

## Proof of Export Issues Can Derail Drawback Programs

Customs officials in various trade outreach forums have indicated that issues related to proof of export accounts for the majority of drawback claim denials. Regulatory drawback provision 19 CFR 191.72 does not require a specific document to substantiate exportation for drawback purposes. Rather, the regulations hold that the document issued by the exporting carrier identifies the exporter, and establish the date and fact of exportation. While not the only document that would fulfill the regulatory criteria, the ocean or export bill of lading is most commonly presented to Customs to substantiate exportation for drawback purposes.

If a claimant's export transaction is selected by Customs for review or if the entire program is targeted for a Compliance Assessment, then a claimant must provide either an originally signed bill of lading or a certified copy thereof when substantiating sample exports. The copy of the bill of lading must be certified by the entity that issued the document (the forwarder or carrier). Specifically, copy must include the statement, "This is a true and correct copy of the original", and it must list the name of the signatory, title, date signed, and include a "wet" or original signature by the certifying individual.

What if a drawback claimant has not received bills of lading for all its past export transactions? Should the claimant proceed with submitting claims even in spite of some record keeping gaps? Given that most large exports use a variety of forwarders and/or carriers with a variances in the terms of sale, it is not uncommon for an exporter of record not to receive a copy of the export bill of lading, particularly for customer routed transactions.

The most conservative approach is to secure an original bill of lading for every transaction before proceeding; however, for some claimants, the sheer volume of historical export transactions can present a significant administrative barrier to such an approach. Forwarders, carriers, and brokers can be considered a claimant's "third party" record keepers so an alternative approach would be to test the claimant's ability to secure the required bills of lading from the transportation provider in the event of a Customs review while at the same time establishing more robust procedures to assure the receipt of all future bills of lading.

Regardless of how drawback claimant tackles the potentially sticky issue of proof of export, it is always advisable to conduct a thorough review of existing export record retention with the assistance of drawback or trade compliance professional before proceeding with a drawback program.

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