



A Berkshire Hathaway Company



DUTY DRAWBACK EXPANSION UNDER TFTEA 2015

October 19, 2016

New Opportunities to Put Cash in The Bank!



Drawback Expansion — Are You Ready to Unlock the Possibilities?



“The Trade Facilitation and Trade Enforcement Act of 2015” (February 24, 2016) - enacted H.R. 644 - marking the successful completion of a nearly 10 year effort to achieve the most sweeping enhancement and expansion of the drawback law in our nation’s history.

Currently, drawback is under-utilized in the footwear industry partly because of the extensive administrative and compliance burdens. The TFTEA attempts to simplify the process to make drawback more available.

What is Duty Drawback?

- An export incentive provision included in the Tariff Act of 1789 passed by first Congress, to enhance a company's ability to compete in the global market.
- Drawback lowers the cost of U.S. exports by allowing for refunds of duties, taxes and fees paid on imported merchandise that can be matched to a subsequent export.



FY 15 (in M)	
Claims Filed	12,116
Duty Refunded	\$ 804.7
Tax Refunded	\$ 57.4
Oil Spill Tax	\$ 24.

1. Import is exported in its same form (“Unused Merchandise”);
2. Import is exported as part of a U.S. manufactured product (“Manufacturing Drawback”);
3. Comparable domestic merchandise is ***substituted*** for the imported merchandise (“Substitution” – for Unused or Manufacturing).
4. Rejected Merchandise

- A refund of duties, taxes and fees (new) paid on imported merchandise that *could have been* used in the production of articles that are either exported or can be **substituted** with another export **(at the same 8 digit classification)**.



5 Years

Import

Production

Export

File Claim

Two ways to match imports and exports for Unused (non-manufacturing) Drawback:

1. Direct ID –

Specifically identifying an export with its import using serial number, lot number, or accounting methodology (FIFO) (same product)



2. Substitution –

Designating imported merchandise that is **commercially interchangeable** with the exported merchandise



How to match imports and exports (for Unused- non-manufacturing) under **Substitution**:



■ **Commercially Interchangeable**

Based on assessment of : government/industrial standards; part numbers; HTS classification; and relative value

■ **Same 8 digit classification**



Caveat: substitution drawback was eliminated for exports to Canada, Mexico and Chile as per FTAs with those countries.

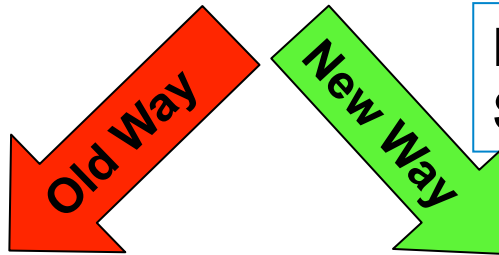
5 Years

Timeframe:



Substitution Matching Example #1

HQ 229161; March 20,2002



Example: Same Color, Style, and Specification but Different Size

Skechers, an importer and exporter of casual leather footwear, protests the denial of drawback on its substitution unused merchandise claims. Skechers claims size is not a factor for the export sales, because it ships the footwear based upon style and what is in inventory. The overseas customer always hopes for a size mix simply because there is no identifiable customer who purchases footwear until after the footwear is exported and is in stock at the individual store. Skechers claims that its style numbers “do not change even if the size of footwear changes.”

HOLDING:

- There are no government or recognized industrial standards to distinguish the Skechers shoes in issue.
- Skechers’ documents show that the same style number footwear does not always have the same classification.
- The packing list specifies that a certain # of each size, were shipped.
- These documents support the conclusion that the purchaser dictated how many shoes of each size for that style was desired and that Skechers shipped the order exactly as requested.
- Therefore, we find that commercial interchangeability of the woven fabrics has not been established

6402 (con.)	Other footwear with outer soles and uppers of rubber or plastics: (con.)
6402.99 (con.)	Other footwear: (con.)
	Other: (con.)
	Other: (con.)
	Other: (con.)
6402.99.80	Valued over \$6.50 but not over \$12/pair.....
	05
	Tennis shoes, basketball shoes, gym shoes, training shoes and the like.....
	Other:
	For men.....
	For women.....
	Other.....
6402.99.90	Valued over \$12/pair.....



Substitution Matching Example #2

HQ 226625 (July 3, 1996)

Example: Same Item: Different Color



Jockey claims duty drawback under the unused merchandise provisions and would like to substitute underwear which is the same size, style and specification but different in color (e.g., substitute light blue underwear for dark blue underwear). Jockey argues that although the items may be of differing colors, they nonetheless has the same style number.

