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TITLE 19--CUSTOMS DUTIES

CHAPTER I--BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY (CONTINUED)

PART 181_NORTH AMERICAN FREE TRADE AGREEMENT--Table of Contents

Subpart E_Restrictions on Drawback and Duty-Deferral Programs

Sec. 181.53 Collection and waiver or reduction of duty under duty-deferral programs.

(a) General--(1) Definitions. The following definitions shall apply for purposes of this section:

(i) Date of exportation. ``Date of exportation'' means the date of importation into Canada or Mexico as reflected on the applicable Canadian or Mexican

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entry document (see Sec. 181.47(c) (1) and (2)).

(ii) Duty-deferral program. A ``duty-deferral program'' means any measure which postpones duty payment upon arrival of a good in the United States until withdrawn or removed for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program. Such measures govern manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, and those temporary importations under bond that are specified in paragraph (b)(5) of this section.

(2) Treatment as entered or withdrawn for consumption--(i) General. (A) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico, and provided that the good is a ``good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333 and is not described in Sec. 181.45 of this part, the documentation required to be filed under this section in connection with the exportation of the good shall, for purposes of this chapter, constitute an entry or withdrawal for consumption and the exported good shall be subject to duty which shall be assessed in accordance with paragraph (b) of this section.

(B) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program and entered

into a duty-deferral program in Canada or Mexico, and provided that the good is a ``good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333 and is not described in Sec. 181.45, the documentation required to be filed under this section in connection with the withdrawal of the good from the U.S. duty-deferral program shall, for purposes of this chapter, constitute an entry or withdrawal for consumption and the withdrawn good shall be subject to duty which shall be assessed in accordance with paragraph (b) of this section.

(C) Any assessment of duty under this section shall include the duties and fees referred to in Sec. 181.42 (a) through (c) and the fees provided for in Sec. 24.23 of this chapter; these inclusions shall not be subject to refund, waiver, reduction or drawback.

(ii) Bond requirements. The provisions of Sec. 142.4 of this chapter shall apply to each withdrawal and exportation transaction described in paragraph (a)(2)(i) of this section. However, in applying the provisions of Sec. 142.4 of this chapter in the context of this section, any reference to release from Customs custody in Sec. 142.4 of this chapter shall be taken to mean exportation to Canada or Mexico.

(iii) Documentation filing and duty payment procedures.

(A) Persons required to file. In the circumstances described in paragraph (a)(2)(i) of this section, the documentation described in paragraph (a)(2)(iii)(B) of this section must be filed by one of the following persons:

(1) In the case of a withdrawal of the goods from a warehouse, the person who has the right to withdraw the goods;

(2) In the case of a temporary importation under bond (TIB) specified in paragraph (b)(5) of this section, the TIB importer whether or not he sells the goods for export to Canada or Mexico unless Sec. 10.31(h) of this chapter applies; or

(3) In the case of a withdrawal from a foreign trade zone, the person who has the right to make entry. However, if a zone operator is not the person with the right to make entry of the good, the zone operator shall be responsible for the payment of any duty due in the event the zone operator permits such other person to remove the goods from the zone and such other person fails to comply with Sec. Sec. 146.67 and 146.68 of this chapter.

(B) Documentation required to be filed and required filing date. The person required to file shall file Customs Form 7501 no later than 10 working days after the date of exportation to Canada or

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Mexico or 10 working days after being entered into a duty-deferral program in Canada or Mexico. Except where the context otherwise requires and except as otherwise specifically provided in this paragraph, the procedures for completing and filing Customs Form 7501 in connection with the entry of merchandise under this chapter shall apply for purposes of this paragraph. For purposes of completing Customs Form 7501 under this paragraph, any reference on the form to the entry date shall be taken to refer to the date of exportation of the good or the date the goods are entered into a duty-deferral program in Canada or Mexico. The Customs Form 7501 required under this paragraph may be transmitted electronically.

(C) Duty payment. The duty estimated to be due under paragraph (b) of this section shall be deposited with Customs 60 calendar days after the date of exportation of the good. If a good is entered into a duty-deferral program in Canada or Mexico, the duty estimated to be due under

paragraph (b) of this section, but without any waiver or reduction provided for in that paragraph, shall be deposited with Customs 60 calendar days after the date the good is entered into such duty-deferral program. Nothing shall preclude the deposit of such estimated duty at the time of filing the Customs Form 7501 under paragraph (a)(2)(iii)(B) of this section or at any other time within the 60-day period prescribed in this paragraph. However, any interest calculation shall run from the date the duties are required to be deposited.

