Via eRulemaking Portal

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U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
Economic Impact Analysis Branch
90 K Street NE, 10th Floor
Washington, DC 20229-1177

RE: Comments to Interim Final Rule CBP Dec. 24-18, U.S. Customs and Border Protection, Department of Homeland Security, Department of the Treasury (Agency/Docket Numbers: USCBP-2024-0017, 90 FR 6056)

To Whom It May Concern:

Below are comments submitted by the American Association of Exporters and Importers ("AAEI") in response to Interim Final Rule (Agency/Docket Numbers: USCBP-2025-00550) entitled: "**Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Implementing Regulations Related to Textile and Apparel Goods, Automotive Goods, and Other USMCA Provisions.**" Specifically, these comments are directed to 19 CFR Part 182, Subpart E, entitled **"Restrictions on Drawback and Duty Deferral Programs."**

AAEI has been the national voice of the international trade community since 1921. Our unique role as an advocate for both importers and exporters reflect a broad membership base of manufacturers, distributors, retailers, and service providers, many of whom are small businesses offering diverse capabilities and technologies to offer to the many agencies of the US Government. With the promotion of fair and open trade policy and practice as our core value, AAEI addresses international trade, supply chain, export control, and customs and border protection issues from the legal, technical, and economic perspectives.

Members of our organization's Drawback Committee have been engaged with CBP as part of a working group to help develop the regulations under 19 CFR 190 for TFTEA and the changes to the TFTEA drawback law. Drawback is one of the oldest laws in the United States and represents one of the few export subsidy programs legally acceptable under international agreements. Drawback is a vital program for U.S. manufacturers, importers, producers, distributors, and exporters, allowing them to compete internationally on an even playing field. Drawback stimulates exports, resulting in investment in U.S. manufacturing and distribution as well as significant job growth in our country.

We appreciate CBP's efforts in promulgating a second Interim Final Rule to administer the implementing statutory provisions effectively enacting the USMCA into U.S. law. Our comments focus on instances where we believe the Interim Final Rule needs revision to bring it in compliance with Congress' implementing legislation, and instances where the Interim Final Rule could be better coordinated with the current drawback process in the Automated Commercial Environment ("ACE") as outlined in the CBP Drawback Business Rules and the ACE Drawback CATAIR. Please note that these comments are in addition to the comments that were previously filed on the first Interim Final Rule.

General Comments

19 CFR 182, Subpart E generally follows the same structure and content from 19 CFR Part 181, implementing regulations for the North American Free Trade Agreement (NAFTA). The differences relate to references to the USMCA agreement and some differences between how the USMCA implementing legislation and NAFTA implementing legislation addressed drawback. One area of confusion that we believe needs better clarification in the Interim Final Rule is differentiating between what is considered a good subject to USMCA drawback as defined in 19 USC 4534 and what is not. This distinction is important because a good subject to USMCA drawback is subject to the drawback limitations in 19 USC 1313(n), while a good that is NOT subject to USMCA drawback is provided full drawback under the law. The Interim Final Rule does not make the clear distinction between these different classes of goods in certain circumstances.

We also note that the Interim Final Rule in many cases follows the content of the Part 181 NAFTA regulations, applying the same language to USMCA. However, in many cases the language used in Part 181 is now obsolete or unnecessary as it is covered in Part 190. First, the Part 181 regulations were developed at a time when the Part 191 drawback regulations had not been updated for many years. Part 191 was updated and overhauled in 1998, but the Part 181 regulations reference requirements and processes that were not covered by Part 191 prior to 1998 but have since been included in Part 191 in the 1998 revisions, in the 2004 regulation update and again when the regulations were recently revised for TFTEA. Therefore, Part 182 no longer needs to reference procedures, requirements, or processes that are detailed in Part 190 and do not change for claims filed under Part 182.

Additionally, Part 181 was developed at a time before drawback became completely electronic in the Automated Commercial Environment (ACE). Therefore, there are many instances where the Part 181 regulations refer to documentation, certifications, and affidavits that at the time might have been needed, but in today's completely electronic environment are not required.

