



December 2019

CUSTOMS AND BORDER PROTECTION

Risk Management for Tariff Refunds Should Be Improved

GAO Highlights

Highlights of [GAO-20-182](#), a report to congressional committees

Why GAO Did This Study

The United States enacted the drawback program in 1789 to create jobs and encourage manufacturing and exports, according to CBP. CBP has primary responsibility for overseeing the drawback program. It disburses about \$1 billion in drawback refunds per year.

According to CBP, TFTEA modernized the drawback program, generally broadening the scope of potential claims and allowing electronic filing starting February 24, 2018. As of February 24, 2019, claimants could only file claims under the drawback statute as amended by TFTEA. TFTEA also included a provision for GAO to assess drawback modernization.

This report examines the extent to which (1) modernization affects drawback refund eligibility and CBP's management of its workload, (2) CBP has taken steps to address risks of improper payments in the program, and (3) CBP has analyzed the impact of the changes to the program on industry and government. GAO reviewed statutory, regulatory, and agency documents, and interviewed agency officials and industry representatives.

What GAO Recommends

GAO is making six recommendations, including that CBP develop a plan for handling its drawback workload, improve its validation activities, and prioritize developing a plan for an economic analysis of the regulation to understand its impact. CBP concurred with all six recommendations.

View [GAO-20-182](#). For more information, contact Kimberly M. Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov.

December 2019

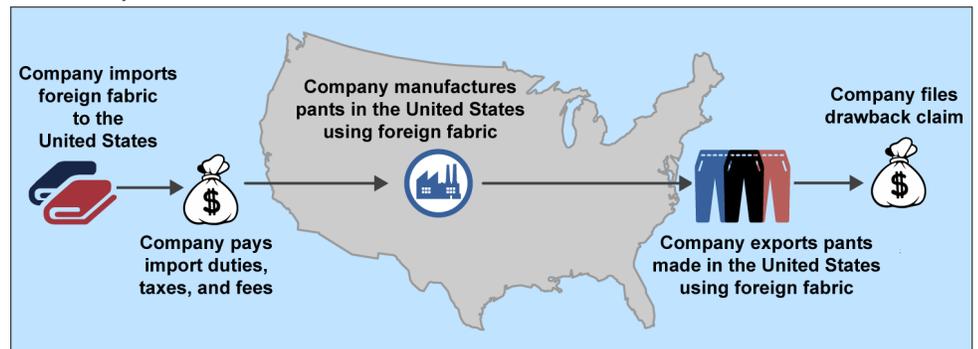
CUSTOMS AND BORDER PROTECTION

Risk Management for Tariff Refunds Should Be Improved

What GAO Found

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) generally expanded eligibility for the drawback program, which provides refunds to claimants of up to 99 percent of certain customs duties, taxes, and fees. For example, a claimant could claim a drawback refund on exported pants made in the United States using imported foreign fabric. The expansion from TFTEA has resulted in Customs and Border Protection (CBP) facing a growing workload. According to CBP officials, the most significant change from TFTEA is that it is now easier to qualify for certain drawback refunds. Industry representatives explained that new claimants are seeking drawback refunds and existing claimants are able to increase claim amounts. However, CBP has not adequately managed the increased workload and has not developed a plan for doing so. As a result, CBP faces delays in processing drawback claims that could result in uncertainty for industry, potentially impeding trade.

GAO Example of One Potential Drawback Claim



Source: GAO analysis of 19 U.S.C. § 1313 as amended by Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016). | GAO-20-182

CBP has taken some steps to address risks of improper payments in the drawback program, but several risks remain. To help ensure it does not overpay funds, CBP now electronically verifies drawback claims against underlying import information. However, CBP cannot verify drawback claims against underlying export information because it does not maintain detailed information about exports in its new electronic system. To compensate for this lack of automated controls, CBP requires manual full desk reviews of a selection of claims to mitigate improper payment risks. However, CBP has not targeted certain claims for a full desk review since switching to the new system on February 24, 2018. The lack of review for claims, which numbered over 35,000 and represented an estimated \$2 billion in claims filed as of August 23, 2019, increases the risk of improper payments.

CBP has not produced a reliable assessment of the economic impact of the changes to drawback refund eligibility because of data availability constraints, systems limitations, and other factors. CBP has not prioritized developing a plan to revisit its economic analysis, although new data and systems capabilities are becoming available. Without such a plan, CBP will not have a reliable assessment of the impact of the changes on industry and government.

Contents

Letter		1
	Background	4
	TFTEA Generally Expanded Eligibility for Drawback Refunds, but CBP Has Not Adequately Managed Its Growing Workload	18
	CBP Has Taken Steps to Address Certain Risks of Improper Payments in the Drawback Program under Modernization, but Has Not Addressed Others	33
	CBP Has Not Produced a Reliable Assessment of the Economic Impact of the Changes to Drawback Refund Eligibility Because of Data Constraints and Other Factors	40
	Conclusions	45
	Recommendations	46
	Agency Comments	47
Appendix I	Objectives, Scope, and Methodology	48
Appendix II	Steps for Filing and Processing Drawback Claims	53
Appendix III	Comments from the Department of Homeland Security	56
Appendix IV	GAO Contact and Staff Acknowledgments	60
Tables		
	Table 1: Amount of Drawback Refunds of Duties, Taxes, and Fees Claimed by Claim Type	11
	Table 2: Number of Drawback Claims Filed by Claim Type	27
	Table 3: Comparison of Mandated, Optimal, and Actual Staffing Levels for Drawback Specialists, Fiscal Years 2014-2019	32
Figures		
	Figure 1: GAO Illustration of the Drawback Program	4
	Figure 2: Example of Direct Identification Manufacturing Drawback	6
	Figure 3: Example of Substitution Manufacturing Drawback	7

Figure 4: Example of Direct Identification Unused Merchandise Drawback upon Destruction	8
Figure 5: Example of Substitution Unused Merchandise Drawback upon Exportation	9
Figure 6: Example of Rejected Merchandise Drawback	10
Figure 7: Timeline of Selected Changes to the Drawback Program	12
Figure 8: Example of Change in Drawback Eligibility for Substituted Underwear	19
Figure 9: Example of Basket Provision in Harmonized Tariff Schedule of the United States	22
Figure 10: Example of U.S. Customs and Border Protection Drawback Center Limited Modification Rulings	26
Figure 11: U.S. Customs and Border Protection Drawback Center Filing Cabinets of Manufacturing Rulings	30

Abbreviations

ACE	Automated Commercial Environment
ACS	Automated Commercial System
CBP	U.S. Customs and Border Protection
HTS	Harmonized Tariff Schedule of the United States
RIA	<i>Regulatory Impact Analysis of the Modernized Drawback Final Rule</i>
TFTEA	Trade Facilitation and Trade Enforcement Act of 2015
Treasury	U.S. Department of the Treasury

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



December 17, 2019

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

The drawback program refunds about \$1 billion per year of certain customs duties, taxes, and fees paid on imported merchandise. U.S. Customs and Border Protection (CBP) generally provides these refunds to claimants on imported merchandise following the export or destruction of the merchandise.¹ The United States first enacted this program in 1789. CBP is the primary entity responsible for overseeing the drawback program. According to CBP, the purpose of the drawback program is to create jobs and encourage manufacturing and exports. CBP recognizes the drawback program as the most complex commercial program it administers because the program involves every aspect of customs business, including both imports and exports.

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) lays out changes to the drawback program.² According to CBP, TFTEA modernized the program, generally broadening the scope of potential claims, extending the time period for claimants to file drawback claims, and requiring electronic filing of them. TFTEA required the Secretary of the Department of the Treasury (Treasury) to prescribe regulations for determining the calculation of drawback refunds no later than February

¹In general, the claimant is either the exporter or destroyer of the merchandise on which a drawback refund is claimed, unless the exporter or destroyer waives the right to claim a drawback refund and assigns such right to the manufacturer, producer, importer, or another intermediate party.

²Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016).

24, 2018.³ Pursuant to this requirement, Treasury and CBP established new regulations at the end of December 2018.⁴

TFTEA included a provision for us to assess drawback modernization and identify industries affected by changes in eligibility for drawback refunds within 12 months from when the final regulations were issued.⁵ We previously audited the drawback program in March 1994, when we reported that procedures were inadequate to prevent excessive or duplicate payments or detect fraudulent drawback claims.⁶ In this report, we examine the extent to which (1) modernization affects drawback refund eligibility and CBP's management of its workload, (2) CBP has taken steps to address risks of improper payments in the program, and (3) CBP has analyzed the impact of the changes to the program on industry and government.

To examine the extent to which modernization affects drawback refund eligibility and CBP's management of its workload, we reviewed relevant documents to identify and describe expansions and limitations to drawback refund eligibility that resulted from amendments made to the drawback statute⁷ by TFTEA.⁸ Specifically, we reviewed key changes to the drawback program enacted in TFTEA, along with other statutory, regulatory, and agency documents. We then assessed steps that CBP has taken to manage its workload against federal standards for internal control.⁹ To examine the extent to which CBP has taken steps to address risks of improper payments in the program, we assessed steps that CBP

³Pub. L. No. 114-125, § 906(g) (codified at 19 U.S.C. § 1313(l)).

⁴83 Fed. Reg. 64,942 (Dec. 18, 2018).

⁵Pub. L. No. 114-125, § 906(p). For the purposes of this report, drawback modernization refers to the drawback program post TFTEA and associated implementing regulations.

⁶GAO, *Financial Management: Control Weaknesses Limited Customs' Ability to Ensure That Duties Were Properly Assessed*, [GAO/AIMD-94-38](#) (Washington, D.C.: Mar. 7, 1994).

⁷19 U.S.C. § 1313.

⁸Specifically, see Pub. L. No. 114-125, § 906.

⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

has taken relative to federal internal control standards, including how drawback modernization affects CBP's ability to better validate claims.¹⁰

For both of these objectives, we reviewed CBP guidance and interviewed CBP officials in Washington, D.C., responsible for writing and implementing the drawback regulations and policy and overseeing the program's operation. We also met with CBP officials in each of the four Drawback Centers located in the field that process drawback claims (Chicago, Illinois; Houston, Texas; Newark, New Jersey;¹¹ and San Francisco, California), as well as 15 industry representatives from a variety of sectors who were engaged in drawback modernization, to understand how CBP is implementing the changes to the drawback program and the impact of the changes to the program.

To examine the extent to which CBP has analyzed the impact of the changes to the program on industry and government, we evaluated portions of CBP's *Regulatory Impact Analysis of the Modernized Drawback Final Rule* (RIA)¹² against GAO's economic analysis standards.¹³ We also assessed whether a future assessment could overcome the prior data limitations. See appendix I for a more detailed description of our scope and methodology.

We conducted this performance audit from February 2018 to December 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁰[GAO-14-704G](#).

¹¹CBP refers to the Drawback Center located in Newark, New Jersey as the New York office.

¹²U.S. Customs and Border Protection, Economic Impact Analysis Branch, Regulations and Rulings, Office of Trade, *Regulatory Impact Analysis of the Modernized Drawback Final Rule* (Washington, D.C.: Nov. 20, 2018).

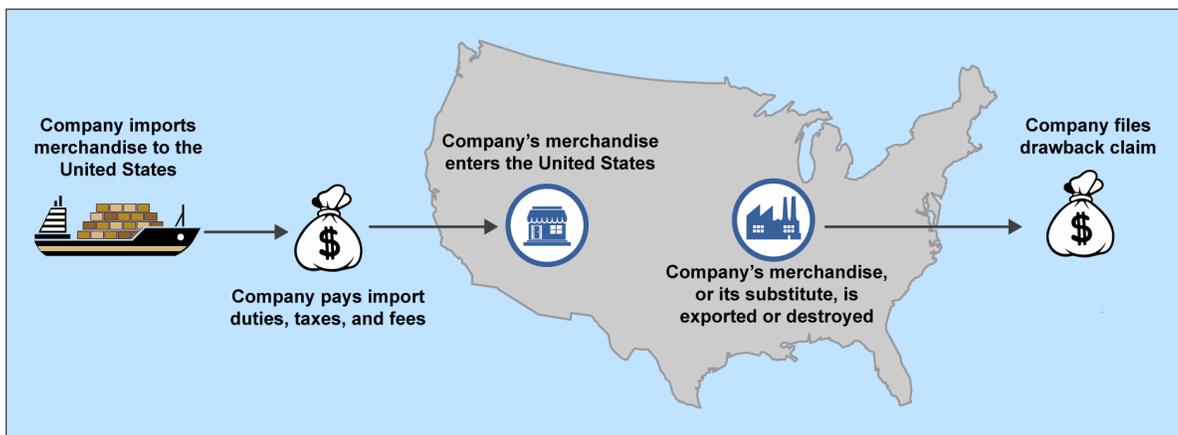
¹³GAO, *Assessment Methodology for Economic Analysis*, [GAO-18-151SP](#) (Washington, D.C.: Apr. 10, 2018).

Background

Drawback Program

Drawback refunds are a remittance of up to 99 percent of duties, taxes, or fees previously paid by an importer. CBP makes these refunds on imported goods on which the importer previously paid duties, taxes, or fees, and subsequently exported from the United States or destroyed.¹⁴ (See fig. 1.)

Figure 1: GAO Illustration of the Drawback Program



Source: GAO analysis of 19 U.S.C. § 1313 as amended by Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016). | GAO-20-182

Note: Eligibility for payment of drawback claim depends on meeting statutory criteria in 19 U.S.C. § 1313.

According to CBP, the rationale for the drawback program was to encourage American commerce and manufacturing.¹⁵ It permits American manufacturers to compete in foreign markets without the handicap of including in their costs, and consequently in their sales price, the duty they paid on imported merchandise.¹⁶ Claimants can apply for and obtain the privilege of accelerated payment of drawback refunds. Accelerated payment allows estimated drawback refunds to be paid prior to

¹⁴Unless otherwise specified, discussion of drawback terms and processes in this report refer to drawback post TFTEA and associated implementing regulations.

¹⁵See *Customs Regulations Revision Relating To Drawback; Specialized and General Provisions*, 48 Fed. Reg. 46,740 (Dec. 12, 1983).

¹⁶*Id.*

liquidation¹⁷ of the drawback entry, provided that, among other things, claimants have acquired and posted with CBP a bond in an amount sufficient to cover the estimated amount of drawback to be claimed.

Types of Drawback Refunds

There are three main categories of drawback refunds: (1) manufacturing drawback (direct identification and substitution), (2) unused merchandise drawback (direct identification and substitution), and (3) rejected merchandise drawback. Within each category, there are variations in drawback eligibility, such as the ability to substitute imported merchandise.