HOLDING:

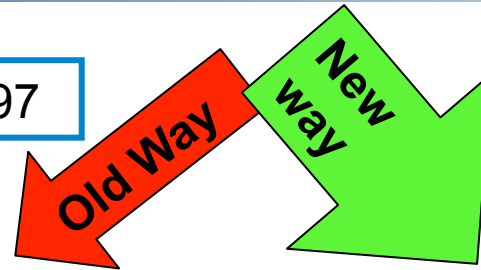
- Disregarding the color codes from the style numbers is not reflected in Jockey's commercial documentation (where separate columns designating various colors within the same style number are delineated), nor is it reflected in the sample retail packages submitted (each of which is marked with the respective style/color numbers 1500/100, 1503/100, 1503/101 and 1503/001).
- Consequently, both Jockey's internal record keeping and retail marketing practices demonstrate that color is an imperative element in the purchase of this particular wearing apparel by the public and the color number is inseparable from the specific style number involved.
- Accordingly, even though two of the three requisite criteria have been met, we find the subject merchandise to be distinguishable with respect to the second criterion (part numbers) and leads us to conclude that the subject underwear is not "commercially interchangeable"

6107	Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted:	
	Underpants and briefs:	
6107.11.00	Of cotton	7.4%



Substitution Matching Example #3

HQ 226996; October 24, 1997



**Example:
Different Style # and Price**

Swift Textiles requested approval to file for unused merchandise drawback, substituting domestic woven fabric styles S/27690 and S/37603 for imported woven fabric Dominion Tunisian style 01486.

- No sales or purchase contracts were provided.
- No inventory records were provided to show use of style numbers but it appears Swift distinguishes the two types of fabrics through the use of part or style numbers (e.g., S/37603 vs. Tunisian 01486).
- The import price is \$3.34 per yard. The export price is \$4.05 per yard.
- There does not seem to be any difference in tariff classification.
- The Lab also reviewed the specifications given for the woven fabrics and determined all specifications provided for width, weight, number of warp and filling yarns per inch, yarn count, and fiber count were within a 3% or less range.

HOLDING:

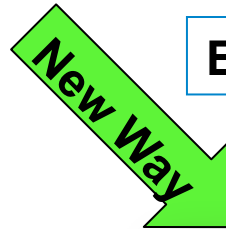
- No information was provided regarding the use of different part numbers.
- The difference in value is 21% which could well be considered material, therefore, we find that commercial interchangeability of the woven fabrics has not been established.

5209 (con.)		Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m ² : (con.)
		Dyed:
5209.31		Plain weave:
5209.31.30	00	Certified hand-loomed fabrics.....
5209.31.60		Other.....
	20	Poplin or broadcloth (314).....
		Sheeting:
	25	Not napped:
		Osnaburg (313).....
	35	Other (313).....
	50	Napped (313).....
	90	Plain weave duck (219).....
5209.32.00		3-thread or 4-thread twill, including cross twill.....



Substitution Matching Example #4- "OTHER"

H060221; August 26, 2009



Example: Same Item - Same Size

Imported Cabretta men's leather goat skin gloves were found to be off spec after importation from Indonesia and were commingled when the non-compliant gloves were consolidated in one location; therefore, the importer is unable to determine which gloves were imported under each entry and is seeking to use substitution same condition drawback pursuant to 19 USC 1313(j)(2)

HOLDING:

- All the gloves in question have the same item number; consequently this criterion is met.
- The importer paid the same unit price for each pair.
- The gloves have not been used or changed in any way since importation.
- They are all tan in color and range in size from small to extra large.
- The items that will be substituted for the imported merchandise will all be of the same size. That is, batches of small gloves will be substituted for other batches of small sized gloves.
- We conclude that the imported and the proposed substituted defective gloves are commercially interchangeable for purposes of the substitution unused merchandise drawback

