

Duty Drawbacks USA Specific

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DUTY DRAWBACK

Topics of
Discussion



TOPIC'S COVERED IN PRESENTATION

- OVERVIEW OF A DUTY DRAWBACK
- TYPES OF DUTY DRAWBACKS
 - 1. DIRECT IDENTIFICATION MANUFACTURING DRAWBACK
 - 2. SUBSTITUTION MANUFACTURING DRAWBACK
 - 3. DIRECT IDENTIFICATION SAME CONDITION/UNUSED MERCHANDISE DRAWBACK
 - 4. SUBSTITUTION SAME CONDITION/UNUSED MERCHANDISE DRAWBACK
- DRAWBACK A PRIVILEGE, NOT A RIGHT
- TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015

OVERVIEW OF A DUTY DRAWBACK

What it is, why we
have them and the
different types



WHAT IS A DUTY DRAWBACK AND WHY DO WE HAVE THEM?

Drawback is a refund of duty paid on imported merchandise that is linked to an exportation (or destruction) of an article. Duty drawback was established to refund duties on imported goods that do not end up being consumed in the importing country.

4 CATEGORIES OF DRAWBACK

There are three categories of drawback: **manufacturing** drawback, **unused merchandise** drawback, and **rejected merchandise** drawback. Within each category, there are variations such as the ability to substitute the imported article, and specific time limits to manufacture or export articles.

OVERVIEW OF A DUTY DRAWBACK

What it is, why we
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PROOF

You must have proof of the export or destruction, as well as proof that duty was originally paid. A bill of sale or airway bill is valid proof of export and a CBP officer must witness the destruction of the goods. Without proof of export or the destruction, the claim is not substantiated.

4 TYPES OF DUTY DRAWBACK

- 1. DIRECT IDENTIFICATION
MANUFACTURING DRAWBACK**
- 2. SUBSTITUTION MANUFACTURING
DRAWBACK**
- 3. DIRECT IDENTIFICATION SAME
CONDITION/UNUSED
MERCHANDISE DRAWBACK**
- 4. SUBSTITUTION SAME
CONDITION/UNUSED
MERCHANDISE DRAWBACK**

TYPES OF DUTY DRAWBACKS

4 categories



1. DIRECT IDENTIFICATION MANUFACTURING DRAWBACK

Traditionally, drawback was a refund of duties paid on materials or components which were previously imported into the United States and used here in the manufacture or production of goods for export. The goal of the drawback law was to encourage the production in the United States of articles for export, thereby stimulating United States foreign trade and assisting United States industry and labor.

TYPES OF DUTY DRAWBACKS; TYPE 1

Direct
identification
manufacturing
drawback



1. DIRECT IDENTIFICATION MANUFACTURING DRAWBACK - EXAMPLE

Assume that Acme Corporation imports 100 electric motors, paying United States customs duties of \$100 (\$1.00 per motor). It brings the motors to its Albany, New York factory, where they are assembled with other components to make 100 winches, each containing one motor. After manufacture, Acme Corporation exports 50 of the winches to customers in various foreign countries. Acme is entitled to claim a drawback equal to 99% of the duties paid on the motors incorporated into the exported winches, or $.99 \times \$50 = \49.50 . This traditional type of drawback is provided under Section 313(a) of the Tariff Act of 1930, as amended [19 U.S.C. Section 1313(a)], and is known as direct identification manufacturing drawback.

**TYPES OF DUTY
DRAWBACKS;
TYPE 1**

**Direct
identification
manufacturing
drawback
EXAMPLE**



2. SUBSTITUTION MANUFACTURING DRAWBACK

Over the years, Congress has expanded the concept of drawback. Section 313(b) of the Tariff Act [19 U.S.C. Section 1313(b)] provides for substitution manufacturing drawback. Under this statute, a drawback of duties is payable with respect to imported, duty-paid components or materials, even if goods are produced for export with other foreign or domestic components or materials of the “same kind and quality” (“SKAQ”).

TYPES OF DUTY DRAWBACKS; TYPE 2

Substitution
Manufacturing
Drawback



2. SUBSTITUTION MANUFACTURING DRAWBACK - EXAMPLE

Acme Corporation imports 100 electric motors, paying United States customs duties of \$100 (\$1.00 per motor). It brings the motors to its Albany, New York factory, where it also maintains an inventory of domestic-origin motors of the “same kind and quality”, as well as imported, duty-free SKAQ motors manufactured in a Caribbean Basin Initiative beneficiary country. Acme then manufactures 100 winches, each containing one motor, and exports 50 of these to foreign customers.

