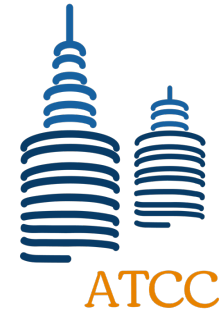




2026 ATCC Conference



## Advanced Strategies for Substitution Drawback

February 5, 2025

Presented By:

Michael V. Cerny, Chief Legal Officer  
Charter Brokerage, LLC

# Agenda

- What is Duty Drawback
- Main types of Duty Drawback
- What is 8-digit substitution
- Addressing misclassification
- Basket provisions and Unused Substitution
- The “lesser of” rule for substitution
- Determining value for substitution
- Questions



*What is Duty Drawback?*

A refund of 99% of customs duties, taxes and fees paid for imported goods that are subsequently **exported** or **destroyed**.



## History of Drawback



- Second oldest law from 1789
- Only surviving export subsidy allowed under GATT/WTO
- Cumbersome paper process until 8 years ago, difficult for CBP to manually track, audit, and verify claims are correct
- CBP routinely received bad audits from GAO on drawback
- Drawback modernization under the Trade Facilitation and Trace Enforcement Act of 2015 (TFTEA)- 8-Digit Substitution
- Went into effect in 2018, simultaneously with CBP upgrading drawback into a fully electronic system in ACE.
- TFTEA modernization and ACE have allowed CBP to perform immediate validations of claims and more easily audit claims

## Four Main Types of Drawback- 19 USC 1313



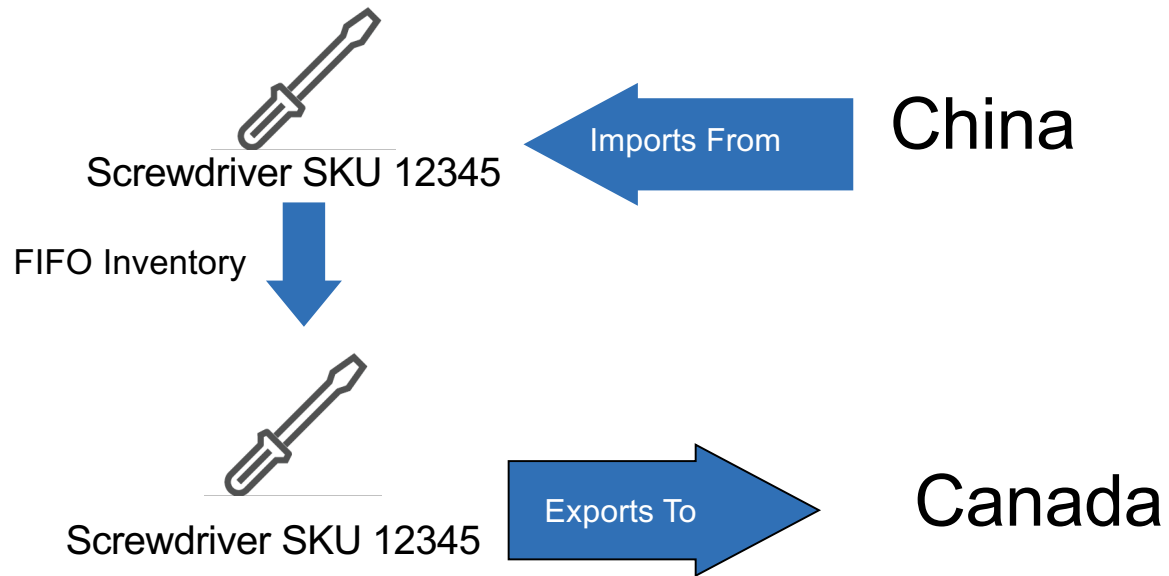
- Unused Direct Identification Drawback (1313(j)(1))
- Unused Substitution Drawback (1313(j)(2))
- Manufacturing Substitution Drawback (1313(b))
- Petroleum Drawback (1313(p))

