



Antidumping and Countervailing Duty Collection of Outstanding Claims

November 24, 2014

Fiscal Year 2014 Report to Congress



Homeland
Security

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

November 24, 2014

I am pleased to submit the following report, “Antidumping and Countervailing Duty Collection of Outstanding Claims,” as prepared by U.S. Customs and Border Protection (CBP).

This report was compiled pursuant to legislative language set forth in Senate Report 113-77, which accompanies the *Fiscal Year (FY) 2014 Department of Homeland Security (DHS) (P.L. 113-76)*.

It provides a detailed account of the current outstanding antidumping and countervailing duty (AD/CVD) claims, including the number of claims, the value of each claim, the stage of collection for each claim, and the date on which the claim was referred for further action to either the CBP Office of Chief Counsel or the U.S. Department of Justice.



Pursuant to congressional requirements, this report is being provided to the public.

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001 or the Department’s Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. McAleenan', with a long horizontal line extending to the right.

Kevin K. McAleenan
Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

CBP has a statutory responsibility to collect all revenue due to the U.S. Government that arises from the importation of goods. In FY 2013, companies imported approximately \$2.38 trillion in goods and deposited approximately \$40.8 billion in duties, taxes, and fees in the treasury. Of the \$2.38 trillion in goods imported in FY 2013, approximately \$8.5 billion, or 0.3 percent, was subject to an AD/CVD order. Importers deposited approximately \$449.8 million in AD/CVD, which represents 1.1 percent of the \$40.8 billion in total duties, taxes, and fees.

The vast majority of manufacturers, exporters, importers, customs brokers, and other parties involved in shipments of goods subject to AD/CVD orders accurately provide their shipment information to CBP and lawfully pay the duties due.

AD/CVD enforcement is a Priority Trade Issue (PTI) for CBP and we are committed to ensuring the AD/CVD laws are enforced. CBP remains committed to the collection of all lawfully owed duties, taxes, and fees, including AD/CVD. CBP will continue to rely on cooperative partnerships both inside and outside of the agency to ensure that AD/CVD duties are collected successfully.

This report provides information about the outstanding AD/CVD claims currently due to the U.S. Government. The details provided in this report will allow for a greater understanding of these debts, the efforts undertaken by CBP to collect these monies, and the challenges that hinder collection. Despite these challenges, CBP actively pursues collection of all unpaid AD/CVD claims against delinquent importers and sureties.



Antidumping and Countervailing Duty Collection Outstanding Claims

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I. Legislative Language

This report is presented in accordance with Senate Report 113-77, which accompanies the *FY 2014 DHS Appropriations Act* (P.L. 113-76).

Senate Report 113-77 states:

CBP is directed to report to the Committee on collection of the outstanding \$1,000,000,000 in AD/CVD duties, including the number of claims, the value of each claim, the stage of collection for each claim and the date on which the claim was referred for further action to either the CBP Chief Counsel or Department of Justice. This report shall be submitted to the Committee not later than 180 days after the date of enactment of this act. This report will include the steps that have been taken to recover funds and will also include the challenges that prevent collection. CBP shall publish on its Web site a version of this report that provides appropriate privacy and trade sensitivity protections.

II. Background

CBP has a statutory responsibility to collect all revenue under the tariff laws of the United States. CBP plays a ministerial role in the U.S. Government's efforts to level the playing field for U.S. companies injured by unfair trade practices, including merchandise that is sold at less than fair value in the United States or where a foreign country subsidizes its exports. The vast majority of manufacturers, exporters, importers, customs brokers, and other parties involved in shipments of goods subject to AD/CVD orders accurately provide their shipment information to CBP and lawfully pay the duties due. CBP's goal in all areas of trade enforcement, including AD/CVD enforcement, is to identify the small minority of non-compliant shipments amid the universe of compliant shipments.

