November 21, 2014

U.S. Customs and Border Protection
Attn: Tracey Denning, Regulations and Rulings
Office of International Trade
90 K Street N.E.
10th Floor
Washington DC 20229-1177

Re: **Agency Information Collection Activities: Importer ID Input Record**

This letter is in response to the October 9, 2014 Federal Register Notice for comments on the proposed revised Importer ID Input Record (CBP Form 5106).

On the form itself, we suggest that block 2A, Mailing Address, and block 2B, Physical Location, be reversed and that Physical Location come before Mailing Address and, if the two addresses are the same, a block be added to allow for automatic completion of the Mailing Address. This saves data entry time and possible data entry errors.

In that CBP is taking over the electronic export information from Census and the Department of Commerce and putting it into ACE, does block 1I, "How will the identification number be utilized?" need to be revised for exporter filers to be included? CBP may want additional information on exporters to enforce commodity export controls.

The Block 3, Company Information, states that "...all of the requested information is required if available"; but, what is "if available"? What if the importer has the information but the importer does not want to furnish it to CBP? Can the customs entry go through? What if the information is incorrect? While CBP may say that the lack of information may trigger customs exams, the fact is, for new importers, the first shipments are probably small shipments and would be examined anyway; thus, there is not much of a penalty.

Under Company Information, block 3C asks for the DUNS Number; however, new importers probably do not have a DUNS Number.

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Federal Maritime License No. 2497

Block 3G, Primary Banking Institution" and information goes too far. Many, or most, importers will not want the federal government to have their banking information. There is a great reluctance and lack of trust to share financial information with the federal government. I, personally, do not think the federal government should have access to my personal bank account and records. There should be some privacy allowed. Foreign importers of record will not want to give that information to the U.S. government. Consignees, who are not even liable for duties, taxes and fees, will not want to provide their banking information to CBP.

Block 3H is a huge block for a two digit State of Incorporation. It is confusing. If that is all that CBP is asking for, it should be entitled "State of Incorporation", rather than "Certificate or Articles of Incorporation (Locator ID)".

Block 3I, Certificate or Articles of Incorporation – (Reference Number), is another awkward block. We have no idea of the number you are looking for. We have many state numbers. We have a corporate license. We have a Legal Entity Registration. Both numbers are different. They are hanging on our wall; but, we are not sure of the number of our articles of incorporation. The State of Washington uses a UBI Number to identify corporations and it is posted on their searchable web site. A UBI Number would work far better than a number from old articles of incorporation.

With regard to block 3J, officers of foreign importers of record would not have Social Security Numbers (SSNs) and may not have passports. Passports are not required for citizens who are not traveling overseas.

The revised 5106 might mean that foreign shippers, shipping to numerous U.S. buyers will be forced to be shown as the importer of record and consignee at the time of customs entry when their U.S. buyers believe the information is intrusive and the buyers do not want to furnish it to CBP. Right now, there are "importers of record, especially along the northern and southern borders, who are using warehouses as their "U.S. addresses". The U.S. Post Office has advertised that people, and firms, with post offices boxes can use the address of the post office as their address. Some firms use their attorney's address as their business address. Other importers of record use mail drops and secretarial service addresses.

CBP has indicated that the revised CBP Form 5106 will only be used for new importers; however, it is hard to imagine that CBP will not change this to require the 5106 be renewed periodically to make sure that CBP's information remains correct. For example, on customs bonds, CBP only requires the Importer Number and not the name and address. If the importer's name and/or address have changed and the 5106 has not been updated, CBP will not have correct information. We believe that CBP will change the requirement for all importers and consignees at some point in the near future. This should have been addressed, along with the expected renewal period, in the Federal Register Notice.

CBP has said that the information, the full information, will be required from both importers of record and the consignees. The "express couriers" will no doubt want a waiver for their consignees. They act as the nominal "importer of record" on most of their customs entries. The requirement should be the same for all importers and consignees no matter how their goods are shipped. To waive, or reduce, the data required from consignees would tend to have buyers use more customs brokers who are willing to be nominal "importers of record" to bypass the filing requirement.

There may be a concern by customs brokers that furnishing CBP with importers' email addresses and phone numbers would encourage CBP to reach out directly to importers to tell importers to deal directly with CBP and bypass customs brokers. When Periodic Monthly Statement came out, CBP told importers that they could have 30 – 45 days to pay the customs duty, taxes and fees. What CBP did not tell importers was that the importers needed to set up their own ACH accounts with CBP. As a result, importers believed they did not have to pay their customs brokers' invoices for 30 – 45 days, even all of the freight costs on the customs brokers' invoices. This created a major problem for customs brokers for some time with many clients. CBP might also use the information to invite importers to "special events" that feature specific customs broker competitors. A couple of years ago, CBP invited importers to a special event on the Importer Security Filing in Seattle that featured one customs broker in Seattle. It appeared to be a two to three hour commercial for that particular customs broker put on by CBP. This goes far beyond CBP needing the information to contact an importer on a specific transaction or transactions. So, there are reasons why customs brokers may be hesitant about importers providing their email address and phone numbers to CBP.

The Transportation Security Administration (TSA) has a system to vet exporters. Their system is non-intrusive and seems to work. They are satisfied with it. The TSA does not ask exporters for banking information, passport numbers and Social Security numbers for officers of exporting corporations, etc. to qualify "known exporters".

In conclusion, we believe that the revised CBP Form 5106 is intrusive, will not have the desired effect of qualifying importers and consignees, will force importers and consignees to provide alternate information (like "dummy" bank accounts taken out only for completion of the CBP Form 5106), will deter businesses from doing business with the United States and will not have the desired effect. Whether it is CBP, the IRS, the FDA, the DOT or other federal agency, much of the information requested is too intrusive and, even if it were less intrusive, the federal government knows who almost all of its U.S. citizens and businesses are. They file tax returns with the IRS each year; they file export declarations when they export goods; they are "known" to the U.S. government. CBP should only be concerned with vetting those parties to the import transactions who are still "unknown" to the U.S. government, not all importers, consignees and exporters. We respectfully request that CBP rescind their proposed revised CBP Form 5106 and reexamine their needs.

Very truly yours,
AIRPORT BROKERS CORPORATION

Gary A. Ryan
Vice President

1400 Glenn Curtiss St. Carson, CA. 90746. PH: 310-900-1974.

Date: October 20, 2014

Attn: Tracey Denning, Regulations and Rulings
Office of International Trade
90 K St NE 10th Fl.
Washington, DC. 20229-1177
202-325-0265

RE: Title Importer ID Input Record
OMB Number: 1651-0064
Form Number: CBP Form 5106

Good morning.

In reference to the Federal Register notice dated Oct. 9, 2014, a quick comment must be noted:

- Online comments should be available for this proposed change to the Importer ID Input Record. This change is dramatic and has high impacts to the Trade – and limiting comments to those provided via "snail mail" will limit the pool of respondents unnecessarily.

Before the comments on certain portions of the proposed form 5106 are addressed, we will first address the items that CBP is asking for.

A: Whether the collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility.

- We would suggest in our reply that the answer is a qualified "no". Our qualifications extend to the following:

Part 3B : NAICS code. We do not see this as valuable or pertinent to CBP's mission. In many cases an importer may have multiple lines of business, with different markets and strategies organized around divisions that would not be captured via this collection. We would suggest this be removed or – at the least- made optional given its known limitations. How would it apply for foreign corporations?
Part 3C: the DUNS number. Most customers do not know their DUNS. And the DUNS is not easily accessible or available to new importers. The proposed rule would require a number that only reflects data reported by creditors – and that data may not be truly reflective. More pertinent (and again should be optional) would be the credit reporting number. And that has as much utility as a DUNS number to

CBP and to the trade. Which is to say, not much. A Moody's or S&P score would be, it seems, better.

Part 3F: While this is seemingly helpful, it seems odd that legally separate entities may be reported on one 5106 record. Would the broker be held accountable for incorrect information provided by the Importer? If so, we are absolutely opposed to providing this, as we would have no way of knowing this information. If not, specific language should be placed in the regulations stating that brokers would not be held accountable for the quality or quantity of this information as provided by the "new" importer.

Part 3G: Brokers are generally not upset about this provision. However, it should be tied directly to the "bona fides" of the importer. Banks are required to engage in strict vetting processes for new business accounts – and while all well and good, if we are providing the banking information it should then suffice to remove the data collection requirements that are shown in sections 3H, 3I, and 3J, as it is truly duplicative of efforts already undertaken by the financial institution. In addition this imposes an undue impediment to the trade to obtain this information. CBP should recognize that if we are asked to collect and provide the banking information, then the next logical step should be put in place- making mandatory the collection of duty via ACH and PMS for companies (sole proprietors and individuals excepted). This validates the bona fides and ensures all safeguards are put in place to protect the revenue. CBP is thus assured that the business entity exists, has been properly vetted by the financial institution (in other words, why should brokers engage in dual work?), and that duties are paid truly by the party doing the importing – and not paid by the broker and then invoiced to the client. That removes a step in the duty collection process with Customs and also removes a major issue that brokers have faced – that is, taking on duty collection responsibilities –and puts it solely in the hands of the parties involved. The surety, the importer, and CBP. The broker merely provides the conduit for the duty collection, and not the "means". It's time this change be made. We would work with importers to provide this information if brokers were to gain the opportunity to require ACH duty collection for all importers – especially for those importers who seek the benefits of holding a continuous bond.