(3) Waiver or reduction of duties--(i) General. Except in the case of duties and fees referred to in Sec. Sec. 181.42(a) through (c) and fees provided for in Sec. 24.23 of this chapter, Customs shall waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who is required to file the Customs Form 7501 (see paragraph (a)(2)(iii)(A) of this section) in accordance with paragraph (b) of this section, provided that a claim for waiver or reduction of the duties is filed with Customs within the appropriate 60-day time frame. The claim shall be based on evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of duties paid in Canada or Mexico (see Sec. 181.47(c)).

(ii) Filing of claim and payment of reduced duties. A claim for a waiver or reduction of duties under paragraph (a)(3)(i) of this section shall be made on Customs Form 7501 which shall set forth, in addition to the information required under paragraph (a)(2)(iii)(B) of this section, a description of the good exported to Canada or Mexico and the Canadian or Mexican import entry number, date of importation, tariff classification number, rate of duty and amount of duty paid. If a claim for reduction of duties is filed under this paragraph, the reduced duties shall be deposited with Customs when the claim is filed.

(iii) Drawback on goods entered into a duty-deferral program in Canada or Mexico. After goods in a duty-deferral program in the United States which have been sent from the United States and entered into a duty-deferral program in Canada or Mexico are then withdrawn from that Canadian or Mexican duty-deferral program either for entry into Canada or Mexico or for export to a non-NAFTA country, the person who filed the Customs Form 7501 (see paragraph (a)(2)(iii)(A) of this section) may file a claim for drawback if the goods are withdrawn within 5 years from the date of the original importation of the good into the United States. If the goods are entered for consumption in Canada or Mexico, drawback will be calculated in accordance with Sec. 181.44 of this part.

(4) Liquidation of entry--(i) If no claim is filed. If no claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, Customs shall determine the final duties due under paragraph (a)(2)(i) of this section and shall post a bulletin notice of liquidation of the entry filed under this section in accordance with Sec. 159.9 of this chapter. Where no claim was filed in accordance with this section and Customs fails to liquidate, or extend liquidation of, the entry filed under this section within 1 year from the date of the entry, upon the date of expiration of that 1-year period the entry shall be deemed liquidated by operation of law in the amount asserted

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by the exporter on the Customs Form 7501 filed under paragraph (a)(2)(iii)(A) of this section. A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date of posting of the notice of

liquidation under this section.

(ii) If a claim is filed. If a claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, an extension of liquidation of the entry filed under this section shall take effect for a period not to exceed 3 years from the date the entry was filed. Before the close of the extension period, Customs shall liquidate the entry filed under this section and shall post a bulletin notice of liquidation in accordance with Sec. 159.9 of this chapter. If Customs fails to liquidate the entry filed under this section within 4 years from the date of the entry, upon the date of expiration of that 4-year period the entry shall be deemed liquidated by operation of law in the amount asserted by the exporter on the Customs Form 7501 filed under paragraph (a)(3)(ii) of this section. A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date of posting of the notice of liquidation under this section.

(b) Assessment and waiver or reduction of duty--(1) Manipulation in warehouse. Where a good subject to NAFTA drawback under this subpart is withdrawn from a bonded warehouse (19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty shall be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty shall be paid no later than 60 calendar days after the date of exportation or of entry into the duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(2) Bonded manufacturing warehouse. Where a good is manufactured in a bonded warehouse (19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty shall be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty shall be paid no later than 60 calendar days after either the date of exportation or of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example Company N imports tea into the United States and makes a Class 6 warehouse entry. Company N manufactures sweetened ice tea mix by combining the imported tea with refined cane sugar and other flavorings and packaging it in retail size canisters. Upon withdrawal of the ice tea mix from the warehouse for exportation to Canada, a Customs Form 7501 is filed showing \$900 in estimated U.S. duties on the basis of the unmanufactured tea. Upon entry into Canada, the equivalent of US\$800 is assessed on the exported ice tea mix. Company N submits to Customs a proper claim under paragraph (a)(3) of this section showing payment of the US\$800 equivalent in duties to Canada. Company N will only be required to pay \$100 in U.S. duties out of the \$900 amount reflected on the Customs Form 7501.

