

1988—Pub. L. 100-449 temporarily added par. at end relating to articles withdrawn for exportation to Canada on and after Jan. 1, 1994, and to drawback-eligible goods under the United States-Canada Free-Trade Agreement Implementation Act of 1988. See Effective and Termination Dates of 1988 Amendment note below.

1983—Pub. L. 97-446 struck out “at an exterior port” after “bonded warehouse” and “immediate” after “sole purpose of” in eighth par.

1979—Pub. L. 96-39, in par. relating to distilled spirits and wine, struck out provision that no internal revenue tax be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses be subject by reason of such rectification to the payment of special tax as rectifier.

1970—Pub. L. 91-271 substituted references to the appropriate customs officer for references to the collector wherever appearing.

1936—Act June 26, 1936, inserted par. at end relating to distilled spirits and wine.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108-77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108-77, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country on that date and after such date for so long as Canada continues to be a NAFTA country and (2) with respect to exports from the United States to Mexico on Jan. 1, 2001, if Mexico is a NAFTA country on that date and after such date for so long as Mexico continues to be a NAFTA country, see section 213(c) of Pub. L. 103-182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96-39, title VIII, §856(b), July 26, 1979, 93 Stat. 295, provided that: “Effective January 1, 1980, the second proviso to the last paragraph of section 311 of the Tariff Act of 1930 [this section] is hereby repealed.”

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Em-

ployees. Customs officers, referred to in text, are under Department of the Treasury.

WITHDRAWAL OF DISTILLED SPIRITS TO MANUFACTURING BONDED WAREHOUSES; TRANSFERS TO WAREHOUSES PENDING EXPORTATION

Pub. L. 96-39, title VIII, §856(a), July 26, 1979, 93 Stat. 295, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In the case of articles described in section 5522(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 5522(a)] (as in effect before its repeal by section 807(a)(50) of the Distilled Spirits Tax Revision Act of 1979 [section 807(50) of Pub. L. 96-39]) the first sentence of the eighth paragraph of section 311 of the Tariff Act of 1930 (19 U.S.C. 1311) shall be applied as if such first sentence did not include the phrase ‘at an exterior port’.”

§ 1312. Bonded smelting and refining warehouses

(a) Bond; charges against bond

Any plant engaged in smelting or refining, or both, of metal-bearing materials as defined in this section may, upon the giving of satisfactory bond, be designated a bonded smelting or refining warehouse. Metal-bearing materials may be entered into a bonded smelting or refining warehouse without the payment of duties thereon and there smelted or refined, or both, together with metal-bearing materials of domestic or foreign origin. Upon arrival of imported metal-bearing materials at the warehouse they shall be sampled according to commercial methods and assayed, both under customs supervision. The bond shall be charged with a sum equal in amount to the duties which would be payable on such metal-bearing materials in their condition as imported if entered for consumption, and the bond charge shall be adjusted to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond.

(b) Cancellation of charges against bond

The several charges against such bond may be canceled in whole or in part—

(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c); except that—

(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

- (i) the total amount of customs duties owed on the materials on importation into the United States, or
- (ii) the total amount of customs duties paid to the NAFTA country on the product, and

(B) in the case of a withdrawal for exportation of such a product to Chile, if any of the imported metal-bearing materials are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation, except that the duties may be waived or reduced by—

- (i) 100 percent during the 8-year period beginning on January 1, 2004,
- (ii) 75 percent during the 1-year period beginning on January 1, 2012,
- (iii) 50 percent during the 1-year period beginning on January 1, 2013, and
- (iv) 25 percent during the 1-year period beginning on January 1, 2014, or

(2) upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing materials, or

(3) upon the transfer of the bond charges to another bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), or

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), and upon withdrawal from such other warehouse for exportation or domestic consumption the provisions of this section shall apply; except that—

(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

- (i) the total amount of customs duties owed on the materials on importation into the United States, or
- (ii) the total amount of customs duties paid to the NAFTA country on the product, and

(B) in the case of a withdrawal for exportation of such a product to Chile, if any of the imported metal-bearing materials are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation, except that the duties may be waived or reduced by—

- (i) 100 percent during the 8-year period beginning on January 1, 2004,
- (ii) 75 percent during the 1-year period beginning on January 1, 2012,
- (iii) 50 percent during the 1-year period beginning on January 1, 2013, and
- (iv) 25 percent during the 1-year period beginning on January 1, 2014, or

(5) upon the transfer to another bonded smelting or refining warehouse without physical shipment of metal of bond charges representing a quantity of dutiable metal contained in imported metal-bearing materials less wastage provided for in subsection (c) of the plant of initial treatment of such materials provided there is on hand at the warehouse to which the transfer is made sufficient like metal in any form to satisfy the transferred bond charges.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no charges against such bond may be canceled in whole or part upon an exportation to Canada under paragraph (1) or (4) during the period such Agreement is in operation except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

(c) Allowance on bond for wastage of metals

For purposes of paragraphs (1), (3), (4), and (5) of subsection (b), due allowances shall be made for wastage of metals other than copper, lead, and zinc, as ascertained from time to time by the Secretary of the Treasury.