Part 3H and 3I: Again, assuming that the items in 3G stand, this information (which is not readily available on many US States' Business entity searches) should be struck until all US States agree to provide this information on their search screens. Brokers already review these sites to ensure the company in question is legally incorporated in the State shown on the POA – and we already are refusing to establish new importers within ABI unless we do this validation and ensure their legal bona fides at this time. But providing the certificate/Articles of Incorporation (locator ID and reference number) is overkill and an unnecessary obstruction of commerce. (some States do not provide updated Articles or Certificates via the Web- you have to order them and wait – sometimes for days and weeks (California is especially egregious in this regard). If freight is on hand, it will go into G.O. and perhaps impact the business' ability to attend a trade show, exhibition, or other such requirement.

1400 Glenn Curtiss St. Carson, CA. 90746. PH: 310-900-1974.

- Generic comment- this proposed change does not seem to address foreign corporations. Will these same requirements apply? How can brokers expect to comply with certain requirements when they are so US-centric? For example- the DUNS number is not available for foreign entities; nor is the NAICS code (it's not an American firm- why should they be so classified)?

Part 3J: The business structure/company officers. The amount of data requested here is an unnecessary burden. Firstly, most officers of a company do not have importing knowledge – they only know that their firm does importing. We can foresee many companies refusing to complete this as it attests that the officers so listed have importing knowledge. Only to the extent that they would be responsible to ensure compliance matters would this ever be an issue for CBP. We would suggest caution before CBP requires this data. Secondly, asking for passport and social security information of the officers in question is also a burden that (while seemingly a small matter) would create undue angst and delays. There remain many citizens of the USA who do not hold passports (true!). If this provision must persist, we would suggest removing the passport requirement and focus (for US firms only) on the name, title, and social security number of 'one" officer of the company only – not on requiring 3.

Finally- CBP's system should automatically do the validations of EIN and SSN numbers and addresses for American-based entities. This is information that is collected already and should be available via interagency agreements. Privacy should hardly be an issue given that CBP is seeking to hold the Trade to account for the accuracy of data that is already in its (the governments') possession.

We thank you for requesting our input, and do hope that it is taken into account prior to issuance of the final rule.

Sincerely,

Mark Neumann, Director of Customs
Mainfreight, Inc.
mark.neumann@mainfreightusa.com

NewellRubbermaid™
Brands That Matter

November 26, 2014

U.S. Customs and Border Protection
Attn: Tracey Denning, Regulations and Rulings
Office of International Trade
90 K Street NE., 10th Floor
Washington, DC 20229-1177

Re: COMMENTS ADDRESSING PROPOSED CHANGES TO 5106 FORM

Dear Ms. Denning:

Newell Rubbermaid Inc. ("Newell") is a global marketer of consumer and commercial products with a strong portfolio of leading brands including Rubbermaid®, Sharpie®, Graco®, Calphalon®, Irwin®, Lenox®, Levolor®, Paper Mate®, Dymo®, Waterman®, Rubbermaid Commercial Products®, Aprica® and Contigo®. With sales in more than 100 countries, our products help consumers flourish where they live, learn, work and play – all over the world. Newell is headquartered in Atlanta, Georgia with approximately 18,300 employees worldwide. More than 90 percent of U.S. households use at least one of our products, and worldwide sales total approximately $5.9 billion.

Newell is going on record as having no objections to Sections 1A thru 1I, 2A thru 2F and 3A thru 3D of the proposed changes by U.S. Customs and Border Protection ("CBP") to the 5106 form. We are however specifically objecting to and / or questioning the information requirements found in Section 3E thru 3J of the form for the following reasons:

3E. Newell respectfully requests clarification of this data request. It may be beneficial, and will be far less burdensome, to request the year of incorporation as an option for legal entities. This especially holds true for businesses which may have been held by multiple owners where actual date of establishment of the business may be unavailable or inaccurate due to inadequate, or lost, documentation over years of business change. At a minimum this request should be directed solely to the party referenced in 1A.

3F. Newell respectfully requests clarification of the need for such information. As referenced in point 3E., this information would be burdensome where a business was held by multiple owners, each of which represented a different FEIN# through their ownership. In these instances the information may be unavailable due to inaccurate or lost documentation over years of business change. Newell believes this request is far too broad and burdensome given the

5106 form is simply an attachment to an actual bond form through which the primary bondholder is responsible for the obligations of the business being attached to said bond.

3G. The 5106 form attaches to a bond that is underwritten, and supported, by a Surety. In essence, the bonding company is providing the collateral that guarantees the bond is able to respond to fines and penalties when the Principal does not meet its payment obligations. Further, providing banking information, especially bank routing numbers, which would be maintained and recorded by the CBP increases, the potential for fraudulent actions against the importer should this information be obtained through cyber attacks aimed at the US Government – think China. Newell sees no valid benefit, business or otherwise, to Newell or to the CBP in providing the banking information requested given the bond is supported by a licensed, financially viable, bonding company.

3H. Newell respectfully requests the CBP be more specific as to exactly what identification number it is requesting. For example, is the request for the number that the Secretary of State has assigned to a specific entity? If so, then so state. Please provide clarification or confirmation that the corporate identification number assigned by the Secretary of State for the entity filing the 5106 form will suffice for this purpose.

3I. Newell respectfully requests the CBP be more specific as to exactly what identification number it is requesting. If 3H properly identifies the location of the Certificate or Articles of Incorporation, to what benefit is an additional Reference Number? Please provide clarification of this request.

3J. Newell currently has 17 officers for each legal entity for which it holds a bond. Businesses being added to a bond via form 5106 do not have a separate set of officers but instead rely on those of its legal parent. Newell considers this request to be overly broad and burdensome. Additionally, and more importantly, Newell objects to the disclosure of highly personal information on such a publicly available form without further explanation from the CBP of its intended use and benefit. It has already been proven in far too many situations how easily this information can be breached when retained in the U.S. Government data base. A phone number and email address for the Principal contact is already provided in Section 2C and 2E. This should be sufficient should a general point of contact be required.

For Newell's purpose, the 5106 form is to identify a location/suffix to be included on a customs importer bond. It is extremely important this document be on file with Customs as soon as possible or risk a bond insufficiency. The result is running the risk that shipments will clear CBP in a timely fashion thus directly impacting our customers and business. It would seem that much of the information requested would be better utilized

if it were a part of an initial bond application rather than the Form 5106 which is more of an addendum to the actual bond.

Newell appreciates the opportunity to provide CBP with frank feedback and encourage you to contact the undersigned if you wish to discuss further.

Respectfully yours,

Paula C. Rawleigh
Director Risk Management

cc: Newell Legal Department

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December 4, 2014

VIA ELECTRONIC MAIL

U.S. Customs and Border Protection
Regulations and Rulings
Office of International Trade
90 K Street, NE
Washington, DC 20229-1177

Attn: Ms. Tracey Denning

Re: Comments on Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61,091 (Oct. 9. 2014); OMB No.: 1651-0064

Dear Ms. Denning:

We are writing to provide U.S. Customs and Border Protection ("CBP") with our comments on CBP's proposal to amend CBP Form 5106, as set forth in Federal Register Notice and Request for Comment, Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61,091 (Oct. 9, 2014) ("Notice"). We appreciate the opportunity to provide the agency with our comments.

As an initial matter, we wish to note that CBP's proposal represents a significant change from past practice. While we have serious concerns with the substance of the proposal itself (discussed in detail below), we are also concerned that CBP would propose such a significant change without first obtaining meaningful input from the trade community. It is not clear from the Notice to what extent (if at all) this proposal was reviewed with the Commercial Operations Advisory Committee or other groups before publication. The proposal has clearly suffered as a result. We believe that CBP should have engaged with the trade community earlier in this process and that, if it had done so, a more acceptable/effective proposal could have been put forth.

In terms of the substance of the proposal, we believe that it is deficient in several important respects.

We believe that in most cases, much of the information sought to be collected will not actually help CBP achieve its stated goal. According to the Notice, that goal is to "enhance CBP's ability to make an informative assessment of risk prior to the initial importation, and [to] provide CBP with improved awareness regarding the company and its officers who have chosen to conduct business with CBP." 79 Fed. Reg. at 61,092.

CBP has not explained how a corporate officer's social security number or passport number will help the agency form a risk assessment. We submit that it will not. While such information may "provide CBP with improved awareness" of a company and its officers in some general sense, it is not clear what value such improved awareness would have in most cases. It appears that the request for personally identifiable information has more to do with post-importation enforcement concerns than it does with forming a risk profile or being more "aware" of a new importer/ultimate consignee.

Before CBP requires importers/ultimate consignees to provide such highly confidential, personally identifiable information, it should articulate how such information will actually help CBP achieve its stated goal.

In addition, the proposal seeks to treat the importing community as a homogeneous unit; requiring the same information from all importers/ultimate consignees. If CBP is serious about using the information provided in the CBP Form 5106 to help form a risk profile, it should recognize that different entities present different risks and tailor its request accordingly. For example, the risk presented by a large, public company that imports $500+ million per year likely differs from the risk presented by a private, solo proprietor that imports less than a $1 million per year. The use of even a few high-level factors (e.g., publicly-traded companies subject to Sarbanes-Oxley requirements versus private companies that are not; large importers versus small importers; established companies versus newly-formed companies; etc.) would help ensure that any additional information CBP seeks to collect is narrowly tailored and actually useful.

In short, rather than trying to implement a one-size-fits-all approach to collecting highly-confidential, personally identifiable information which will have limited value to the agency in any case, CBP should share its risk assessment matrix with the trade community and work with that community to develop a revised proposal that is better tailored to achieve the stated goal.

