Bureau of Customs and Border Protection

(CBP Dec. 04–34)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR SEPTEMBER, 2004

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): September 6, 2004

European Union euro:

September 1, 2004	$1.217900
September 2, 2004	1.216400
September 3, 2004	1.205200
September 4, 2004	1.205200
September 5, 2004	1.205200
September 6, 2004	1.205200
September 7, 2004	1.209300
September 8, 2004	1.216400
September 9, 2004	1.218900
September 10, 2004	1.228200
September 11, 2004	1.228200
September 12, 2004	1.228200
September 13, 2004	1.225100
September 14, 2004	1.226800
September 15, 2004	1.214400
September 16, 2004	1.215400
September 17, 2004	1.217400
September 18, 2004	1.217400
September 19, 2004	1.217400
September 20, 2004	1.217200
September 21, 2004	1.226400
September 22, 2004	1.226100
September 23, 2004	1.229800
September 24, 2004	1.225600
September 25, 2004	1.225600
September 26, 2004	1.225600
September 27, 2004	1.230700
September 28, 2004	1.230600

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for September 2004 (continued):

European Union euro: (continued):

September 29, 2004	1.230800
September 30, 2004	1.241700

South Korea won:

September 1, 2004	$0.000870
September 2, 2004	0.000869
September 3, 2004	0.000869
September 4, 2004	0.000869
September 5, 2004	0.000869
September 6, 2004	0.000869
September 7, 2004	0.000869
September 8, 2004	0.000870
September 9, 2004	0.000873
September 10, 2004	0.000873
September 11, 2004	0.000873
September 12, 2004	0.000873
September 13, 2004	0.000873
September 14, 2004	0.000873
September 15, 2004	0.000871
September 16, 2004	0.000873
September 17, 2004	0.000872
September 18, 2004	0.000872
September 19, 2004	0.000872
September 20, 2004	0.000872
September 21, 2004	0.000872
September 22, 2004	0.000871
September 23, 2004	0.000871
September 24, 2004	0.000870
September 25, 2004	0.000870
September 26, 2004	0.000870
September 27, 2004	0.000870
September 28, 2004	0.000866
September 29, 2004	0.000867
September 30, 2004	0.000868

Taiwan N.T. dollar

September 1, 2004	$0.029525
September 2, 2004	0.029551
September 3, 2004	0.029577
September 4, 2004	0.029577
September 5, 2004	0.029577
September 6, 2004	0.029577
September 7, 2004	0.029455
September 8, 2004	0.029499
September 9, 2004	0.029568
September 10, 2004	0.029472
September 11, 2004	0.029472
September 12, 2004	0.029472
September 13, 2004	0.029481
September 14, 2004	0.029520

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for September 2004 (continued):

Taiwan N.T. dollar (continued):

September 15, 2004	0.029621
September 16, 2004	0.029682
September 17, 2004	0.029520
September 18, 2004	0.029520
September 19, 2004	0.029520
September 20, 2004	0.029490
September 21, 2004	0.029472
September 22, 2004	0.029586
September 23, 2004	0.029542
September 24, 2004	0.029516
September 25, 2004	0.029516
September 26, 2004	0.029516
September 27, 2004	0.029412
September 28, 2004	0.029326
September 29, 2004	0.029369
September 30, 2004	0.029420

Dated: October 1, 2004

Richard B. Laman for MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

(CBP Dec. 04–35)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR SEPTEMBER, 2004

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 04–32 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): September 6, 2004

Brazil real:

September 1, 2004	$0.341530
September 3, 2004	0.341472
September 4, 2004	0.341472
September 5, 2004	0.341472
September 6, 2004	0.341472

FOREIGN CURRENCIES—Variances from quarterly rates for September 2004 (continued):

Brazil real (continued):

September 7, 2004	0.343407
September 8, 2004	0.344590
September 9, 2004	0.343997
September 10, 2004	0.344590
September 11, 2004	0.344590
September 12, 2004	0.344590
September 13, 2004	0.343997
September 14, 2004	0.343053
September 15, 2004	0.343938
September 16, 2004	0.345901
September 17, 2004	0.347766
September 18, 2004	0.347766
September 19, 2004	0.347766
September 20, 2004	0.349162
September 21, 2004	0.347766
September 22, 2004	0.348311
September 23, 2004	0.348129
September 24, 2004	0.348797
September 25, 2004	0.348797
September 26, 2004	0.348797
September 27, 2004	0.348189
September 28, 2004	0.349040
September 29, 2004	0.350140
September 30, 2004	0.349162