(d) Credit for exportation of product other than refined metal

Upon the exportation of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; except that—

(1) in the case of a withdrawal for exportation to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before

such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 1508(b)(2)(B) of this title) in an amount not to exceed the lesser of—

(A) the total amount of customs duties paid or owed on the materials on importation into the United States, or

(B) the total amount of customs duties paid to the NAFTA country on the product, and

(2) in the case of a withdrawal for exportation to Chile, if any of the imported metal-bearing materials are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, charges against the bond shall be paid before the 61st day after the date of exportation, and the bond shall be credited in an amount equal to—

(A) 100 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 8-year period beginning on January 1, 2004.

(B) 75 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2012,

(C) 50 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2013, and

(D) 25 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2014.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

(e) General bond for two or more warehouses

Two or more smelting or refining warehouses may be included under one general bond and the quantities of each kind of metal subject to duty on hand at all of such warehouses may be aggregated to satisfy the bond obligation.

(f) Definitions

For purposes of this section—

(1) the term “metal-bearing materials” means metal-bearing ores and other metal-bearing materials provided for in chapter 26 of the Harmonized Tariff Schedule of the United States, metal waste and scrap and unwrought metal to be smelted or refined provided for in chapters 71 through 83 of the Harmonized Tariff Schedule of the United States, and metal compounds to be processed for the recovery of their metal content;

(2) the term “smelting or refining” embraces only pyrometallurgical, hydrometallurgical, electrometallurgical, chemical, or other processes—

(A) for the treatment of metal-bearing materials to reduce the metal content thereof to a metallic state in the course of recovering it in forms which if imported would be classifiable in chapters 71 through 83 of the Harmonized Tariff Schedule of the United States as unwrought metal, or in the form of oxides or other compounds which are obtained directly from the treatment of materials provided for in chapter 26 of the Harmonized Tariff Schedule of the United States, and

(B) for the treatment of unwrought metal or metal waste and scrap to remove impurities or undesired components; and

(3) the term “product of smelting or refining” means metals or metal-bearing materials resulting directly from smelting or refining processes, but does not include metal-bearing ores of chapter 26 of the Harmonized Tariff Schedule of the United States.

(g) Supervision and cost of labor under this section

Labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer. The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(June 17, 1930, ch. 497, title III, §312, 46 Stat. 692; Pub. L. 87-456, title III, §301(b), May 24, 1962, 76 Stat. 75; Pub. L. 100-418, title I, §1214(h)(1), Aug. 23, 1988, 102 Stat. 1157; Pub. L. 100-449, title II, §204(c)(2), Sept. 28, 1988, 102 Stat. 1862; Pub. L. 103-182, title II, §203(b)(2), Dec. 8, 1993, 107 Stat. 2088; Pub. L. 108-77, title II, §203(b)(2), Sept. 3, 2003, 117 Stat. 925.)

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108-77, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 501(c) of Pub. L. 100-449, see Effective and Termination Dates of 1988 Amendment note below.

REFERENCES IN TEXT

Sections 202 and 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in subsecs. (b) and (d), are sections 202 and 204 of Pub. L. 100-449, which are set out in a note under section 2112 of this title.

Section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsecs. (b)(1)(B), (4)(B) and (d)(2), is section 203(a) of Pub. L. 108-77, which is set out in a note under section 3805 of this title.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (f), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, §IV, N, subsection 1,

38 Stat. 198, which was superseded by act Sept. 21, 1922, ch. 356, title III, §312, 42 Stat. 940, and repealed by section 321 thereof. Section 312 of the act of 1922 was superseded by section 312 of act June 17, 1930, and repealed by section 651(a)(1) of the 1930 act.

Provisions more or less similar were contained in the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §24, 36 Stat. 89, the Dingley Tariff Act of July 24, 1897, ch. 11, §29, 30 Stat. 210, the McKinley Tariff Act of Oct. 1, 1890, ch. 1244, §24, 26 Stat. 617, and the Wilson Tariff Act of Aug. 27, 1894, ch. 349, §21, 28 Stat. 551.

Previous provisions for sampling lead ores were contained in act Mar. 2, 1895, ch. 189, §1, 28 Stat. 933, prior to repeal by act Sept. 21, 1922, ch. 356, title III, §321, 42 Stat. 947.