For the procedural and substantive reasons set forth above, we oppose the proposed amendment to CBP Form 5106 and respectfully urge CBP to withdraw it.

Sincerely,

Susan Renton
Director, International Trade Compliance

american apparel & footwear association

we wear® compliance

December 8, 2014

Tracey Denning
Regulations and Rulings
Office of International Trade
U.S. Customs and Border Protection
90 K Street NE, 10th Floor
Washington, DC 20229–1177

RE: Agency Information Collection Activities: Importer ID Input Record, *Federal Register*, October 9, 2014, Vol. 79, No. 196, Pages 61091-61092

Dear Ms. Denning:

On behalf of the American Apparel & Footwear Association (AAFA), I am writing to express serious concerns regarding U.S. Customs and Border Protection's (CBP) proposed changes to the CBP Form 5106, the Importer ID Input Record.

AAFA urges CBP to formally withdrawal the proposal for the reason articulated below.

The proposal, as currently written, would adversely impact the entire trade community, by treating trusted traders, long-time importers, and new, unknown companies the same, which is directly contrary to CBP's risk mitigation through partnership arrangements. Further, the proposal would impose a huge administrative burden on all importers. Finally, the proposal would require the disclosure of detailed, sensitive personal information but does not provide any justification as to how such information would "enhance CBP's ability to make an informative assessment of risk."

Representing more than 340 companies responsible for 1,000 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its suppliers, its management and shareholders, its four million U.S. workers, and its contribution of $361 billion in annual U.S. retail sales. AAFA member companies are major importers.

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<u>CBP Proposal Would Adversely Impact All Importers Alike</u>

While not spelled out at all in the *Federal Register* notice, in subsequent conversations with CBP officials AAFA has learned that the

intent of the proposal is to obtain visibility into new importers in order to "enhance CBP's ability to make an informative assessment of risk." However, the proposal, as currently written, would require all companies to file the new form, with all of the new information, even if there was only a simple change in address, or a change in company officers, or any other minor change in company information. CBP has failed to articulate a compelling justification for the sensitive personal data requested, especially when there is only a minor change to the company information. Again, the proposal does not differentiate in any way between trusted traders, long-time importers, or new importers.

However, even if the proposal distinguished the information that was required by type of importers (trusted trader, current and new importer), most of the pertinent information to make a risk assessment is already known to CBP. For example, CBP has sufficient information to make risk assessments for its trusted traders and existing importers based on the importing data that currently exists. For new importers, the existing CBP Form 5106 along with CBP Form 301 contains much of the pertinent information to allow CBP to make a risk assessment of a new importer.

Proposal Would Impose an Undue Administrative Burden on Importers

Because of the new information requested, any change in company officer or any change in company personnel involved in importing would automatically trigger a new filing. With the average tenure of an employee at a company being only 1-3 years, these new filings would impose a significant administrative burden on importers, without any obvious, or explained, benefit to CBP. The increased administrative burden this proposal places on companies is unwarranted in the absence of an articulate rationale as to how this information is necessary to achieve its stated purpose.

New Personal Data Required is Intrusion Without Benefit

CBP proposes collecting very sensitive data under the proposal – social security numbers, passport information, personal e-mails, home addresses, etc. – but does not provide any information on how such data will be used. This request for personal information of private individuals acting in their official corporate capacity is inappropriate.

Just as importantly, CBP does not provide any details on who will have access to data, or how CBP will protect the data. And CBP provides no justification for such a sweeping proposal when, as demonstrated by recent enforcement actions, it already appears to have access to necessary data for enforcement purposes through information on bonds and other means. Frankly, without any clearly stated rationale for the need for such data, the proposal, as currently written, represents a serious intrusion into the sensitive personal data of company employees without any benefit to CBP, and with certainly no benefit to the importing community.

AAFA thanks CBP for taking the time to talk with AAFA members about the proposal and address some of the issues raised in this submission. On that call, CBP officials explained that the purpose of the proposal is to provide more visibility into new importers to evaluate risk. In it proposal, however, CBP provides no justification as to why it needs any additional information, beyond what it already collects through bonds and by other means. At the same time, the proposal would impose significant

administrative burdens and raise serious and significant security concerns for AAFA members – trusted traders and long-time importers.

Therefore, AAFA again urges CBP to formally withdraw the current proposal. Further, AAFA encourages CBP to work with the importing community, through the COAC or other mechanisms, to craft a proposal that better meets the needs of both CBP and the importing community.

Thank you for your time and consideration in this matter. Please contact Nate Herman of my staff at 703-797-9062 or nherman@wewear.org if you have any question or would like additional information.

Sincerely,

Steven Lamar
Executive Vice President

AMERICAN PETROLEUM INSTITUTE

Michael T. Flickinger
Advisor – Customs and Accounting

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December 5, 2014

Office of International Trade
U.S. Customs and Border Protection
90 K Street NE
Washington, DC 20229-17

ATTN: Tracey Denning, Regulations and Rulings

Re: Agency Information Collection Activities: Importer ID Input Record
OMB No.: 16651-0064
Form No.: 5106

Dear Ms. Denning,

The American Petroleum Institute (API), on behalf of its members, submit the following comments concerning U.S. Customs and Border Protection's (CBP) request for comments on the Agency Information Collection Activities: Importer ID Input Record published in the Federal Register, 79 Fed. Reg. 61091, on October 9, 2014.

API is a national trade organization representing over 600 companies involved in all aspects of the domestic and international oil and natural gas industry, including exploration, production, refining, marketing, distribution and marine activities. The API member companies participate in an industry that is essential to the economic health of the United States and a vital part of U.S. trade. While we understand CBP's security and protection mission, we do not believe that the proposed collection of information would be necessary or have practical utility and may compromise CBP's other objective of supporting trade.

The breadth of excessive information gathering proposed in Form 5106, does not bear any significant value to the validation and security process for participating entities. For example, Social Security numbers, Passport numbers, and bank account information of Officers are not pertinent to validating entities that already possess tax identification numbers or other identifying marks that differentiate them from one another. We recognize that other commenters, specifically the American Association of Exporters & Importers, have focused on this issue in more detail and we lend our voice to their concerns.

We would note that in in the limited instances where an Importer ID Form is submitted by either (a) non-resident entity that is not a known importer with an acceptable compliance history; or (b) a new or privately-held entity that is not a subsidiary or affiliate of a publically - traded resident company or of a known importer with an acceptable compliance history, it may be appropriate for CBP to require that entity to complete applicable relevant portions of Section 3 of the proposed Form 5106 for further inquiry and risk assessment of the company.

Based on these concerns, API has strong concerns with the proposed revision of CBP Form 5106.

Should you have any questions or wish to discuss our comments further, please do not hesitate to contact me at 202-682-8264 or FlickingerM@api.org.

Michael Flickinger
Advisor – Customs and Accounting
API
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Washington DC 20005
P: 202-682-8264
FlickingerM@api.org

Marc Kron
Director
Global Trade Policies & Empowered Official

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December 5, 2014

U.S. Customs and Border Protection
Regulations and Rulings
Office of International Trade
90 K Street, NE
Washington, DC 20229-1177

Attn: Ms. Tracey Denning

Re: Comments on Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61,091 (Oct. 9. 2014); OMB No.: 1651-0064

Dear Ms. Denning,

On behalf of AT&T, I am writing to provide U.S. Customs and Border Protection (CBP) with our comments on CBP's proposal to amend CBP Form 5106, as set forth in Federal Register Notice and Request for Comment, Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61,091 (Oct. 9, 2014) ("Notice"). We appreciate the opportunity to provide the agency with our comments.

As an initial matter, we wish to note that CBP's proposal represents a significant change from past practice. While we have serious concerns with the substance of the proposal itself (discussed in detail below), we are also concerned that CBP would propose such a significant change without first obtaining meaningful input from the trade community. It is not clear from the Notice to what extent (if at all) this proposal was reviewed with the Commercial Operations Advisory Committee or other groups before publication. The proposal has clearly suffered as a result. We believe that CBP should have engaged with the trade community earlier in this process and that, if it had done so, a more acceptable/effective proposal could have been put forth.

In terms of the substance of the proposal, we believe that it is deficient in several important respects.

We believe that in most cases, much of the information sought to be collected will not actually help CBP achieve its stated goal. According to the Notice, that goal is to "enhance CBP's ability to make an informative assessment of risk prior to the initial importation, and [to] provide CBP with improved awareness regarding the company and its officers who have chosen to conduct business with CBP." 79 Fed. Reg. at 61,092.

CBP has not explained how a corporate officer's social security number or passport number will help the agency form a risk assessment. We submit that it will not. While such information may "provide CBP with improved awareness" of a company and its officers in some general sense, it is not clear what value such improved awareness would have in most cases. It appears that the request for personally identifiable

information has more to do with post-importation enforcement concerns than it does with forming a risk profile or being more "aware" of a new importer/ultimate consignee.

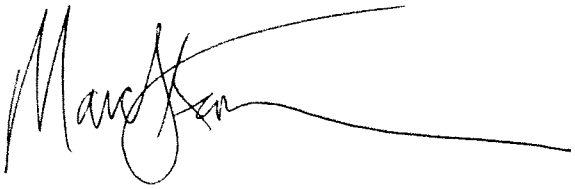
Before CBP requires importers/ultimate consignees to provide such highly confidential, personally identifiable information, it should articulate how such information will actually help CBP achieve its stated goal.