CBP has specifically designated AD/CVD enforcement as a PTI. PTIs are high-risk areas that can cause significant revenue loss, hurt the U.S. economy, or threaten the health and safety of the American people. The AD/CVD trade program was elevated to PTI status within CBP in FY 2003 to ensure that a concerted, systematic approach was implemented to facilitate legitimate trade, detect and deter circumvention of the AD/CVD laws, and liquidate transactions in a timely and accurate manner. CBP is committed to ensuring that AD/CVD laws are vigorously enforced, and takes an agency-wide approach to AD/CVD enforcement.

The laws governing AD/CVD collections are provided for in Title VII, Sections 701–783 of the *Tariff Act of 1930*, as amended, and updated in 1994 by the *Uruguay Round Agreements Act* (P.L. 103-465). These provisions are codified as Chapter IV of Title 19 of the United States Code (U.S.C.), sections 1671–1677n (19 U.S.C. §§ 1671-1677n). The AD/CVD provisions are also governed by the *North American Free Trade Agreement Implementation Act* (P.L. 103-182), which amended Title 19 concerning trade between Mexico, Canada, and the United States. The U.S. Department of Commerce's (Commerce) regulations governing how to implement the AD/CVD provisions of the U.S. Code are laid out in Title 19, Part 351 of the Code of Federal Regulations (19 CFR Part 351). CBP's regulations concerning AD/CVD provisions are laid out in 19 CFR §§ 159.41 and 159.47, which state that AD/CVD shall be assessed according to Commerce's regulations.

Commerce is responsible for conducting AD/CVD investigations and reviews to determine whether, and to what degree, merchandise is being sold at less than fair value in the United States, or benefits from countervailable subsidies. CBP's role in enforcing the AD/CVD laws is to collect the AD/CVD assessed against applicable imports.

III. Challenges to Collection

A. Retrospective AD/CVD System

CBP's ability to fulfill its statutory responsibility with regard to AD/CVD has been affected by the United States' retrospective AD/CVD system and the willingness and ability of importers to pay AD/CVD. Under the U.S. system, CBP collects estimated AD/CVD at the time of entry either in cash or bond, but the final AD/CVD amount an importer is obligated to pay is not known until after Commerce reviews the AD/CVD order and provides CBP with a final AD/CVD rate. This final rate can result in liquidating an entry as entered, issuing a refund, or seeking to collect additional duty. Commerce's findings may be subject to judicial review by the U.S. Court of International Trade or, with respect to imports from Canada or Mexico, review by a bi-national panel. CBP's ability to collect these duties is delayed. Couple this with a company that is evading, not willing to pay, or does not have the financial ability to pay the duties, and CBP's collection of the duties is significantly affected.

The retrospective system often results in the issuance of bills years after the importation of merchandise has occurred. The original importers of the merchandise (who have almost always sold the goods long before they receive a bill for additional duties from CBP) are often unwilling, unable, or simply had no intention of paying any increase in duties.

B. Delays Related to Protests

In addition to the significant delay in issuing AD/CVD bills inherent in the U.S. system, other factors inherent in the duty collection process may further lengthen the period of time between importation of AD/CVD merchandise and active collection efforts. For example, 19 U.S.C. § 1514 permits an importer or surety to protest a decision, including the legality of all orders and findings entering into those decisions, made by CBP. A protest can lengthen the period of time between the issuance of an AD/CVD bill and CBP's collection on that bill. Since 2004, CBP regulations have allowed for the filing of a protest up to 180 days after the date of notice of liquidation. Moreover, the protesting party may seek further administrative review of CBP's initial decision to deny a protest.

C. "Shell" Entities Intent on Avoiding Payment

Entities are sometimes able to easily enter (and leave) highly profitable markets for imported goods subject to AD/CVD, thereby enabling AD/CVD avoidance and circumvention for parties inclined to do so. Many legitimate importers have few assets, are lightly capitalized or undercapitalized, are not able to pay final AD/CVD, and may already have gone out of business before the AD/CVD bills are issued. Other importers are "shell companies," which are also characterized by having few assets and being lightly capitalized or undercapitalized, and have no intention of paying any final AD/CVD bills. New Shippers can be similarly characterized and a high percentage of new shippers have shown a propensity to evade the payment of AD/CVD.