## Unused Direct Identification Drawback

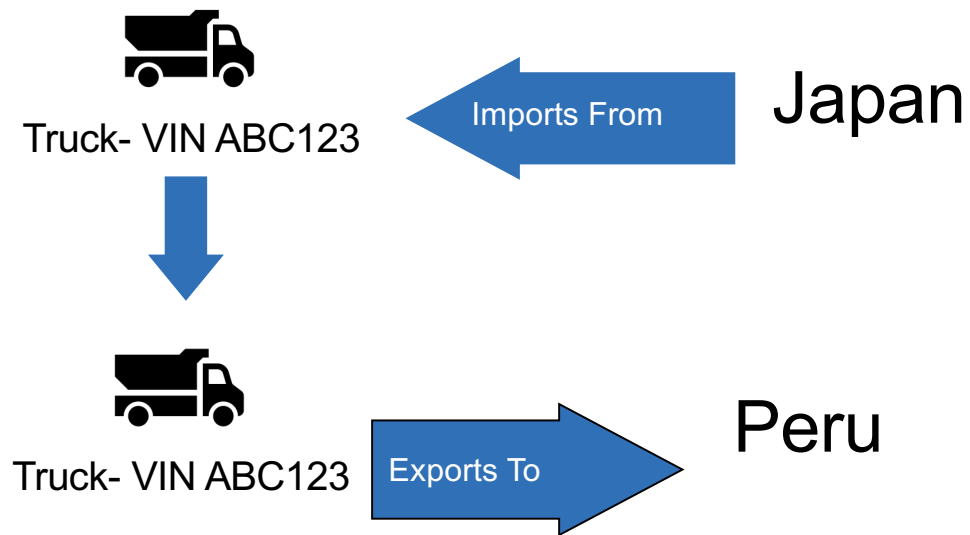


- Must be same exact item, identical, such as same SKU
- Must trace product from import to export
- Trace exact item with a unique ID such as serial or lot number on each item
- Where goods are commingled and fungible, can use an inventory accounting method such as Last In First Out (LIFO) or First In First Out (FIFO) to trace import to export
- Largely unchanged under TFTEA, but ACE validations provide significant upgrade for CBP's review of claims.

***Unused Merchandise Drawback Direct Identification- Accounting Method***



***Unused Merchandise Drawback Direct Identification- Specific Identification***

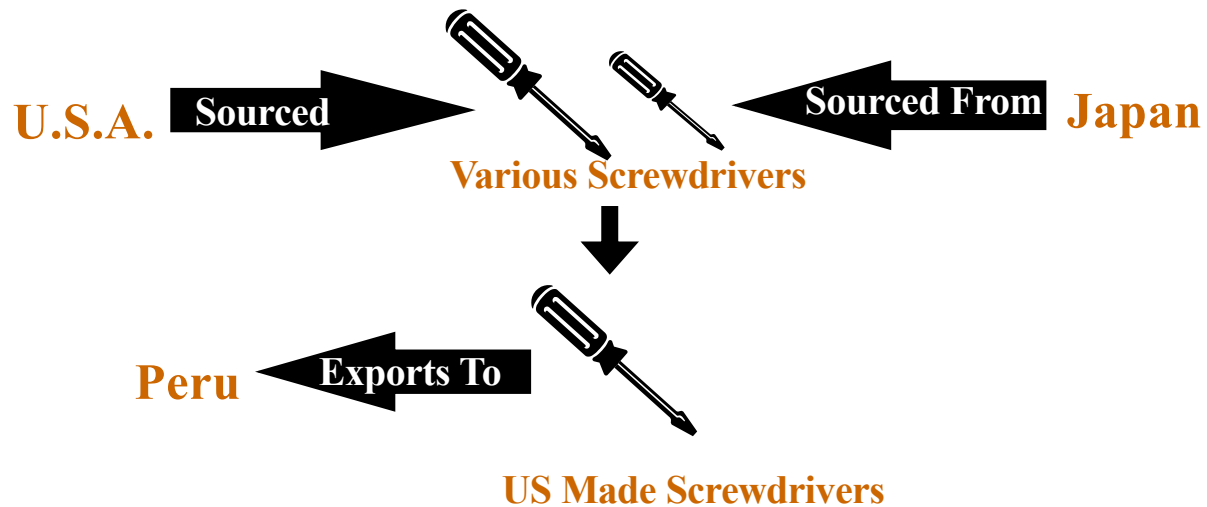


### ***Substitution Unused Merchandise Drawback 1313(j)(2)***

- TFTEA standard for substitution is same 8-digit HTS- no longer commercial interchangeability
- Limitations if your 8-digit HTS starts with “other”- basket provisions
- 5 years import to claim
- No more Certificates of Delivery
- Calculate drawback amount based upon line item average
- Consider value of exported/destroyed items (lesser of rule)