Canada dollar:

September 30, 2004	$0.790639

New Zealand dollar:

September 30, 2004	$0.675500

South Africa rand:

September 1, 2004	$0.151057
September 2, 2004	0.152207
September 3, 2004	0.150204
September 4, 2004	0.150204
September 5, 2004	0.150204
September 6, 2004	0.150204
September 7, 2004	0.150602
September 8, 2004	0.150523
September 9, 2004	0.149701
September 10, 2004	0.151976
September 11, 2004	0.151976
September 12, 2004	0.151976
September 15, 2004	0.151976
September 16, 2004	0.151895
September 17, 2004	0.152439

FOREIGN CURRENCIES—Variances from quarterly rates for September 2004 (continued):

South Africa rand: (continued):

September 18, 2004	0.152439
September 19, 2004	0.152439

Dated: October 1, 2004

Richard B. Laman for MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

10/1/04

CIE C 42/03
LIQ–03–01–RR:OO:CI

RE: SECTION 159.34 CFR

SUBJECT: CERTIFIED RATES OF FOREIGN EXCHANGE: FOURTH QUARTER, 2004

LISTED BELOW ARE THE BUYING RATES CERTIFIED FOR THE QUARTER TO THE SECRETARY OF THE TREASURY BY THE FEDERAL RESERVE BANK OF NEW YORK UNDER PROVISION OF 31 USC 5151. THESE QUARTERLY RATES ARE APPLICABLE THROUGHOUT THE QUARTER EXCEPT WHEN THE CERTIFIED DAILY RATES VARY BY 5% OR MORE. SUCH VARIANCES MAY BE OBTAINED BY CALLING (646) 733–3065 OR (646)733–3057.

QUARTER BEGINNING OCTOBER 1, 2004 AND ENDING DECEMBER 31, 2004

COUNTRY	CURRENCY	U.S. DOLLARS
AUSTRALIA	DOLLAR	$0.723200
BRAZIL	REAL	$0.352113
CANADA	DOLLAR	$0.791828
CHINA, P.R.	YUAN	$0.120823
DENMARK	KRONE	$0.166639
HONG KONG	DOLLAR	$0.128253
INDIA	RUPEE	$0.021810
JAPAN	YEN	$0.009054
MALAYSIA	RINGGIT	$0.263158
MEXICO	NEW PESO	$0.088160
NEW ZEALAND	DOLLAR	$0.673300
NORWAY	KRONE	$0.149432
SINGAPORE	DOLLAR	$0.594778

COUNTRY	CURRENCY	U.S. DOLLARS
SOUTH AFRICA	RAND	$0.154381
SRI LANKA	RUPEE	$0.009657
SWEDEN	KRONA	$0.137457
SWITZERLAND	FRANC	$0.800256
THAILAND	BAHT	$0.024178
UNITED KINGDOM	POUND STERLING	$1.797600
VENEZUELA	BOLIVAR	$0.000521

Richard B. Laman for MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

19 CFR PART 191

[CBP Dec. 04 – 33]

RIN 1505–AB44

MERCHANDISE PROCESSING FEES ELIGIBLE TO BE CLAIMED AS CERTAIN TYPES OF DRAWBACK BASED ON SUBSTITUTION OF FINISHED PETROLEUM DERIVATIVES

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations to provide that merchandise processing fees are eligible to be claimed, in limited circumstances, as drawback based on substitution of finished petroleum derivatives. The changes implemented by this document are consistent with a court decision in which merchandise processing fees were found to be eligible to be claimed as unused merchandise drawback. As drawback based on substitution of finished petroleum derivatives is, in limited circumstances, treated in the same manner as unused merchandise drawback, this amendment reflects that merchandise processing fees are also eligible to be claimed as drawback in these circumstances.

EFFECTIVE DATE: November 8, 2004.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8807.

SUPPLEMENTARY INFORMATION:

Background

Merchandise Processing Fees

Merchandise processing fees are fees the Secretary of the Treasury charges and collects for the processing of merchandise that is formally entered or released into the United States. See 19 U.S.C. 58c(a)(9)(A). Merchandise processing fees are assessed as a percentage of the value of the imported merchandise, as determined under 19 U.S.C. 1401a.

Merchandise Processing Fees Eligible to be Claimed as Drawback

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 under specific conditions.