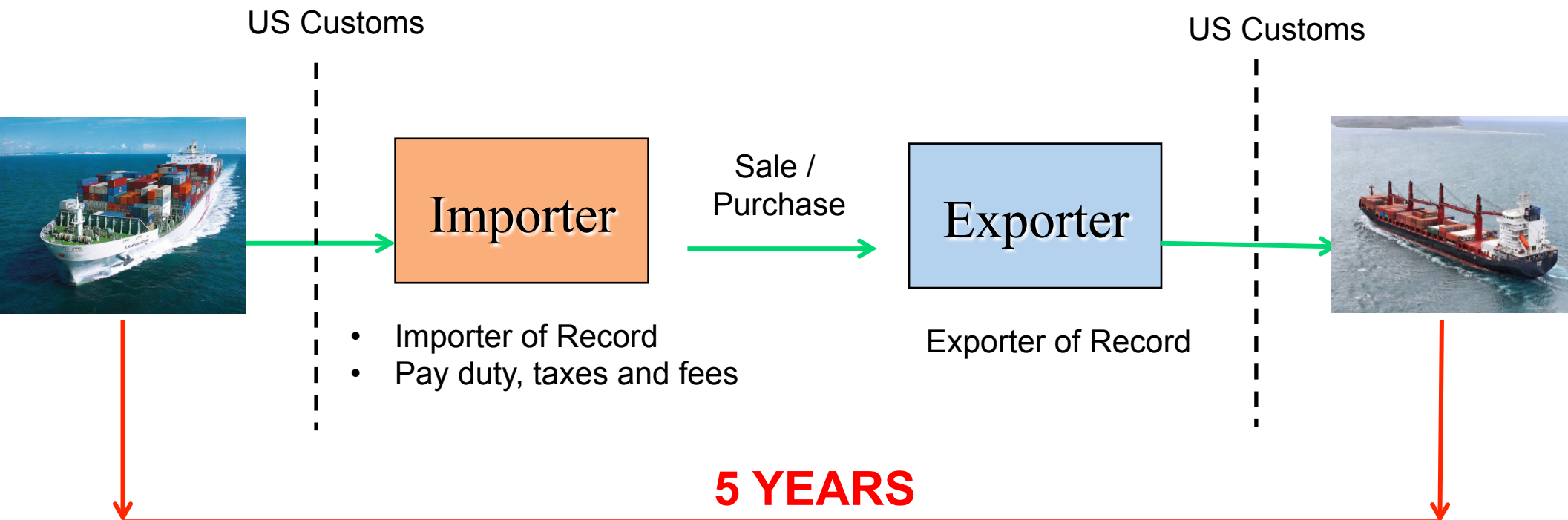
4203 (con.)		Articles of apparel and clothing accessories, of leather or of composition leather: (con.)
		Gloves, mittens and mitts: (con.)
4203.29		Other:
		Gloves of horsehide or cowhide (except calfskin) leather:
		Wholly of leather:
4203.29.05	00	With fourchettes or sidewalls which, at a minimum, extend from fingertip to fingertip between each of the four fingers.....
		Other.....
4203.29.08	00	Other.....
		Other:
4203.29.15	00	With fourchettes or sidewalls which, at a minimum, extend from fingertip to fingertip between each of the four fingers.....
		Other.....
4203.29.18	00	Other.....



But What If I Am Only an Importer or Exporter?