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108-77, §§107(c), 203(b)(2)(A), temporarily substituted “except that—” and subpars. (A) and (B) for “except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

“(A) the total amount of customs duties owed on the materials on importation into the United States, or

“(B) the total amount of customs duties paid to the NAFTA country on the product, or”.

See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(4). Pub. L. 108-77, §§107(c), 203(b)(2)(B), temporarily substituted “except that—” and subpars. (A) and (B) for “except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

“(A) the total amount of customs duties owed on the materials on importation into the United States, or

“(B) the total amount of customs duties paid to the NAFTA country on the product, or”.

See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (d). Pub. L. 108-77, §§107(c), 203(b)(2)(C), temporarily substituted “except that—” and pars. (1) and (2) for “except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 1508(b)(2)(B) of this title) in an amount not to exceed the lesser of—

“(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or

“(2) the total amount of customs duties paid to the NAFTA country on the product.”
See Effective and Termination Dates of 2003 Amendment note below.

1993—Subsec. (b). Pub. L. 103-182, §203(b)(2)(B), inserted concluding provisions following par. (5).

Subsec. (b)(1). Pub. L. 103-182, §203(b)(2)(A), struck out “(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)” after “upon the exportation” and inserted provisions excepting goods withdrawn for exportation to a NAFTA country.

Subsec. (b)(4). Pub. L. 103-182, §203(b)(2)(A), struck out “(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)” after “warehouse for exportation” and inserted provisions excepting goods withdrawn for exportation to a NAFTA country.

Subsec. (d). Pub. L. 103-182, §203(b)(2)(C), struck out “(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)” after “Upon the exportation” and inserted before concluding period provisions excepting goods withdrawn for exportation to a NAFTA country, including pars. (1) and (2), as well as sentence relating to conditions arising should Canada cease to be a NAFTA country.

1988—Subsec. (b)(1), (4). Pub. L. 100-449, §204(c)(2)(A), temporarily inserted “(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)” after “exportation”. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (d). Pub. L. 100-449, §204(c)(2)(B), temporarily inserted “(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)” after “exportation”. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (f)(1). Pub. L. 100-418, §1214(h)(1)(A), substituted “chapter 26 of the Harmonized Tariff Schedule of the United States” for “schedule 6, part 1, of the Tariff Schedules of the United States” and “chapters 71 through 83 of the Harmonized Tariff Schedule of the United States” for “schedule 6, part 2, of such schedules” and struck out the quotation marks surrounding “metal waste and scrap” and “unwrought metal”.

Subsec. (f)(2)(A). Pub. L. 100-418, §1214(h)(1)(B), substituted “chapters 71 through 83 of the Harmonized Tariff Schedule of the United States” for “part 2 of schedule 6” and “chapter 26 of the Harmonized Tariff Schedule of the United States” for “part 1 of schedule 6” and struck out single quotation marks surrounding “unwrought metal”.

Subsec. (f)(3). Pub. L. 100-418, §1214(h)(1)(C), substituted “of chapter 26 of the Harmonized Tariff Schedule of the United States” for “as defined in part 1 of schedule 6”.

1962—Pub. L. 87-456 amended section generally, and among other changes, substituted “metal-bearing minerals” for “ores or crude metals”, authorized adjustment of the bond charge to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond, permitted two or more warehouses to be included under one general bond, prohibited allowances for wastage of copper, lead, and zinc, and defined “metal-bearing materials”, “smelting or refining”, and “product of smelting or refining”.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108-77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108-77, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country on that date and after such date for so long as Canada continues to be a NAFTA country and (2) with respect to exports from the United States to Mexico on Jan. 1, 2001, if Mexico is a NAFTA country on that date and after such date for so long as Mexico continues to be a NAFTA country, see section 213(c) of Pub. L. 103-182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-456 effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87-456.

§ 1313. Drawback and refunds

(a) Articles made from imported merchandise

Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) Substitution for drawback purposes

If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the

manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, but only if those articles have not been used prior to such exportation or destruction; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) Merchandise not conforming to sample or specifications

(1) Conditions for drawback

Upon the exportation or destruction under the supervision of the Customs Service of articles or merchandise—

(A) upon which the duties have been paid,

(B) which has been entered or withdrawn for consumption,

(C) which is—

(i) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation, or

(ii) ultimately sold at retail by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and

(D) which, within 3 years after the date of importation or withdrawal, as applicable, has been exported or destroyed under the supervision of the Customs Service,

the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

(2) Designation of import entries

For purposes of paragraph (1)(C)(ii), drawback may be claimed by designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (1)(A) and (B) under the supervision of the Customs Service. The merchandise designated for drawback must be identified in the import documentation with the same eight-digit classification number and specific product identifier (such as part number, SKU, or product code) as the returned merchandise.

(3) When drawback certificates not required

For purposes of this subsection, drawback certificates are not required if the drawback claimant and the importer are the same party,