

## § 181.23

“series of importations” means two or more entries covering goods arriving on the same day from the same exporter and consigned to the same person.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98-56, 63 FR 32955, June 16, 1998; CBP Dec. 07-76, 72 FR 52782, Sept. 17, 2007; CBP Dec. 15-14, 80 FR 61292, Oct. 13, 2015; CBP Dec. No. 16-26, 81 FR 93026, Dec. 20, 2016]

### **§ 181.23 Effect of noncompliance; failure to provide documentation regarding transshipment.**

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this part, including submission of a Certificate of Origin under § 181.22(b) or submission of a corrected Certificate under § 181.22(c), the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this part are met, the Center director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than the United States, Canada or Mexico and the importer of the good does not provide, at the request of the Center director, copies of the customs control documents that indicate to the satisfaction of the Center director that the good remained under customs control while in such other country.

## **Subpart D—Post-Importation Duty Refund Claims**

### **§ 181.31 Right to make post-importation claim and refund duties.**

Notwithstanding any other available remedy, including the right to amend an entry so long as liquidation of the entry has not become final, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment on that originating good was made at that time under § 181.21(a) of this part, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance

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with the procedures set forth in § 181.32 of this part. Subject to the provisions of § 181.23 of this part, Customs may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 181.33(c) of this part.

### **§ 181.32 Filing procedures.**

(a) *Place of filing.* A post-importation claim for a refund under § 181.31 of this part shall be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund shall be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;

(2) Subject to § 181.22(d) of this part, a copy of each Certificate of Origin (see § 181.11 of this part) pertaining to the good;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

(4) A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA (see subpart E of this part). If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and

(5) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law, and if any such protest or petition or request for reliquidation has been filed, the statement shall identify the protest, petition or request by number and date.

**§ 181.33 Customs processing procedures.**

(a) *Status determination.* After receipt of a post-importation claim under § 181.32 of this part, the Center director shall determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review.* If the Center director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the Center director shall suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the Center director shall suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim—(1) Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the Center director shall take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the Center director shall reliquidate the entry taking into account the claim for refund under this subpart.

(3) *Information to be provided to Canada or Mexico.* If any information is provided to Customs pursuant to § 181.32(b) (4) or (5) of this part, that information, together with notice of the allowance of the claim and the amount of duty refunded pursuant to this subpart, shall be provided by the Center

director to the customs administration of the country from which the good was exported.

(d) *Denial of claim—(1) General.* The Center director may deny a claim for a refund filed under this subpart if the claim was not filed timely, if the importer has not complied with the requirements of this subpart, if the Certificate of Origin submitted under § 181.32(b)(2) of this part cannot be accepted as valid (see § 181.22(c) of this part), or if, following initiation of an origin verification under § 181.72(a) of this part, the Center director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 181.72(d), § 181.74(c) or § 181.76(c) of this part.

(2) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director shall deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason therefor shall be given 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.

(3) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to 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 Center 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

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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.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. No. 17-08, 82 FR 35065, July 28, 2017]

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

(a) Antidumping and countervailing duties;

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(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