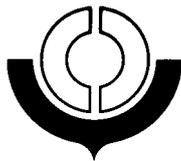


KYOTO CONVENTION

GUIDELINES TO SPECIFIC ANNEX F

Chapter 3

DRAWBACK



WORLD CUSTOMS ORGANIZATION

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1. Introduction

Most administrations have in place procedures which help promote export trade and are in the interest of the national economy. Drawback is one such procedure. This procedure grants repayment of import duties and taxes paid on :

- Goods used in the processing or manufacture of exported products,
- Materials contained in the goods or consumed in the manufacture of the exported products, or
- Imported goods re-exported in the same state.

The repayment may be partial or total.

Drawback is one of the several procedures which provides relief from duties and taxes for the manufacture of exported goods and is extensively used. Some administrations may allow it in combination with other procedures like inward processing, temporary admission or Customs warehouses.

2. Purpose and scope of drawback procedure

The imported goods are used to process or manufacture goods for export by the domestic industries. The use of domestic labour and processing or manufacturing of goods add value to the finished goods for export. The repayment of duties and taxes paid on the imported goods enables domestic industries to offer the goods at competitive prices on international markets.

Some administrations restrict the categories of goods qualifying for drawback. This is usually an economic consideration and is designed to encourage the use of equivalents of imported goods which are produced within the country by domestic industry.

Where it may be difficult to identify certain exported goods as being those that were originally imported or those resulting from the processing of imported goods, administrations should allow the exportation of equivalent goods (e.g. compensating goods equivalent in all respects to the goods which should normally have been re-exported) and apply the drawback procedure to repay import duties and taxes where goods or materials are replaced by equivalent goods or materials. This is a practice which is recommended in this Chapter.

Countries wishing to encourage trade through free zones in their territory may also apply the drawback procedure to goods that are re-exported into these zones.

Usually goods imported with the intention to re-export them, other than those used for processing or manufacture, are not permitted to be used during their stay in the Customs territory. If such use is allowed, administrations usually have provisions under which the amount of drawback granted is reduced according to the extent of the resulting depreciation.

Some administrations use the term drawback for refund of taxes on imported goods that are not according to specification and are returned to the seller, or goods used in manufacture for home consumption, or imported goods that are obsolete, etc. The procedure covered by this Chapter does not relate to such goods. This issue is covered in Standard 4.19 of the General Annex.

The drawback procedure will not apply to repayment of or relief from other taxes (e.g. sales tax, value added tax) or to items which may be aids to the manufacturing process that are granted relief or repayment under other provisions.

3. Essential features of the drawback procedure

The basis for assessment of the amounts payable as drawback is usually specified in the national legislation. Where drawback is applied to duties and taxes levied at importation for goods permitted to be used and then re-exported, the national legislation generally grants a reduction of the full amount of these duties and taxes. This is usually expressed as a percentage (e.g. 80 % of the import duty to be paid as drawback if the goods are used for X period of time).

Where rates of drawback are fixed for categories of goods or for individual manufacturers, national legislation usually provides for changes in these rates when there is a change in the rates of related imported duties and taxes. These new rates of drawback may either be fixed at the same time as the new rate of import duties and taxes or later when the goods which have effectively borne these new taxes are exported. For administrative convenience, national administrations will usually change the rates of drawback only if the changes in import duties and taxes are significant enough to justify the task of revision.

3.1. Benefits of the drawback procedure

The drawback procedure offers distinct benefits to national administrations and interested persons in that it :

- Generates domestic economic activities,
- Provides for revenue protection on imported goods released into the Customs territory, and
- Offers options to interested persons when other procedures such as temporary admission cannot be applied to the goods.

When Customs administers the drawback procedure by implementing modern control techniques of selective verifications, risk assessment of users, post-audits of users records and electronic data exchange and transfer of payments, drawback can be well managed and offers the full array of economic incentives to national economies. (See Chapter 6 of the General Annex and its Guidelines.)

Interested persons have import options regarding whether to make the financial commitment to pay the duties and taxes and wait for repayment to be completed under drawback after the goods are exported, and whether this affects the competitive pricing of exported goods.