In addition, the proposal seeks to treat the importing community as a homogeneous unit; requiring the same information from all importers/ultimate consignees. If CBP is serious about using the information provided in the CBP Form 5106 to help form a risk profile, it should recognize that different entities present different risks and tailor its request accordingly. For example, the risk presented by a large, public company that imports $500+ million per year likely differs from the risk presented by a private, solo proprietor that imports less than a $1 million per year. The use of even a few high-level factors (e.g., publicly-traded companies subject to Sarbanes-Oxley requirements vs. private companies that are not; large importers vs. small importers; established companies vs. newly-formed companies; etc.) would help ensure that any additional information CBP seeks to collect is narrowly tailored and actually useful.

In short, rather than trying to implement a one-size-fits-all approach to collecting highly- confidential, personally identifiable information which will have limited value to the agency in any case, CBP should share its risk assessment matrix with the trade community and work with that community to develop a revised proposal that is better tailored to achieve the stated goal.

For the procedural and substantive reasons set forth above, we oppose the proposed amendment to CBP Form 5106 and respectfully urge CBP to withdraw it.

Sincerely,



U.S. Customs and Border Protection
Office of International Trade
90 K Street, NE – 10TH Floor
Washington D.C. 20229-1177

December 3, 2014

Attention: Tracey Denning
Regulations and Rulings

Re: Comments of BCB International, Inc.
Importer ID Input Record/EBP 5106

Dear Ms. Denning:

In accordance with the 60 – Day Notice and request for comments[1], BCB International, Inc. respectfully submits the following comments on U.S. Customs and Border Protection's ("CBP" or "Customs") proposed changes to Custom Form ("CF") 5106. Specifically, we wish to address the inappropriate use of the SS/ IR/EIN as positive identification of the parties purchasing and/or receiving goods from a non-resident Importer of Record. We feel that the collection of the SS/IR/EIN for this purpose is infeasible, provides little value, and is not aligned with CBP's intentions.

Per the IRS, social security numbers, IR numbers, and EINs are all unique, 9 digit numbers issued by the IRS to identify *specific individuals and business entities* (emphasis added) for the collection of Federal Internal Revenue tax collection. It's important to emphasize that the IRS issues these numbers to business *entities*, not particular business locations. Any of the branch offices, divisions, or facilities under the control of a corporation will share a single EIN with the corporation's headquarters.

For example, suppose that the EIN of ABC Company is associated with their Buffalo, NY headquarters. They have a branch office in Detroit, MI that is authorized to make purchases independent of corporate approval. When the Detroit office makes such a purchase, the EIN that is transmitted to CBP

[1] Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61091 (Oct 9, 2014).

Detroit. The EIN can **never** provide CBP with assurance of a positive identification of the purchaser unless the purchaser happens to also be the Importer of Record.

The Federal ID number transmitted electronically to CBP for security targeting *will only reflect the name and address in the 5106 file for the ID number transmitted*. In the past, CBP officers have tried to overcome this limitation by requiring the filer to append a 2-digit suffix to the EIN number. The thinking was that this suffix could be used to identify various branch offices or addresses that might be associated with a single business. These suffixes are completely unverifiable, having never been formally issued by the IRS or any other record-keeping government authority.

Although CBP has since stopped the practice of directing the addition of 2-digit to the EIN, the 11-digit numbers have not been removed from CBP records. The legacy "5106 file" utilized by CBP for positive identification of parties to the import transaction is overwrought with Federal ID numbers erroneously filed over time with a two digit suffix. Indeed, the 5106 file is full of inaccurate, unverified, records entered by unrestricted third parties who lack the resources or legal authority to verify even valid, 9-digit SS/IR/EIN numbers, let alone invented suffixes, and is still being utilized by CBP for security targeting.

We agree that the IRS issued SS/IR/EIN number should continue to be used to identify, specifically, the Importer of Record in an entry transaction and that the 5106 is the proper means of providing that information to CBP. However, we feel that the purchaser/ship-to party (which may or may not also be the Importer of Record) cannot adequately be identified by an SS/IR/EIN. Rather than using the EIN as a proxy for the purchaser's name and address, we feel that the purchaser's name and address should be transmitted directly. This would allow CBP to identify the purchaser accurately and directly, without the added complications that the use of the SS/IR/EIN currently present. This would also allow CBP to identify parties not associated with any SS/IR/EIN.

Current policy requires that a 5106 be filed – either by paper or electronically through ABI, without any restrictions as to who supplies the name and address associated with the SS/IR/EIN. The result is uncontrolled filings by multiple third parties who lack the resources to authenticate and verify the information being input. The result for CBP is a 5106 file that has become bastardized as it contains names and addresses that, despite the best efforts of the filers, are merely associated with a nine or eleven digit number that may or may not be the SS/IR/EIN number of the party named on the import documents. As such an SS/IR/EIN number is an inappropriate means of positive identification of parties to the transaction not acting in a role of Importer of Record on an entry filing.

BCB International, Inc. is a privately held U.S. Customs brokerage firm established in 1981 with operations on the Northern Border. BCB International Inc's. 24/7 operations process, on average, approximately 36,000 entries monthly covering Northern Border U.S. importations – over 90% of which are imported by non-resident (foreign) importers of record. In general, reflective of BCB business model, Northern Border Brokers are more often agents of the foreign Importer of record and have no direct business relationship with the nonresident Importer's U.S. Consignees nor a power of attorney on file to act on the U.S. resident consignee's behalf.

Northern Border releases comprise a notable percentage of all U.S. importations. In establishing regulation the unique importation environment specific to the Northern Border is often overlooked or misunderstood resulting in impractical policies and CBP officer "workarounds". When considering regulatory changes to importer , purchaser, and ship-to identification policy we wish to emphasize the importance of addressing the unique complexities of Northern Border importations and ensure they are accommodated during the policy making process. As previously stated our intent is to ensure that the information required to be collected is not only feasible and of value, but also *commensurate with CBP's intent for the collection.*

U.S. Customs and Border Protection's Directive 3550-079A defines the "ultimate consignee" for release/entry purposes and the appropriate means of identification to be provided by the filer at time of entry or release. The directive specifically states:

"

6.4 " *For formal entries, the appropriate identification number for the Ultimate Consignee is defined as an Internal Revenue Service employer identification number, or a Social Security number. Filing for the appropriate identification number for the Ultimate Consignee is provided for in 19 CFR § 24.5. Customs assigned numbers are for non-U.S. entities, and as such, are not acceptable to identify the Ultimate Consignee on formal entries, except for the following classes of merchandise...."*

6.5 "For informal entries, the appropriate identification number for the Ultimate Consignee is defined as an Internal Revenue Service employer identification number, or a Social Security number. In instances when neither an Internal Revenue Service employer identification number, nor a Social Security number is available at the time of entry or release, the appropriate identification number for the Ultimate Consignee on informal entries may also be defined as any of the following:

6.5.1 *The ABI transmission of the name and U.S. address of the party to whom the overseas shipper either sold or consigned the imported merchandise, or if unknown, the ABI transmission of the name and U.S. address of the proprietor of the U.S. premises to which the imported merchandise is to be delivered*

Northern border release is a 24/7 operation with the heaviest demand for pre arrival release processing occurring after 5pm where advance notice of a pending importation may be a matter of hours rather than days or weeks as in the air and sea environment. Most electronic 5106 additions for non-importer purchaser/ship-to parties are done at time of release from the EIN and name and address information provided to the broker/filer by the foreign Importer of Record on their import documents. As previously stated, we emphasize that the information the CBP officer receives from the electronic cargo transmission is the *specific name and address in CBP's 5106 file associated with the ID number transmitted* and will often **not** match the name and address of the purchaser/ship-to party named on the invoice. It is understood that due to the proprietary nature of personal identification information the IRS cannot validate or share Internal Revenue Service identification numbers with U.S. Customs and Border Protection. As a result CBP has no verifiable means of validating the 5106 information other than the physical address transmitted via the 5106 against the U.S. Postal Services address records. Transmission of the name and address as allowed on an informal entry would provide CBP with a more accurate

identification of the parties to the transaction where the accuracy of electronically transmitted information is crucial for meaningful security targeting.

The Office of Justice Programs, Bureau of Justice Statistics (BJS) states household identity theft rose 33% between 2005 and 2010 which coincides with CBP enforcement beginning in 2004 of the mandatory requirement to report the SS/IR/EIN identification number of the purchaser/ship-to as a condition of import. The result of CBP Directive 3550-079A is the U.S. government requiring a U.S. party to disclose their SS, IR, and/or EIN information to a foreign national (the foreign Importer, trucking company, etc) whom the U.S. government has no true legal authority over to ensure that the information is protected and remains proprietary. Forcing the disclosure of this type of proprietary information to a foreign national as a condition of foreign purchase is a restrictive trade practice which, due to the impending paperless environment and rising prevalence of identity theft, is a very real security risk.

We contend that the transmission of name and address for a consignee not acting as Importer of Record on a entry/release or entry summary would be a more accurate representation of the parties related to the import transaction and provide CBP the means for a more meaningful security targeting. Use of name and address for identification of the non Importer of Record purchaser/ship-to party would eliminate the U.S. resident party's exposure to the risks associated with providing proprietary information to a foreign national where the U.S. Government demanding that disclosure as a condition of purchase and subsequent import cannot provide any protection against the misuse of that information by a foreign national (emphasis added).

If the 5106 is to continue to be used for submission of consignee information the Trade community needs to have clarified, absent a Power of Attorney for the company in question, by whom and under

what authority can an electronic 5106 be added to ABI. CBP also needs to clarify WHAT name & address is to be added - the corporate name & address associated with the IR/EIN or the branch office added for CBP release purposes. IF SS, IR, or EINs are to be used as a means of identification of the U.S. consignee, then CBP officers should be able to accept the corporate name and address without a name and address match to the consignee as noted on the commercial invoices / shipping documents.

