

| Organization  | Executive Order | Date           |
|---|-----------------|----------------|
| Council of Europe in Respect of the Group of States Against Corruption (GRECO) .....          | 13240           | Dec. 18, 2001. |
| Hong Kong Economic and Trade Offices .....  | 13052           | June 30, 1997. |
| International Union for Conservation of Nature and Natural Resources—Limited privileges ..... | 12986           | Jan. 18, 1996. |
| Interparliamentary Union .....  | 13097           | Aug. 7, 1998.  |
| Israel-United States Binational Industrial Research and Development Foundation .....          | 12956           | Mar. 13, 1995. |
| Korean Peninsula Energy Development Organization .....  | 12997           | Apr. 1, 1996.  |
| Organization for the Prohibition of Chemical Weapons. ....                                    | 13049           | June 11, 1997. |
| World Trade Organization .....  | 13042           | Apr. 9, 1997.  |

Dated: August 18, 2003.

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*Commissioner, Customs and Border Protection.*

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*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 03–21577 Filed 8–21–03; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

#### 19 CFR Part 191

[CBP Dec. 03–23]

RIN 1515–AD02

### Manufacturing Substitution Drawback: Duty Apportionment

**AGENCY:** Bureau of Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on July 24, 2002, as T.D. 02–38. The interim rule amended the regulations to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court decisions have held that a chemical element that is contained in an

imported material that is subject to an *ad valorem* rate of duty may be designated as same kind and quality merchandise for drawback purposes. The amendment provides the method by which the duty attributable to the chemical element can be apportioned and requires a drawback claimant, where applicable, to make this apportionment calculation.

**EFFECTIVE DATE:** August 22, 2003.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Drawback—19 U.S.C. 1313*

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant upon the exportation, or destruction under Customs supervision, of eligible articles. The purpose of drawback is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties paid on imports used in domestic manufactures intended for export.

##### *Substitution for Drawback Purposes—19 U.S.C. 1313(b)*

There are several types of drawback. Under section 1313(b), a manufacturer can recoup duties paid for imported merchandise if it uses merchandise of the same kind and quality to produce exported articles pursuant to the terms

of the statute. Section 1313(b) reads, in pertinent part:

##### *(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

\* \* \*

Manufacturing substitution drawback is intended to alleviate some of the difficulties in accounting for whether imported merchandise has, in fact, been used in a domestic manufacture. Section 1313(b) permits domestic or other imported merchandise to be used to make the export article, instead of the actual imported merchandise, so long as the domestic or other imported merchandise is of the “same kind and quality” as the actual imported merchandise.

Several recent court cases have examined the scope of the term “same kind and quality” as used in 19 U.S.C. 1313(b). See *E.I. DuPont De Nemours and Co. v. United States*, 116 F. Supp. 2d 1343 (Ct. Int’l Trade 2000). See also *International Light Metals v. United States*, 194 F.3d 1355 (Fed. Cir. 1999). In these cases, the courts held that a chemical element that is contained in an imported material that is dutiable on its value may be designated as same kind