IMPORTER AND EXPORTER CAN BE BUT DO NOT HAVE TO BE THE SAME

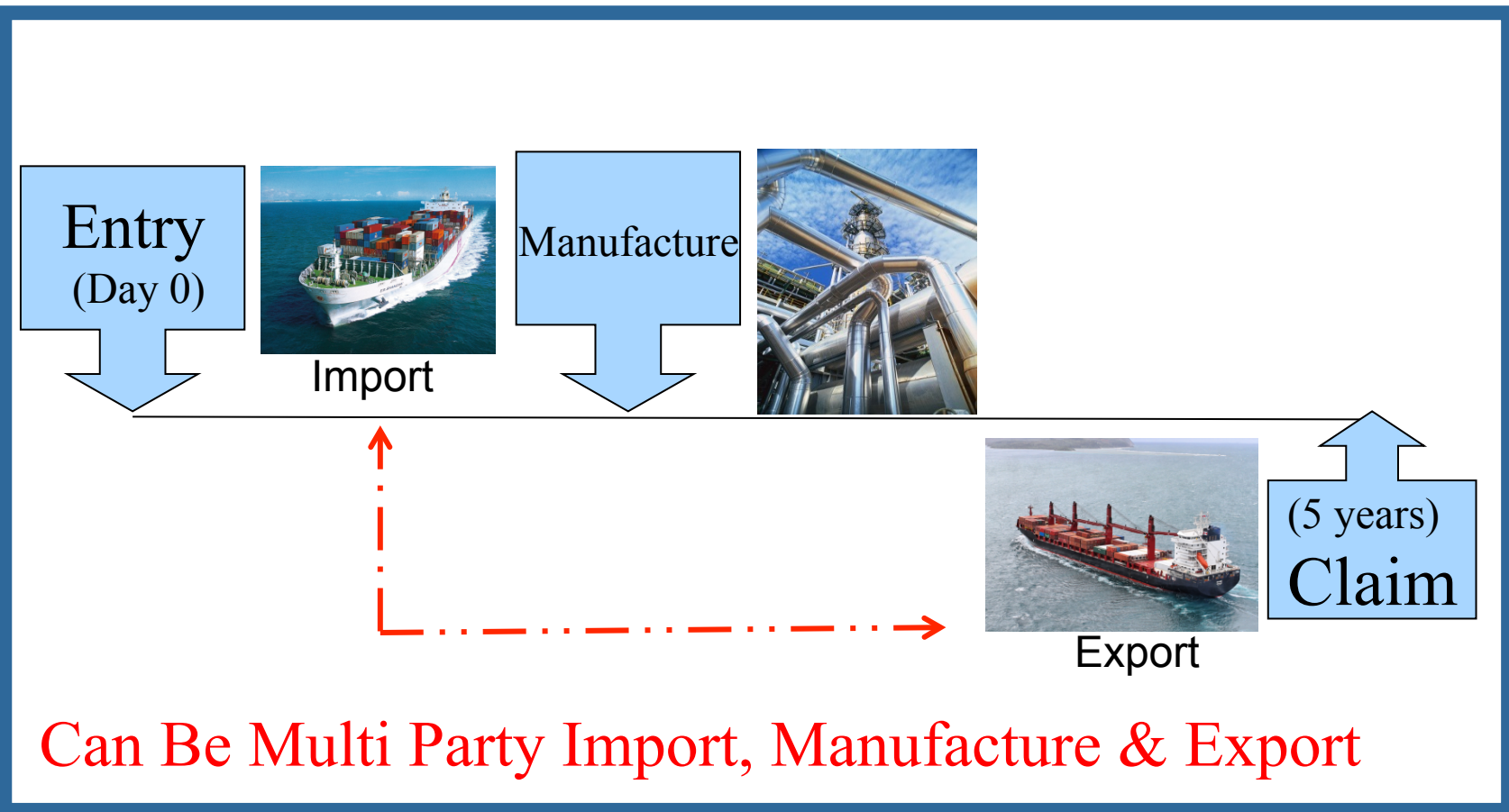
- Need an Importer
- Need an Exporter
- Need a commercial relationship between the two showing the sale/purchase of merchandise within the same 8 Digit HTS code.



- Total annual U.S. duty recoveries average less than two percent (2%) of total annual duties collected in duty payments.
- Unique opportunities exist by using an intermediary trade service program to bring various industry players together to match otherwise unrelated imports and exports in a way that individual companies would not be able to accomplish
(this way protects the confidentiality of the data and documents required to file claims).



Drawback Manufacturing Opportunity



Can Be Multi Party Import, Manufacture & Export

Key Difference between Old vs. New (HR 644)

Old Drawback Rules

Simplified Drawback (under TFTEA)

Identification

- Direct identification – matching SKU, size, color, value...

- ✓ 8 digit HTS

Timing*

- 3 years from import to export
3 years from export to claim

- ✓ 5 years from import to claim

Recovery of taxes and fees

- Only for Unused drawback

- ✓ Unused AND manufacturing drawback

Recovery based on:

- Unit of measure – pieces, weights...

- ✓ Lesser of value calculation between import and export (Note: Regulations required)

Liability

- Claimant only

- ✓ Joint and severable for claimant/importer/exporter

Recordkeeping

- 3 years from the date of payment of the claim

- ✓ 3 years from liquidation of the claim

*Claims filed under the new law are subject to the phase in provisions of HR 644 and are eligible for submission on 2/24/2018

1. Do you have IMPORTS?

2. Do you have EXPORTS?

3. Do you BUY from someone who imports?

4. Do you SELL to someone who exports?

5. If you answered yes to any of the above, then . . .

There is a possible drawback opportunity.

6. Next Steps . . .

- 1. Determine volume + value by HTS number of:**
 - Imports + add in duties and fees**
 - Exports**
- 2. If Excess Imports or Exports, consider a trading partner**

REGULATORY



- **Pioneered simplified drawback:** lead the way to enactment of 8 digit HTS simplified drawback in 1993 for the energy/plastics/resins industries
- **Forged continuous legislative efforts:** successfully spearheaded 10+ year initiative to expand 8 digit drawback to all industries as per the *Trade Facilitation and Trade Enforcement Act of 2015*, P.L. 114-125, HR 644)
- **Industry Advocate-** work directly with Congressional Staff and CBP Headquarters, with lead roles in multiple trade associations/CBP work groups

COMMERCIAL



- Process more than 1/3 of all drawback claims filed with CBP (by value) annually
- Representing Fortune 10 companies
- Recoveries for clients = > several billion \$\$ (collectively)

QUESTIONS & ANSWERS

Any Questions?

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