(3) Bonded smelting or refining warehouse. For any qualifying imported metal-bearing materials (19 U.S.C. 1312), duty shall be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after either the date of exportation of the treated materials to Canada or Mexico or the date of entry of the treated materials into a duty-deferral program of Canada or Mexico, either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of

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material from a bonded smelting or refining warehouse. However, upon filing of a proper claim under paragraph (a)(3) of this section, the duty on the imported materials shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example Company Z imports 47 million pounds of electrolytic zinc which is entered into a bonded smelting and refining warehouse (Class 7) for processing. Thereafter, Company Z withdraws the merchandise for exportation to Canada and files a Customs Form 7501 showing \$90,000 in estimated U.S. duty on the dutiable quantity of metal contained in the imported metal-bearing materials. Upon entry of the processed zinc into Canada, the equivalent of US\$50,000 in duties are assessed. Within 60 days of exportation Company Z files a proper claim under paragraph (a)(3) of this section and Customs liquidates the entry with duty due in the amount of \$40,000.

(4) Foreign trade zone. For a good that is manufactured or otherwise changed in condition in a foreign trade zone (19 U.S.C. 81c(a)) and then withdrawn from the zone for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program, the duty assessed, as calculated under paragraph (b)(4)(i) or (b)(4)(ii) of this section, shall be paid no later than 60 calendar days after either the date of exportation of the good to Canada or Mexico or the date of entry of the good into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(i) Nonprivileged foreign status. In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico or its entry into a duty-deferral program of Canada or Mexico.

Example CMG imports \$1,000,000 worth of auto parts from Korea and admits them into Foreign-Trade Subzone number 00, claiming nonprivileged foreign status. (If the auto parts had been regularly entered they would have been dutiable at 4 percent, or \$40,000.) CMG manufactures subcompact automobiles. Automobiles are dutiable at 2.5 percent (\$25,000) if entered for consumption in the United States. CMG withdraws the automobiles from the zone and exports them to Mexico. Upon entry of the automobiles in Mexico, CMG pays the equivalent of US\$20,000 in duty.

Before the expiration of 60 calendar days from the date of exportation, CMG files a proper claim under paragraph (a)(3) of this section and pays \$5,000 in duty to Customs representing the difference between the \$25,000 which would have been paid if the automobiles had been entered for consumption from the zone and the US\$20,000 equivalent paid to Mexico.

(ii) Privileged foreign status. In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is granted in the zone.

Example O&G, Inc. admits Kuwaiti crude petroleum into its zone and requests, one month later, privileged foreign status on the crude before refining the crude into motor gasoline and kerosene. Upon withdrawal of the refined goods from the zone by O&G, Inc. for exportation to Canada, a Customs Form 7501 is filed showing \$700 in estimated duties on the imported crude petroleum (rather than on the refined goods which would have been assessed \$1,200). D&O is the consignee in Canada and pays the Canadian customs duty assessment of the equivalent of US\$1,500 on the goods. O&G, Inc. is entitled to a waiver of the full \$700 in duties upon filing of a proper claim under paragraph (a)(3) of this section.

(5) Temporary importation under bond. Except in the case of a good imported from Canada or Mexico for repair or alteration, where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, Harmonized Tariff Schedule of the United States) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty shall be paid no later than 60 calendar days after either the date of exportation or the date of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this

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section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example Company A imports glassware under subheading 9813.00.05, HTSUS. The glassware is from France and would be dutiable under a regular consumption entry at \$6,000. Company A alters the glassware by etching hotel logos on the glassware. Two weeks later, Company A sells the glassware to Company B, a Mexican company, and ships the glassware to Mexico. Company B enters the glassware and is assessed duties in an amount equivalent to US\$6,200 and claims NAFTA preferential tariff treatment. Company B provides a copy of the Mexican landing certificate to Company A showing that the US\$6,200 equivalent in duties was assessed but not yet paid to Mexico. If Mexico ultimately denies Company B's NAFTA claim and the Mexican duty payment becomes final, Company A, upon submission to Customs of a proper claim under paragraph (a)(3) of this section, is entitled to a waiver of the full \$6,000 in U.S. duty.

(c) Recordkeeping requirements. If a person intends to claim a waiver or reduction of duty on goods under this section, that person

shall maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico or entry into a duty-deferral program of Canada or Mexico, and if a person files a claim under this section for a waiver or reduction of duty on goods exported to Canada or Mexico or entered into a Canadian or Mexican duty-deferral program, that person shall maintain evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the good (see Sec. 181.47(c)). Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(d) Failure to file proper claim. If the person identified in paragraph (a)(2)(iii)(A) of this section fails to file a proper claim within the 60-day period specified in this section, that person, or the FTZ operator pursuant to paragraph (a)(2)(iii)(A)(3) of this section, will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(e) Subsequent claims for preferential tariff treatment. If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA or under any other circumstance after duties have been waived or reduced under this section, Customs may reliquidate the entry filed under this section pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the entry has become final.

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