§ 182.1

Section 182.1 proposes to add the following definition: *USMCA drawback* means any drawback, waiver, or reduction of U.S. customs duty provided for in subpart E of this part;

This is proposed definition is incorrect and contrary to the specific scope of Subpart E set out in the Applicability section previously published in the IFR in § 182.41: "This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 2.5 of the USMCA and applies to any good that is a "good subject to USMCA drawback" within the meaning of 19 U.S.C. 4534." 19 USC 4534 states that a good subject to USMCA drawback is any imported good "other than" the items listed in 4534 (a)(1)-(8). These eight breakouts receive full drawback, are not goods subject to USMCA drawback, and are essentially restated in Subpart E, 19 CFR 182.45. Those 8 breakouts in 182.45 should not be USMCA drawback. The proposed definition of USMCA drawback in 182.1 would include everything in Subpart E, even those goods that are not subject to USMCA drawback. This is very confusing and leaves an ambiguity as to whether other sections of Subpart E also apply to the drawback of goods that are not subject to USMCA drawback, for example the requirements applicable to goods subject to USMCA drawback set out in 182.43-44, and 182.46-52. Provisions 182.43-44 and 182.46-52 should not apply to any good that is not subject to USMCA drawback and should not be considered USMCA drawback. A perfect example is 182.47, setting out specific requirements such as listing a claim as USMCA drawback and providing evidence of payment of duties to Canada and Mexico, all requirements that are only applicable to goods subject to USMCA drawback. The proposed definition would apply these requirements to any drawback referred to in Subpart E, including the drawback listed in 182.45.-

We propose that the definition be revised to read as follows: "*USMCA drawback* means any drawback, waiver, or reduction of U.S. customs duty provided for in subpart E of this part, except for drawback provided for in Section 182.45 of Subpart E;"

§ 182.44(h)

§182.44 sets out the lesser of two calculation applicable to USMCA drawback or goods that are subject to USMCA drawback as provided for in 19 U.S.C. 4534. This new provision in (h) applies the USMCA calculation for drawback claims filed under (b)(p) that are goods subject to USMCA drawback. However, as explained above, the overbroad definition of USMCA drawback appears to apply all (b)(p) drawback to the calculation in 182,44 even if the claim is not for a claim involving a good subject to USMCA drawback under 19 U.S.C. 4534. For example, claims for goods listed in 19 U.S.C. 4534 (a)(5)(B) and (C) for originating goods are not goods subject to USMCA drawback and are entitled to receive full drawback (see also 19 CFR 182.45(a)).

We recommend that the changes proposed above to the definition of USMCA drawback be implemented to make it clear that 182.44(h) only applies to goods that are subject to USMCA drawback as provided for in 19 U.S.C. 4534.

§ 182.44(i)

This new provision outlines the details for retail returns, stating that these claims can be made, which is a change from the previous interim rule released in 2021. Since that interim rule was released, a Retail Sales Substitution Indicator for 1313(c)(1)(C)(ii) claims has been added to the ACE Drawback CATAIR in Position 77 of the 10-Record, requiring a claimant to indicate if that provision will be for Substitution (and if not, to leave as a space for Direct Identification). This provision should be more specific to outline how the drawback claims should be finalized and we recommend that the language be amended to incorporate the new language in red:

- (i) *Goods sold at retail and returned under 19 U.S.C. 1313(c)(1)(C)(ii)*. Upon presentation of the USMCA drawback claim under 19 U.S.C. 1313(c)(1)(C)(ii) for goods ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer, the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico. The amount of drawback payable may not exceed 99 percent of the duty paid on such imported merchandise into the United States. Direct identification is the only methodology that will be accepted under this section (see part § 190.14(c) of this chapter, as Substitution pursuant to 19 U.S.C. 1313(c)(2) is not permitted (see § 182.42(c) of this subpart)).

§ 182.47

Referencing the comments provided above under 182.1 above, this entire provision is confusing because it does not limit the applicability of this section to goods only subject to USMCA drawback under 19 U.S.C. 4534. We recommend that 182.47(a) state specifically that the requirements in this section do not apply when 182.45 authorizes full drawback, or for goods that are not subject to USMCA drawback. Similarly in paragraph (b), the language appears to apply the specific requirements provided for in (b)(2) to any claim filed under Subpart E, requiring that all such claims be labeled "USMCA Drawback." This is not correct and not in accordance with position 76 within the 10-record of the current CATAIR for drawback.