Respectfully Submitted,
BCB INTERNATIONAL, INC.

Barbara M. Carman
Director of Customs Compliance
BCB International, Inc.
Tel: 716-884-1554 ext 101
Fax: 716-884-5703
barbcarman@bcbinternational.com

cc: David W. Odden
President, BCB International, Inc.

The Boeing Company
929 Long Bridge Drive
Arlington, VA 22202-4208

December 8, 2014

U.S. Customs and Border Protection
Attn.: Ms. Tracey Denning
Regulations and Rulings
Office of International Trade
90 K Street, NE, 10th Floor
Washington, DC 20229-1177

Re: Federal Register/Vol. 79, No. 196/October 9, 2014
Importer ID Input Record

Dear Ms. Denning:

The Boeing Company ("Boeing") appreciates the opportunity to respond to the Bureau's Notice and Request for Comments regarding revisions to its Importer ID Input Record, CBP Form-5106.

We applaud and support CBP's continued efforts to implement measures for ensuring the safety of our nation's borders, as well as that of our global supply chain, in an environment of growing threats to U.S. national security. We also realize that a key to those efforts is access to information. ,

However, we have significant concerns about what we consider an unnecessary expansion of the requirements in Form 5106 as they relate to the provision of company officer data—in an overwhelming majority of cases without apparent corresponding gains in terms of national security considerations. Further, we are concerned that the new data requirements would cast a wide net over the entire importing community, to include companies that have for many decades proven their commitment to compliance with U.S. laws and regulations and their support for U.S. national security and foreign policy goals, in order to capture a small number of unknown entities and potential violators. Specifically, we have the following comments:

- Form 5106 requires the provision of sensitive personal information about the importing company's officers, including Social Security Number ("SSN"), and other personal information through submittal of passport data. Personal data are treated by Boeing as Personally Identifiable Information, or "PII", and as such protected by company policy from disclosure both within and outside of the company. We do not believe this information should be shared, inasmuch as the company has done the necessary due diligence (including background checks) on the individuals listed as officers and members of the Board. The certification provided by the signature on Form 5106 should be sufficient confirmation of the company's due diligence. Therefore, we respectfully request that the Bureau consider not including the requirement to provide personal officer data on Form 5106. Given that CBP's intent is to create maintain a database of importers and thus rename Form 5106 the "Create/Update Importer Identity Form," this approach would be similar to 22 CFR Chapter I Subchapter M, Part 122.2, where the Department of State's Directorate of Defense Trade Controls requires a Statement (Form DS-

2032) from a senior office of the company that attests to the eligibility of the company and its officers to conduct activities under that Subchapter.

- As the International Trade Data System (" ITDS") program is implemented, the number of government agencies having access to information submitted by Exporters and Importers will grow significantly, and with that the risk that an individual's personal information could be accessed in error, misplaced, or misused.

- The Federal Register Notice states that *"...CBP is also requesting that company officers whose information will be submitted on this form have importing and financial business knowledge of the company...."* It is not clear whether Boeing should only submit the names of those officers who have importing and financial business knowledge, or whether the names of all officers must be submitted and all of them must have, for example, importing knowledge. While company officers have in-depth knowledge about the company, individual portfolios might not necessarily include knowledge about importing, and we are concerned that responsibility and accountability for such knowledge could be assigned.

Additionally, and in answer to questions (a) through (e) posed by CBP in the Supplementary Information section, we offer the following comments:

- (a) We do not believe that the proposed collection of information, in particular the PII, is broadly necessary for the proper performance of the function of the agency, or that the information would have practical utility if the requirement were applied across the board. Information as expansive as proposed should be sought only in limited, select cases.

- (b) Stated estimates regarding the burden of the collection of information on industry may not be accurate, since it would take additional time to overcome internal restrictions on disclosure of personal data and its potential legal implications.

- (c) In lieu of supplying the highly sensitive information proposed in the Federal Register Notice (i.e., Primary Banking Information, Company Officer SSN and Passport information), we recommend substituting the Statement noted above and/or Continuous Customs Bond information. The process for obtaining a Continuous Bond could act as a vetting venue to ensure the legitimacy and financial stability of an entity, and to reduce the validation burden to CBP.

- (d) Use of automated collection techniques would minimize the burden of submitting information through this and any other information collection forms, as long as the data provided can be adequately protected.

- (e) Given our comment to (b) above, we are unable to provide data regarding what the costs related to submittal of an expanded-Form 5106 might be.

In closing, we thank you once again for the opportunity to comment and reiterate our support for CBP's recent initiatives. However, with respect to this information collection we respectfully request that the Bureau reconsider the proposed requirements and seek alternative solutions for addressing corporate due diligence and compliance, as well as for evaluating potential risks.

Please do not hesitate to contact me if you have any questions or if we can be of any assistance. I can be reached at (703)-465-3505 in our Crystal City, Virginia Office or at christopher.e.have@boeing.com.

Sincerely,

Christopher Haave
Director,
Global Trade Controls

CARMICHAEL INTERNATIONAL SERVICE

533 GLENDALE BOULEVARD • LOS ANGELES, CALIFORNIA 90026-5097
TEL: (213) 353-0800 • FAX: (213) 250-0710

An APL Logistics Company

December 4, 2014

U.S, Customs and Border Protection
Office of International Trade3
90 K Street, 10th Floor
Washington, DC 20229-1177

Attention: Tracy Denning
Regulations and Rulings

Re: Comments on Importer ID Input Record

Dear Ms. Denning,

I am writing in response to the Federal Register Notice on the proposed changes to the Importer ID Input Record - CBPF 5106. My comments deal with a suggested change to the proposed form itself.

In the address information under section 2 of the form, covering the mailing address in 2A, the form calls for the Country ISO Code. The ISO code for countries is often not recognized by Post Offices. Too often mail is returned to U.S. Customs and Border Protection (CBP) as undeliverable when the country of destination is not clearly spelled out on the envelope. This is a real problem for foreign importers of record in that the Revenue Division that will make an importer's bond inactive if it receives mail back as undeliverable. The form should call for the actual country name in section 2A. The Country ISO Code is correct and proper for the physical location address under 2B for CBP's system, but it should not be used in the actual mailing address.

Thank you for the opportunity to comment. Please feel free to contact with any questions about this comment.

Sincerely,

Daniel Meylor

ALL OR ANY BUSINESS UNDERTAKEN IS SUBJECT TO THE CONDITIONS OF THE NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC.

COMMITTEE TO SUPPORT U.S. TRADE LAWS

2100 M Street, N.W., Suite 200 | Washington, DC 20037 | (202) 785-4185

December 4, 2014

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U.S. Customs and Border Protection
Attn: Tracey Denning
Regulations and Rulings
Office of International Trade
90 K Street NW
10th Floor
Washington, D.C. 20229-1177

Re: Agency Information Collection Activities; Importer ID Input Record

On behalf of the Committee to Support U.S. Trade Laws ("CSUSTL"), an organization of U.S. companies, trade associations, and workers, we are providing comments on U.S. Customs and Border Protection's ("CBP") proposed revision to CBP Form 5106: Importer ID Input Record ("Form 5106").[1]

As described below, CSUSTL supports CBP's proposal to require importers to provide additional information regarding their ownership, officers, and the nature of their importing business. CSUSTL believes that the collection of the additional information identified in the Proposed Revision will allow CBP to better track and target importers seeking to evade the payment of duties, particularly antidumping and countervailing duties. The Proposed Revision will also enable CBP to better ensure that bonds sufficient to protect the Treasury are required of new importers. CSUSTL herein also proposes that the agency

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[1] *See Agency Information Collection Activities: Importer ID Input Record*, 79 Fed. Reg. 61,091 (Dep't Homeland Security Oct. 9, 2014) ("Proposed Revision").

collect certain additional information in Form 5106 that would further facilitate CBP's enforcement efforts.

I. BRIEF BACKGROUND

Form 5106 plays an important role in facilitating CBP's effective enforcement of U.S. trade laws. As CBP acknowledges, Form 5106 "is the basis for establishing bond coverage, release and entry of merchandise, liquidation, and the issuance of bills and refunds."[2] As such, Form 5106 is integral to CBP's ability to track importers of merchandise that is subject to U.S. antidumping and countervailing duties, and to collect duties from these entities as appropriate. As the U.S. Government Accountability Office ("GAO") has noted, however, the limited nature of the information required by the current version of the form, and the corresponding ease with which applicants are able to obtain importer identification numbers, has hampered CBP's efforts to enforce the trade laws.

CBP has long experienced difficulties in collecting antidumping duties, as well as in collecting civil penalties for duty evasion generally. In a 2012 report, the GAO noted that CBP had collected only two percent (or roughly $5 million) of the approximately $208 million it assessed in civil penalties between fiscal years 2007 and 2011.[3] In 2008, the GAO found that uncollected antidumping and countervailing duties between 2001 and 2008 totaled over $600 million.[4] CBP itself has stated that, as of August 2014, "{t}here are approximately 36,000 unpaid AD/CVD bills from FY 2001 through FY 2013 totaling $1.83 billion, for which CBP is

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[2] *Proposed Revision*, 79 Fed. Reg. at 61,091.

[3] U.S. Government Accountability Office, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion* (May 2012) at 17 ("2012 GAO Report").

