Section 301 Tariffs Are Slowing U.S. Companies' Duty Drawbacks

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U.S. companies seeking to mitigate the cost of section 301 tariffs on Chinese imports by applying for duty drawbacks are in a Catch-22 position, as the increase in applications is slowing down the refund process.

Under the duty drawback program introduced in the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), companies can apply for a 99 percent refund of duties, taxes, and fees paid on imported goods and raw materials that are later exported — in their original form or in products manufactured from the imported materials — or destroyed.

According to panelists on a November 11 KPMG webcast titled "Expanding Duty Drawback Benefits in a Turbulent Trade Environment," the TFTEA took effect in February 2018, and its regulations were finalized in December 2018 after updates to allow for "electronic filling, simplified procedures, and streamlined claim validations and reporting."

Dawn Olesky, senior manager for trade and customs services at KPMG, said during the webcast that before the increase in tariffs on goods imported from China, U.S. companies might have paid no, or minimal, customs duties on those products. With the implementation of the section 301 tariffs, companies using Chinese imports are incurring new costs and turning to duty drawbacks to offset them, she said.

Olesky said in an email to *Tax Notes* that although the increase in workload for U.S. Customs and Border Protection has affected the processing of drawback applications and rulings, companies will still receive drawback refunds if they meet the requirements set forth in 19 U.S.C. 1313 and 19 C.F.R. 190.

“Despite [the] current backlog, if companies are interested in developing a drawback program, our suggestion is to move forward in an expedited fashion with the required drawback applications and rulings as [Customs'] reviews are processed on a first-come, first-served basis,” Olesky said.

Relations between the United States and China have been uncertain in the past few months as the two countries have taken turns imposing new tariffs. On November 8 President Trump denied reports that the two sides have agreed to mutually roll back tariffs. However, tensions between the two countries seem to be easing since the United States decided to hold off on a scheduled October 1 tariff increase — from 25 percent to 30 percent — on $250 billion of Chinese imports. Another round of tariffs against China is scheduled December 15, but Trump has said he expects the two sides to reach a trade deal by then.

Earlier this year the National Association of Manufacturers filed suit against the U.S. government, complaining that a restriction on excise tax refunds on alcohol exports and imports violates the Administrative Procedure Act. The group argued that a rule in the implementation package for the TFTEA imposes a new, extrastatutory restriction on the drawback for manufacturing substitution that contradicts Congress's policy decisions and basic economics.