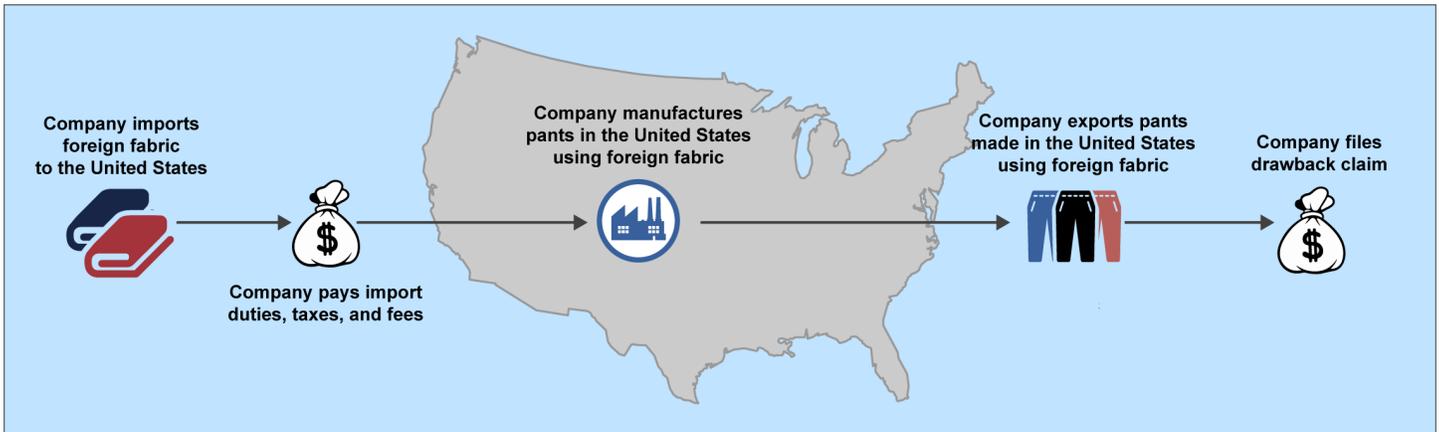
1. Manufacturing drawback

- a. *Direct identification manufacturing drawback* may be claimed on exported or destroyed articles that have been manufactured or produced in the United States with imported duty-paid merchandise, if those articles have not been used in the United States prior to export or destruction under CBP supervision.¹⁸ For example, a claimant could claim a drawback refund on exported pants made in the United States using imported foreign fabric. (See fig. 2.)

¹⁷Liquidation means the final computation or ascertainment of duties on entries for consumption or drawback entries. 19 C.F.R. § 159.1.

¹⁸19 U.S.C. § 1313(a).

Figure 2: Example of Direct Identification Manufacturing Drawback



Source: GAO analysis of 19 U.S.C. § 1313 as amended by Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016). | GAO-20-182

Note: Eligibility for payment of drawback claim depends on meeting statutory criteria in 19 U.S.C. § 1313.

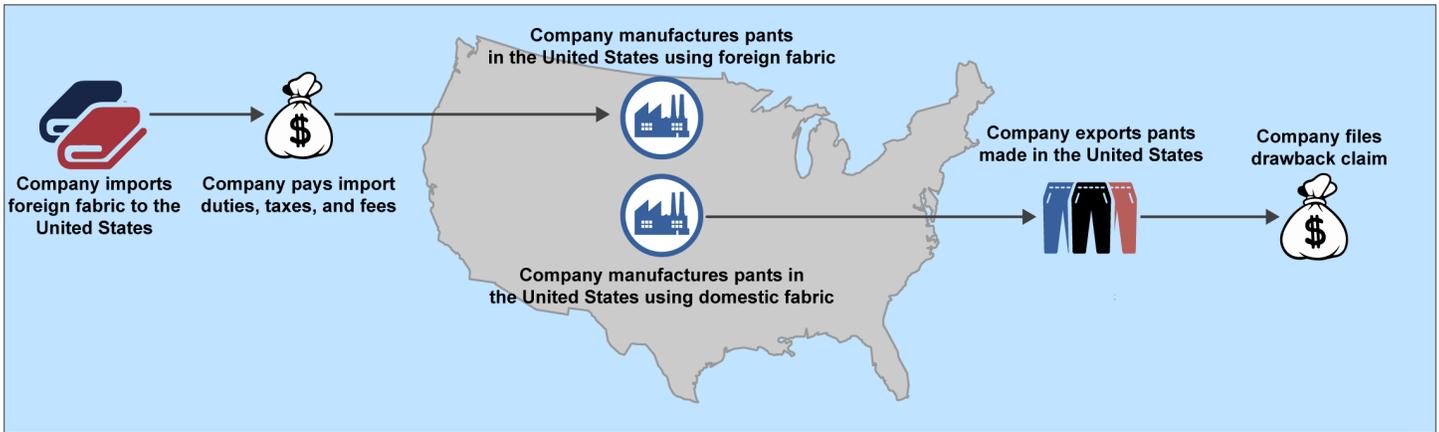
- b. *Substitution manufacturing drawback* may be claimed on exported or destroyed¹⁹ articles that have been manufactured or produced in the United States using domestic merchandise substituted for imported duty-paid merchandise meeting the statutory criteria, where the articles have not been used in the United States.²⁰ As a result, domestic producers can select the most advantageous sources for their raw materials and components without regard to duties, saving them production costs.²¹ For example, a claimant could claim a drawback refund on exported pants made in the United States using domestic fabric substituted for imported foreign fabric. (See fig. 3.)

¹⁹Destruction of the article must be done under CBP supervision. 19 U.S.C. § 1313(b)(1).

²⁰19 U.S.C. § 1313(b).

²¹Staff of H. Committee on Ways and Means, 111th Cong., *Overview and Compilation of U.S. Trade Statutes*, Vol. I of II, p. 85 (Comm. Print 2010).

Figure 3: Example of Substitution Manufacturing Drawback



Source: GAO analysis of 19 U.S.C. § 1313 as amended by Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016). | GAO-20-182

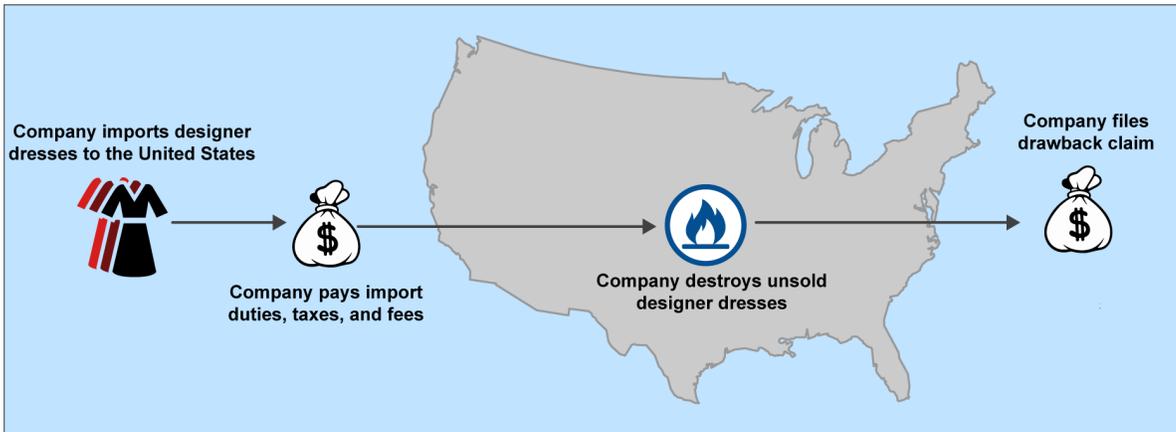
Note: Eligibility for payment of drawback claim depends on meeting statutory criteria in 19 U.S.C. § 1313.

2. Unused merchandise drawback

- a. *Direct identification unused merchandise drawback* may be claimed on imported merchandise that was exported or destroyed under CBP supervision, without having been used within the United States.²² For example, a claimant could claim a drawback refund on unused imported designer dresses upon their destruction. (See fig. 4.)

²²19 U.S.C. § 1313(j)(1).

Figure 4: Example of Direct Identification Unused Merchandise Drawback upon Destruction



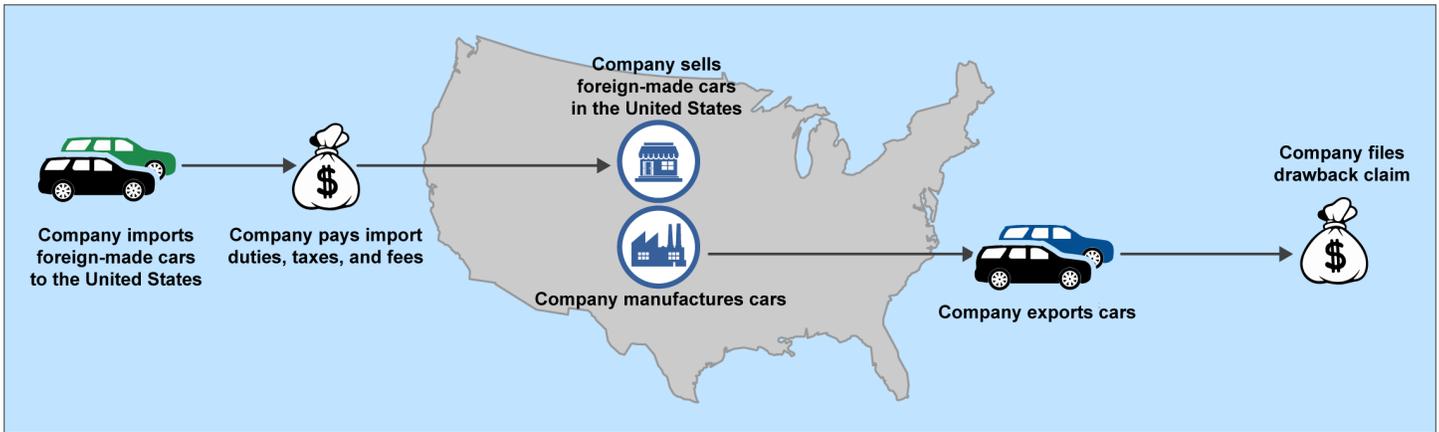
Source: GAO analysis of 19 U.S.C. § 1313 as amended by Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016). | GAO-20-182

Note: Eligibility for payment of drawback claim depends on meeting statutory criteria in 19 U.S.C. § 1313.

- b. *Substitution unused merchandise drawback* may be claimed on goods that were exported or destroyed under CBP supervision, without being used, and were substituted for imported merchandise meeting the appropriate criteria.²³ For example, a claimant could claim a drawback refund on exported cars substituted for imported foreign-made cars. (See fig. 5.)

²³19 U.S.C. § 1313(j)(2).

Figure 5: Example of Substitution Unused Merchandise Drawback upon Exportation



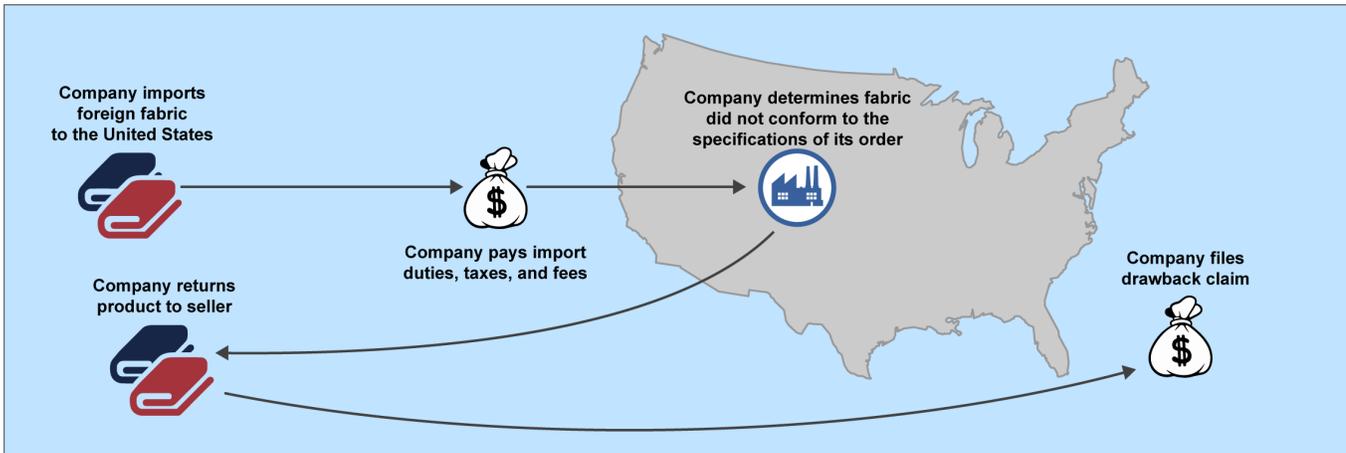
Source: GAO analysis of 19 U.S.C. § 1313 as amended by Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016). | GAO-20-182

Note: Eligibility for payment of drawback claim depends on meeting statutory criteria in 19 U.S.C. § 1313.

3. **Rejected merchandise drawback** may be claimed upon the exportation or destruction under CBP supervision of imported duty-paid merchandise entered or withdrawn for consumption, provided it meets the statutory criteria (i.e., not conforming to sample or specifications, shipped without consent, determined to be defective at the time of import, or ultimately sold at retail and returned).²⁴ For example, a claimant could claim a drawback refund on foreign fabric it imported but returned to the seller because the fabric did not conform to the specification of the claimant's order. (See fig. 6.)

²⁴19 U.S.C. § 1313(c)(1)-(3).

Figure 6: Example of Rejected Merchandise Drawback



Source: GAO analysis of 19 U.S.C. § 1313 as amended by Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016). | GAO-20-182

Note: Eligibility for payment of drawback claim depends on meeting statutory criteria in 19 U.S.C. § 1313.

Drawback Refunds Claimed Annually Ranged from \$631.6 Million to \$1.4 Billion from 2009 through August 21, 2019

During calendar years 2009 through August 21, 2019, the total amount of drawback refunds claimed ranged from \$631.6 million to \$1.4 billion. The amount of drawback refunds claimed varied from year to year, but generally rose between 2011 and 2016. Overall, in dollar terms, substitution unused merchandise drawback remained the largest category of drawback refund, as shown in table 1.

Table 1: Amount of Drawback Refunds of Duties, Taxes, and Fees Claimed by Claim Type

Dollars in millions

Claim type ^a	Calendar year										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019 (as of Aug. 21)
Direct identification manufacturing	\$5.3	\$4.3	\$4.8	\$5.6	\$7.2	\$8.2	\$7.6	\$7.9	\$8.4	\$7.0	\$3.8
Substitution manufacturing	\$146.6	\$143.1	\$166.4	\$181.2	\$240.1	\$293.3	\$305.8	\$284.7	\$183.6	\$207.1	\$101.2
Direct identification unused merchandise	\$128.4	\$150.1	\$162.9	\$174.3	\$251.0	\$251.4	\$302.8	\$297.4	\$291.9	\$266.2	\$182.0
Substitution unused merchandise	\$221.1	\$225.0	\$212.3	\$261.0	\$299.0	\$305.2	\$310.8	\$332.3	\$269.3	\$562.7	\$356.3
Rejected merchandise	\$3.2	\$3.2	\$2.9	\$2.2	\$3.0	\$4.4	\$3.9	\$2.6	\$2.9	\$5.2	\$3.1
Other ^b	\$181.1	\$107.8	\$82.4	\$68.0	\$54.4	\$50.7	\$65.9	\$83.4	\$82.5	\$330.9	\$248.7
Total drawback refunds claimed^c	\$685.8	\$633.5	\$631.6	\$692.2	\$854.6	\$913.2	\$996.8	\$1,008.2	\$838.6	\$1,379.0	\$895.1

Source: U.S. Customs and Border Protection (CBP). | GAO-20-182

Note: The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (1) provided for a transition period, from February 24, 2018 to February 23, 2019, during which drawback claimants could file under either the amended provisions or the drawback law as it existed previously; and (2) required that upon the expiration of the transition period, the amendments made under TFTEA shall apply to claims filed on or after February 24, 2019. Pub. L. No. 114-125, Title IX, § 906, 130 Stat. 122, 226-234 (Feb. 24, 2016). As such, claims filed from 2009 through 2017 reflect non-TFTEA claims. Claims filed in 2018 and 2019 reflect both non-TFTEA and TFTEA claims.

