception 3: Finally you may export to Canada for full Drawback refund, goods eligible under 1313(c).

Eligible goods exported to Canada & Mexico:	Drawback Refund?
Manufacturing Drawback Direct Identification	partial
Manufacturing Drawback Substitution	full*
Rejected Merchandise Drawback	full
Unused Merchandise Drawback Direct Identification	full
Unused Merchandise Drawback Substitution	no

*Only if the imported goods are from Canada or Mexico; only a partial refund if goods are from non-NAFTA country

Same condition Direct Identification Drawback has not been affected by NAFTA. However, there is a further complicating factor that resulted from the passage of the NAFTA treaty. The legislative strategy for congressional passage of NAFTA and the Customs Modernization Act (Mod Act) involved putting both bills together in a single piece of legislation, the North American Free Trade Agreement Implementation Act.

The Mod Act amended the drawback statute to replace Same Condition Drawback with the new Unused Merchandise Drawback. Unfortunately, the implementing law continued to refer to the old Same Condition Drawback for NAFTA purposes because it was too late to renegotiate the new treaty language on drawback. The result of this problem is that it appears that Drawback to NAFTA countries would fall under the old Same Condition Direct Identification while Drawback to non-NAFTA countries are guided by the new Unused Merchandise Drawback. For purposes of flexibility and manipulation, it is preferable to qualify for drawback under the new Unused Merchandise rules rather than the old Same Condition rules.

If imported goods are commingled (e.g. Same part from different shipper or suppliers or similar parts from the same shipper), qualification for Same Condition Direct Identification Drawback is nearly impossible. The chief reason is because Substitution is not allowed for Drawback to a NAFTA country and your imported goods are commingled and not directly identified.

Another drawback provision under NAFTA became effective on January 1, 1996 for U.S. exports to Canada, and January 1, 2001 for U.S. exports to Mexico. The biggest change in these provisions is the so-called 'lesser of' rule. Under the 'lesser of' rule, now effective for manufacturing drawback claims based on exports to Canada after January 1, 1996, drawback refunds will be limited to the lesser of the duties paid on the importation of non-NAFTA goods used in manufacture, and those paid on the exportation of the manufactured articles to another NAFTA country. There are certain exceptions to this rule.

The current regulations are clear as to the process of Drawback. Drawback is transactional. Each export shipment needs to have an audit trail. This audit trail starts with the receipt of imported goods into your inventory and ends with the exportation of the article from the United States. Exporters' summary procedures for Unused Merchandise drawback allow for the summary of the date by transaction and to be submitted to Customs on a periodic basis. The transaction may be identified by your invoice number or other numbers that are used in your internal accounting or sales systems. Export Summary cannot be used until your company has been approved for this and only for prospective shipments. Waiver of prior notice is also required.

M.E. Dey can make applications for all of these options on your behalf.