4. Definitions

E1/F1 *“drawback” means the amount of import duties and taxes repaid under the drawback procedure;*

E2/F3 **“drawback procedure”** means the Customs procedure which, when goods are exported, provides for a repayment (total or partial) to be made in respect of the import duties and taxes charged on the goods, or on materials contained in them or consumed in their production;

E3/F1 **“equivalent goods”** means domestic or imported goods identical in description, quality and technical characteristics to those under the drawback procedure which they replace.

All the definitions of terms necessary for the interpretation of more than one Annex to the Convention are placed in the General Annex. The definitions of terms applicable to only a particular procedure or practice are contained in that Specific Annex or Chapter.

5. Principle

Standard 1

The drawback procedure shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.

The revised Kyoto Convention has a set of obligatory core provisions that are contained in the General Annex. The General Annex reflects the main principles considered necessary to harmonize and simplify all the relevant Customs procedures and practices which Customs apply in their daily activities.

As the core provisions of the General Annex are applicable to all Specific Annexes and Chapters, they should be applied in full for Drawback. Where a specific applicability is not relevant, the general facilitation principles of the General Annex should always be borne in mind when implementing the provisions of this Chapter. In particular, Chapter 1 of the General Annex on General principles, Chapter 3 on Clearance and other Customs formalities, Chapter 4 on Duties and taxes, Chapter 6 on Customs control, Chapter 7 on Information technology and Chapter 9 on Information, decisions and rulings supplied by the Customs should be read in conjunction with this Chapter on Drawback.

Contracting Parties should particularly note Standard 1.2 of the General Annex and ensure that their national legislation specifies the conditions to be fulfilled and the formalities to be accomplished for Drawback.

In line with Article 2 of the Convention, Contracting Parties are encouraged to grant greater facilities than those provided for in this Chapter.

6. Field of Application

Standard 2

National legislation shall enumerate the cases in which drawback may be claimed.

The cases where drawback may be claimed may be specified by reference to certain goods or classes of goods or to certain uses of goods. This could be achieved, for example, by reference in national legislation to certain tariff headings or to specific descriptions of goods or classes of goods as being eligible for the payment of drawback. Some countries restrict the categories of imported goods qualifying for drawback based on economic considerations where equivalents of the goods to be imported are produced by domestic industries.

Drawback may also be restricted to certain categories of import duties and taxes or to cases where the goods have undergone processing, manufacture or repair or other authorized uses. In this respect some administrations exclude internal taxes which are applicable on import, such as value added tax or sales tax, from the scope of the drawback procedure. Some administrations exclude goods which are re-exported in the same state from eligibility for drawback.

Drawback on goods consumed in the production of exported goods does not normally extend to mere aids to manufacture, such as lubricants. However, it may apply to goods such as catalysts and accelerators or retarders of chemical reactions that are consumed during a manufacturing process and are essential to it. In most cases drawback also applies to waste or loss resulting from a manufacturing operation.

Countries which have free zone regimes or Customs warehouses also allow drawback on goods moved to these places on condition that they are subsequently exported. (See also the explanations to Recommended Practice 9).

In addition to indicating the cases in which drawback may be claimed, Customs administrations also specify in their regulations the extent of the payment of drawback. It may be partial or total. Some administrations allow the total amount of import duties and taxes paid upon the exportation of the goods to be eligible for drawback, whereas depending on the economic policy others only allow a part of the import duties and taxes paid. The drawback may be a percentage of the duties and taxes paid, or may be a fixed rate per unit of quantity or may be related to the value of re-exported goods. In fixing the amount of drawback to be paid, most administrations take into consideration the part of the imported goods which is lost in the manufacturing process, i.e. wastage. The percentage of such wastage that is allowed for drawback may be fixed for each product, for an individual manufacturer or for a certain process.

Repayment of drawback is not granted in cases where import duties and taxes have been, or will be, repaid under other provisions.