## *Substitution Unused Merchandise*

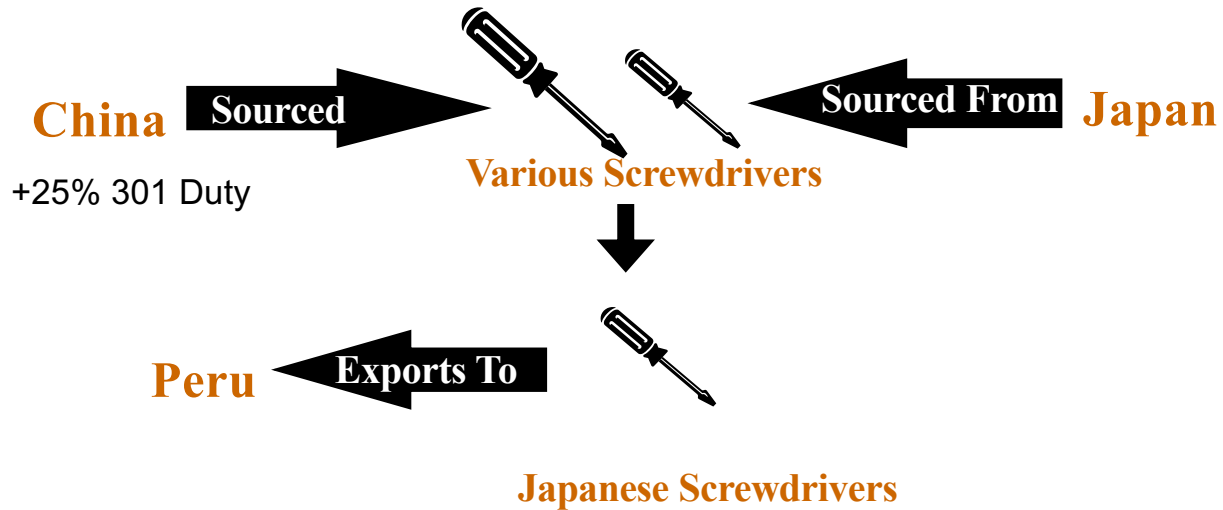
Same 8-digit HTSUS 8205.40.00



Claim duty, taxes, and fees paid on Japanese screwdrivers

## *Substitution Unused Merchandise*

Same 8-digit HTSUS 8205.40.00



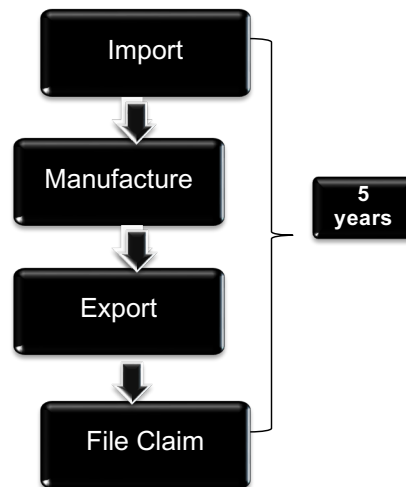
Claim duty, taxes, and fees paid on Chinese screwdrivers