In Texport Oil v. United States, 185 F.3d 1291 (Fed. Cir. 1999), the Court of Appeals for the Federal Circuit (CAFC) held that merchandise processing fees were assessed under Federal law and imposed by reason of importation and therefore eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

Subsection (p) of 19 U.S.C. 1313 authorizes drawback that is based on "substitution of finished petroleum derivatives." Subsection (p)(4)(B) of 19 U.S.C. 1313, in pertinent part, limits the amount of drawback payable under this subsection to the amount of drawback that would be attributable to the article "if imported under [subsection 1313(p)(2)(A)(iii) or (iv)] had the claim qualified for drawback under subsection (j)." [emphasis added]

Subsection 1313(p)(2)(A)(iii) requires that the exporter of the exported article imported the qualified article in a quantity equal to or greater than the quantity of the exported article. Subsection 1313(p)(2)(A)(iv) requires that the exporter of the exported article purchased or exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

The language "had the claim qualified for drawback under subsection (j)" reflects that drawback is payable under 1313(p)(2)(A)(iii) or (iv) pursuant to the same formula set forth in subsection 1313(j), i.e., the amount of drawback payable under 19 U.S.C. 1313(j) is not to exceed 99 percent of any duty, tax, or fee imposed under Federal law because of the imported article's importation. The term "drawback payable" under 19 U.S.C. 1313(p)(2)(A)(iii) and (iv) includes the merchandise processing fee.

Consistent with the determination of the CAFC that merchandise processing fees are eligible to be claimed as drawback pursuant to 19 U.S.C. 1313(j), such fees are also eligible to be claimed as drawback

when drawback is based on substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

Amendment to CBP Regulations to Reflect the Texport Oil Decision

The Texport Oil decision is reflected in the CBP Regulations at §§ 191.3 and 191.51. See 67 FR 48547 (July 25, 2002), in which a final rule was published amending the CBP Regulations to reflect that merchandise processing fees are eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

On October 2, 2003, CBP published in the **Federal Register** (68 FR 56804) a proposal to amend §§ 191.3, 191.51 and 191.171 to reflect that the Texport Oil decision is applicable, in limited circumstances, to drawback based on substitution of finished petroleum derivatives.

Comments were solicited on the proposal.

DISCUSSION OF COMMENT

One comment was received in response to the solicitation of public comment in 68 FR 56804. The commenter supported CBP's proposal to reflect the Texport Oil court decision in part 191 of the CBP Regulations as regards drawback based on substitution of finished petroleum derivatives. The commenter noted that the proposed amendments contribute to the goal of offsetting the cost of raw materials.

CONCLUSION

After review of the one comment received, and upon consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (68 FR 56804) on October 2, 2003.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because these regulations serve to conform the CBP Regulations to reflect the full scope of a recent decision by the Court of Appeals for the Federal Circuit whereby, in limited circumstances, merchandise processing fees are eligible to be claimed as drawback, it is certified pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. that this amendment will not have a significant impact on a substantial number of small entities. Further, this amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.1(a)(1).

DRAFTING INFORMATION

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 191

Claims, Commerce, CBP duties and inspection, Drawback.

AMENDMENTS TO THE REGULATIONS

For the reasons stated above, part 191 of the CBP Regulations (19 CFR part 191) is amended as follows:

PART 191 – DRAWBACK

1. The general authority citation for part 191 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

2. Section 191.3(a)(4) and (b)(2) are revised as follows:

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties and fees subject to drawback include:

* * *

(4) Merchandise processing fees (see § 24.23 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j), and drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

(b)

* * *

(2) Merchandise processing fees (see § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

* * * * *

3. In § 191.51, paragraph (b)(2) introductory text is revised to read as follows:

§ 191.51 Completion of drawback claims.

* * * * *

(b)

* * *

(2) <u>Merchandise processing fee apportionment calculation</u>. Where a drawback claimant seeks unused merchandise drawback

pursuant to 19 U.S.C. 1313(j), or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), for a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that merchandise that provides the basis for drawback when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

* * * * *

4. In § 191.171, a new paragraph (c) is added to read as follows:

§ 191.171 General; Drawback allowance.

* * * * *

(c) Merchandise processing fees. In cases where the requirements of paragraph (b)(1) of this section have been met, merchandise processing fees will be eligible for drawback.

ROBERT C. BONNER,
Commissioner,
U.S. Customs and Border Protection.

Approved: October 4, 2004

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, October 7, 2004 (69 FR 60082)]