^aCBP noted limitations with identifying the claim type for paper-based claims submitted prior to February 24, 2019 because CBP had to manually review each claim to identify the claim type.

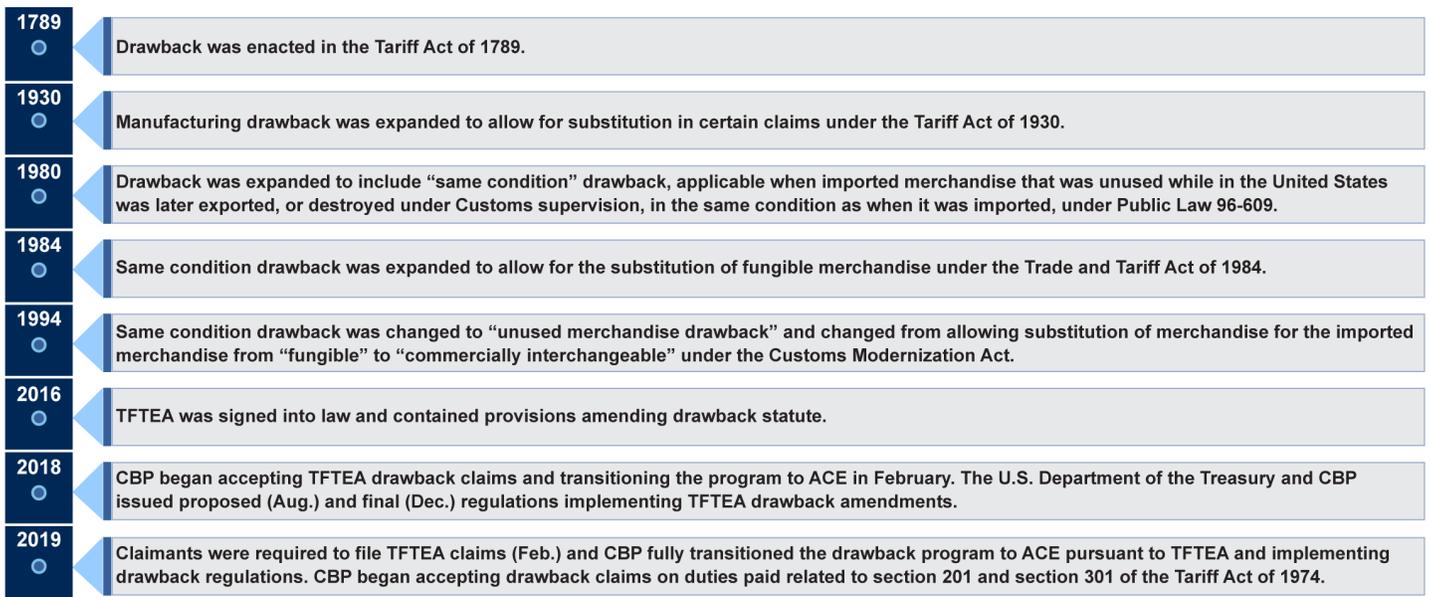
^bCBP reported that the drawback claim type “Other” includes, but is not limited to, repair materials, construction materials, packaging materials, and recovered materials.

^c“Total drawback refunds claimed” reflects the amount of drawback claimed for each calendar year, not the final amount as determined by CBP. The amount of drawback claimed by claim type for each calendar year may not add up to the total drawback claimed because of rounding.

CBP’s Transition to Drawback Modernization

As originally enacted in 1789, the drawback program was limited to duties paid on certain imported merchandise if the merchandise was exported within a year. In the 1930s, drawback claimants could use substituted merchandise for imported merchandise in specified circumstances. Congress has continued to allow substitution for drawback refunds in various forms. (See fig. 7.)

Figure 7: Timeline of Selected Changes to the Drawback Program



Legend: TFTEA = Trade Facilitation and Trade Enforcement Act of 2015; ACE = Automated Commercial Environment; CBP = U.S. Customs and Border Protection.
Source: GAO analysis of relevant laws. | GAO-20-182

Note: Descriptions do not include all changes made to the drawback program by the laws cited.

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was signed into law.²⁵ The Act amends Section 313 of the Tariff Act of 1930. TFTEA made numerous changes to the drawback law, commonly referred to as modernization, including

- requiring the electronic filing of drawback claims;
- allowing substitution drawback claims based on the 8-digit Harmonized Tariff Schedule of the United States (HTS),^{26, 27} thus eliminating the need to file a commercially interchangeable determination ruling for those claims;²⁸
- extending drawback refunds to taxes and fees for manufacturing drawback claims;
- extending the deadline for filing certain drawback claims from 3 years from the date of export to 5 years from the date of import;²⁹
- extending the record retention period for certain drawback claims from 3 years from payment of the drawback claim to 3 years from liquidation of the drawback claim;
- allowing the transfer of goods to be evidenced by business records kept in the normal course of business rather than requiring certificates of transfer or manufacture; and

²⁵Pub. L. No. 114-125, § 906.

²⁶The U.S. International Trade Commission publishes and maintains the HTS. The HTS is used to determine tariff classifications for goods imported into the United States. Each item imported into the United States is classified in a category with an assigned 8-digit HTS subheading number. The category may be subdivided into 10-digit HTS subheading numbers for statistical purposes. The 4-digit and 6-digit nomenclature is consistent internationally. CBP is responsible for fixing the final classification.

²⁷For unused merchandise substitution drawback claims, TFTEA also allows drawback using the U.S. Department of Commerce Schedule B commodity number. Pub. L. No. 114-125, § 906(e)(4). We do not discuss the use of the Schedule B commodity number in this report because, according to CBP, it is very rare that the Schedule B commodity number is not identical to the HTS number.

²⁸CBP determined commercial interchangeability by comparing the primary characteristics of the designated and substituted merchandise. Factors to be considered included, but were not limited to, government and industry standards, part numbers, tariff classification, and value.

²⁹Claims under 19 U.S.C. § 1313(d) remain subject to a 3-year completion deadline from the date of export.

-
- stating that importers are now jointly and severally liable with claimants for refunds associated with their imported goods.

Treasury and CBP had 2 years from the date of enactment of TFTEA to promulgate regulations implementing the TFTEA drawback provisions. TFTEA also provided for an additional 1-year transition period (February 24, 2018–February 23, 2019) during which drawback claimants could file under either the amended provisions or the drawback law as it previously existed.³⁰ When the government did not meet the 2-year deadline for issuing regulations, which lapsed on February 24, 2018, a number of companies filed suit. Subsequently, Treasury and CBP published the *Modernized Drawback Notice of Proposed Rulemaking* in the *Federal Register*³¹ on August 2, 2018 and separately published the *Regulatory Impact Analysis of the Modernized Drawback Notice of Proposed Rulemaking*.³² In an October 12, 2018 order, the Court of International Trade ordered the United States to file the final rule developed pursuant to the *Modernized Drawback Notice of Proposed Rulemaking* with the Office of the Federal Register by December 17, 2018. The government met that deadline, publishing the Modernized Drawback Final Rule in the *Federal Register*³³ and the *Regulatory Impact Analysis of the Modernized Drawback Final Rule* (RIA). In the final rule, CBP summarized and responded to public comments received on the *Modernized Drawback Notice of Proposed Rulemaking* and established new policies and procedures for the drawback program pursuant to TFTEA. In the RIA, CBP provided its predictions of the impact—primarily in terms of costs, benefits, and revenue transfers—of key changes to the drawback program on industry and the U.S. government. CBP did not make accelerated payments on or liquidate any TFTEA drawback claims until the final rule was issued. CBP also did not make any drawback payments during the partial federal government shutdown (December 22, 2018–January 25, 2019).

³⁰Pub. L. No. 114-125, § 906(q)(3).

³¹83 Fed. Reg. 37,886 (Aug. 2, 2018).

³²U.S. Customs and Border Protection, Economic Impact Analysis Branch, Regulations and Rulings, Office of Trade, *Regulatory Impact Analysis of the Modernized Drawback Notice of Proposed Rulemaking* (Washington, D.C.: July 24, 2018).

³³83 Fed. Reg. 64,942 (Dec. 18, 2018).

Under drawback modernization, CBP transitioned its filing process for making claims for payment under the drawback program from its Automated Commercial System (ACS) to its Automated Commercial Environment (ACE). Previously, CBP required claimants to file a paper claim, and electronic transmission of a claim summary through ACS was optional. TFTEA required claimants to file all claims electronically on and after February 24, 2018, but also allowed for a 1-year transition period where claims could be filed under the existing drawback statute or under the statute as amended by TFTEA.³⁴ CBP designated ACE as the electronic system for filing drawback claims.³⁵

CBP initially partially deployed ACE for the drawback program on February 24, 2018, to allow electronic filing of claims. During the transition period, claimants could file claims under the existing drawback process (detailed in 19 C.F.R. part 191) or under the new drawback process (detailed in 19 C.F.R. part 190). CBP fully deployed ACE for the drawback program on February 24, 2019, the first day after the transition period when all drawback claims had to be filed under the amended statute and implementing regulations. After CBP mandated electronic filing in ACE, drawback entry summary data had to be filed at the more detailed line item level.³⁶ ACE has expanded capabilities, such as accounting for line item reporting for drawback claims and automatically validating drawback claims against underlying import entries.

³⁴Pub. L. No. 114-125, § 906(j)(3) and (q)(3) (codified as amended at 19 U.S.C. § 1313r(4) and note section).

³⁵In 1994, CBP initiated planning and development of the ACE information system to ensure proper assessment and collection of customs duties. In 2006, Congress broadened this effort by mandating creation of a “single portal” International Trade Data System to, among other things, efficiently regulate the flow of commerce and more effectively enforce laws and regulations relating to international trade. ACE is intended to provide this single portal, according to CBP. See GAO, *Customs and Border Protection: Automated Trade Data System Yields Benefits, but Interagency Management Approach Is Needed*, [GAO-18-271](#) (Washington, D.C.: Mar. 14, 2018).

³⁶Line item reporting requires claimants to provide certain relevant information for the designated imported merchandise on a drawback claim associated with the line item on an import entry summary, including the tariff classification, quantity, and value, as well as the duties, taxes, and fees assessed thereon. According to CBP officials, the import entry summary (CBP Form 7501) is a required document that must be filed with every entry of goods into the United States in order to properly report the cargo that has entered the United States and ensure that importers have paid related duties, taxes, and fees. An import entry summary can be composed of numerous line items. Upon a claim’s submission, ACE compares and verifies the drawback claim against the import entry summary to help ensure that drawback claims are not over claimed—and thus are not overpaid—at the individual line item level.

Changes in the broader trade policy context may also impact CBP's drawback program. In particular, 2018 witnessed a series of presidential and agency actions that resulted in higher tariffs on a range of goods. For example, in January 2018, the President issued Presidential Proclamation 9693 and Presidential Proclamation 9694, imposing tariff rate quotas and increased duties on imports of solar cells and panels, and washing machines and parts, effective February 7, 2018. Further, at the direction of the President, the United States Trade Representative has imposed additional duties on products of China in four tranches, in June 2018, August 2018, September 2018, and August 2019. According to the United States Trade Representative request for comments on a modification to the fourth tranche, the four tranches cover an annual aggregate trade value of approximately \$550 billion.³⁷ CBP has determined that the aforementioned tariffs (commonly referred to as section 201 and 301 duties, respectively) are eligible for drawback refunds and issued guidance on how to make such claims. For fiscal year 2019, Treasury reported that it collected \$70.8 billion in customs duties, as compared to \$41.3 billion in fiscal year 2018.³⁸

CBP Offices Responsible for Drawback Program

Within the Department of Homeland Security, CBP's Office of Trade is primarily responsible for managing the drawback program. CBP officials described the roles and responsibilities of the several offices within CBP that are involved, as follows:

- **Trade Policy and Programs.** The Office of Trade Policy and Programs provides policy and program oversight for the drawback program.
- **Field Operations.** The Office of Field Operations is responsible for implementing the drawback program, including ensuring that the Drawback Centers have the resources—allocations, staffing, equipment—to perform their duties and meet CBP's trade mission.
- **Drawback Centers.** Drawback specialists located in one of the four Drawback Centers in Chicago, Houston, Newark, or San Francisco are responsible for reviewing and processing drawback claims. They review claims, in whole or in part, to determine eligibility for drawback

³⁷84 Fed. Reg. 46,212 (Sept. 3, 2019).

³⁸U.S. Department of the Treasury, Bureau of the Fiscal Service, *Final Monthly Treasury Statement: Receipts and Outlays of the United States Government for Fiscal Year 2019 Through September 30, 2019, and Other Periods*.

refunds. (Appendix II describes CBP's steps for filing and processing drawback claims.) They also review and make determinations concerning claimants' (1) requests for drawback privileges for accelerated payment and waiver of prior notice,³⁹ (2) applications for certain manufacturing rulings,⁴⁰ and (3) protests of denied claims.⁴¹

- **Regulations and Rulings.** The Office of Regulations and Rulings is responsible for issuing various types of binding rulings and decisions on drawback refunds. These include decisions on protest applications flagged for further review by the Drawback Centers as well as prospective ruling requests filed by drawback applicants, such as rulings on specific manufacturing drawback rulings and on the proper classification of merchandise for substitution manufacturing drawback. In addition to issuing binding rulings, the Office of Regulations and Rulings is responsible for drafting any regulatory changes involving the drawback program and provides technical advice for drawback policy and litigation.

³⁹There are two types of waiver of prior notice: a one-time waiver of prior notice and a waiver of prior notice. A one-time waiver of prior notice is a privilege for claimants of certain drawback types, such as unused merchandise claims and rejected merchandise claims, that waives the requirement to file CBP Form 7553 (Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback) for past exports or destructions. Meanwhile, a waiver of prior notice waives the requirement to file CBP Form 7553, which may be the subject of certain drawback claims such as unused merchandise claims and rejected merchandise claims, for prospective exports or destructions.

⁴⁰During the transition period (February 24, 2018–February 23, 2019), claimants who wanted to operate under an existing manufacturing ruling had to file a supplemental application for a limited modification to that ruling. Claimants who did not apply for a limited modification by February 23, 2019, would need to apply for a new ruling. There are two types of manufacturing rulings: general manufacturing rulings for certain common manufacturing operations and specific manufacturing rulings for commodity-specific manufacturing operations. The Drawback Centers are responsible for reviewing and processing limited modifications as well as new applications for general manufacturing rulings. The Office of Regulations and Rulings is responsible for reviewing and processing new applications for specific manufacturing rulings.

⁴¹Claimants can protest the denial of a drawback claim within 180 days of liquidation. 19 C.F.R. § 174.12.