TYPES OF DUTY DRAWBACKS; TYPE 2

Substitution
Manufacturing
Drawback
EXAMPLE



2. SUBSTITUTION MANUFACTURING DRAWBACK - EXAMPLE

Perhaps the exported winches all contain domestic SKAQ motors; perhaps Acme cannot identify the source of the motors incorporated into the exported winches. Nonetheless, Acme is entitled to a drawback equal to 99% of the duties paid on imported motors, as if those motors had been used to manufacture the 50 winches for export, i.e., $.99 \times \$50 = \49.50 . However, the total drawback paid may not exceed 99% of the total duties paid on imported materials. Thus, if Acme Corporation imported 100 motors as above, and produced 125 winches for export, its maximum drawback recovery would be $.99 \times \$100 = \99 .

TYPES OF DUTY DRAWBACKS; TYPE 2

Substitution
Manufacturing
Drawback
EXAMPLE



3. DIRECT IDENTIFICATION SAME CONDITION/UNUSED MERCHANDISE DRAWBACK

In 1980, Congress amended the drawback law to provide for “same condition” drawback, a refund of 99% of duties, fees and taxes paid with respect to imported merchandise which is subsequently exported (or destroyed under Customs supervision) within three years after its date of importation, without having been changed in condition or used in the United States prior to such exportation or destruction.

TYPES OF DUTY DRAWBACKS; TYPE 3

**Direct
Identification
Same
Condition/Unused
Merchandise
Drawback**



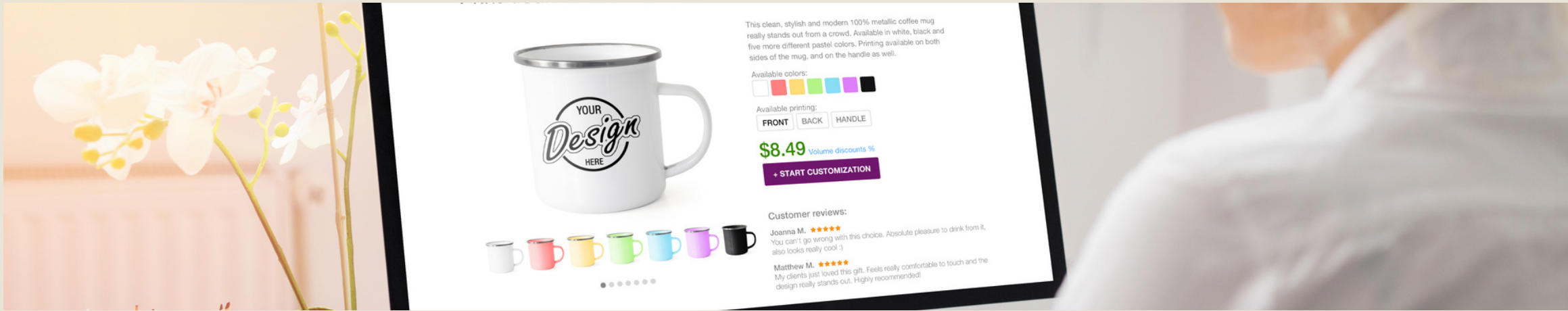
3. DIRECT IDENTIFICATION SAME CONDITION/UNUSED MERCHANDISE DRAWBACK - EXAMPLE

Acme Corporation imports 50 generators, paying Customs duties of \$500 (\$10 per generator). Two years after importation, Acme finds that it only needs 30 of these generators, and exports the remaining 20 to a foreign customer. The exported generators are in the same condition as when imported, and have not been used in the United States. Upon compliance with applicable Customs Regulations, Acme may claim a drawback equal to 99% of the duties, fees and taxes paid on the exported generators, i.e., $.99 \times \$200 = \198 . This is known as “direct identification same condition drawback”.