[4] U.S. Government Accountability Office, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection* (March 2008) ("2008 GAO Report").

pursuing collection. . . . Further amounts are owed by importers that have disappeared or dissolved without going through the bankruptcy process."[5]

One of the key factors that has contributed to this problem is that the CBP currently collects only minimal information on new importers, and does not conduct background or financial checks on such businesses. According to GAO, these factors "create{} challenges to locating and collecting AD/CV duties."[6] Dishonest companies "take advantage of" the relatively simple processes currently in place for becoming an importer of record "to elude CBP efforts to locate and collect revenues from them."[7] The ease with which companies can adopt new importer names and identification numbers facilitates duty avoidance, making it difficult for CBP "to track {companies'} importing activity and gather evidence needed to prove that they are engaging in evasion."[8] In fact, it appears that, in anticipation of CBP targeting/collection efforts, some importers simply obtain new identification numbers and then proceed with their business under a new name.[9]

CBP itself has stated that collection of antidumping and countervailing duties is made particularly difficult by the fact that entries of these goods are often made by companies with insufficient assets or business to cover likely duty payments, as well as by rising numbers of simply fraudulent entries:

> Undercapitalized importers with few assets, if still in business by the time bills for final AD/CVD are issued, often have difficulties in paying these bills. Other importers, often in the form of shell companies and foreign non-resident importers, have no intention of paying any final duties, and disappear as soon as there is any indication that final duties may increase. This is particularly true for AD/CVD orders covering imports from China, and Chinese agriculture/aquaculture imports in particular. . . . In addition, some importers

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5 Department of Homeland Security, *Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2013* (Aug. 19, 2014) at 14 ("2014 DHS Report").

6 2008 GAO Report at 20; 2012 GAO Report at 17.

7 2012 GAO Report at 17.

8 *Id.*

9 *Id.*

participate in schemes to intentionally evade AD/CVD by filing incorrect entries, leading to additional uncollected AD/CVD.[10]

The collection of additional data on new importers through Form 5106 should assist CBP in identifying "undercapitalized" businesses before they bring in significant quantities of goods subject to trade orders. Moreover, it should assist the agency in identifying individuals and/or entities who have previously failed to pay trade duties, and are attempting to continue their business without making good on their outstanding obligations.

II. PROPOSED REVISION AND ADDITIONAL CHANGES

Clearly, CBP requires additional means by which to identify undercapitalized importers, those who have outstanding bills under other business names, or who have previously been found to engage in fraudulent practices with respect to trade duties. CSUSTL supports CBP's Proposed Revision to Form 5106 because it will provide CBP with more robust information regarding a company's ownership, officers, and the proposed nature of its importing business.

Obtaining information on the applicant's history and related businesses will facilitate the identification of entities simply seeking to adopt new names and importer identification numbers. The collection of information regarding the principal officers of the applicant, in conjunction with the information on related business entities, stands to facilitate the identification of the specific individuals involved in duty evasion. Moreover, obtaining information regarding importers' banking institutions could also enable CBP to assess the creditworthiness of such entities, and distinguish between legitimate claims of bankruptcy and those intended solely to evade the payment of duties and civil penalties. Additionally, we note that CBP's proposed revisions appear consistent with the provisions of H.R. 6642 (the Customs Trade Facilitation and Enforcement Act of 2012). In particular, the proposed revisions are consistent with the goals of Section 221 of that bill, which would require the agency to develop a program to ensure that the

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[10] Department of Homeland Security, *Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2013* (Aug. 19, 2014) at 9.

agency has sufficient information to identify changes in importers' addresses and corporate structure, and to prevent duplication of importer of record numbers.

While CSUSTL supports the proposed additional data requirements, CSUSTL also believes that CBP should collect still further information in order to facilitate CBP's enforcement efforts and collection of unpaid duties and civil penalties. In this regard, CSUSTL respectfully requests that CBP consider adopting the following changes:

- Require applicants to identify both movable and nonmovable assets located in the United States. Such information could allow CBP to seize the assets of any importers attempting to evade the payment of antidumping and/or countervailing duties;

- In Block 3A, CBP should specify that the brief business description must state whether the importer intends to import goods subject to AD/CVD orders. The agency may also wish to obtain information specifying whether an importer intends to bring in goods subject to quota, or to regulation by agencies such as the U.S. Food & Drug Administration, U.S. Environmental Protection Agency, or U.S. Department of Agriculture.

- In Block 3J, CBP should require the applicant to identify, for each company officer listed, the names of all other companies in which the individual has served or currently serves as an officer. This information would further enable the agency to meet the goals of Section 221 of H.R. 6642, as well as facilitating proper bonding and collection on outstanding bills. For each such company listed, the individual should provide:

    - The importer identification number, if any;

    - The current status of the company, *i.e.*, whether the company is currently operational, filed for bankruptcy, or has otherwise ceased operations; and

    - The nature of the company's operations, and, if engaged in importing product into the United States, the type(s) of product(s) imported.

- Finally, given that 19 C.F.R. 141.18 requires non-resident importers to have resident agents authorized to accept service of process, CBP should collect information on the identity and addresses of such resident agents pursuant to Form 5106.

This information will allow CBP to identify applicants who may have obtained previous importer identification numbers under different/related company names, as well as to identify, prior to significant entries being made, importers that face the increased financial and compliance burdens presented by trade orders, quotas, etc. This information will also allow CBP

to identify individual company officers involved in multiple importing operations, and could enhance CBP's ability to identify companies/individual officers involved in questionable importing activities.

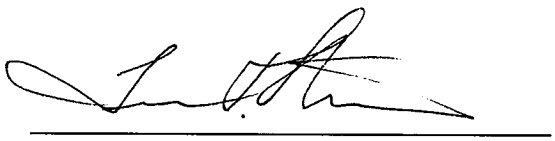
III. CONCLUSION

In sum, CSUSTL supports CBP's proposed revision to Form 5106, which will allow the agency to better target and collect duties and civil penalties from importers seeking to evade such assessments. CSUSTL also respectfully submits that the collection of the additional information described above will further facilitate the effective enforcement of U.S. trade laws and will ensure that all entities engaged in trade in the United States do so fairly and in accordance with U.S. law.

* * *

We appreciate CBP's consideration of these comments. Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,



Terence P. Stewart
President

Maureen E. Thorson
Nathaniel M. Rickard
Co-Chairs, Enforcement Subcommittee

Committee to Support U.S. Trade Laws

b a c m
BUSINESS ALLIANCE FOR CUSTOMS MODERNIZATION
1501 K Street NW
Washington, DC 20005

December 5, 2014

U.S. Customs and Border Protection
Attn: Tracey Denning
Regulations and Rulings
Office of International Trade
90 K Street NE, 10th Floor
Washington DC 20229-1177

Re: Comments on Federal Register Notice on Agency Information Collection Activities: Importer ID Input Record [1651-0064]

Dear Ms. Denning:

The U.S. Business Alliance for Customs Modernization (BACM) appreciates the opportunity to file these public comments on the above captioned Federal Register notice (79 Fed Reg 61091, dated October 9, 2014). BACM is a coalition of U.S. companies that import and export extensively, filing over 2 million entries valued at more than $130 billion per year. BACM is dedicated to modernization of U.S. Customs laws, regulations and policies and is committed to the facilitation of trade to the greatest extent possible consistent with customs compliance.

The notice states that "Each person, business firm, government agency, or other organization that intends to file an import entry shall file CBP Form 5106 with the first formal entry or request for services...". It further states that U.S. Customs and Border Protection (CBP) proposes to revise Form 5106 by gathering additional information about companies and their officers. CBP estimates that this proposal will double the information collection burden on entities completing that form. Consistent with the statement in the notice that Form 5106 is filed with the first formal entry or request for services by an importer, our understanding, based on comments made at public meetings of the Commercial Operations Advisory Committee (COAC), is that CBP intends to gather information about entities that it does not already know. That is, for low-risk importers and those with long and extensive histories of interacting with CBP, such as the BACM member companies, there would be no need to obtain the type of information listed in this proposal.

BACM recommends that CBP clarify that the additional information proposed to be collected applies only to "unknown" entities. This is necessary because the current instruction sheet to Form 5106 states that it should be used not only for first time importers, but also if an entity is "using an importer number for the first time", or for changes of name or address. Companies such as BACM members regularly make use of new importer numbers due to

acquisitions or divestitures, reorganizations, etc. Name and address changes are also not infrequent. Current box 17 of Form 5106 inquires whether the importer has ever been assigned a CBP Importer Number under the same or different name. That question could be revised to filter out low-risk or entities "known" to CBP, and to specify that certain sections of the form need not be completed if that question is answered in the affirmative.

Unless CBP were to revise and clarify its proposal in accordance with our recommendation herein, BACM would have serious reservations about the proposal. Not only is the collection of the additional information an additional burden to existing importers, but some of the data, such as social security numbers and passport numbers, raise serious privacy concerns. Moreover, for large publically-traded entities such as the BACM companies, the notion that corporate officers actually have "importing knowledge" in most cases would be unrealistic.

For all the above reasons, we strongly recommend that CBP revise its proposal to amend CBP Form 5106 in the manner we suggest herein.

Sincerely,

Richard M. Belanger, Counsel
U.S. Business Alliance for Customs Modernization

Customs Surety Association

6 Mill Ridge Lane
Chester, NJ 07930
Telephone (908) 879-0990 Fax (908) 879-2272

December 4, 2014

Ms Tracy Denning
Regulations and Ruling
Office of International Trade
U.S. Customs and Border Protection
90 K Street, NE, 10th Floor
Washington, D.C. 20229-1177

Re: Department of Homeland Security – U.S. Customs and Border Protection
FR Notice. 1651-0064
Agency Information Collection Activities: Importer ID Input Record

The Customs Surety Association ("the CSA") respectfully submits these comments with regard to the above referenced Federal Register Notice (FRN) published on October 9, 2014.