## **Manufacturing Substitution Drawback 1313(b)**

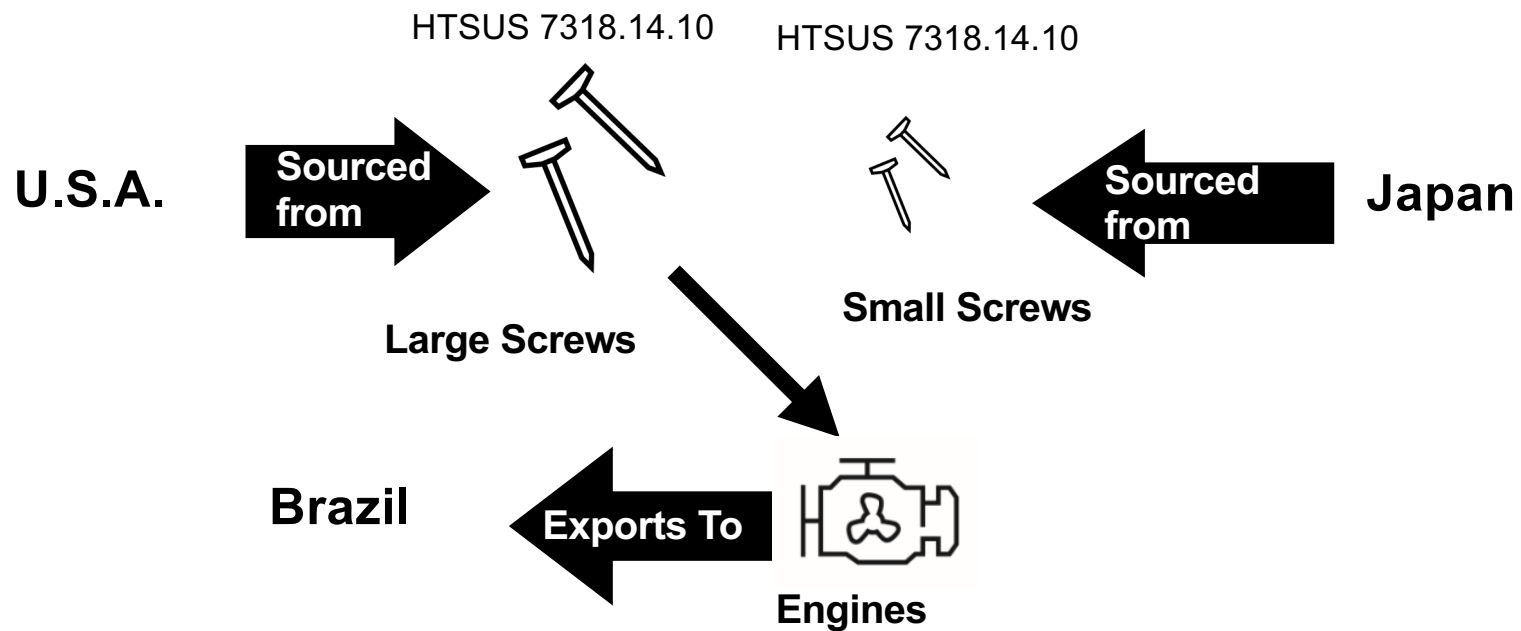
- Generally, not available for exports to Canada, Mexico, and Chile
- 8-digit substitution, just like unused but looking at the components used in the manufacturing process
- Basket provisions (“other”) ARE available for drawback under 1313(b)
- Calculate drawback using average line item
- Lesser of rule applies just like unused, but looking at components