The fact that new shippers are able to post bonds in lieu of cash deposits only compounds the problem of uncollected duties since the bond amount is less than the cash deposit.

Too frequently, by the time CBP is able to take action to collect AD/CVD bills, the importers have gone out of business, entered bankruptcy, or simply disappeared, leaving few or no assets that could satisfy a judgment. CBP is responding to the challenge of “Shell” Entities through advanced data analysis and trend identification to target those companies that pose the highest risk to future revenue collection. Concentrating CBP attention in these high-risk areas will help to deter and prevent the circumvention of the AD/CVD laws and reduce the amount of uncollected AD/CVD duties.

D. Automation Deficiencies

As part of CBP’s modernization process, CBP successfully completed the automation and centralized management of its continuous importer bonding operations in June 2005. However, CBP’s single transaction bond (STB) is yet to be fully centralized or automated. Pending available resources, CBP plans to address these deficiencies by Calendar Year 2015.

IV. CBP Efforts to Improve Collections

The following is a list of actions CBP has taken to improve collections. Although these steps may help in the recovery of some AD/CVD, the underlying challenges with a retrospective system persist.

A. AD/CVD Collections Team

A key component of CBP's current strategy to improve collections on AD/CVD debts involved the creation of a permanent team within the CBP Office of Administration dedicated solely to the collection of AD/CVD debts. In March 2014, this AD/CVD Collections Team consisting of four full-time members became operational.

B. Expanded Use of STBs

CBP continues to utilize its legal authority to require additional security in the form of a STB to protect the revenue when CBP has reasonable evidence that a risk of revenue loss exists. These efforts to require additional security have been particularly effective at simultaneously protecting the revenue while facilitating compliance when utilized with regard to AD/CVD importations. On May 1, 2012, a memorandum providing detailed guidance to CBP Field Offices was issued to expand the frequency and efficiency with which CBP utilizes this tool. CBP has partnered with Commerce in this effort to better utilize bonding as a means to improve collectability. CBP's Centers of Excellence and Expertise are also engaged in setting STB amounts and making additional security determinations for participating importer accounts.

C. Utilizing Partnerships

CBP has established key partnerships with Commerce, U.S. Department of the Treasury, Office of the U.S. Trade Representative, U.S. Immigration and Customs Enforcement's Homeland Security Investigations, and other partner agencies to improve AD/CVD collections. The future of AD/CVD collections will continue to rely on these key partnerships to identify and address patterns of non-payment. Partnerships with the trade community are also critical. U.S. industry, trade associations, importers, brokers, and sureties provide critical insight to CBP on AD/CVD collections issues. CBP meets regularly with representatives of the surety and customhouse brokerage communities to discuss AD/CVD issues.

D. STB Centralization and Electronic Bonds (E-Bond)

CBP has proposed establishing a centralized office within the Office of Administration with the responsibility for developing and implementing STB policy, reporting on STB activities, and monitoring STB effectiveness.

Upon implementation of the proposed new structure, all STBs will be filed at the Revenue Division in the Office of Administration and co-located with continuous bond processing. The

proposed operating model would also require the development of a web-based bond application, known as E-bond, which serves as the platform through which sureties are to provide STBs.

V. Conclusion

CBP continually reviews its processes to glean “lessons learned” from the AD/CVD bills that are determined to be uncollectible. This includes performing case studies on certain AD/CVD commodities as well as specific importers wherein a large amount of AD/CVD was never collected. CBP takes its responsibility to collect AD/CVD bills seriously and will continue to refine its processes to improve its collections of AD/CVD while working to streamline trade processing. CBP understands that risk management and trade facilitation goals can be complimentary. Valid debts can be efficiently collected while simultaneously removing administrative barriers to trade.

Appendix – List of Acronyms

Acronym	Definition
AD/CVD	Antidumping and Countervailing Duty
CBP	U.S. Customs and Border Protection
Commerce	U.S. Department of Commerce
DHS	Department of Homeland Security
E-Bond	Electronic Bond
FY	Fiscal Year
PTI	Priority Trade Issue
STB	Single Transaction Bond
U.S.C.	United States Code