The CSA is an association comprised of surety companies who execute a significant number of Customs bonds on a yearly basis and who, on a collective basis, secure a high percentage of all import entries as well as other Customs bonded transactions on a yearly basis. The CSA is also an active participant and contributor to the Customs/Surety Executive Committee (C/SEC), a chartered group comprised of associations with special interest of Customs bonds and Customs and Border Protection (CBP) executive personnel. The C/SEC has been under its current structure since 1995 and routinely discusses and makes recommendations with respect to Customs procedures and practices as they relate to Customs bonds.

The Customs form CF5106 is an important document in the Customs bond filing process. Our members have an intimate knowledge of the bond filing process and are able to provide meaningful input on this subject.

Comments:

Most bonds filed are for principals who previously filed a CF5106 with Customs. Historically, it has been found that the name and/or address information in the 5106 system of CBP is out of date, so it has, generally, become an accepted practice to file CF5106 forms with all new bond filings.

As CBP moves to the new eBond filing in ACE in January, the name and address will be decoupled from the bond. However, the need to keep CBP advised of any changes in name or address will be vitally important. A significant portion of the CF5106 forms filed are only for this purpose.

The new form requires much additional information over the name and address of the company filing the CF5106. It would be quite burdensome to CF5106 filers to fully complete the new form just to update its name and address. Much of the information in section 3 will not change for the entity, so inclusion of this data would duplicative.

In earlier outreach to the trade in the development of this form, the C/SEC group discussed this very matter with Customs officials. It was our understanding that provisions would be made to submit a subset of the data being requested on the form if the filing of the form was for the purpose of updating a name and/or address only. Nothing in the referenced notice addresses this issue.

We submit that the instructions be amended to permit the completion of only items 1A through 1G and all of section 2 when checking Change of Name or Change of Address as the Type of Action. Other Types of Action should be considered to indicate when other sections of the form should be completed.

It is also unclear how to complete the form when used to report an additional location or division name. Based on our information approximately 40% of the users of continuous bonds are divisions or additional locations. Again, completing this entire form to provide duplicative data of section 3 for each division or additional location for this signification portion of CF5106 filers would be burdensome.

Further, there is a note in the Type of Action section which states "If a continuous bond is on file, a rider must accompany this change document." CBP should review the inclusion of this statement in light of the anticipated regulations supporting eBond. In the eBond environment there is no longer a need for the Name Change and Address Change riders. Therefore, CBP should remove this statement from the form.

As an organization comprised of members and individuals who are active on a day to day basis with the business of underwriting, executing, administering and monitoring Customs bonds, the CSA has extensive knowledge and experience dealing with Customs and Border Protection on such matters. We appreciate the opportunity to comment on this FRN and the impact the proposed changes to regulations may have. Based on our prospective and experience with respect to the Customs bond process, we trust that CBP will apply the appropriate weight to our comments and thoroughly consider the impact to the trade. We stand available to discuss any of our comments on a more detailed basis with representatives of CBP should a request be forthcoming.

Sincerely,

Customs Surety Association

Bruce S. Haskell
Executive Vice President

December 5, 2014

U.S. Customs and Border Protection
Office of International Trade
90 K Street, NE – 10th Floor
Washington, DC 20229-1177

Attention: Tracy Denning, Regulations and Rulings

Re: Comments of Radix Group International, Inc.
and DHL Express, Inc. (USA)
Importer ID Input Record/CBP Form 5106

Dear Ms. Denning;

On behalf of DHL, including both DHL Express, Inc. (USA) and Radix Group, Inc. d/b/a DHL Global Forwarding (DGF), we offer the following comments on U.S. Customs and Border Protection's (CBP) proposed changes to the Customs Form 5106 in accordance with the 60 – day notice and request for comments.

Introduction

DHL is a world leader in express delivery, transportation and supply chain management, and is a part of Deutsche Post DHL. DHL was established in 1969 in San Francisco as an Express company, but today, the footprint of the DHL group in the U.S. combines four business units (DHL Express, DHL Global Forwarding, DHL Supply Chain, and DHL Global Mail). Each DHL business unit plays a critical role in the global supply chain.

Our over 30,000 employees and contractors in the U.S. provide a broad product portfolio for our US customers, including millions of international express shipments each year, complex logistics services for major U.S. manufacturers, heavy freight movements (ocean and air) and work share partnerships with the U.S. Postal Service in the management of postal products.

The comments offered below are specifically on behalf of the two business units most directly involved in the filing of data for cross border movements into and out of the United States, namely DHL Express and Radix Group International, Inc. (d/b/a DGF or DHL Global Forwarding). As a separate legal entity and subsidiary of Deutsche Post-DHL, Radix is a licensed customs broker within the meaning of 19 U.S.C. §1641(b)(3) under assigned filer code 336 and files approximately 1 million entries a year.

Comments

U.S. Customs and Border Protection (CBP) has proposed to rename the CBP Form 5106 (5106) to "Create/Update Importer Identity Form". In previous discussions with the trade community and CBP, the agency has alluded that a change in address will not require a whole new 5106 to be filed. While the new form name indicates an update of information, the instructions or type of action on the proposed 5106 form does not state what is the minimum data required for the role

the party will play. Radix offers the following suggestions based on the five available responses in the proposed field 1I; Importer of Record, Consignee/Ultimate Consignee, Drawback Claimant, Refunds/Bill, or Other.

Importer of Record

1. When an importer of record (IOR) is required to complete the 5106 as a notification of identification number (TYPE OF ACTION field), it is suggested CBP allow the broker, as a validation party of the information received and agent of the IOR, to provide the information available at the time of import to satisfy admissibility of the goods. This information should align with previous 5106 data elements to allow the filing of entry and entry summary with CBP. For example, the name, address and IRS number for CBP Form 3461 and 7501 importer of record purposes. The IOR should be granted a secure portal application to file the proposed privacy data elements; 3F, 3G, 3H, 3I, and 3J. It is recommended the initial 5106 data elements be filed via ABI by the licensed Customs brokerage firm or an authorized surety company. When the information is filed, it is suggested CBP return to the broker/surety company a unique authorization code that can be utilized by the Importer of Record to provide the sensitive personal data requested in Section 3, particularly 3F, 3G and 3J via a secure online application. It is recommended if an importer, upon subsequent importations, fails to submit the requested identity information to align with the proposed from 5106, that CBP initiate an ABI reject in ACE prohibiting importation until the importer files this required privacy information. It is recommended this ABI message be similar to the current importer on sanction ABI message.
2. If the IOR is a C-TPAT or Trusted Trader participant the reporting of the proposed privacy data elements in field 3F, 3H, 3I, and 3J should be waived.
3. CBP must state what minimum proposed 5106 data requirements are required for an IOR with an import history. If an IOR has an import history with CBP, the request for additional identifying, very private, data elements places a burden on the IOR on the collection of this information. In addition there is a risk by the importer in releasing sensitive personal information such as social security and passport information. The burden of the reporting and collection of this information will not result in a change in the data reported to CBP on future imports. It is suggested the previous import history be considered and CBP should waive the reporting of this sensitive, private information. Radix suggests CBP's consideration of an import history of one year.
4. The proposed changes were vague and did not advise if a change in information would require the filing of an updated 5106. If an importer has passport information on file and that information changes, is a new 5106 required? If a company officer retires, is the importer required to file a new 5106? What change in proposed 5106 data elements would warrant the filing of an amended 5106?

Consignee/Ultimate Consignee

1. The definition of consignee and ultimate consignee vary differently depending on the role in the supply chain. In addition varied definitions exist in the customs regulations depending on the role of the consignee, for example on the manifest vs. the entry

summary. As a result and to seek clarity, Radix suggests CBP strike the term consignee and ultimate consignee and use sold to for one selection and deliver to for another selection in field 1I. The consignee for entry and entry summary purposes will be either a sold to party or deliver to party. Clarity of these roles will reduce confusion and simplify the reason for how the identification number will be utilized.

2. While the proposed instructions on the CBP Form 5106 do indicate that a consignee to the import transaction need only complete section 1 and 2 of the proposed form, Radix request CBP identify what the minimum data requirements are in section 1 and 2 for a sold to or delivery to party to be placed on file. Are fields 1H, 1J – 1M, 2A, and 2C – 2F truly required for the acceptance of and placement on file of a deliver to or sold to party?
3. It is requested CBP acknowledge the understanding of the relationship of the deliver to or sold to party in an importation. The broker generally identifies if the deliver to or sold to party has the applicable information on file with CBP. This current applicable information is simply the name, physical address and IRS or customs assigned number. If this information is not on file, today, the broker can immediately place this data on file based on the signed and certified import documentation. The certified documentation does not include the additional information as listed in fields 1H, 1J – 1M, 2A, and 2C – 2F and therefore a burden exists in the collection of this data and may result in impeding trade in requiring additional information that would have minimal impact in the identification of the sold to / deliver to party.
4. CBP must note the party that has historically provided this information, the broker, does not have a direction relationship with the deliver to or sold to party as they do with the IOR. As such the additional information that is not available today places a burden on the broker to obtain this information.

Thank you for your consideration of this comments provided. If you require any additional information, please do not hesitate to contact the undersigned.