## *Manufacturing Drawback Timeframes*

### TFTEA 1313(b)

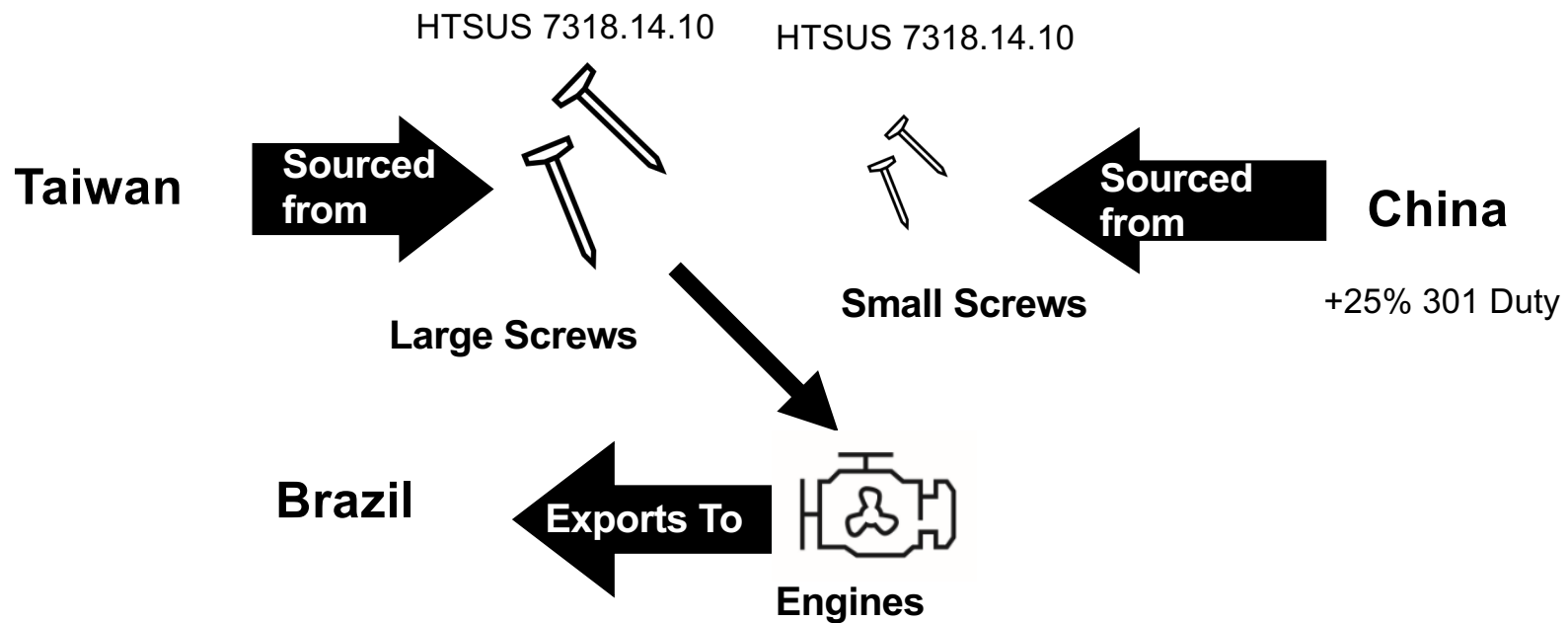


## *Substitution – Manufacturing*



Claim duty, taxes, and fees paid on Japanese fans

## Substitution – Manufacturing



Claim duty, taxes, and fees paid on Chinese screws

***If the substituted product shares the same first 8 HTS code digits as the imported product, then it may qualify for duty drawback***

**TFTEA definition of what can be substituted**



**6208.22.0000**  
Women's nightshirt  
of man-made fibers



**6208.22.0000**  
Girl's pajamas  
of man-made fibers



**6208.22.0000**  
Women's nightshirt  
of man-made fibers



**6208.22.0000**  
(different styles, colors, etc.)

## ***What does 8-digit substitution mean?***

- It means just that, same 8-digit HTS in and out
- Schedule B can be used at export, and it could be broader- “without regard to whether the Schedule B number corresponds to more than one 8-digit HTS subheading”
- Previous CIDs, CI and same kind & quality rulings are irrelevant
- Exercise reasonable care
- Obtain a classification ruling if in doubt
- Unused import and export have same 8-digit HTSUS
- Manufacturing- component/material used to manufacture and imported component/material have same 8-digit HTSUS

## *What if your product is misclassified?*

- If your Entry Summary has an incorrect HTS, in order to qualify for drawback
  - ✓ File a PSCs
  - ✓ File a protest
  - ✓ File a Voluntary Disclosures
- If your EEI has an incorrect HTSUS, correct (VSD?)
- Update HTS numbers on manufacturing BOMs
- Obtain ruling

**1313(j)(2) Drawback**  
**8-digit substitution and "other" categories**

- What is this about “basket provisions”?
- You cannot use j2 if your 8-digit HTS starts with the word “other”
- However, you can use j2 if your 8-digit HTS has 10-digit breakouts and your product’s breakout doesn’t start with the word “other.”
- If your 10-digit HTS begins with “other,” then you can only claim drawback under 1313(j) using j1.

## 1313(j)(2) Drawback 8-digit substitution and "other" categories

- Example, 8509 "Electromechanical Domestic Appliances"

8509.80		Other appliances:		
8509.80.10	00	Floor polishers. ....	No. ....	Free
8509.80.20	00	Kitchen waste disposers (disposals).....	No. ....	Free
8509.80.50		Other: .....		4.2%
	40	Can openers (including combination units)....	No.	
	45	Electric toothbrushes. ....	No.	
	50	Humidifiers:		
		Evaporative.....	No.	
		Other:		
	70	Ultrasonic. ....	No.	
	80	Other.....	No.	
	95	Other.....	No.	