There are various possibilities by which drawback may be claimed and Standard 2 requires that such possibilities and the conditions attached are enumerated in the respective national legislation. The following key aspects should be specified in the national legislation :

- On which goods drawback can be claimed and/or which goods are not eligible for drawback;
- When drawback can be claimed : whether at the time of import, during the period when the manufacturing or processing activity is taking place, or at the time of export;
- The time limits for the export of goods eligible for drawback and for the submission of claims;
- The time limits within which drawback should be claimed;
- The amounts below which drawback cannot be claimed;
- Persons entitled to claim drawback : the exporter, the manufacturer, or any other persons;
- How drawback is to be claimed, including the information/documents necessary to be produced or maintained for claiming drawback;

- If a prescribed application form is to be completed for claiming drawback : If so, information regarding the specified form and where available. Where such forms are specified, clear instructions regarding them should be completed;
- Where drawback is eligible on imported goods processed or manufactured for export, including a clear definition of what activities will be considered as processing or manufacturing;
- The method used by the national administration for assessing or applying the drawback rate whether drawback is based on a schedule giving fixed rates, or based on individual applications; and
- A clear notice to the users of this procedure whether the national legislation requires a declaration to be made at the time of import that the goods would be used under the drawback procedure.

This will benefit and facilitate exporters or entitled persons to claim drawback. It will also enable the national administration to develop and prescribe procedures which are simple and unambiguous.

Recommended Practice 3

National legislation should include provision for the application of the drawback procedure in cases where the goods which have borne import duties and taxes have been replaced by equivalent goods used in the production of exported goods.

In principle imported goods which have borne import duties and taxes must be exported in order to qualify for drawback. However, as a facility to traders, where such goods are replaced by equivalent goods in the production of exported goods, this provision recommends that the drawback procedure should also be applied.

This provision should apply whether or not it is possible to distinguish the imported goods from the equivalent goods, for example, where they have not been segregated for storage. The question of equivalence is related to the quantity of the goods rather than to the identification of precisely which goods had borne the import duties and taxes. From an economic point of view, allowing equivalent goods which are of domestic origin as replacements helps to generate domestic economic activities.

7. Conditions to be fulfilled

Standard 4

The Customs shall not withhold payment of drawback solely because, at the time of importation of the goods for home use, the importer did not state his intention of claiming drawback at exportation. Similarly, exportation shall not be mandatory when such a statement has been made at importation.

Customs may require the importer, at the time of importation of the goods for home use, to state his intention of claiming drawback. This may be required to establish a reference file and segregate the goods from other goods, or to enable the processing or manufacturing of the compensating products under Customs supervision. Such a statement would also facilitate the drawback process at the time of exportation and payment.

There are many practical situations, however, where the importer did not have the intention to re-export the goods, but circumstances changed after importation. Standard 4 therefore extends the facility of drawback to those importers who did not know at the time of importation that they would export the imported goods or their equivalent. Nevertheless the

responsibility to establish the entitlement to drawback remains with the claimant and it is in his interest to ensure that all Customs requirements in relation to drawback are met.

Similarly, Customs should not require the importer to export the goods solely because a statement of intention to claim drawback was made at the time of import, as the Revenue interests were protected when the import duties and taxes on the goods were paid.

8. Duration of stay of the goods in the Customs territory

Recommended Practice 5

Where a time-limit for the exportation of the goods is fixed beyond which they no longer qualify for drawback, this should, upon request, be extended if the reasons are deemed valid by the Customs.

Recommended Practice 6

Where a time-limit is fixed beyond which claims for drawback will not be accepted, provision should be made for its extension for commercial or other reasons deemed valid by the Customs.

Recommended Practice 5 does not suggest that Customs should fix a time limit for the exportation of the goods beyond which they no longer qualify for drawback. If Customs does set a time limit, however, whether in general, for certain categories of goods or type of manufacture or process, or in relation to the period for which they normally retain records, they should allow reasonable requests to extend the time limit. This is generally done on a case-by-case basis.

It must be noted that there is a distinction between Recommended Practice 5, which is concerned with a possible time limit for the exportation of goods under the drawback procedure and Recommended Practice 6 which relates to a possible time limit for the lodging of a claim for drawback.