**TYPES OF DUTY DRAWBACKS;
TYPE 3**

Direct
Identification
Same
Condition/Unused
Merchandise
Drawback

EXAMPLE

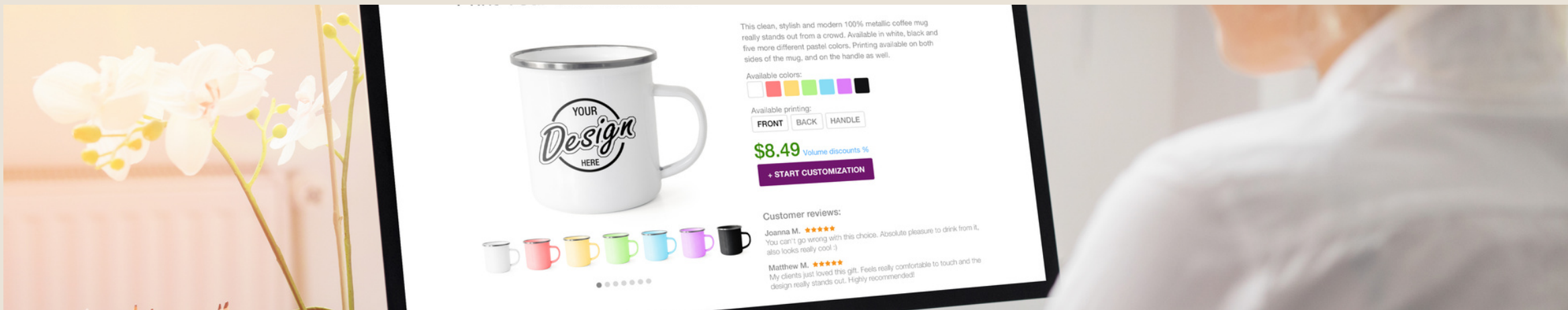


4. SUBSTITUTION SAME CONDITION/UNUSED MERCHANDISE DRAWBACK

In 1984, Congress again amended the drawback law to provide for “substitution” same condition drawback. Under this procedure, a company may recover a 99% drawback of duties paid on imported merchandise, if, within three years, it exports “fungible” domestic or foreign merchandise. The exported “fungible” merchandise must be in the same condition as the merchandise which was imported, and may not have been used within the United States prior to its exportation. “Fungible” merchandise is defined as merchandise which is for all purposes commercially interchangeable with the imported merchandise.

TYPES OF DUTY DRAWBACKS; TYPE 4

Substitution Same
Condition/Unused
Merchandise
Drawback



4. SUBSTITUTION SAME CONDITION/UNUSED MERCHANDISE DRAWBACK - EXAMPLE

Acme Corporation imports 1000 "Type X" transistors, paying duties of \$200 thereon. Within three years, Acme exports 1000 domestically-made "Type X" transistors. The exported transistors are completely fungible with the imported transistors, are in the same condition as the imported transistors, and have not been used in the United States. Upon compliance with applicable Customs Regulations, Acme may claim a drawback equal to 99% of duties paid on the imported transistors, i.e., $.99 \times \$200 = \198 .

Here again, Customs recently amended the drawback law, replacing "same condition" drawback with "unused merchandise" drawback. The standard of "fungibility" has been replaced with a more liberal standard of "commercial interchangeability". In addition, the list of "incidental" operations which may be performed has been expanded.

TYPES OF DUTY DRAWBACKS;
TYPE 4

Substitution Same Condition/Unused Merchandise Drawback

EXAMPLE

DRAWBACK A PRIVILEGE, NOT A RIGHT



DRAWBACK A PRIVILEGE, NOT A RIGHT

Customs has always been historically hard on drawback claims. Before the recent changes that happen in February 2018.

Customs' Tests for Substitution were often unreasonable. An example was that asparagus that was cut slanted on the bottom as opposed to flat on the bottom were ruled by customs that they were not substitute products. However the court eventually reversed this ruling stating they were interchangeable.



DRAWBACK A PRIVILEGE, NOT A RIGHT



DRAWBACK A PRIVILEGE, NOT A RIGHT

The courts have uniformly ruled that the allowance of duty drawback is a privilege, not a right. Drawback claimants must follow exactly all of the procedural requirements for claiming drawback set forth in the Customs laws and regulations.

Thus, careful attention to detail and accurate recordkeeping systems are required in establishing and administering corporate duty drawback programs.