(j)(1)

# Basket or "Other" Provisions - 1313(j)(2)



- HQ H303399 March 10, 2020

8411.81		Other gas turbines:			
8411.81.40	00	Of a power not exceeding 5,000 kW:			
8411.81.80	00	Aircraft turbines.....	No.....	Free <sup>1/</sup>	
		Other.....	No.....	2.5% <sup>1/</sup>	
8411.82		Of a power exceeding 5,000 kW:			
8411.82.40	00	Aircraft turbines.....	No.....	Free <sup>1/</sup>	
8411.82.80	00	Other.....	No.....	2.5% <sup>1/</sup>	

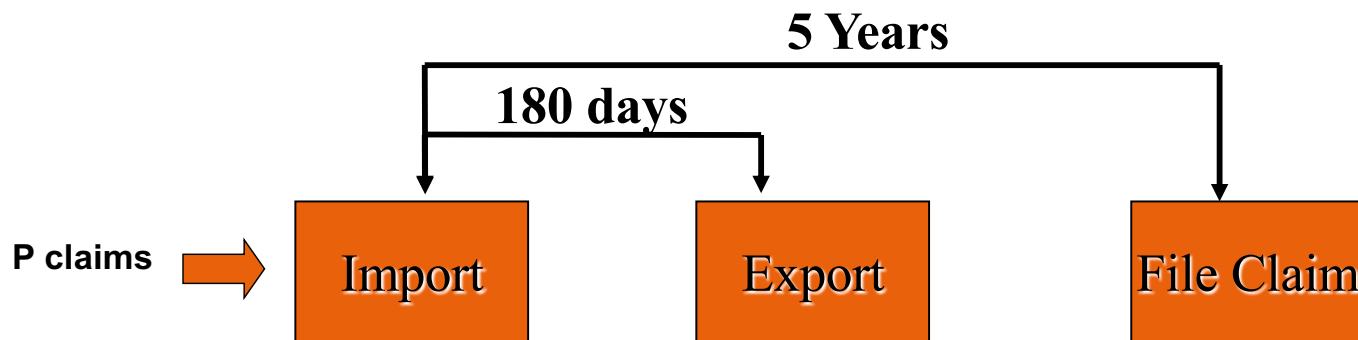
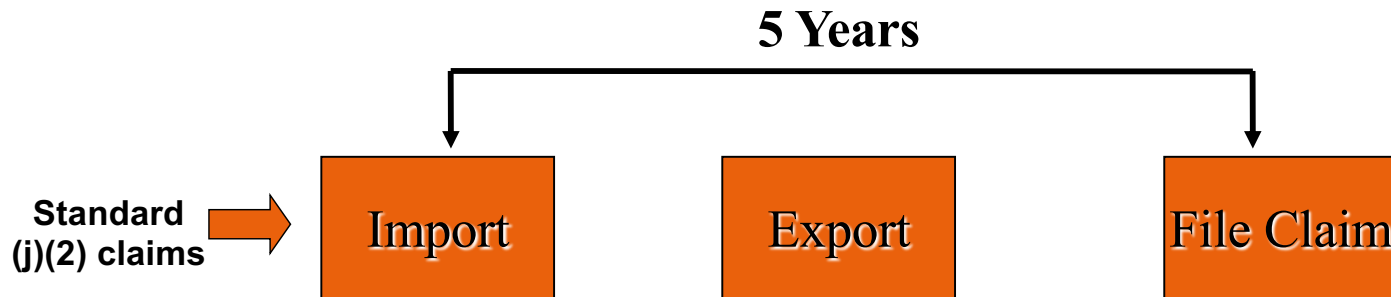
Spirit Aerosystems Inc. v. United States, Slip Op. 20-00094 (January 30, 2024)

8803.30.00		Other parts of airplanes or helicopters.....		
	15	For use in civil aircraft:		
		For use by the Department of Defense or the		
		United States Coast Guard <sup>3/</sup> .....	kg	
	30	Other <sup>4/</sup> .....	kg	

## 19 USC 1313(p) - Substitution Unused Drawback of Finished Petroleum Products



Limited to certain petroleum and petro-chemical HTS numbers



In exchange for the more limited time frames, petroleum products receive more liberal substitution rules.