TFTEA Generally Expanded Eligibility for Drawback Refunds, but CBP Has Not Adequately Managed Its Growing Workload

TFTEA generally expanded eligibility for drawback refunds, with some caveats, but CBP is not adequately managing its growing workload of claims resulting from the changes. The substitution standard for drawback claims under TFTEA generally allowed more merchandise to potentially qualify for drawback refunds. However, it also limited the eligibility of certain broadly categorized merchandise. TFTEA also expanded the scope of the refund of taxes and fees for manufacturing claims and standardized time limits to file claims. On balance, these changes, along with certain limitations in CBP's Automated Commercial Environment (ACE), have led to an increase in the workload of drawback specialists. However, CBP did not anticipate the increased workload and does not have a plan to manage the increased workload, which has caused delays resulting in uncertainty for industry—potentially impeding trade.

TFTEA Generally Expanded Eligibility for Drawback Refunds

Substitution Standard under TFTEA Generally Expanded Drawback Refund Eligibility, but Also Limited the Eligibility of Some Merchandise

Change of substitution standard: According to CBP officials, the most significant change resulting from TFTEA is that it is now easier to substitute merchandise and still qualify for drawback refunds. TFTEA changed the substitution standard for certain drawback types, with new rules reflecting a shift from a subjective to a more objective standard.⁴² Previously, CBP applied a subjective “same kind and quality” standard for manufacturing substitution drawback and “commercially interchangeable” standard for unused merchandise drawback.⁴³ For example, CBP did not permit a U.S.-based clothing manufacturer, Jockey, to substitute light blue underwear for dark blue underwear for an unused merchandise drawback claim before modernization. In 1995, Jockey submitted a request to CBP for a “commercially interchangeable” ruling to permit it to substitute underwear that is the same size, style, and specification, but different in color and part number—for example, substitute light blue underwear for dark blue underwear. CBP ruled that Jockey underwear was not “commercially interchangeable” for the purpose of the unused merchandise substitution drawback. Under the

⁴²TFTEA changed the substitution standard for manufacturing drawback claims and for unused merchandise claims. Pub. L. No. 114-125, § 906(b) and (e).

⁴³Prior to TFTEA, “same kind and quality” applied to substitution manufacturing drawback claims under 19 U.S.C. § 1313(b) and “commercially interchangeable” applied to substitution unused merchandise drawback claims under 19 U.S.C. § 1313(j)(2).

new substitution standard for manufacturing drawback and unused merchandise drawback, both the imported merchandise and the substituted merchandise generally must match at the 8-digit or 10-digit HTS classification to be eligible for drawback refunds. The new substitution standard has made more merchandise eligible for drawback refunds, such as the Jockey underwear that would now be eligible for unused merchandise substitution drawback, as shown in the example for one type of product in figure 8 below. It has also enabled automatic acceptance and verification of drawback claims in ACE. CBP officials told us that they had seen an increase in new claimants as a result of the changes to the substitution standard, among other factors.

Figure 8: Example of Change in Drawback Eligibility for Substituted Underwear^a

Prior to TFTEA: CBP had ruled that light blue Jockey underwear could not be substituted for dark blue underwear with a different part number for the purpose of unused merchandise drawback.^b



Post-TFTEA: CBP permits drawback for imported and exported men's or boys' cotton underpants or briefs, knitted or crocheted. (HTS 6107.11.00).



TFTEA = Trade Facilitation and Trade Enforcement Act of 2015; CBP = U.S. Customs and Border Protection; HTS = Harmonized Tariff Schedule of the United States.

Source: GAO analysis of CBP Jockey Ruling 226625 (July 3, 1996) and 19 C.F.R. part 190. | GAO-20-182

^aCBP Jockey Ruling 226625. CBP determined commercial interchangeability by evaluating critical properties of the substituted merchandise and in that evaluation factors to be considered include, but are not limited to, governmental and recognized industrial standards, part numbers, tariff classification, and value.

^bThe light blue and dark blue underwear were packaged and tracked by different color codes, and, therefore, different part numbers.

According to industry representatives we interviewed, the changes to the substitution standard have enabled new companies to file for drawback refunds and have expanded eligibility for existing clients. For example, they stated that the changes to the substitution standard have allowed the automotive industry to substitute domestic car exports for imported foreign-made cars, as mentioned earlier. One industry representative noted that as a result of the new substitution standard, an automotive company that had been recovering about \$2 million in drawback refunds per year before TFTEA can now recover about \$20 million a year.

Drawback trading: The new substitution standard may also broaden the scope for “drawback trading,” according to industry representatives we interviewed. They described “drawback trading” as matching excess import and export activity through the use of a third-party special purpose entity that exists for the sole purpose of maximizing drawback refund recovery between currently unrelated importers and exporters with no existing commercial relationship.

CBP officials we spoke to did not think the new substitution standard should have any bearing on the potential for “drawback trading.” CBP officials explained that although the substitution standard for certain drawback claims had changed, TFTEA should not significantly affect “drawback trading” because, as before TFTEA, the claimant would still need to fulfill the possession⁴⁴ and assignment standards.⁴⁵ Finished petroleum derivative drawback claims do not have a possession requirement.⁴⁶ CBP has permitted drawback where a company set up relationships with the importer and exporter expressly to maximize drawback for finished petroleum derivatives.

⁴⁴Possession, for the purposes of substitution unused merchandise drawback (19 U.S.C. § 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback. 19 C.F.R. §§ 190.2, 191.2.

⁴⁵For both manufacturing drawback and unused merchandise substitution drawback, either the exporter or destroyer may assign its right to claim drawback refunds to an intermediate party provided that regulatory requirements, including certification, are met. See 19 C.F.R. §§ 190.28, 190.33, 191.28, and 191.33.

⁴⁶CBP had issued a ruling in 2004 permitting a drawback claim for finished petroleum products where a third party was able to position itself as the importer of record, as well as meeting other legal criteria. Since 2004, companies have been “drawback trading” by filing HTS substitution manufacturing drawback claims for finished petroleum products, which, as discussed earlier, do not have a possession requirement. CBP officials specified that these claims were filed under 19 U.S.C. § 1313(p).

Limitation of basket provisions from unused merchandise substitution drawback: While TFTEA's change to the use of HTS classifications generally expanded eligibility for certain drawback substitution claims, it concurrently limited eligibility in certain situations. Specifically, TFTEA prohibited eligibility for unused merchandise substitution of merchandise that is classified as "other" at both the 8-digit and 10-digit HTS subheadings for drawback refunds.⁴⁷ Such classifications are considered basket provisions. For example, shrimps and prawns that fall under the HTS 1605.21.10.30 basket provision, as shown in figure 9, are not eligible for substitution unused merchandise drawback, as follows. If the shrimps and prawns are not in airtight containers, and are not products containing fish meat or prepared meals, they fall under "other" at the 8-digit HTS subheading (1605.21.10). If these shrimps and prawns are also frozen but not breaded, they fall under "other" at the 10-digit HTS statistical suffix (1605.21.10.30), categorizing them in a basket provision.

According to CBP, the products most affected by the limitation on basket provisions from unused merchandise substitution drawback based solely on 2016 HTS counts will be screws, nuts, and bolts; motor vehicle parts and accessories; and transmission shafts.⁴⁸ One company we spoke with had been able to claim over \$1 million in unused merchandise substitution drawback a year prior to modernization, for an imported ceramic substrate used for cleaning emissions in cars. The company also makes domestically sourced ceramic substrate, which it exports. CBP considered these two products commercially interchangeable. However, according to the company, the ceramic substrate is classified as a basket provision and the company is no longer eligible for drawback refunds.

⁴⁷Pub. L. No. 114-125, § 906(e)(4).

⁴⁸U.S. Customs and Border Protection, *Regulatory Impact Analysis of the Modernized Drawback Final Rule*, Page 62.

Figure 9: Example of Basket Provision in Harmonized Tariff Schedule of the United States

Heading/ Subheading	Stat Suf- fix	Article Description	Unit of Quantity
1605.21		Shrimps and prawns:	
		Not in airtight containers:	
1605.21.05	00	Products containing fish meat; prepared meals.....	kg
1605.21.10		Other	
		Frozen, imported in accordance with Statistical Note 1 to this chapter:	
	20	Breaded.....	kg
	30	Other	kg

8-digit HTS code classified as "Other"

10-digit HTS code classified as "Other," commonly known as a basket provision

Source: Harmonized Tariff Schedule of the United States (HTS). 2019 Revision 12. | GAO-20-182

Although TFTEA limited basket provisions from being eligible for unused merchandise substitution drawback refunds, companies may still have two options to qualify for drawback refunds through either (1) direct identification drawback or (2) if a company successfully petitions for a new HTS statistical breakout with the Committee for Statistical Annotation of Tariff Schedules through unused merchandise substitution drawback, as follows:⁴⁹

- If merchandise is classified as a basket provision, it may still be eligible for a drawback refund through direct identification if claimants are able to prove that it is eligible for direct identification, rather than substitution. However, eligibility for direct identification can be more difficult to attain than for substitution because a company must be able to verify that the item imported is the same item exported. To do so, companies may use an accounting method that establishes that the merchandise is identified as being received into and withdrawn

⁴⁹According to an industry representative, an additional complication has been determining whether a drawback is impacted by the elimination of basket provisions. Although CBP has a list used in ACE to verify that a drawback is not classified as "other" at both the 8-digit and 10-digit HTS subheading, the industry representative indicated that this list is not publicly available or definitive.

Criteria for Edits to Statistical Breakouts of the Harmonized Tariff Schedule of the United States

The Committee for Statistical Annotation of Tariff Schedules generally approves requests for new statistical reporting numbers in the Harmonized Tariff Schedule of the United States (HTS) only if the following conditions are met:

- Each requested statistical reporting number represents at least \$1 million in trade per year.
- U.S. Customs and Border Protection is able to administer the new statistical reporting number. For example, the article description must be clear, the HTS classification must be correct, and the new number must not require difficult or prohibitively expensive laboratory or other testing.

Data for any new statistical reporting number are publishable under Census Bureau rules for protecting confidential business information: data must represent imports or exports by at least three importers or exporters, no one or two of which may account for a high percentage of total trade, in order to avoid the disclosure of confidential business information.

The committee generally refuses or removes statistical breakouts if

- less than four importers or exporters are likely to use the 10-digit HTS code, or
- the statistical breakout has not been used in 5 years.

Source: GAO analysis of [GAO-15-491R](#) and a U.S. International Trade Commission document.

from the same inventory. If the imported item is substituted for an exported item that is not fungible⁵⁰ with the imported item, it does not qualify for direct identification.⁵¹

- If merchandise is not eligible for direct identification drawback but is classified as a basket provision, it may still qualify for a drawback refund if a company can successfully petition the Committee for Statistical Annotation of Tariff Schedules for new 10-digit HTS statistical breakouts.⁵² However, such a workaround is time-intensive and not guaranteed, according to an industry representative. In one example, the representative explained that a chemical company with a product classified as a basket provision successfully petitioned for a new statistical breakout. The company produces chemical methanol and was unable to file a TFTEA drawback claim in 2018 because of the basket provision restriction.⁵³ Such requests are generally considered by the committee twice a year.

⁵⁰Fungible merchandise or articles means merchandise or articles that for commercial purposes are identical and interchangeable in all situations. 19 C.F.R. § 190.2.

⁵¹Under drawback modernization, each line of a claim is restricted to the “first filed rule,” such that an import entry line can only be claimed for a single type of drawback, such as direct identification or substitution—whichever was completed and accepted by CBP first. If a company makes a substitution claim on a line item for a portion of the import entry and it was completed and accepted by CBP, it cannot then make a direct identification claim on that same line item. This restriction did not exist in the past because, according to CBP officials, they did not verify claims at the line item level. Additionally, unused merchandise drawback claims pursuant to the North American Free Trade Agreement are restricted to direct identification claims. According to one industry representative, this restriction can add a new limitation to companies’ drawback claims if they export items from one import entry line to Canada or Mexico as well as the rest of the world. The representative explained that the “first filed rule” added work for the representative’s company because it had to format its drawback data differently, depending on the export destination.

⁵²Section 484(f) of the Tariff Act of 1930 (19 U.S.C. § 1484(f)) authorizes the establishment of categories in the HTS for statistical purposes. Requests for changes to these non-legal statistical elements that appear in the HTS are reviewed by the Committee for Statistical Annotation of Tariff Schedules, an interagency committee chaired by the U.S. International Trade Commission and composed of representatives of CBP and the Census Bureau.

⁵³Specifically, chemical methanol had been categorized as 2905.11.20.00 “Methanol (Methyl alcohol)” “Other” at the 8-digit level and “Other” at the 10-digit level. However, in 2019, the Committee for Statistical Annotation of Tariff Schedules broke out various types of methanol uses, resulting in the merchandise no longer being categorized in a basket provision. The new breakout of methanol by uses—which included chemical production of aldehydes, plastics, olefins, and resins, as well as wastewater treatment—enabled the company to file a claim for drawback based on the new 10-digit HTS classification.

TFTEA Also Standardized Time Limits and Expanded Eligibility of Manufacturing Drawback Refunds by Including Taxes and Fees

Standardizing time limits: TFTEA also expanded eligibility for drawback refunds by standardizing the drawback filing deadline.⁵⁴ Previously, drawback claim filing deadlines varied based on type of claim and time between import and export or destruction, ranging from 3 years to 5 years from importation to exportation or destruction, followed by a 3-year window to file a claim. TFTEA generally standardized the timelines for the acceptance of claims to be up to 5 years from import.⁵⁵ CBP expects the new eligibility time frames will give some drawback claimants more time to file for drawback and potentially increase drawback eligibility for some claimants.

Expanding taxes and fees: TFTEA expanded the scope of drawback refunds by explicitly including taxes and fees for manufacturing drawback claims. Prior to TFTEA, the drawback statute did not specify that taxes and fees were eligible for manufacturing drawback. TFTEA extended drawback refunds to taxes and fees for manufacturing claims.⁵⁶ Some industry representatives we spoke to told us they were benefiting from this expansion. For example, a representative from the U.S. oil industry noted that the new law is “much more lucrative” for oil companies that refine crude oil because they can now get drawback refunds on the oil spill tax and harbor maintenance fee.

CBP Has Not Adequately Managed the Growing Workload Resulting from TFTEA

CBP has not adequately managed the growing workload drawback specialists have been experiencing since TFTEA. Drawback specialists told us that they had been experiencing increasing workloads since CBP implemented the changes from TFTEA. The largest Drawback Centers expect their backlog of old claims will take about 5 years to work through. This workload is the cumulative result of various factors that have caused delays with processing claims, rulings, and privileges applications. The workload of the Drawback Centers is growing because of a learning curve related to the switch from a paper-based to an electronic process, delays in processing claims, and an increase in the number of claims, as

⁵⁴Pub. L. No. 114-125, § 906(j)(1).

⁵⁵For certain finished petroleum derivative drawback claims, pursuant to 19 U.S.C. § 1313(p), timelines are restricted to imported merchandise that is subsequently exported within 180 days or if the claimed merchandise is exported within 180 days after the close of the manufacturing period attributable to an import.

⁵⁶Pub. L. No. 114-125, § 906(g).

discussed below. Further, the Drawback Centers continue to face staffing shortages.