§ 182.47(b)(2): Generally, many of the requirements provided for specific claims are outdated and still refer to the paper claim format that doesn't exist anymore. All claims are now completely electronic and references to, for example, 7501, affidavits, evidence of exportation, etc. are not part of a complete claim. These provisions should be updated to coordinate with today's electronic claims.

§ 182.47(b)(2)(iii): This type of drawback appears to be subject to full drawback under 19 U.S.C. § 4534(a)(4) and 182.45(c). Why is it provided for under USMCA drawback in 182.47?

§ 182.47(b)(2)(vi): This is labeled as "*Substitution of finished petroleum derivatives under 19 U.S.C. 1313(p) for derivatives manufactured under 19 U.S.C. 1313(a) or (b)*." We recommend that this be

retitled, as this provision does not apply to those claims that fall under 19 U.S.C. § 4534(a)(5) and 182.45(a), as they do not involve goods subject to USMCA drawback.

§ 182.48

Within this section, the new text that was added has provided a contradiction for who the party entitled to drawback should be. The definition of *"Exporter"* is outlined in 19 CFR 190.2 and explains that they are the person who *"has the power and responsibility for determining and controlling the sending of the items out of the United States."* This new section attempts to expand on that definition. The language needs to maintain consistency between 19 C.F.R. § 182 and 19 C.F.R. § 190.

Similarly, the language suggested in § 182.48(b) improperly provides for drawback to be decided by the manufacturer or producer first. The exporter is the party that is entitled to the drawback, and that party can appropriately waive their drawback rights back to the manufacturer, producer or other party per the language in 19 CFR § 190.28 and 19 CFR § 190.82. This language needs to be amended, and we suggest the additional text in red below for § 182.48(a) and § 182.48(b) to eliminate confusion for drawback claimants.

- Person entitled to receive drawback.
    - *(a) General*. The person named as exporter pursuant to § 190.82 of this chapter shall be entitled to receive drawback. The *Exporter* (as defined in § 190.2 of this chapter) can be listed as the party on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents~~., will be considered the exporter and entitled to drawback.~~

      (b) *Manufacturing drawback*. The person named as the exporter is entitled to claim manufacturing drawback, unless they waive their right to the manufacturer, producer, or agent (*see* § 190.28 of this chapter). ~~unless the manufacturer or producer reserves the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, will receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.~~

§ 182.50(b)

This proposed provision is contrary to 19 U.S.C. 1504(a)(2) which provides for liquidation of drawback entries by operation of law. A regulation cannot change the statutory requirements that liquidate

claims by operation of law. We recommend that this paragraph start with the following language: "Except as provided for in 19 U.S.C. 1504(a)(2) providing for liquidation by operation of law…"

The last sentence of proposed 182.50(b) appears to allow CBP to adjust a liquidated drawback claim and we find no basis or authority to in law for such an action. 19 U.S.C. 4534(e)(1) provides as follows:

> "If the Commissioner of U.S. Customs and Border Protection determines that a claim of preferential tariff treatment has been made with respect to an article for which a claim described in paragraph (2) has been made, the Commissioner may make such adjustments regarding the previous customs treatment of the article as may be warranted."

This provision does not provide any authority to upset a validly liquidated drawback claim and there is no indication in legislative history that this is what Congress intended. In fact, the language of the statute authorizes the Commissioner to "make such adjustments regarding the previous customs treatment of the article as may be warranted." That authority clearly involves how the article was treated for Customs purposes at import. This is obvious because the authority granted – adjusting previous Customs treatment – follows the same language at the beginning of that sentence referring to someone claiming preferential treatment, something that can only occur as part of the importation of the good. If Congress had intended to authorize the Commissioner to revise a liquidated drawback claim, the language would have specifically said just that – to make such adjustments to the drawback claim regardless of liquidation. The last sentence proposed in 182.50(b) should be eliminated.
We appreciate this opportunity to provide comments to CBP on this Interim Final Rule and would welcome an opportunity to discuss them further at your earliest convenience.

Respectfully submitted,

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On behalf of Eugene Laney Jr., President and CEO
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