As in Recommended Practice 5, Recommended Practice 6 does not suggest that a time limit for lodging a claim for drawback must be fixed. In practice, however, many administrations do fix a time limit beyond which claims for drawback will not be accepted. This is normally for administrative reasons such as the length of time that they retain records. In such cases it is recommended that Customs should take into consideration commercial reasons where it may not be possible to lodge the claim within the time limit specified, and determine if an extension should be allowed. Such reasons could be, for example, the manufacturing process involved or orders for the export of certain types of specialized goods.

Generally the time limit for filing a claim for drawback is calculated from the date of exportation or when the goods are deposited in a free zone or a Customs warehouse.

9. Payment of drawback

Standard 7

Drawback shall be paid as soon as possible after the claim has been verified.

Claims for drawback must provide all the facts necessary to determine the amount of drawback and provide proof, as required, to show that the conditions necessary for drawback have been fulfilled.

As a facilitation measure the drawback claim may be made on the same form as the declaration of exportation or on a separate form. If it is made out on a separate form, it may be lodged at the time of exportation or within the time limit stipulated by Customs.

Standard 7 requiring that drawback be paid without any delay should also be read in conjunction with Standard 4.24 of the General Annex. That Standard allows administrations to fix a minimum amount below which repayments need not be paid in order to avoid unnecessary paperwork in processing such claims. The administration should also apply this principle to the drawback procedure.

It is not normally considered necessary to make the payment of drawback subject to the production of evidence that the goods have arrived in the country of destination. However, this may be necessary where the claim for drawback is not made at the time of the exportation of the goods, so that the necessary checks can be made.

Some administrations pay the drawback claim immediately upon a cursory examination of the relevant documents and conduct a later post-audit of the claimant's accounts to verify the claims in detail. This may be considered as granting a greater facility in accordance with Article 2 of the Convention.

In dealing with claims for drawback, as a good administrative practice, Customs should set themselves time limits for the verification of documents and the payment of drawback. (See the Guidelines to Standard 4.21 of the General Annex).

Verification should not be required as a matter of course where a general rate of drawback has been fixed for categories of goods based on trade data. In these cases calculation and payment of drawback can be made without verification, immediately on the completion of export, based on the declaration made by the exporter/claimant.

Some administrations fix rates of drawback for individual exporters when accurate general rates cannot be fixed because of the specialized nature of the goods or because there are few manufacturers of such goods. In such cases the exporter may be required to make a separate application requesting the special rate of drawback, complete with the details of imports, duties and taxes paid and the drawback due on the exported goods.

To fix individual rates of drawback for exporters, administrations could expedite the application process for exporters with good track records by allowing approved chartered accountants and/or chartered engineers to certify the correctness of the details of the application, drawback rate expected and, where necessary, the process of manufacture. Verification of every claim for drawback in these cases should be waived. Controls should be exercised through periodic and/or selective audits checks. Appendix I provides an example of the use of control and audit and the application of information technology in applying the drawback procedure.

Recommended Practice 8

National legislation should provide for the use of electronic funds transfer for the payment of drawback.

Electronic funds transfer is a modern practice which is highly recommended. Chapter 4 of the General Annex advocates the establishment of an electronic funds transfer system for a quick and efficient payment of duties and taxes. Likewise payment of drawback should be made with such a system for the benefit of both Customs and the trade. Electronic funds transfer allows swifter payments, immediate and accurate accounting, and security of the transfer of funds.

Recommended Practice 9

Drawback should also be paid on deposit of the goods in a Customs warehouse or introduction of the goods into a free zone, on condition that they are subsequently to be exported.

This Recommended Practice is a useful facility for traders in that it expedites the payment of drawback when the goods are placed under certain procedures. Very often goods meant for export are deposited in a Customs warehouse pending the clearance formalities and the arrival of the vessel. In addition there could be situations such as delay in the export of the goods due to the non-arrival or non-availability of vessels or due to force majeure. In such instances the application of this Recommended Practice enables the exporter to obtain the drawback instead of waiting for the actual shipment of the goods. It should be noted that in applying this provision Customs would be permitting the entry into a Customs warehouse of goods having previously borne import duties and taxes, a departure from the definition of the term "Customs warehouses".