Learning curve: According to CBP officials, drawback specialists face a learning curve as they become familiar with ACE and the new rules for drawback refunds. They explained that drawback specialists are still working through pre-TFTEA claims that were migrated into ACE. From January 1, 2019 to September 13, 2019, CBP Drawback Centers liquidated about 18 percent of the value of the remaining claims filed in CBP's Automated Commercial System (ACS) and about 27 percent of the number of remaining claims filed in ACS.⁵⁷ For TFTEA claims, CBP provided in-person training to drawback specialists before the final regulations were issued, as well as in May 2019 and September 2019. CBP has also been updating its guidance for processing claims, and, according to officials, plans to continue to offer trainings for drawback specialists as it finalizes the guidance. Nevertheless, adjusting to the changes has hampered the efficiency of drawback specialists. For example, drawback specialists explained that they had to learn to toggle between different systems that require separate logins to review event history, file uploads, and tax information within ACE in order to fully process a claim.

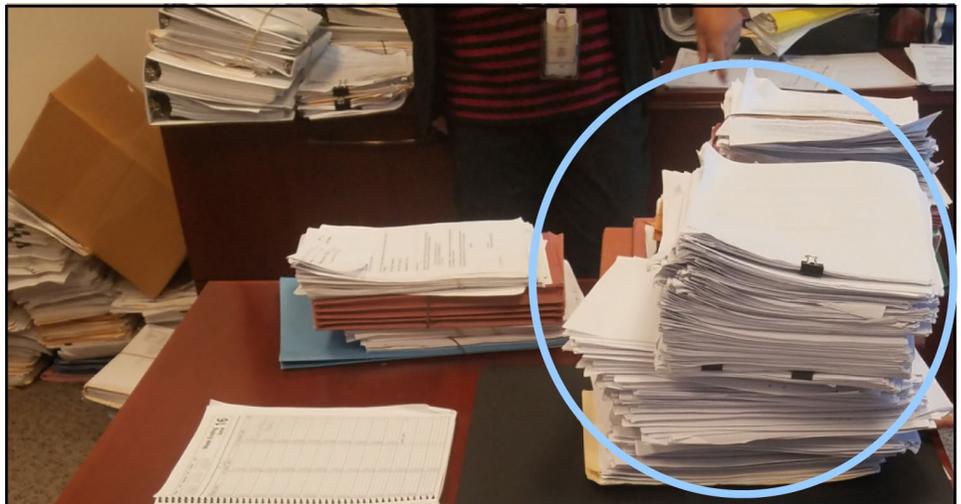
Delays in processing claims: CBP faced a delay in processing drawback claims because of a hold relating to the issuance of the drawback final rule. Claimants could begin filing TFTEA claims on February 24, 2018, but CBP did not process any of these claims pending the final rule—which CBP issued on December 17, 2018. As a result, all 18,319 claims filed during this 10-month period were put on hold. CBP lifted the hold when the final rule was issued.

CBP's workload continued to grow because certain TFTEA manufacturing claims were on hold. Following TFTEA, the proposed and final rule required claimants who wanted to operate under an existing manufacturing ruling to file a supplemental application for a limited modification to the existing ruling, as previously discussed. According to CBP interim guidance, to ensure compliance with TFTEA drawback requirements, a limited modification must include a bill of materials or formula, annotated with the applicable HTS subheading numbers.

⁵⁷The remaining claims do not include the claims filed in ACE, including the TFTEA manufacturing claims that are on hold.

Claimants who did not apply for a limited modification by February 23, 2019, would need to apply for a new manufacturing ruling. CBP received about 800 applications for limited modifications, which it began approving on September 16, 2019. Between February 2019 and July 2019, CBP also received about 50 applications for new manufacturing rulings, which it has not yet begun to process. These processes remain paper-based (see fig. 10). CBP officials explained that CBP generally does not process manufacturing drawback claims until claimants are issued up-to-date ruling numbers.⁵⁸ Until the new or modified manufacturing rulings are approved, CBP officials explained, they will not provide accelerated payment or process manufacturing claims. Moreover, some manufacturing rulings can take years to finalize. For example, one chemical company noted that CBP's lab analyzes every piece of the manufacturing process, and as a result, it is awaiting final decisions on new manufacturing rulings from 2013.

Figure 10: Example of U.S. Customs and Border Protection Drawback Center Limited Modification Rulings



Source: GAO. | GAO-20-182

Increase in number of claims: CBP has also seen an increase in the number of drawback claims because of TFTEA's changes to the

⁵⁸According to CBP officials, CBP is continuing to process manufacturing claims associated with drawback claims submitted prior to modernization.

drawback program and limitations in ACE. Prior to TFTEA, the number of drawback claims per calendar year ranged from 11,690 to 13,291. CBP saw a large increase in the number of drawback claims in 2018 and 2019. (See table 2.)

Table 2: Number of Drawback Claims Filed by Claim Type

Claim type ^a	Calendar year										2019
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	(as of Aug. 21)
Direct identification manufacturing	198	166	180	189	181	218	138	131	97	216	75
Substitution manufacturing	2,231	2,254	2,337	2,149	2,245	2,392	2,215	2,108	1,657	5,281	3,596
Direct identification unused merchandise	6,079	6,219	6,446	6,243	6,975	7,171	6,838	6,983	7,104	11,673	9,774
Substitution unused merchandise	2,209	2,234	2,420	2,737	3,181	2,823	2,425	2,346	1,978	2,658	1,872
Rejected merchandise	286	147	159	146	187	234	238	238	203	212	147
Other ^b	806	670	607	543	522	407	489	653	651	1,468	1,062
Total drawback claims filed	11,809	11,690	12,149	12,007	13,291	13,245	12,343	12,459	11,690	21,508	16,526

Source: U.S. Customs and Border Protection (CBP). | GAO-20-182

Note: The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (1) provided for a transition period, from February 24, 2018 to February 23, 2019, during which drawback claimants could file under either the amended provisions or the drawback law as it existed previously; and (2) required that upon the expiration of the transition period, the amendments made under TFTEA shall apply to claims filed on or after February 24, 2019. Pub. L. No. 114-125, Title IX, § 906, 130 Stat. 122, 226-234 (Feb. 24, 2016). As such, claims filed from 2009 through 2017 reflect non-TFTEA claims. Claims filed in 2018 and 2019 reflect both non-TFTEA and TFTEA claims.

^aCBP noted limitations with identifying the claim type for paper-based claims submitted prior to February 24, 2019 because CBP had to manually review each claim to identify the claim type.

^bCBP reported that the drawback claim type "Other" includes, but is not limited to, repair materials, construction materials, packaging materials, and recovered materials.

CBP limited the number of lines in a drawback claim in ACE, which increased the number of drawback claims filed. Prior to TFTEA, claims were not limited by line. Because of system constraints, claims filed in

ACE are restricted to 10,000 lines per claim.⁵⁹ CBP had predicted that this ACE line limitation would increase the number of claims by a factor of four.⁶⁰ Evidence to date indicates a significant increase in workload for certain Drawback Centers. For example, the Chicago Drawback Center noted that two claimants had filed over 4,000 claims between February 24, 2018 and February 23, 2019, whereas these same claimants had filed less than 50 claims in the prior year. According to the industry representatives we spoke with, the line limit in ACE added more work for industry and CBP because it made it necessary for claimants to break up the volume of their claims into different applications. For example, one broker used to file drawback claims four times a year on behalf of one refinery, but now has to file 300 times per year to account for the line limit. Drawback specialists pointed out that each claim stands on its own. As a result, they explained that they must liquidate each claim in ACE, which involves a number of quality control steps such as verifying that the claim is ready to be liquidated, relevant rulings are valid, and all validation activities are complete.

As discussed earlier, the changes to the substitution standard have also led to an increase in new drawback claimants, according to CBP officials.⁶¹ CBP has received applications from over 500 new claimants since February 24, 2018. New claimants require additional work, including drawback specialists' manual reviews of claims, privilege applications, and ruling requests, as follows.

- **Claims.** Drawback specialists explained that drawback claims from new claimants are subject to a full desk review. The specialists will request supporting documentation to ensure that the appropriate statutory and regulatory requirements are met. They also determine drawback due on the basis of the completed drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or

⁵⁹All TFTEA drawback claims are required to be filed electronically in ACE and include drawback entry summary data at the more detailed line item level. Previously, drawback claims required a paper claim and ACS only included high-level summary information.

⁶⁰At the time of this estimation, the line limit in ACE was 5,000. As of March 3, 2019, CBP was able to adjust the line limit to 10,000 lines per drawback claim.

⁶¹Additionally, CBP expects an increase in drawback claims because tariffs on goods imposed pursuant to section 301 and section 201 of the Tariff Act of 1974 are eligible for drawback.

information.⁶² According to CBP, the time it takes a drawback specialist to conduct a full desk review varies by claim, based on the nature of the claim and the experience of the drawback specialist. CBP reported that it could take more than 3 years for CBP to conduct a full desk review and determine the final disposition of a drawback claim.⁶³

- **Privilege applications.** Claimants can also apply for privileges including accelerated payment privileges, a waiver of prior notice of intent to export or destroy, or a one-time waiver of prior notice of intent to export or destroy. Claimants must continue to submit paper applications for such privileges and drawback specialists must manually review the privilege applications.⁶⁴ According to CBP, most claims are eligible for accelerated payment of drawback refunds.
- **Manufacturing rulings.** Lastly, if a claimant is seeking either a direct identification manufacturing drawback or a substitution manufacturing drawback, it must manually apply for a manufacturing ruling using a paper form submitted through email, which may require significant documentation and review, as discussed earlier. CBP maintains the manufacturing rulings as paper files. For example, the Drawback Center in Newark stores manufacturing rulings in rows of filing cabinets. (See fig. 11.)

⁶²As of October 9, 2019, drawback specialists had completed six full desk reviews of the 19,713 TFTEA claims accepted into ACE.

⁶³According to CBP officials, drawback specialists try to complete their reviews of claims within 1 year but may be restricted in doing so if a claim is not ready for final liquidation.

⁶⁴Claimants are permitted to either mail or email privilege applications.

Figure 11: U.S. Customs and Border Protection Drawback Center Filing Cabinets of Manufacturing Rulings



Source: GAO. | GAO-20-182

Additionally, CBP has not been able to respond to all privilege applications within 90 days, as set forth in the regulations.⁶⁵ Between February 2018 and July 2019, CBP received almost 600 new privilege applications. CBP missed the 90-day deadline about 60 percent of the time. According to drawback specialists, they missed this deadline because of their workload. According to an industry representative, delays in processing privilege applications mean companies cannot receive their drawback money in a timely manner. Such delays cause uncertainty for industry, potentially impeding trade.

Drawback specialists face new obstacles to managing automatic liquidation of drawback claims in ACE. According to CBP officials, previously, drawback specialists had at least 10 days of lead time to

⁶⁵Pursuant to regulations, CBP will notify the applicant in writing within 90 days after receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny, or act on the application, and the reason therefor. 19 C.F.R. §§ 190.36(c); 190.91(c); 190.92(e)(2).

address an automatic liquidation. Now, Drawback Centers must continually monitor the automatic liquidation reports. Because of the way ACE operates, drawback specialists may only have 1 day of lead time before a claim automatically liquidates.⁶⁶ According to drawback supervisors, such monitoring is significantly increasing their workload. Further, drawback specialists told us that one way they were managing their increased workload was by extending automatic liquidation, which can be done up to three times, as discussed in appendix II. This practice goes directly against CBP's guidance.⁶⁷ Moreover, if they continue this practice, specialists may be forced to liquidate claims at zero if they run out of extensions.

Further, as the workload continues to grow, Drawback Centers continue to face staffing shortages. As of October 26, 2019, CBP met the congressionally mandated staffing level for drawback specialists of 37 for the first time in over 5 years.⁶⁸ In CBP's 2017 Resource Optimization Model, it reported an optimal staffing level of 40 to meet its drawback staffing needs. CBP's staffing level of 37, as of October 2019, did not meet this target.⁶⁹ According to CBP officials, although Drawback Centers are utilizing overtime, the drawback specialists are not able to keep up with the influx of work.

⁶⁶CBP officials told us that programming logic for this function works differently in ACE than it did previously in ACS. For example, drawback specialists must run reports repeatedly to see updates about automatic liquidation throughout the day and week, instead of having notices issued with 10 days' lead time. As a result, drawback specialists may only receive notification about an entry being liquidated and set up for payment on Friday, sometime during the day on Thursday.

⁶⁷CBP's guidance states that liquidation extensions are intended to provide additional time to obtain information or documentation necessary to complete the review of a drawback claim prior to mandatory liquidation. CBP guidance also states that extensions may not be used to manage the workload.

⁶⁸In the Homeland Security Act of 2002, Congress required that CBP maintain the staffing levels for different trade positions, including drawback specialists. Pub. L. No. 107-296, § 412(b), 116 Stat. 2135, 2179.

⁶⁹According to CBP officials, CBP has authorization for 40 positions.

Table 3: Comparison of Mandated, Optimal, and Actual Staffing Levels for Drawback Specialists, Fiscal Years 2014-2019

Mandated trade position	Mandated staffing level	Optimal staffing level (2017- 2024)	Actual staffing level (as of the end of 2014-2018)					2019 (as of Oct. 26)
			2014	2015	2016	2017	2018	
Drawback specialist	37	40	35	33	36	35	34	37

Source: U.S. Customs and Border Protection (CBP). | GAO-20-182

Note: CBP determines the optimal staffing level.

CBP has not adequately managed its drawback workload because it did not anticipate the increase in workload and did not plan for the increase accordingly. Federal standards for internal control note that management should evaluate performance and hold individuals accountable for their internal control responsibilities, which include evaluating pressure on personnel to help personnel fulfill their assigned responsibilities in accordance with the entity’s standards of conduct. Management can adjust excessive pressures using many different tools, such as rebalancing workloads or increasing resource levels.⁷⁰ However, CBP has not brought staffing to its optimal level, and has not adjusted the workload in Drawback Centers through ACE to account for the increase in claims, rulings, and privilege applications. Prior to TFTEA, CBP officials explained that CBP could not control the workload of the Drawback Centers because claimants mailed their paper-based claims to the Drawback Center of their choice. Now, CBP has greater visibility and flexibility to potentially control the work flow to the Drawback Centers through ACE, but has not done so. CBP officials said they had anticipated that ACE automation would reduce drawback specialists’ workload, but experience, to date, indicates that workload increased.⁷¹ Until CBP develops a plan for managing its increased workload, it risks further delays in drawback claim processing that result in uncertainty for industry, potentially impeding trade—which runs counter to its strategic goal of enhancing U.S. competitiveness by enabling lawful trade and travel, such as by reducing barriers to the efficient flow of trade and streamlining and unifying processes and procedures.

⁷⁰GAO-14-704G, Principle 5.01.

⁷¹The RIA also discusses other costs to CBP associated with transitioning to electronic filing in ACE.

CBP Has Taken Steps to Address Certain Risks of Improper Payments in the Drawback Program under Modernization, but Has Not Addressed Others

CBP has taken steps to mitigate improper payment risks in the drawback program. Specifically, CBP expects three key changes to the drawback process under modernization will strengthen its ability to validate claims and recover inaccurately claimed drawback refunds: (1) requiring electronic filing in ACE, (2) extending the record retention period, and (3) broadening liability. However, CBP has not addressed several other risks for improper payments in the drawback program. These risks relate to (1) limitations in CBP's existing desk review process, (2) establishing electronic proof of export, and (3) targeting a selection of claims for review.

