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**CBP's BIG Drawback News**

Okay, it's not so BIG. CBP will still require would-be drawback claimants to light a match on a wet bar of soap before qualifying for waiver of prior notice of exportation, retroactive drawback and accelerated payment privileges. In addition, Birnam Wood may have to return FROM Dunsinane before liquidation of your drawback entries will become final.

***Drawback: the refund or remission of a customs duty or internal revenue tax imposed on imported merchandise under Federal Law because of its importation by virtue of its exportation or destruction under CBP supervision...***

On June 30, 2000, President Clinton signed into law The Electronic Signature in Global and National Commerce Act ([the ESign Act](#)) that made it possible to conduct business online by legitimizing electronic signatures. The act declared that an electronic signature "may not be denied legal effect, validity, or enforceability solely because it is in electronic form."

And so this week, more than fifteen years later, CBP announced amendments to its regulations covering documentation requirements related to the documents used to establish the date and fact of exportation for purposes of drawback.

In the Federal Register Notice dated August 7, 2015, CBP made the changes immediately effective. CBP regulations no longer require that proof of export documents be made either by submission of signed originals or certified copies.

***"I'm sorry madam, but this drawback claim is invalid, as I cannot FEEL the ink and pen impression on the back of the page. I fear the signer did not press hard enough to signify the comprehension of the seriousness of this procedure."***

It's a bureaucracy, after all, so change takes time. Once when I offered my understanding that the CBP official with whom I was working had to contend with the bureaucracy, she objected, denying that CBP was a bureaucracy, I said, "I think by definition the Federal government IS a bureaucracy." She replied, "But not in the negative sense."

By way of apology (?), CBP in the Federal Register notice acknowledged that "(a)cquiring pen and ink signatures for the original documentation or certified copies of such documentation is time consuming and often unrealistic for the trade. CBP realizes the difficulty of having to provide a pen and ink signature for documents when these documents are issued electronically and do not contain an actual pen and ink signature. As a consequence, drawback claims are often denied when claimants can produce only documentary evidence that does not contain a signature or copies of such documents that are not certified."

CBP will now allow claimants to provide unsigned originals or copies of documentary evidence as proof of export for drawback eligibility. Therefore, copies of original documentary evidence will no longer need to be certified.

Will this open the flood gates to false claims that somehow would have been discouraged by the "hard signatures" requirements? Not likely. CBP still has civil penalty authority under 19 U.S.C. § 1593A, and the change in the regulations has absolutely no impact on the Federal False Claims Act (31 U.S.C §§ 3729-3733), 18 U.S.C. § 1001 and remember this?

#### **18 U.S.C. § 550 - False claim for refund of duties**

Whoever knowingly and willfully files any **false or fraudulent entry or claim for the payment of drawback**, allowance, or refund of duties upon the exportation of merchandise, or knowingly or willfully makes or files any false affidavit, abstract, record, certificate, or other document, **with a view to securing the payment to himself or others of any drawback**, allowance, or refund of duties, on the exportation of merchandise, greater than that legally due thereon, **shall be fined under this title or imprisoned not more than two years, or both, and such merchandise or the value thereof shall be forfeited.**

Ouch.

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