Free zones are considered to be areas outside the Customs territory insofar as the duties and taxes on goods are concerned. Thus if certain goods are eligible for payment of drawback when exported, they would automatically qualify for such payment once they are introduced into a free zone.

Recommended Practice 10

The Customs should, if so requested, pay drawback periodically on goods exported during a specified period.

This Recommended Practice provides an arrangement which would be facilitative to Customs and the trade. Usually where a trader has a large number of drawback claims and exports on a regular basis, it would be beneficial to allow the payment of the drawback amounts periodically for goods exported during a specified period if a request to this effect is made to Customs. Thus periodic payments simplify the work of both Customs and the claimant, and minimize the necessity for individual claims by the exporter and individual verification and payments by Customs. It should be noted that even where the claimant does not request periodic payment of drawback, Customs must nonetheless, by virtue of Standard 7, pay the drawback as soon as the claim has been verified.

10. References

Comparative studies of Customs procedures – study No. 9 – Customs Cooperation Council

International Customs Norms of the Customs Cooperation Council

Export Manual – Customs procedures

APEC Customs Guide

CCC Recommendation on Standard Codes*

CCC Recommendation on the use of UN/EDIFACT*

CCC Recommendation on the acceptability of electronically transmitted documents*

UN Model Data Interchange Agreement*

CCC Recommendation on the use of the Data Mapping Guide for UN/EDIFACT Messages*

* These references are applicable to all procedures where automation is applied.

Appendix 1

Method of application

Customs Control and Information Technology for Drawback

CONTROL AND AUDIT

1. Introduction

Providing facilitative measures for the application of the drawback procedure, especially because it involves repayment of taxes collected by a national administration, involves certain risks.

As described in the "Guidelines on Customs Control" most administrations apply risk analysis techniques to identify these risks and develop control measures to be applied. This enables administrations to effectively direct their resources towards high-risk categories and to provide facilitative procedures for low-risk ones by minimizing controls.

In applying risk management to the drawback procedure, Customs would have to identify claimants of drawback and, through pre-audit of their records and manufacturing and processing systems, establish criteria for the types of controls to be exercised.

2. Establish exporter/claimant profiles

Customs should use historical records of drawback claims and establish a profile of exporters or claimants. The following criteria should be included and evaluated in an analysis of each exporter or claimant :

1. Record of compliance,
2. Whether there is systematically maintained accounting system for goods,
3. Standard manufacturing or processing systems, and
4. Whether these systems have been approved by Customs through pre-audit and physical verification.

Once exporters and claimants are evaluated against these criteria, the following three-level risk analysis can be applied.

3. Risk levels

A. Low risk :

Those exporters and claimants with positive evaluations in all or most of these criteria can be considered low risk and facilitated by :

- Approval to maintain records of imports, exports, duties and taxes paid and to lodge declarations and supporting documents certified by chartered accountants and/or engineers or other competent officials or agencies approved by Customs;
- Waiver of verification for fixing drawback rates;
- Waiver of routine examination of goods at the time of export;
- Provisional payment of a percentage of drawback claimed when the drawback rates are not fixed or available at the time of export and without requiring any security;
- Payment of drawback on placing the export goods in a Customs warehouse with the intent to export them;
- Payment of drawback on the basis of exporters' declarations without verification of records.

In all cases where such facilitation is extended, Customs will reserve the right to revoke the facility in the event of any misuse, and to check or verify records, manufacturing processes and export shipments at any time. This would include periodic verifications or audits.

B. Medium risk

Where national administrations specify certain categories of goods that require control due to national policy or licensing controls, or in cases where the exporter is not yet well established :

- Customs may combine various measures suggested for low and high risk and exercise an intermediate form of control under the drawback procedure.

C. High risk

Exporters or claimants with a record of misdeclarations, incorrect claims of drawback, smuggling or any other revenue fraud and those with insufficient accounting/record systems would be considered high risk. In all such cases the exporters would be subject to:

- Lodging individual declarations for each export under claim for drawback;
- Customs verification of the claim before payment of drawback; and
- Examination by Customs of import and export goods.