# 1313(p) 2000 HTSUS



## Harmonized Tariff Schedule of the United States (2000)

Annotated for Statistical Reporting Purposes

2710.00.15		Motor fuel		52.5¢/bbl <u>1/</u>	Free (A+,CA,IL) <u>1/</u> 15.7¢/bbl (MX) <u>1/</u>	\$1.05/bbl <u>1/</u>
	10	Gasoline:				
		Leaded	bbl			
	14	Unleaded:				
	16	Reformulated	bbl			
	18	Oxygenated	bbl			
	20	Other	bbl			
	30	Jet fuel, naphtha-type	bbl			
	50	Jet fuel, kerosene-type	bbl			
		Other	bbl			

# 1313(p) Current HTSUS



R 2710.12		Light oils and preparations:				Free (A+, AU, BH, CA, CL, CO, D, IL, JO, KR, MA, MX, OM, P, PA, PE, R, SG)
2710.12.15		Motor fuel			52.5¢/bbl	
		Gasoline:				
2710.12.15.10		Leaded		bbl		
		Unleaded:				
2710.12.15.14		Reformulated		bbl		
2710.12.15.19		Other		bbl		
R 2710.19.16		00	Kerosene-type jet fuel	bbl	52.5¢/bbl	Free (A+, AU, BH, CA, CL, CO, D, IL, JO, KR, MA, MX, OM, P, PA, PE, R, SG)

Different 8 digits

## Records to Support Classification for Substitution



- Import and export Purchase Order/Sales order
- Import Export Invoice
- Entry Summary
- CF28s, audits, rulings, or other determinations by CBP
- Specifications and information to support classification
- Export EEI

## “Lessor of” Requirement



- Genesis of the concept
- Last minute surprise for manufacturing
- Unused: Receive the lesser of the duties, taxes, and fees of the import or the export
- Manufacturing: Receive the lesser of the duties, taxes, and fees of the import or the substitute component/material used to manufacture
- Based solely on value and ad valorem rates. Specific rates of duty are not impacted.
- Does not apply to 1313(p) drawback

## “Lessor of” Requirement New 19 CFR 190.11



### 19 CFR 190.11(b)

***Exported merchandise or articles.*** The value of the exported merchandise or articles eligible for drawback is the selling price as declared for the Electronic Export Information (EEI), including any adjustments and exclusions required by 15 CFR 30.6(a). If there is no selling price for the EEI, then the value is the other value as declared for the EEI including any adjustments and exclusions required by 15 CFR 30.6(a) (e.g., the market price, if the goods are shipped on consignment). (For special types of transactions where certain unusual conditions are involved, the value for the EEI is determined pursuant to 15 CFR part 30 subpart C.) If no EEI is required (see, 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the value that would have been set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

## “Lessor of” Requirement New 19 CFR 190.11



19 CFR 190.11(b)

***Substituted merchandise for manufacturing drawback claims.*** The value of the substituted merchandise for manufacturing drawback claims pursuant to 19 U.S.C. 1313(b) is the cost of acquisition or production for the manufacturer or producer who used the substituted merchandise in manufacturing or production. **These costs must be based on records kept in the ordinary course of business and may be determined on the basis of any of the inventory accounting methods recognized in the Generally Accepted Accounting Principles.** Any inventory management method which is used by a manufacturer or producer for valuation of the substituted merchandise for manufacturing drawback claims under 19 U.S.C. 1313(b) must be used without variation with other methods for a period of at least 1 year.

## Desk Review- Designated Merchandise Review



### ➤ DESIGNATED MERCHANDISE REVIEW

For ITIN/Claim Record Number(s)\* 65, 278, 146 provide the following per record:

1. Import purchase orders and invoices;
2. Duty rates for the imported merchandise;
3. Descriptive literature of the imported merchandise;
4. Evidence supporting the substituted merchandise value as recorded in the claim.  
Documents provided should demonstrate that the value was correctly calculated per the requirements in §190.11;
5. Provide a summary recap sheet (see sample below) that shows all transfers of the designated and substituted merchandise from import through export.
6. Statement regarding any merchandise substitutions by the importer, claimant, or any other intermediary party;
7. Company contact person (name, title, address, phone number) in the event that further information is required.

## Records Proving Export Value- Unused



- Sales Order
- Export Invoice
- EEI (FOB Value- be careful of C and D terms of sale that include international freight and insurance)
- General Ledger Accounts
- Proof of Payment

## Manufacturing Records Proving Substitute Value



- Purchase Orders for components/materials
- Invoices for components/materials
- Inventory records
- Standard cost data
- Proof of payment for components/materials

# *Question & Answer*