TFTEA Made Three Key Changes to the Drawback Process That CBP Expects to Strengthen Its Ability to Validate Claims and Recover Inaccurately Claimed Drawback Refunds

TFTEA contained provisions amending the drawback statute that CBP expects will help it to remediate certain internal control deficiencies over drawback claim processing. Prior independent audits identified significant or material internal control weaknesses related to CBP's processing of drawback claims, including that CBP's drawback system lacked effective automated controls to prevent the overpayment of drawback claims and that the record retention period was not appropriate to ensure that support for drawback claims was maintained for the length of the drawback claim lifecycle.⁷² CBP expects that three key changes to the drawback process under modernization will strengthen its ability to validate claims and recover inaccurately claimed drawback refunds, as follows.

- **Requiring the electronic filing of drawback claims.** On February 24, 2019, the drawback program fully transitioned to ACE. Specifically, all drawback claims are now required to be filed electronically in ACE⁷³ and include drawback entry summary data at the more detailed line item level. Line item reporting requires claimants to provide certain relevant information for the designated

⁷²U. S. Department of Homeland Security, Office of Inspector General, *Independent Auditors' Report on DHS' FY 2017 Financial Statements and Internal Control over Financial Reporting*, OIG-18-16 (Nov. 15, 2017); *Independent Auditors' Report on U.S. Customs and Border Protection's Fiscal Year 2016 Consolidated Financial Statements*, OIG-17-36 (Feb. 6, 2017); and *Independent Auditors' Report on DHS' FY 2015 Financial Statements and Internal Control over Financial Reporting*, OIG-16-06 (Nov. 13, 2015).

⁷³TFTEA required electronic filing and CBP designated ACE as the electronic system for filing claims. Pub. L. No. 114-125, § 906(j)(3) (codified as amended at 19 U.S.C. § 1313 r(4)).

imported merchandise on a drawback claim associated with the line item on an import entry summary, including the tariff classification, quantity, and value, as well as the duties, taxes, and fees assessed thereon.⁷⁴

With electronic filing and line item reporting, CBP can now automatically compare and verify the amounts of duties, taxes, and fees claimed on the drawback claim against the amounts paid on the import entry summary, which CBP expects will help ensure that it does not overpay funds.⁷⁵ CBP's prior system for filing drawback claims did not have the capability to electronically compare and verify claims against underlying import entries upon which the drawback claim was based to determine whether an excessive amount had been claimed at the individual line item level, according to prior independent audits.⁷⁶ CBP's transition to ACE is intended to mitigate risks of improper payments on drawback-related imports, by helping to ensure through automated validations that the amount paid for drawback claims against a given import entry does not exceed 99 percent of the duties, taxes, and fees collected at the individual line item level.

- **Extending the record retention period for certain drawback claims.** For all TFTEA drawback claims, supporting records must now be maintained for a period of 3 years from the date of liquidation of the claim, rather than 3 years from the date CBP pays a drawback claimant. This new time frame requires claimants with accelerated payment privileges to maintain supporting records for a longer period than before modernization. Prior to modernization, the drawback record retention period sometimes fell short of the time in which CBP liquidated a drawback claim, preventing CBP from substantiating a claim with complete documentation. The extension of the record retention period provides CBP with more time to request documents needed to verify claims during desk reviews, which in turn should strengthen its ability to recoup over claimed drawback refunds.

⁷⁴According to CBP officials, the import entry summary (CBP Form 7501) is a required document that must be filed with every entry of goods into the United States in order to properly report the cargo that has entered the United States and ensure that importers have paid related duties, taxes, and fees.

⁷⁵According to CBP officials, import specialists enter import entry summary information into ACE. Upon a drawback claim's acceptance, ACE validates the claim against the import entry summary.

⁷⁶OIG-18-16, OIG-17-36, and OIG-16-06.

According to CBP officials, if a claimant fails to provide documents as directed, or if the documents do not support the claim as presented, CBP can liquidate the claim at \$0, or other diminishment as appropriate, and ACE will then issue a bill for outstanding funds owed.

- **Broadening liability for drawback claims.** Following TFTEA, liability for the full amount of a drawback claim shifted from the claimant to both the claimant and the importer of the designated imported merchandise upon which drawback refunds are claimed. CBP expects that establishing joint and several liability, consistent with TFTEA, will help it to recoup over claimed drawback refunds by holding the importer of record, in addition to the claimant, responsible for payment of erroneous or false drawback claims. According to the industry representatives we spoke to, the impact of the joint and several liability change remains to be seen, but it could limit the incentive of importers to engage in drawback filing with exporters or claimants to avoid liability.

In addition to implementing these statutory changes, CBP has been working with a statistician to develop a more robust basis for sampling and selecting claims for review. For example, CBP has determined that it will target higher-value claims for more frequent review.

CBP Has Not Addressed Several Other Risks for Improper Payments in the Drawback Program

CBP lacks effective automated controls to prevent overpayment of drawback refunds related to export information. CBP guidance⁷⁷ notes that a statutory prohibition on multiple drawback claims is set forth in 19 U.S.C. § 1313(v), which restricts the use of merchandise that is exported or destroyed to a single claim for drawback.⁷⁸ Unlike import information, which is included in ACE to allow CBP to electronically compare and verify claims against underlying import entries, similar export information is not included in ACE. Therefore, CBP cannot perform electronic comparisons of export data within ACE to help ensure that it does not

⁷⁷U.S. Customs and Border Protection, *Drawback: Interim Guidance for Filing TFTEA Drawback Claims*, Version 3 (March 2018).

⁷⁸The provision also provides that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

make overpayments on drawback-related exports.⁷⁹ For example, if a claimant exported 10 widgets and filed one drawback claim for six exported widgets and another claim for five exported widgets, CBP would not be able to systematically verify that the second drawback claim was excessive and thus invalid. To compensate for the lack of automated controls, CBP designed an internal control for the drawback program that targets a selection of claims for a manual full desk review by drawback specialists. (See appendix II for an explanation of what such desk reviews involve). However, CBP has not addressed several other risks for improper payments in the drawback program. These risks relate to (1) limitations in CBP’s existing desk review process, (2) establishing electronic proof of export, and (3) targeting a selection of claims for review.

CBP’s Existing Desk Review Process Cannot Systematically Identify Duplicate or Excessive Claims for Drawback Related to Export Information

CBP’s existing manual desk review process does not have the ability to systematically confirm the validity of export documentation and confirm that export documentation is accurately being used across multiple claims. CBP officials noted that, while export documentation could be used across multiple claims, by law, claimants cannot file multiple drawback claims based on the same exported merchandise, as discussed above. Under TFTEA, a person claiming drawback refunds based on the exportation of an item must provide proof of export.⁸⁰ Such proof must establish fully the date and fact of exportation and the identity of the exporter and may be established through the use of records kept in the normal course of business or through an electronic export system, as determined by CBP. To comply with this requirement, CBP requires claimants to (1) provide summary data as part of the drawback claim in ACE that includes the date of export, name of exporter, description of the goods, quantity and unit of measure, tariff classification number, and country of ultimate destination; and (2) maintain actual proof of export, which can be records kept in the normal course of business, and provide such proof upon demand by CBP. However, CBP officials told us that claimants only provide proof of export upon request by the drawback

⁷⁹In its *Fiscal Year 2018 Agency Financial Report*, the Department of Homeland Security reported an estimated improper payment amount of \$355,000 for the “refund and drawback program” as part of the agency’s Improper Payments Elimination and Recovery Improvement Act testing of fiscal year 2017 payments. See U.S. Department of Homeland Security, *FY 2018 Agency Financial Report* (Nov. 14, 2018). We did not assess the department’s methodology for estimating its improper payments and thus cannot comment on its reliability.

⁸⁰19 U.S.C. § 1313(i).

specialist, and that such requests typically are made after the claim is accepted in ACE and only in the context of desk reviews. Drawback specialists do not routinely request, store, or compare export documentation except for claims selected for desk reviews. CBP has no way of tracking whether claimants are using their export information excessively, and, according to officials, CBP has not yet assessed the feasibility of doing so. CBP officials explained that having the ability to flag excessive export submissions across multiple claims would enhance CBP's protection against over claiming, but that further review is needed to determine whether flagging is feasible with current system capabilities. CBP officials said that they intend to look further into the matter in fiscal year 2020. As a result, the drawback program remains at risk of improper payments on drawback related to export information as claimants could over claim drawback refunds by using non-existent, insufficient, or falsified export documentation, or by reusing export documentation across multiple claims for merchandise that was never exported.

CBP Has Not Taken Steps to Establish Electronic Proof of Export

CBP has not taken any steps to establish electronic proof of export, although it has a longstanding goal to designate the Automated Export System as an electronic means of establishing proof of export. Federal standards for internal control call for agency management to design the entity's information system and related control activities to achieve objectives and respond to risks.⁸¹ However, CBP has not yet deemed the Automated Export System as a reliable system of record for proof of export.⁸² At the time the final rule was issued in December 2018, CBP commented that the Automated Export System, as it stands, could not provide sufficient proof of export, and CBP would therefore continue to require documentary proof of export until further notice. Specifically, CBP determined that the Automated Export System does not establish the date and fact of exportation, or the identity of the exporter—information that can be relied upon to demonstrate drawback eligibility. CBP officials in headquarters told us that while being able to develop a reliable system of record for proof of export remains a goal, CBP does not have a plan or time frames for doing so as it intends to revisit the matter in fiscal year 2020. CBP officials explained that their focus has been on transitioning

⁸¹ [GAO-14-704G](#), Principle 11.01.

⁸² CBP and the Department of Commerce initiated the Automated Export System in 1991. The Automated Export System is a computer system distinct from ACE that collects electronic export information. However, CBP determined that the Automated Export System is largely a pre-departure filing system and therefore does not necessarily provide proof of exportation.

the drawback program to ACE, including by training staff and addressing industry concerns. Until CBP implements effective control activities for the drawback program, the government may be subject to revenue loss through duplicate or excessive claims for drawback related to export information. We cannot precisely estimate the potential savings that might result from CBP taking steps to prevent over-claims because the current rate of improperly claiming against the same export documentation multiple times is unknown. Further, the current number and amount of drawback claims improperly using export information is unknown. However, if these steps reduced drawback-related costs by even 1 percent of the over \$1 billion in annual drawback refunds, this could equate to millions of dollars in savings.

CBP Has Not Targeted over 35,000 Claims for Review since It Disabled the Selection Feature, and the Number of Claims Not Targeted for Review Continues to Increase

CBP has not targeted a selection of claims for a manual full desk review since it disabled the selection feature in ACE, and the number of claims not targeted for review continues to increase because CBP has not turned the selection feature back on. The lack of review increases the risks of improper payments for claims filed, which stood at over 35,000 as of August 23, 2019, and represented an estimated \$2 billion. To mitigate risks of improper payments in the drawback program, CBP designed an internal control for the drawback program in which a selection of claims is targeted for a manual full desk review by drawback specialists. Prior to modernization, CBP officials told us that they would target 1 percent of the claims per claimant and 1 percent of the entries on a drawback claim for a full desk review. Drawback specialists provided examples of having conducted full desk reviews in which they discovered that the claimants had failed to substantiate the claim by, for example, providing insufficient proof of export. They explained that the claimants had to repay their drawback refund and had CBP target subsequent claims for a limited desk review. However, CBP officials explained that when CBP transitioned the drawback program to ACE starting on February 24, 2018, a system error forced CBP to disable the selection feature in ACE. Certain claims that have been submitted since the system error was discovered have not been targeted for a full desk review.

Federal standards for internal control call for agency management to identify, analyze, and respond to risks related to achieving the defined objectives.⁸³ These standards note that agency managers should comprehensively identify risks and analyze them for their possible effects,

⁸³GAO-14-704G, Principle 7.01.

as well as design responses to these risks as necessary to mitigate them. CBP officials told us that they are working toward turning the selection feature back on as soon as CBP can address the system error. However, CBP did not expect the issue to persist as long as it has to date (22 months, as of December 2019). As a result, even when the selection feature is reactivated, it will only be applied to new claims filed after that point. CBP does not have a plan to retroactively target claims for review that had already been accepted in ACE during the system error, or to identify and analyze risks from targeting to adjust targeting in the future. For example, CBP has not determined whether specific claimant characteristics or claim types are more frequently associated with compliance problems. CBP officials explained that analyzing risks from targeting to identify non-compliance patterns across claimants is not something CBP has done in the past because CBP is account based⁸⁴ and does not compare claims across claimants. However, CBP officials acknowledged the feasibility—with ACE’s new capabilities—of systematically pulling and analyzing non-compliance data input into ACE by the drawback specialists during limited or full desk reviews, and told us that they intend to explore this matter further in fiscal year 2020. These officials stated that taking these steps would be valuable for improving risk management in the drawback program and that doing so is likely to be feasible with current staff resources.

Without finalizing or implementing procedures to retroactively target claims for review and taking steps to analyze non-compliance patterns to improve future compliance processes, CBP may miss opportunities to protect U.S. trade revenue from improper payments of drawback claims. We cannot precisely estimate the potential savings that might result from CBP pursuing claims from the period when the selection feature was disabled, because the amount of drawback recovery resulting from the review of this universe is unknown, and the actual amount would depend on the number of reviews conducted, amount of improper payments discovered, and ability to recover these payments. However, if these reviews recovered even half of 1 percent of the \$2 billion in un-reviewed claims, this could equate to millions of dollars in additional recoveries.

⁸⁴According to CBP, the Drawback Centers assign workload to drawback specialists by account, based on an alphanumeric (A through Z and 1 through 9) standard. They assign specific letters, numbers, or both to each drawback specialist based on the company name filing the drawback claim.

CBP Has Not Produced a Reliable Assessment of the Economic Impact of the Changes to Drawback Refund Eligibility Because of Data Constraints and Other Factors

CBP Has Not Reliably Established the Economic Impact to Industry and Government through Its Prospective Estimate of the Impact of Drawback Refund Eligibility Changes

CBP published a required *Regulatory Impact Analysis of the Modernized Drawback Final Rule* (RIA) of new drawback regulations in 2018 to outline, prospectively, the anticipated consequences of this economically significant regulatory action.⁸⁵ The RIA was to include a quantification and monetization of anticipated benefits and costs, to the best extent possible with information available at the time. As of December 2019, CBP's RIA was the only formal analysis that had been conducted on the impact of changes to drawback eligibility under modernization on industry and government.

We assessed three key portions of the RIA relating to impact on industry and changes to drawback eligibility against GAO's standards for review of economic analysis, and found that CBP had not produced reliable estimates.⁸⁶ Various factors limited the analyses that CBP could conduct. For example, because the RIA was published prospectively, post-modernization program data were, necessarily, not yet available. According to CBP officials, CBP also developed the RIA before it had transitioned to ACE, a database with enhanced capabilities. However, in

⁸⁵U.S. Customs and Border Protection, *Regulatory Impact Analysis of the Modernized Drawback Final Rule*.