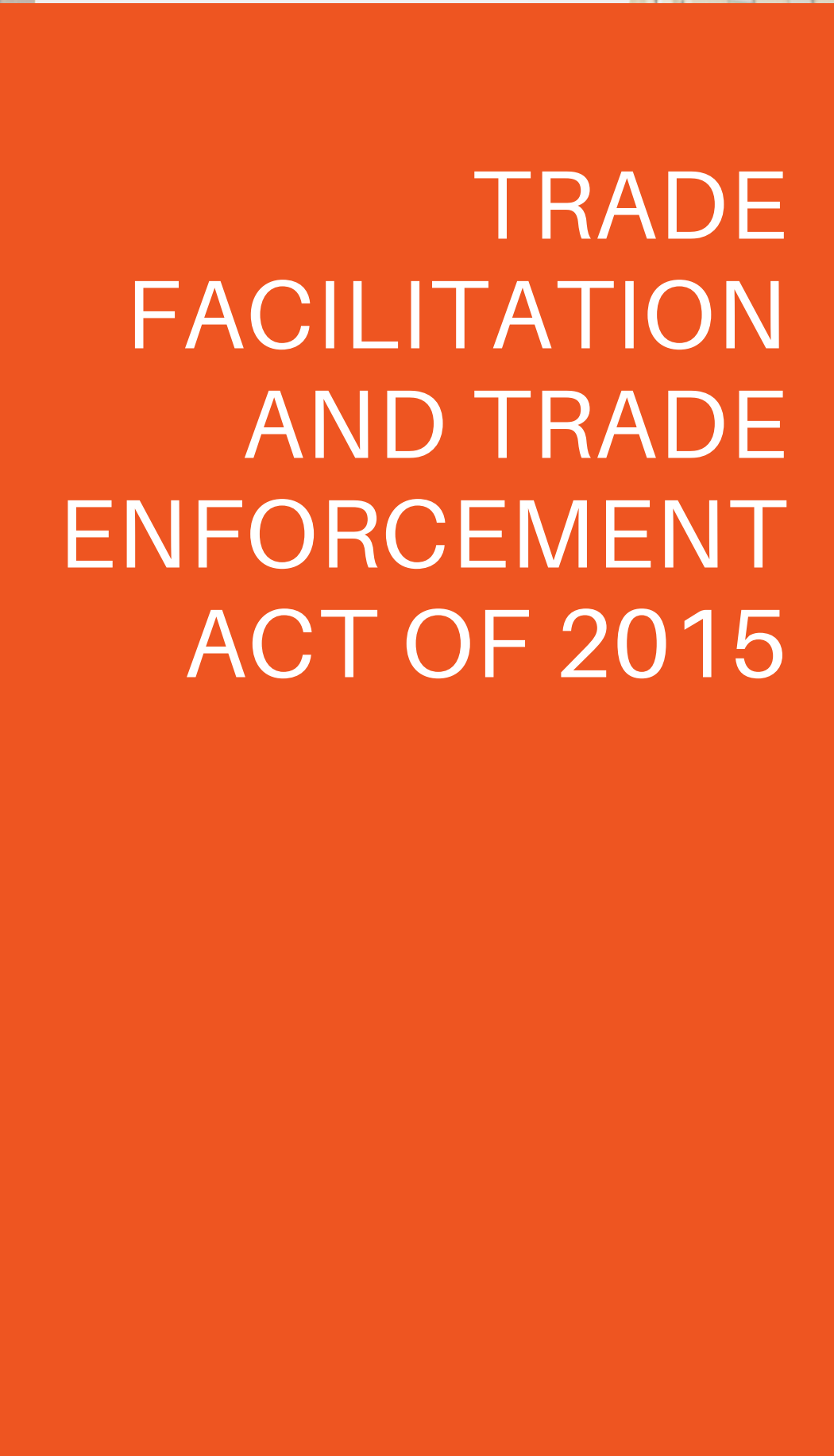
TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015

The Trade Facilitation and Trade Enforcement Act of 2015 became effective for claims filed on/after 2/24/2018. The act had various major changes as to how duty drawback is applied.

MAJOR CHANGES:

The major change of the legislation was that “Substitutability” is now based on 8-digit tariff classifications. This means that customs no longer has a say in which products are substituted for each other. If two products have the same 8 digit U.S. tariff classification they are interchangeable. This change also results in exporters needing to understand what the U.S. classification of the product they are exporting out of the U.S. is.

The drawback claim period has been expanded from 3 to 5 years from the importation date.



DUTY DRAWBACKS USA SPECIFIC

FRONTIER

Supply Chain Solutions, INC.