USE OF INFORMATION TECHNOLOGY/SIMPLIFIED PROCEDURES

1. Introduction

The use of information technology is common to most Customs procedures and is covered in the Guidelines to Chapter 7 of the General Annex on Application of information technology. These use systems like trader registration database, electronic submission system, central transaction database, risk management, electronic payment and funds transfer system, security features, etc. Only those aspects which are specific to the drawback procedure are described in the following paragraphs.

Drawback procedures can be greatly facilitated through the effective application of information technology. The submission of claims for drawback to Customs, the processing of such claims by Customs and the payment of the drawback to the exporter can all be greatly simplified and expedited. If the export declaration contains the data necessary to claim drawback, a separate claim will not be necessary and drawback processing may form an integrated part of an automated Customs export system.

2. Specific features

Whenever possible it is recommended to design the drawback system as part of an integrated Customs system covering import and export declarations. But it can also be designed as a stand-alone system. (See flow chart.) In addition to the common aspects explained in the Guidelines on Information technology and the data requirements for drawback, an automated drawback system should cover the following specific features :

- Electronic matching of import payments with drawback claims;
- Electronic matching of export references quoted on the drawback claim; and
- Calculation of drawback.

3. Verification of import and export details

For the verification of import and export details quoted on the drawback claim, an integrated system will typically access the Customs transaction database (which holds historical information on Customs import and export transactions for a specific period - e.g. 2 years). Information in this database will enable the system to confirm that the goods on which drawback is being claimed had originally been imported and duty had been paid. Any previous drawback claims or other claims for duty refund on the import entry will also be indicated.

A stand-alone system will store only the data of previous drawback claims. Therefore such a stand-alone system would only be able to confirm that the details quoted on the claim were not used on drawback claims in the past.

4. Matching of export references

Within an integrated system export references quoted on the drawback claim will generate an interrogation of the transaction database to confirm the validity of the references quoted. This process will confirm that the goods have been exported and that no previous drawback claim has been lodged against the export declaration.

Where the drawback system is a stand-alone system, the information stored in the system contains only data from previous drawback claims. Such a system can only ensure that the export reference was not quoted on former drawback claims.

5. Calculation of drawback

The calculation of drawback depends on the status of the goods.

- (a) If the goods are exported in the same state as they were imported, the calculation is based either on a definitive percentage of the total amount of duties paid or on fixed rates for certain categories of goods. In those cases an integrated system will access the Customs transaction database to retrieve either the actual total amount of duties paid at importation or the relevant import details in order to calculate the drawback.

A stand-alone system has no access to import and export data. Therefore the claimant has to provide Customs with the necessary information of the referenced import declaration.

- (b) If the goods were used for processing or manufacture, the calculation can be performed in two steps. An automated system will need data for the quantity of goods imported, the rate of yield, the accepted percentage of wastage and the quantity of goods exported. In a first step the system will calculate, with the rate of yield and the accepted percentage of wastage, the quantity of imported goods incorporated into the quantity of exported goods quoted on the drawback claim. In a second step the system will calculate the drawback based on this quantity of incorporated goods.

The integrated system will access the Customs transaction database to retrieve the import and export details and will access the trader registration database to retrieve details on the claimant, the rate of yield and the accepted percentage of wastage.

A stand-alone system can also access its trader registration database to retrieve the necessary information. But since there is no access to import and export information, the claimant has to provide Customs with the required information.

6. Transaction tracking

As part of an integrated system, where all import and export information is available, the drawback system could also record and tabulate debits from the declared imported quantities which will be credited to drawback for individual claimants, either by transaction or periodically as provided for in Recommended Practice 10.

This feature would provide accurate transaction tracking for payment of drawback claims and for post audit purposes.

7. Other considerations

7.1. Costs

Where automation is envisaged as one of the methods of implementing effective simplification, administrations which have not already invested in automated systems would have to plan for this expenditure. Automated systems should be integrated to cover the entire range of Customs procedures and not only drawback. Similar arrangements would have to be made by the exporters or claimants. The costs would be balanced by facilitation with rapid verification of data, fewer document requirements or eventual elimination of documents, and reduction of the element of human error.

PROCESS FLOW DIAGRAM FOR DRAWBACK