⁸⁶[GAO-18-151SP](#). We assessed only those portions of the RIA that most directly related to our scope of impact on industry and changes to drawback eligibility. The three tables we analyzed were "Industries Affected by Rule from Random Sample" (table 1), "Total Decrease in Substitution Unused Merchandise Drawback: Transfers from Trade Members to U.S. Government" (table 27), and "Total Increase in Substitution Drawback: Transfers from U.S. Government to Trade Members" (table 31). CBP officials confirmed that these three tables were the most relevant for our scope.

some cases, we found that CBP was not transparent about the level of uncertainty in its assumptions resulting from these limitations. We did not comprehensively assess the entire RIA (a 251-page document containing more than 90 tables) or assess any of it against the Office of Management and Budget's guidelines for an RIA.⁸⁷ Therefore, the following discussion of the RIA is not an assessment of whether the RIA met the criteria for required regulatory analyses outlined in the Office of Management and Budget Circular A-4.⁸⁸ Our assessment of each of the relevant portions of the RIA is based on GAO's standards for review of economic analysis, and outlined below.

Affected industries: CBP determined that a wide range of industries would be affected by modernization but did not determine whether the dollar impact of eligibility changes from modernization would be more concentrated in some industries than in others because of data limitations. To reach the conclusion that a wide range of industries would be affected by modernization, CBP took a sample of companies that had submitted drawback claims and examined these companies to determine their primary industry.⁸⁹ According to GAO standards, an economic analysis should state its objective and the scope of the analysis should be designed to address this objective.⁹⁰ According to CBP officials, CBP designed this sample to support statements about the number of companies affected but not the dollar size of the impact, although CBP did not explicitly state the intent of this design in the RIA. At the time of the RIA, according to these officials, designing a dollar-weighted sample—which could support statements about which industries were most affected in terms of financial costs and benefits—would have

⁸⁷OMB reviewed the drawback modernization RIA prior to its publication. Portions of the RIA that we did not assess include, for example, the impact of electronic filing, standardizing the time frame for eligibility to claim drawback, and eliminating “double drawback” of excise taxes.

⁸⁸Office of Management and Budget Circular No. A-4 (Washington, D.C.: Sept. 17, 2003).

⁸⁹Specifically, the analysis sampled 375 unique drawback claimants filing between 2007 and 2016 out of a total population of 9,017 unique drawback claimants. According to CBP officials, this sample was designed to be generalizable and the size was intended to ensure a margin of error of less than 5 percent with 95 percent confidence. CBP used claimant ID from a CBP database in conjunction with a crosswalk to public and proprietary industry databases. Through this process, CBP gathered information on entity type, primary line of business, size, revenue, and other information from these databases.

⁹⁰[GAO-18-151SP](#).

required a prohibitive amount of work with paper records.⁹¹ However, the officials noted that a dollar-weighted sample should now be feasible because most of the necessary information is now stored electronically in ACE.

Expansion of substitution eligibility: CBP estimated that the expansion of substitution eligibility would account for \$1 billion (98 percent) of the \$1.02 billion estimated total 10-year amount of increased drawback refunds under modernization; however, we found that this estimate was not reliable because of the amount of uncertainty in key assumptions. According to GAO standards, an economic analysis should consider all relevant alternatives and describe and justify the analytical choices, assumptions, and data used.⁹² CBP's estimate was based on assumptions about changes to the dollar amount per drawback claim and number of drawback claims as a result of modernization and system limitations in the number of lines per claim. Specifically, CBP assumed that claim values would remain equal to their historical average (adjusted for line limitations in ACE) and that the number of claims under modernization would grow primarily in the first year after modernization.

However, CBP did not justify some key methodological assumptions about the amount and number of claims and did not take sufficient steps to inform on the extent to which the conclusions of the analysis would remain similar, even if it changed some of these assumptions. CBP estimated the dollar amount per claim based on a historical average of drawback claim amounts but did not explain in the RIA why the historical average is an appropriate assumption for drawback claim amount. CBP officials told us that they considered a range of different drawback claim amount values and growth rates as a result of significant annual variation in drawback claim amounts prior to TFTEA. However, CBP did not include variation in claim dollar amounts in its published sensitivity analyses for this table or otherwise discuss, within the scope of these analyses, whether its conclusions would have been affected by this variation in the assumed amount per claim.

⁹¹ CBP explained that limitations in ACS would have necessitated manual review of nearly 122,000 claims that were not fully electronic. This process would have been "cumbersome," in particular, because manual review would have been required to determine which portion of a given claim related to a given drawback type.

⁹² [GAO-18-151SP](#).

Additionally, CBP's estimate of expected increase in the number of claims that would be filed under modernization contains several key assumptions that it justifies based on emails and discussions with industry representatives and CBP subject matter experts, the details of which are not transparent in the RIA.⁹³ We reviewed these emails and found that the two industry representatives whom CBP cited expressed uncertainty about the effects of modernization and provided estimates of growth in substitution drawback claims that varied by 20 percentage points from one another. CBP also sought public comments on these estimates and did not receive any, according to officials. As the estimated effect of this change constitutes nearly all of the estimated increase in drawback refunds in the RIA, the uncertainty around key assumptions for this analysis means that the overall actual effects of modernization could differ widely from CBP's estimate.

Limitations on basket provisions: CBP estimated that eliminating claims with basket provisions would cost industry about \$11 million over 10 years; however, we found that this estimate was not reliable because of the amount of uncertainty in key assumptions. According to GAO standards, an economic analysis should consider all relevant alternatives and describe and justify the analytical choices, assumptions, and data used. These standards further note that, when feasible, an economic analysis should adequately quantify how the statistical variability of the key data elements underlying the estimates of the economic analysis impacts these estimates.⁹⁴ While CBP's general methodology was reasonable, its sample design was too small to ensure reliable results and some assumptions were not fully explained or transparent. CBP sampled 50 out of 2,346 substitution unused merchandise claims from 2016, of which 16 contained lines classified under basket provisions in the HTS code, and used this sample to estimate the number of affected claims and lines, as well as average affected line value. CBP officials told us that CBP selected this sample size because of the labor-intensive process required to examine paper records from the relevant claims. However, in the RIA, CBP did not discuss how this small sample size caused

⁹³CBP assumes that the number of substitution drawback claims will grow at a rate of 25 percent in the first year, instead of 1 percent without modernization; and that all other drawback claims will grow at a rate of 5 percent in the first year, instead of 1 percent without modernization.

⁹⁴[GAO-18-151SP](#).

imprecision in its estimates.⁹⁵ Further, CBP did not establish that this time-limited sample was generalizable beyond 2016, either for the proportion of affected claims and lines or for the average affected line value. CBP officials said that, to alleviate these issues, CBP sought public comments on these estimates and did not receive any. According to CBP officials, at the time of their analysis, there was no evidence about the average dollar amount of future claims. However, CBP did not conduct a sensitivity analysis on these assumptions, for example, to determine how much its estimates would change if the number or dollar amount of claims utilizing basket provisions was larger or smaller than CBP had assumed.

TFTEA Has Enhanced Data and System Capabilities for Economic Analysis of Changes to Drawback Eligibility, but CBP Has No Plans to Conduct Further Analysis in the Near Future

Beyond its RIA, CBP has not conducted economic impact analysis of the changes to drawback eligibility under modernization, including on industry, and does not have plans to do so in the near future. Because the changes are new and CBP has devoted many of its resources to rolling out modernization, CBP stated that, while it intends to follow relevant requirements for regulatory review, it has not yet prioritized developing a plan for further assessments of the economic impact of the regulation. CBP officials stated that any future plans for retrospective review would follow Treasury guidance.⁹⁶ This guidance states that priorities for retrospective review projects of existing significant regulations should be based upon an understanding of the economic impact of the regulatory action on industry and the government, among other factors. According to the RIA, the drawback modernization regulations are an “economically significant regulatory action.” The Treasury guidance states that such an understanding can be achieved through an *ex post* analysis of the effects of the regulation on the public, industry, or the government, including increased revenue or costs.⁹⁷

An *ex post* analysis of impact on industry and the impact of major changes to drawback eligibility would have fewer limitations than the RIA,

⁹⁵For example, CBP used its sample of 50 claims to estimate that 32 percent of claims have lines utilizing basket provisions. Given a large population size and a population average of an estimated 32 percent, CBP’s sample of 50 claims would have a confidence interval of about + or - 13 percentage points—that is, the true value would lie between 19 percent and 45 percent, with 95 percent confidence.

⁹⁶U.S. Department of the Treasury, *Plan for Retrospective Analysis of Existing Rules* (Washington, D.C.: Aug. 22, 2011).

⁹⁷We use the term *ex post* analysis to mean a review of certain aspects of an existing rule after it has gone into effect.

which analyzed the changes prospectively (using historical data to predict future outcomes). For example, because of system updates, more detailed data about lines within claims are now stored electronically, which may reduce the need to conduct sampling in order to estimate the impact of changes. Additionally, because the regulation is now in effect, information such as the number of claims filed can be determined with actual data rather than by projection. According to CBP officials, within 3 to 5 years the agency will have sufficient data to conduct a reliable *ex post* analysis of the impact of the changes. Useful analysis might be possible sooner, as well. CBP assumed in the RIA that some of the most important effects of modernization would occur in the first year. According to GAO standards, the reliability of an *ex post* analysis will depend not only on the sufficiency of data, but also on whether the analysis has considered and properly dealt with elements such as objective and scope, methodology, analysis of effects, transparency, and documentation.⁹⁸

At present, however, CBP has not prioritized developing a plan with time frames to conduct such an analysis when the data are available—a plan that could include identifying key areas of analysis, data sources, and appropriate methodologies. Without an *ex post* analysis, CBP cannot reliably determine the financial effects of changes to drawback refund eligibility on industry and the government.

Conclusions

CBP disburses about \$1 billion in drawback refunds per year and expects the amount of drawback refunds dispersed to continue growing. According to CBP, TFTEA modernized CBP's system for processing drawback claims, transitioning it from a paper-based to an electronic system, in an attempt to mitigate longstanding risks in the program.

Despite the expected increase in drawback claims, CBP did not anticipate and then adequately manage the increase in drawback specialists' workload. As a result, CBP has delayed timely processing of some drawback claims, rulings, and privilege applications, which has resulted in uncertainty for industry—potentially impeding trade.

Since modernization, drawback claims continue to be at risk of improper payments with vulnerabilities in CBP's export verification and quality control system. While drawback modernization addressed longstanding

⁹⁸[GAO-18-151SP](#).

risks associated with the program by automatically verifying import information, export information still creates a risk. CBP cannot systematically verify the validity and accuracy of a company's proof of export. As a result, companies could still over claim drawback refunds by using non-existent, insufficient, or falsified export documentation, or by reusing export documentation across multiple claims.

Additionally, while CBP established internal controls to mitigate improper payment risks in the program, such as by targeting a selection of claims for review, it disabled this quality control measure for claims submitted since drawback modernization began in February 2018. Over 35,000 claims accepted since drawback modernization—amounting to over \$2 billion—remain at risk for noncompliance. Without CBP finalizing and implementing procedures to target claims retroactively and in the future, CBP will continue to miss opportunities to protect U.S. trade revenue. Further, if CBP does not design its targeting system to mitigate identified risks, future claims also are at risk of noncompliance.

Prior to drawback modernization, CBP was not able to produce a reliable assessment of the economic impact of the changes to the drawback program on industry and government because of data availability constraints, systems limitations, and other factors. However, modernization has eliminated some of these constraints, and CBP estimates that within several years it will have sufficient data to conduct an *ex post* analysis. However, CBP has not prioritized developing a plan to do so. Without such an analysis, CBP cannot be certain about the economic impact of drawback modernization.

Recommendations

We are making a total of six recommendations to CBP. Specifically:

The Commissioner of CBP should ensure that the Office of Field Operations, in consultation with the Office of Trade, develops a plan for managing its increased workload. (Recommendation 1)

The Commissioner of CBP should ensure that the Office of Trade assesses the feasibility of flagging excessive export submissions across multiple claims and takes cost-effective steps, based on the assessment, to prevent over claiming. (Recommendation 2)

The Commissioner of CBP should ensure that the Office of Trade develops a plan, with time frames, to establish a reliable system of record for proof of export. (Recommendation 3)

The Commissioner of CBP should ensure that the Office of Trade turns the claim selection feature in ACE back on and finalizes and implements procedures to target claims for review that were accepted into ACE during the period in which the selection feature was disabled. (Recommendation 4)

The Commissioner of CBP should ensure that the Office of Trade analyzes the results of its targeting of claims for review and designs responses to mitigate identified risks. (Recommendation 5)

The Commissioner of CBP should ensure that the Office of Trade prioritizes developing a plan to conduct an *ex post* analysis of the impact on industry and government of key changes to the drawback program, including time frames and methodology. (Recommendation 6)

Agency Comments

We provided a draft of this report to CBP and Treasury for comment. In its comments, reproduced in appendix III, CBP concurred with all six of our recommendations. CBP also provided technical comments, which we incorporated as appropriate. We requested comments from Treasury, but none were provided.

We are sending copies of this report to the appropriate congressional committees, the Commissioner of CBP, and the Secretary of Treasury. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Kimberly M. Gianopoulos
Director, International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

This report examines (1) the extent to which modernization affects drawback refund eligibility and U.S. Customs and Border Protection's (CBP) management of its workload, as well as the extent to which CBP has (2) taken steps to address risks of improper payments in the program and (3) analyzed the impact of the changes to the program on industry and government.¹

To examine the extent to which modernization affects drawback refund eligibility and CBP's management of its workload, we reviewed statutory, regulatory, and agency drawback documents to identify and describe expansions and limitations to drawback refund eligibility. Specifically, we reviewed the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA),² the *Modernized Drawback Notice of Proposed Rulemaking*,³ and the *Modernized Drawback Final Rule*⁴ to identify key changes resulting from amendments made to the drawback statute⁵ and implementing regulations.⁶ We also reviewed CBP's internal guidance, which defines the standards that drawback specialists must meet when processing claims for drawback refunds in the Automated Commercial Environment (ACE) and under TFTEA. To understand the regulations and policies for drawback modernization, we interviewed CBP officials with the Offices of Regulations and Rulings and Trade Policy and Programs within the Office of Trade. To gain insight into how drawback modernization is working, in practice, we interviewed CBP officials from the Office of Field Operations and the four Drawback Centers. We visited the largest Drawback Centers, located in Newark, New Jersey, and San Francisco, California, to observe how they manage their workload and process claims. As context for CBP's increasing workload following drawback modernization, we also collected data on the following:

- The number of drawback claims filed in calendar years 2018 and 2019, as of August 21, 2019. We also compared these data against

¹Drawback modernization refers to the drawback program post TFTEA and associated implementing regulations.

²Pub. L. No. 114-125, § 906, 130 Stat. 124, 226-234 (Feb. 24, 2016).

³83 Fed. Reg. 37,886 (Aug. 2, 2018).

⁴83 Fed. Reg. 64,942 (Dec. 18, 2018).

⁵19 U.S.C. § 1313.

⁶19 C.F.R. part 190.

the historical number of drawback claims filed from 2009 through 2017, as reported by CBP in its *Regulatory Impact Analysis of the Modernized Drawback Final Rule* (RIA).⁷ In addition, we reported on the amount of drawback claimed during this period as context for the size of the drawback program. TFTEA (1) provided for a transition period, from February 24, 2018 to February 23, 2019, during which drawback claimants could file under either the amended provisions or the drawback law as it existed previously; and (2) thereafter required all claims to be filed under TFTEA starting on February 24, 2019. As such, claims filed between 2009 and 2017 reflect pre-TFTEA drawback claims. Claims filed in 2018 and 2019 reflect drawback claims filed under both the amended provisions and the drawback law as it existed previously.

