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**February 25, 2013**

**Department of Homeland Security**

**Docket No. USCBP-2013-0004**

From: Congressman Michael G. Grimm (NY11)  
To: The Advisory Committee on Commercial Operations of Customs and Border Protection  
Re: Statement of Work and Next Steps regarding the Exports Subcommittee.

Please accept the below comments to The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) detailing my concerns regarding Customs and Border Protection's (CBP) interpretation of the identity and definition of "exporter" as it applies to drawback claims.

There is no question that CBP can have only one definition of the exporter, both historically and logically, which is applicable to all export situations. That definition is enunciated in the case of *Edgar Bros. v U.S.*, United States Customs Court, Third Division, decided August 10, 1938. As stated in this case, the U.S. seller is the exporter when the sale is for export regardless of who arranges the export transportation. Furthermore, the *Edgar Bros* decision has been cited by CBP in its own administrative ruling (HQ 227994) of June 3, 1998 regarding the definition of the exporter.

However, it has come to my attention that CBP chooses not to apply this definition to exports in drawback situations. Rather, it chooses to define the exporter as the foreign buyer who arranges the export transportation in situations where drawback may be claimed. In the current international transportation environment foreign buyers arrange the export transportation in a vast number of cases.

This interpretation by CBP has the potential to negatively impact the economy of the United States by placing our sellers in the very difficult, if not impossible, position of having to obtain waivers from foreign buyers in order to claim drawback. This appears to be counterintuitive to the very purpose of drawback itself, which is to stimulate exports by allowing U.S. sellers to remove the cost of import duty from the sale price and better compete in the international marketplace.

Sincerely,



Michael G. Grimm  
Member of Congress