Duty Relief Opportunities for U.S. Businesses

Duty relief for U.S. businesses is available in a number of ways, including government programs, free trade agreements, and effective application of tariff classification codes. Applying for duty relief requires detailed paperwork and meticulous recordkeeping, and, in some instances, the process may take years to complete. Most businesses rely on a qualified customs broker or experienced logistics provider to manage the process for them. But it's important for business managers to understand the available options in order to work collaboratively with their third-party partner to ensure maximum savings.

Duty Drawback

Duty drawback allows businesses a refund of up to 99 percent of duties paid on products that are imported into the U.S., and then subsequently exported or destroyed. The government sets a very high bar for a claimant to prove drawback eligibility and the process can take years to complete. A business must maintain meticulous records and be able to provide a clear "trail" that a product initially imported into the U.S. is the same – or, in some cases, nearly the same – as the product subsequently exported (or destroyed). But given that a successful drawback can reap huge financial savings, the end result is often worth the aggravation and time.

Types of Drawback

U.S. Customs and Border Protection (CBP) has established three main categories of drawback:

- **Demand Management:** Demand management refers to the process whereby businesses utilize various indicators to forecast customer demand and align their supply chain to meet those projections. Central to its success is the synchronization and integration of many different parts, with technology being the glue that holds everything together. The typical business has access to troves of data about virtually all aspects of its business. Big data can be truly overwhelming unless a business has the mechanisms in place to properly manage and assess the information.
- **Unused Merchandise Drawback:** This applies to merchandise that is imported and subsequently exported or destroyed within three years without having been used. Customs does permit certain "allowable operations" to be performed on the product, such as testing, cleaning, repacking, disassembling, and inspecting, to name a few. In general, allowable services are performed in distribution centers.
- **Rejected Merchandise Drawback:** This is simply defined as merchandise not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective at the time of importation.

There is no reason for a business to pay more duty than is legally necessary.

The U.S. government makes available a number of options for a business to minimize – and even eliminate – duty obligations.

Filing a Claim

In general, a drawback claim must be filed and completed within three years after the date of export, with claims not filed by that time considered "abandoned." Each drawback category includes unique filing deadlines and criteria, which must be strictly followed. In addition, CBP requires extensive recordkeeping mandates for businesses that receive drawback.

Tariff Classification

Although payment of duties is an integral part of the import/export process, there is nothing to gain from paying more duties than necessary. There is much to gain from taking the time to ensure that products entering the country are charged the least amount of duty possible. Every product entering the United States must bear a 10-digit identifying code, as found in the Harmonized Tariff Schedule of the United States (HTS), which is maintained by the U.S. International Trade Commission. The HTS includes more than 17,000 different product classifications, and code assignments can vary based on slight product variations. Products that are misclassified run the risk of being assessed higher tariff rates than necessary or of missing out on trade benefit eligibility.

First Sale Rule

A lesser-utilized option for reducing duty obligations is the “First Sale Rule,” which can potentially apply to goods brought into the U.S. following multiple prior sales. The First Sale Rule allows importers to use the price paid in the “first” sale as the basis for the customs value of the goods. For example, if a manufacturer sells a product to a distributor and then to an importer, under First Sale Rule, the importer could value the product at the price initially charged by the manufacturer. This generally helps reduce duty obligations, since previous sales would tend to be at a lower price. Products that are misclassified run the risk of being assessed higher tariff rates than necessary or of missing out on trade benefit eligibility.

North American Free Trade Agreement (NAFTA)

A key NAFTA provision is the elimination of tariffs on virtually all originating goods traveling between the U.S, Canada, and Mexico. But determining whether or not a product fits within NAFTA’s terms for “origination” can be tricky. Under NAFTA, origination is not restricted only to goods produced within the U.S., Canada, or Mexico. Instead, the agreement makes allowances for products to include percentages of non-NAFTA materials and still qualify for preferential benefits. To determine if a product is eligible for NAFTA benefits, it is necessary to consult NAFTA’s Rules of Origin, which specify content requirements for all products. Once a product is determined to qualify for preferential treatment, a NAFTA Certificate of Origin must be completed.

Duty Deferral

In addition to the options for duty relief discussed so far, there are ways for an importer to defer payment of duty, thereby minimizing total liability.

- **Foreign Trade Zones:** FTZs are secure areas under the supervision of CBP but considered to be outside the customs territory of the U.S. for duty assessment and customs compliance purposes. As a result, duties may be deferred on goods stored in a FTZ until they are moved into the U.S. marketplace, or duties may be avoided altogether on products that are exported.
- **Customs Bonded Warehouse:** A bonded warehouse is a privately operated storage facility, regulated by CBP, where imported merchandise may be stored, duty-free, for a period of up to five years. Businesses that choose to place imports in a bonded warehouse must provide CBP with a “bond” assuring there will be no loss of revenue should any of the goods be inadvertently released from the warehouse.

To learn more about these and other supply chain innovations, visit www.purolatorinternational.com/whitepapers.