- The number and value of claims migrated to ACE from the Automated Commercial System—CBP’s prior system for filing drawback claims—as well as the number and value of these claims liquidated in the first 9 months of 2019.
- The number of limited modifications to existing manufacturing rulings submitted between February 24, 2018 and February 23, 2019. Claimants who wanted to operate under an existing manufacturing ruling were required to file a supplemental application for a limited modification to the existing ruling by February 23, 2019.
- The number of new manufacturing rulings submitted between February 24, 2019 and July 22, 2019. Claimants who want to operate under a manufacturing ruling but did not apply for a limited modification by February 23, 2019, need to apply for a new manufacturing ruling.
- The number of privilege applications submitted between February 24, 2018 and July 22, 2019. Claimants can apply for and obtain drawback privileges for accelerated payment and waiver of prior notice.

We incorporated data reliability questions in our interviews with agency officials, such as how the data are derived, maintained, and updated, and how CBP ensures their completeness and accuracy. Based on our interviews with agency officials, we found these data to be sufficiently reliable for providing context for CBP’s growing workload since modernization. We then discussed steps that CBP had taken to manage

⁷U.S. Customs and Border Protection, *Regulatory Impact Analysis of the Modernized Drawback Final Rule*.

its workload, such as how it had updated its staffing models, managed processing privilege applications, and managed automatic liquidation. We assessed CBP's responses against federal standards for internal control, which call for agency management to evaluate pressure on personnel to help personnel fulfill their assigned responsibilities in accordance with the entity's standards for conduct.⁸

We reviewed staffing data covering fiscal years 2014 through 2019 for drawback specialists. We previously reported on staffing data from fiscal years 2014 through 2016.⁹ We incorporated data reliability questions in our interviews with agency officials for the fiscal years 2017 through 2019 staffing data. To determine staffing shortfalls, we compared actual staffing data against the minimum staffing level mandated by the Homeland Security Act and the optimal staffing level identified in CBP's Resource Optimization Model for 2017.¹⁰ We determined these data to be sufficiently reliable for the purposes of comparing actual to optimal and mandated staffing levels.

In addition, to understand how CBP is implementing the changes to the drawback program under modernization and the impact of the changes to the program, we interviewed a non-generalizable sample of 15 industry representatives from a variety of sectors who (a) had submitted public comments on the proposed rule, (b) were part of CBP's Trade Support Network Drawback Subcommittee, or (c) met our criteria for both (a) and (b). According to CBP officials, this subcommittee was CBP's primary forum through which officials obtained input on the modernized drawback regulations from industry. We developed a standard set of questions to ask industry representatives, for example, regarding their company's involvement in the drawback program, how drawback modernization has impacted their company, what industries have been most impacted by the changes, and any unexpected or unintended results of the modernization.

⁸[GAO-14-704G](#), Principle 5.01.

⁹GAO, *Customs and Border Protection: Improved Planning Needed to Strengthen Trade Enforcement*, [GAO-17-618](#) (Washington, D.C.: June 12, 2017). CBP's 2015 Resource Optimization Model reflected the optimal staffing level ranges estimated for fiscal years 2015 to 2022 and actual staffing levels as of October 4, 2014. CBP is required to submit a resource allocation model report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives every 2 fiscal years. GAO did not independently assess and validate the optimal staffing models' ranges.

¹⁰U.S. Customs and Border Protection, *Resource Optimization Model for 2017: Fiscal Year 2017 Report to Congress*.

To examine the extent to which CBP has taken steps to address risks of improper payments in the program, we reviewed prior independent audits of the program, as well as statutory, regulatory, and agency documents delineating changes to the program, to understand how the changes are expected to remediate prior audit findings. These documents included TFTEA, as well as CBP's proposed and final rules for modernized drawback, the RIA, and internal and external guidance for filing and processing drawback claims. We also interviewed agency officials in headquarters and in the field to discuss prior audit findings and the successes and challenges, if any, to drawback modernization addressing identified issues. We then assessed steps that CBP had taken to mitigate improper payment risks in the drawback program against federal standards for internal control, which call for agency management to identify, analyze, and respond to risks related to achieving the defined objectives.¹¹ We collected data on the number of claims filed between February 24, 2018 and August 23, 2019, and the total amount claimed, that were not targeted for a full desk review. Based on our interviews with agency officials, we found the data to be sufficiently reliable for the purposes of reporting on the total number and value of claims that were not targeted for a full desk review during this period.

To examine the extent to which CBP has analyzed the impact of the changes to the program on industry and government, we evaluated CBP's RIA against GAO's standards for review of economic analysis.¹² We assessed those portions of the RIA that relate directly to the financial impact of changes to drawback eligibility, corresponding to three tables describing (1) affected industries, (2) expansion of substitution eligibility, and (3) limitation of basket provisions. We then compared our assessments against applicable Department of the Treasury standards to determine if a future assessment could overcome the prior data limitations, warranting a limited review of certain aspects of an existing rule. However, we did not comprehensively assess the RIA (a 251-page document containing more than 90 tables) or assess it against the Office of Management and Budget's standards for regulatory impact analysis. Therefore, our discussion of the RIA is not an assessment of whether the

¹¹[GAO-14-704G](#), Principle 7.01.

¹²[GAO-18-151SP](#).

RIA met the criteria for required regulatory analyses outlined in the Office of Management and Budget Circular A-4.¹³

We conducted this performance audit from February 2018 to December 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹³Office of Management and Budget, *Regulatory Analysis*, OMB Circular A-4 (Washington, D.C.: Sept. 17, 2003).

Appendix II: Steps for Filing and Processing Drawback Claims

Drawback claim filing and processing generally follows three steps. Claims are (1) submitted for initial acceptance or rejection, (2) reviewed for drawback eligibility as applicable, and (3) liquidated with full, partial, or no payment. U.S. Customs and Border Protection (CBP) officials indicated that while the transition from the Automated Commercial System (ACS) to the Automated Commercial Environment (ACE) under drawback modernization has automated the initial intake of drawback claims, the review of claims to determine drawback eligibility, as presented, remains largely a manual process.

1. **Claim submission.** Prior to modernization, claimants had to file paper claims, including supporting documentation. CBP was required to accept or reject claims and authorize accelerated payment within 90 days of receiving the paper claim. However, claimants could also submit an electronic summary of the claim, known as a shell record, through ACS. For accelerated payment claims with a shell record, CBP was required to certify the approved claim for payment within 21 days of receiving the electronic summary of the claim.

Under modernization, claims must be filed electronically. The drawback claim is transmitted electronically via ACE and supporting documentation, when required, is uploaded via the Document Image System component of ACE.¹ CBP officials explained that the transition to ACE had automated the initial intake process of drawback claims. Instead of a drawback specialist having to manually validate the claim for completeness and mail a response back to the claimant, ACE is able to make that determination within seconds and provide immediate feedback to the claimant on whether the claim is accepted or, if rejected, what errors need to be addressed.

2. **Claim review.** CBP policy before and after modernization has been to require a full or limited desk review of selected claims, according to CBP officials. Claims necessitating a drawback specialist's full desk review will undergo a more comprehensive verification of the complete drawback claim that often requires additional information from the claimant. If additional information is required to process the drawback claim, CBP will send a formal request for information to the claimant. Additionally, CBP officials said that before and after modernization, if CBP identified compliance issues during its review of a drawback claim, the drawback specialist could target any

¹If a Document Image System upload is required, CBP will issue a request for additional information directing the claimant to upload the requested information into the Document Image System within the period allotted in the request.

subsequent claims filed by the claimant for a limited desk review. According to CBP officials, the time it takes a drawback specialist to conduct a desk review varies by claim, based on the nature of the claim and the experience of the drawback specialist. CBP reported that it could take more than 3 years for CBP to conduct a full desk review and determine the final disposition of a drawback claim.²

3. **Claim liquidation and payment.** Prior to modernization, CBP would manually verify that drawback claimants had the accelerated payment privilege on file. CBP stated that claimants with the privilege of accelerated payment of drawback generally received their refunds 14 days after CBP accepted claims and authorized accelerated payment. Now, under drawback modernization, a claimant can receive accelerated payment without a drawback specialist's involvement. ACE is programmed to automatically make accelerated payment on claims that have on file the accelerated payment privilege and a drawback bond that equals or exceeds the amount of the claim(s). CBP stated that claimants with the privilege of accelerated payment generally receive their refunds within 21 days of claim acceptance.

Before and after modernization, drawback claims are set to automatically liquidate if all the designated import entries within a claim are liquidated and final within 1 year of the claim date, according to CBP officials. CBP officials said that drawback specialists must extend the claim to prevent it from automatically liquidating before the necessary reviews have been completed. Drawback claims can be extended for three 1-year periods. CBP officials explained that liquidation extensions are intended to provide additional time to obtain information or documentation necessary to complete the review of a drawback claim. If the claimant fails to provide documents as directed, or if the documents do not support the claim as presented, the claim will be liquidated based on the information on file, which may result in liquidation at \$0, or other diminishment, as appropriate.

CBP officials described the liquidation and payment of drawback claims with and without accelerated payment privileges, as follows. At the time of liquidation, for claims with accelerated payment privileges, ACE issues an additional refund if the final claimed amount is greater than the accelerated payment amount, or a bill, if the accelerated payment amount is greater than the final claimed amount. If the accelerated payment amount is the same as the amount determined

²According to CBP officials, drawback specialists try to complete their reviews of claims within 1 year but may be restricted in doing so if a claim is not ready for final liquidation.

at liquidation, no further action is necessary. For claims without accelerated payment privileges, ACE will issue a refund for the drawback amount approved at liquidation. Claimants have 30 days from the issuance of a bill to repay CBP any amount due. Claims may be reliquidated up to 90 days from the date of an original liquidation.

Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 4, 2019

Kimberly M. Gianopoulos
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-20-182, "CUSTOMS AND BORDER PROTECTION: Risk Management for Tariff Refunds Should be Improved"

Dear Ms. Gianopoulos:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's recognition of the complexity of the drawback program and the importance of ensuring accurate claims processing. The Customs and Border Protection (CBP) Offices of Trade, Field Operations, and Finance collaborate to fulfill this critically important and complicated function.

Pursuant to Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114-125), CBP completed the transition of all drawback processing from the filing of paper and manual drawback claims to mandatory electronic submissions within the Automated Commercial Environment (ACE) in February 2019. CBP updated internal and external policy guidance and engaged in proactive communications with the trade community to promote understanding of the drawback program modifications. CBP's automation and other implementation efforts significantly enhanced its ability to safeguard the revenue of the United States. CBP remains committed to enhancing the drawback program's processes and procedures in the areas of continued technical enhancements, updated policy guidance, and post review analysis.

The draft report contained six recommendations with which the Department concurs. Attached please find our detailed response to each recommendation. DHS previously submitted technical comments under a separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,



For

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendations
Contained in GAO-20-182**

GAO recommended that the Commissioner of CBP:

Recommendation 1: Ensure that the Office of Field Operations develops a plan for managing its increased workload.

Response: Concur. CBP's Office of Field Operations developed an operational foundation to ensure that the drawback claim workload is appropriately managed through an enhanced organizational structure and the application of risk management at the account level. The February 2019 deployment of drawback claims in the ACE system allows the development of enhanced reporting capabilities that provide full visibility into the workload and the centralization of a claimant's activities while also automating the risk segmentation process. The new ACE drawback module provides the capability to extract data for workload management, and further enhanced reporting capabilities for drawback claims are under development. Estimated Completion Date (ECD): October 31, 2020.

Recommendation 2: Ensure that the Office of Trade assesses the feasibility of flagging excessive export submissions across multiple claims and takes cost-effective steps, based on the assessment, to prevent over claiming.

Response: Concur. CBP's Office of Trade is conducting an assessment exploring alternatives to track duplicate exports across multiple drawback claims. Once complete, CBP will develop a plan to implement the necessary technical and policy updates. ECD: June 30, 2020.

Recommendation 3: Ensure that the Office of Trade develops a plan, with time frames, to establish a reliable system of record for proof of export.

Response: Concur. The implementation of modernized drawback regulations enabled CBP to assess the reliability of the Automated Export System (AES), and, if so, designate AES as an electronic means of establishing proof of export. However, AES is not sufficient alone, as the system cannot substantially support proof of export for drawback claims in its current state. CBP's Office of Trade will work to develop a plan for the use of AES (and possibly other systems) for electronic proof of export in the future. ECD: September 30, 2020.

Recommendation 4: Ensure that the Office of Trade turns the claim selection feature in ACE back on and finalizes and implements procedures to target claims for review that were accepted into ACE during the period in which the selection feature was disabled.

Response: Concur. The claim selection feature in ACE is used in conjunction with other methods to review drawback claims. These methods were in place prior to, and during, the lapse period. CBP's Office of Trade plans to turn the drawback claim selection feature back on, and retroactively assess the claims accepted during the lapse period, as appropriate. ECD: February 29, 2020.

Recommendation 5: Ensure that the Office of Trade analyzes the results of its targeting of claims for review and designs responses to mitigate identified risks.

Response: Concur. The additional data captured as a result of the implementation of the TFTEA and the deployment of drawback claims in ACE increased targeting proficiency of claims for review. CBP's Office of Trade is working to implement technical enhancements in its current automated systems to enhance the targeting approach using the additional data elements. ECD: June 30, 2020.

Recommendation 6: Ensure that the Office of Trade prioritizes developing a plan to conduct an ex post analysis of the impact on industry and government of key changes to the drawback program, including time frames and methodology.

Response: Concur. CBP's Office of Trade will prioritize the development of a plan to conduct an ex post analysis of the impact on industry and government of key changes to the drawback program. As noted in the technical comments, the ex-ante analysis required prior to the implementation of the modernized drawback regulations changing the drawback program was a good estimate of the effects of the rule, but it did not have the benefit of hindsight that informs ex post analyses. The most useful ex post analysis will take place once there is sufficient historical drawback data available to analyze the effects of the recent regulatory provisions against the baseline. CBP's analytical plan, which we aim to complete by the end of next year, will include a preliminary timeline for the analysis based on when sufficient quality data will likely be available. The plan will also include a general methodology for assessing changes to the Drawback Program from an ex post perspective based partly on stakeholder outreach. ECD: November 30, 2020.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Kimberly M. Gianopoulos, (202) 512-8612 or gianopoulosk@gao.gov

Staff Acknowledgments

In addition to the contact named above, Kim Frankena (Assistant Director), Alana Miller (Analyst-in-Charge), Andrew Kurtzman, and Esther Toledo made key contributions to this report. The team benefited from the expert advice and assistance of Debbie Chung, Martin De Alteriis, Jeff Isaacs, Christopher Keblitis, Grace Lui, and Oliver Richard.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through our website. Each weekday afternoon, GAO posts on its [website](#) newly released reports, testimony, and correspondence. You can also [subscribe](#) to GAO's email updates to receive notification of newly posted products.

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <https://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).
Subscribe to our [RSS Feeds](#) or [Email Updates](#). Listen to our [Podcasts](#).
Visit GAO on the web at <https://www.gao.gov>.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact FraudNet:

Website: <https://www.gao.gov/fraudnet/fraudnet.htm>

Automated answering system: (800) 424-5454 or (202) 512-7700

Congressional Relations

Orice Williams Brown, Managing Director, WilliamsO@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707 U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548

