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July 27, 2011

U.S. Customs and Border Protection
Attn: Tracey Denning
Regulations and Rulings
Office of International Trade
799 9th Street, NW, 5th Floor
Washington, DC. 20229-1177

RE: Comments on Drawback Process Regulations published in Federal Register on April 6, 2011

Dear Ms. Denning:

On April 6, 2011, U.S. Customs and Border Protection published a Notice and request for comments on an information collection requirement concerning the Drawback Process Regulations (CBP Forms 7551, 7552 and 7553), identified as OMB Number 1651-0075. Below are our comments.

- CBP Form 7551. Under the provisions of 19 C.F.R. 191.176, certifications are required for claims filed under 19 U.S.C. 1313(p) drawback. Currently, such certification is required for each claim on a separate letter that must be signed by the claimant (or agent) and filed with the claim. Paperwork could be reduced significantly if such a certification were to be included on the back of CBP Form 7551 under Section V – Declarations. There is already a declaration that addresses 1313(p), the fourth one listed under Section V, which reads as follows:

“The undersigned hereby certifies that the merchandise herein described is the same kind and quality as defined in 19 U.S.C. 1313(p)(3)(B), with the designated imported merchandise or the article manufactured or produced under 1313(a) or (b), as appropriate.”

We propose that the following wording be inserted into the existing declaration:

“that for claims filed under 19 U.S.C. 1313(p) the requirements under 19 C.F.R. 191.176 have been or will be met and”

The complete declaration would then read as follows:

“The undersigned hereby certifies that for claims filed under 19 U.S.C. 1313(p) the requirements under 19 C.F.R. 191.176 have been or will be met and that the merchandise

herein described is the same kind and quality as defined in 19 U.S.C. 1313(p)(3)(B), with the designated imported merchandise or the article manufactured or produced under 1313(a) or (b), as appropriate.”

- CBP Form 7553 vis-à-vis CBP Form 7551. On the CBP Form 7553 there are five boxes, listed below, that are not pertinent to the purpose of the form, that create additional burdens for completion of the form and should therefore be eliminated from the CBP Form 7553.
 - Box 2 (Drawback Entry No.);
 - Box 5 (Drawback Center);
 - Box 15 (Import Entry No.);
 - Box 17 (Drawback Amount); and
 - Box 20 (Drawback to be filed as). [We use the word “filed” here even though the word on the form is “filled”. We believe that the word “filed” is what is intended here, so we will use that term in these comments. On the CBP Form 7553, the word “filled” in Box 20 should be corrected to read “filed”.]

Our reasons for this position follow.

1. These five boxes are all found on the drawback entry, CBP Form 7551 (although the names of the boxes might differ slightly). The purpose of the drawback entry, as per 19 C.F.R. 191.2(j), is to “constitute the request for drawback payment”. These five boxes are critical to the purpose of the payment of drawback. They are not necessary for the examination of merchandise prior to its exportation or destruction.

The purpose of the CBP Form 7553, as stated in 19 C.F.R. 191.35(a), is “to give Customs the opportunity to examine the merchandise”. The addition of these boxes to this form does not transform the CBP Form 7553 into a multi-purpose form that can also be used as a request for drawback payment.

Therefore, there is no reason to include these five boxes, which are critical to a request for drawback payment, on a form whose purpose has nothing to do with drawback payment.

2. The instructions for the CBP Form 7553 state:

“This form is presented to CBP prior to any action taken by the company. It will be returned to the company, indicating CBP’s decisions on examination, destruction or waiver. After this form is signed off by CBP, it should be submitted as an attachment to the Drawback Entry, CBP Form 7551, along with proof of exportation or destruction, and submitted to the Drawback Center”.

The chronology of events described in the above instructions is as follows:

- The company presents the CBP Form 7553 to CBP.
- CBP returns the CBP Form 7553 to the company.

- The company takes the appropriate action, i.e., the exportation or destruction of the merchandise.
- (Implicit) The company obtains proof of exportation or destruction.
- The company submits the CBP Form 7553 to the Drawback Center as an attachment to the Drawback Entry, CBP Form 7551, along with proof of exportation or destruction.

Because the filing of the CBP Form 7553 with CBP is at least three steps prior to the filing of the CBP Form 7551 with CBP, the requirement that the five boxes in question must be completed on the CBP Form 7553 creates a situation in which the exporter or claimant might not know the information that is required by these five boxes on the CBP Form 7553 at the time of filing this form.

- The party filing the form might not know, at the time of filing, what the Drawback Entry No. (Box 2) is or will be because either that party has not yet filed a drawback claim on this export or destruction, or perhaps it never will file such a claim. This possibility is anticipated in 191.35(c) and 191.42(e), both of which refer to “any” drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback”... It does not say “the” drawback claim, which would be more proper to say if a drawback claim based on the CBP Form 7553 must necessarily be filed, or if there were only one possible drawback claim in view and that such drawback claim had already been processed to the point of providing all the information about it on the CBP Form 7553.
- The party might not know the Drawback Center (Box 5) at which the potential drawback entry will be filed.
- The party might not know the specific Import Entry No. (Box 15) that will be designated or identified on the eventual drawback claim, especially if the drawback claim will be filed under a substitution provision of the statute such as 19 U.S.C. 1313(j)(2).
- The party might not know what the amount of drawback (Box 17) will be on the prospective drawback claim because they have not yet prepared or filed the drawback claim.
- The company might not know on which provision of the drawback statute (Box 20) the drawback claim will be based.

Our point is that the CBP Form 7553 relates to an event that takes place well before the preparation of a drawback claim, and therefore creates burdens for the filer in determining information that does not yet exist, or in making decisions that do not need to be made until a later point in time.

3. According to the drawback statute in 19 U.S.C. 1313(r)(1), “A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed...”.

Similarly, according to the Customs Regulations in 19 C.F.R. 191.51(e)(1), "A completed drawback claim, with all required documents, shall be filed within 3 years after the date of exportation or destruction of the merchandise or articles which are the subject of the claim".

A drawback claim may therefore be filed at any time within 3 years after the exportation or destruction takes place. There is no statutory or regulatory exception that applies to the filing of a CBP Form 7553. There is no requirement for the filer of the CBP 7553 to have such information at the time of filing the CBP 7553 and before the CBP 7551 is filed.

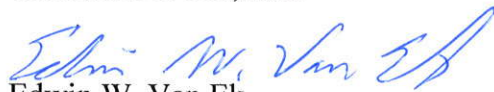
Customs position might be that the completion of a CBP Form 7553 does not require the prior filing of a CBP Form 7551, but only requires a few items of information that also happen to be found on a CBP Form 7551. However, if this is Customs position, it ignores the fact that in order to include this information on the CBP Form 7553 the exporter must first determine the statutory provision that will be applicable, then designate imports in a manner that takes account of any specific provisions in the statute or regulations relative to that statutory provision, then accurately calculate the drawback due. These steps constitute the major parts in the preparation of a drawback claim.

4. Many exporters who are not covered by a Waiver of Prior Notice of Intent to Export must sometimes export merchandise on short notice for one reason or another. Similar situations exist for companies who need to destroy merchandise and are not covered by any waiver. Companies in both of these situations, in order to protect those exportations or destructions for drawback, are placed at a disadvantage because they do not have the time required to essentially prepare a drawback claim before they prepare and file a CBP Form 7553. Thus the requirement to complete boxes 2, 5, 15, 17 and 20 on the CBP Form 7553 can discriminate against exporters who do not have a Waiver of Prior Notice of Intent to Export or against companies who need to destroy merchandise on short notice.

Thank you for the opportunity to submit our comments.

Sincerely,

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