Respectfully,

DHL Global Forwarding

Cynthia D. Allen
VP and Head of Brokerage US
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Ste. 200
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DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

December 8, 2014

Tracey Denning
U.S. Customs and Border Protection
Rulings and Regulations
Office of International Trade
90 K Street NE, 10th Floor
Washington, DC 20229-1177

RE: Docket Number USCBP-2006-0048-0009: Agency Information Collection Activities: Importer ID Record (Federal Register Number 2014-24199 (Thursday, October 9, 2014))

Dear Ms. Denning:

On behalf of the Distilled Spirits Council of the United States, Inc. ("Distilled Spirits Council"), I am pleased to submit our views regarding the U.S. Customs and Border Protection's (CBP) Federal Register Notice entitled *Agency Information Collection Activities: Importer ID Input Record*. The Distilled Spirits Council is a national trade association representing U.S. producers, marketers, exporters and importers of distilled spirits products. In 2013, U.S. imports of distilled spirits products exceeded $6.5 billion (CIF value) and U.S. exports of distilled spirits worldwide were valued at more than $1.5 billion (FAS value). Through September 2014, U.S. imports of distilled spirits are up 2.5% and U.S. exports of distilled spirits products are up 6.7% as compared to the same period in 2013.

As a preliminary matter, the Distilled Spirits Council and its member companies recognize the important role collecting information about an importer and specific imports plays in helping CBP perform risk assessments when goods are brought into the United States. We appreciate this opportunity to outline the U.S. spirits industry's concerns and requests for further clarification on this proposal, as detailed below.

We believe the nature of such an expansion of data collection goes beyond the parameters of risk assessment. The Council feels some of the information now requested on Form 5106 (including social security numbers and passport numbers) is an over-step and its collection will be overly burdensome for importing companies.

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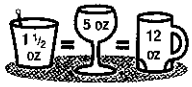
A FACT ABOUT ALCOHOL CONTENT:


As a general matter, we have concerns that the proposal to amend Importer ID Input Record Form 5106 will not improve CBP's targeting of non-compliant imports or potential security threats. We also have concerns that some of the newly requested information about company officers is invasive, while other information is duplicative as it is already collected by CBP.

The Council strongly objects to the collection of the social security number and passport information of certain company officers. We believe that the personal and sensitive nature of the information about corporate officers will not help CBP improve their risk assessments. Furthermore, given the sensitive nature of the information requested for each officer, can you clarify how it will be protected and how long it will be kept in the file?

Moreover, the proposal is duplicative as it seeks to gather information that CBP already collects. For example, through the comprehensive pre-arrival security filing for ocean going cargo, i.e. Importer Security Filing, importers and vessel operating carriers provide advance trade data to CBP. Specifically, the following 10 data elements are required from the importer: (1) Manufacturer (or supplier) name and address; (2) Seller (or owner) name and address; (3) Buyer (or owner) name and address; (4) Ship-to name and address; (5) Container stuffing location; (6) Consolidator name and address; (7) Importer of record number/foreign trade zone applicant identification number; (8) Consignee number(s); (9) Country of origin; and (10) Commodity Harmonized Tariff Schedule number. In addition to the 10 data points provided by the importer, the carrier is required to provide the following two data points: (1) Vessel stow plan; and (2) Container status messages. Furthermore, companies who voluntarily partner with CBP and participate in the Customs-Trade Partnership Against Terrorism (C-TPAT) and/or Importer Self-Assessment (ISA) programs already provide CBP enhanced data points to assist in its targeting of imports. In light of all the information CBP already obtains before every import is made, it is unclear why the proposal to collect additional information about a company and its officers before their first import is necessary.

Additionally, we believe that CBP seriously underestimates the time that will be required to keep the greatly expanded list of data points up-to-date. For example, will a new CBP Form 5106 have to be filed whenever there is a change in corporate officers? Similarly, will a new CBP Form 5106 have to be filed if a company changes its website, email address, or fax number? If that is the case, companies will likely amend their filings several times a year, thus increasing substantially the amount of time companies will have to spend maintaining Form 5106.

Furthermore, it is unclear whether importers with an active importer ID number will be required to file a new CBP Form 5106. According to CBP's regulations, once an importer has received an ID number they are not required to file a new CBP Form 5106 unless they have not completed an import over the last year. For that reason, we seek clarification whether importers that currently have an active importer ID number will be required to file the revised Form 5106.

Finally, it is unclear if customs brokers who obtain companies' information before products are exported to the United States will be required to file a new Form 5106. If so, it could delay U.S. imports.

In sum, we urge CBP to reconsider its proposal to amend Form 5106 as it is unclear how the personal information of company officers will improve CBP's targeting of non-compliant imports or potential security threats. Moreover, since providing much of the data is already collected by CBP such information in Form 516 is duplicative and unnecessary. Thank you again for the opportunity to provide comments on the proposal, and we would be pleased to amplify and/or clarify any of these points as needed.

Sincerely,

Christine A. LoCascio
Senior Vice President
International Issues and Trade

December 8, 2014

U.S. Customs and Border
Protection
Office of International Trade
90 K Street NE 10th Floor
Washington, DC 20229-
1177

Attention: Tracy Denning
Office of Regulations and Rulings

RE: Comments on "Agency Information Collection Activities: Importer ID Input Record" OMB Number 1651-0064

Dear Ms. Denning:

The Express Association of America (EAA) welcomes the opportunity to provide comments on the Agency Information Collection Activities for the CBP Form 5106, otherwise known as the Importer ID Input Record. EAA represents DHL, FedEx Express, TNT and UPS – the four largest express delivery service providers in the world, providing fast and reliable service to the U.S. and more than 220 other countries and territories. EAA Members have estimated annual revenues in excess of $200 billion, employ more than 1.1 million people, and deliver more than 30 million packages each day.

Our comments below are organized in the areas CBP requested that we address, but we would like to begin with some general recommendations:

- While fully understanding CBP's desire to obtain additional specific information on companies that potentially are engaged in criminal activity, the additional requirements included in the proposed Form 5106 changes are overly burdensome and are requesting very private information. CBP should take a risk assessment approach to requiring this information, and only request the sensitive information from new importers or companies where there is a suspicion of criminal activities.
- Companies who have a current Form 5106 on file, many of whom CBP is well acquainted with, should not have to submit additional staff information, and essentially should be "grandfathered" from the new requirement.

- Firms participating in C-TPAT or ISA programs should not be required to submit the elements required in Section 3 if a new 5106 is filed.
- Submission of Form 5106 should be a post release activity and should, in no case, be required for release of the goods.

In their roles as importers of record and/or customs brokers, EAA members file and maintain CBP Form 5106 data on behalf of thousands of customers annually. We have categorized our comments in the five areas requested by the Federal Register Notice.

1. **Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility:**

   EAA understands the challenges faced by CBP in the identification of the proper party who may act as the Importer of Record, the Consignee (or Sold to Party), or a Drawback Claimant. CBP's risk assessment methodologies to make exam and admissibility decisions depend on the accuracy of the information presented to them. EAA supports the basic collection of information as necessary, but offers comments in Section 3 below to better define the appropriate information to meet the Government's needs. We believe the role of the party to be reported factors into the amount of information required, and we recommend CBP formulate their final rule to ensure "over collection" of information is avoided. Reporting all data elements (Sections 1,2, 3 and 4) for a casual or infrequent importer does not appear to be practical or an efficient use of time and resources. Requiring more information from an Importer of Record than from a party receiving infrequent personal shipments is prudent – CBP needs to balance the role of the party with the amount of data collected.

2. **The accuracy of the agency's estimates of the burden of the collection of information:**

   EAA does not believe the agency's estimates of the burden of the collection of information accurately reflects the amount of time it takes to perform the necessary tasks. The 15 minute estimate does not accurately reflect the time it takes to identify and locate the right party, contact them, collect the information and then provide the information to CBP. A better estimate of collection time for the existing form would be 30 to 60 minutes, and the changes being proposed would impose a requirement for additional interactions that could extend the total time to aggregate the data into several hours.

3. **Ways to enhance the quality, utility and clarity of the information to be collected:**

   It is important to identify what data elements are required versus optional, understanding that only the very basic information should be required or mandatory. The role of the party being reported should be considered in CBP's risk assessment methodology. This will result in several of the fields not being

applicable to certain parties, and, in establishing the policy for Form 5106, CBP should make clear which fields are optional and which are always required. "Not applicable" should be an acceptable response when the information may not be available or does not exist.

With regard to Section 3, EAA recommends that the sensitive company data not be required data elements when initially filing the 5106 form. As Customs brokers, express companies can collect some of the data elements for Importers of Record requested in Section 3, if available, as follows: 3A, 3B, 3C, 3D, 3E, 3H, and 3I. While the Customs broker may have at least one name of a corporate officer for an entity that is an Importer of Record, the broker does not wish to collect or report the sensitive information requested in 3F or 3J.

For providing the details in Section 3, CBP should provide an opportunity for the importer to submit that information to CBP directly, after the CBP number is assigned, perhaps by allowing the company to log into a secure portal to enter the additional data. This would avoid the need for an importer to provide sensitive corporate officer information to a company with whom they may not have a direct business relationship.

For the Consignee/Ultimate Consignee block, EAA recommends that CBP remove the word "Ultimate Consignee" as the word "ultimate" has been removed from the lexicon in the ACE world. We believe this party is better described as the "Consignee or Sold to Party". EAA suggests CBP add definitions in the instructions for "Importer of Record" and "Consignee or Sold to Party" to assist the trade community in understanding what the selection means.

Parties other than Importers of Record, Consignees, Drawback Claimants, etc. will utilize this form. We recognize that these parties could be identified utilizing the block marked "Other." CBP should consider the benefits of adding additional role selections to the form, such as:
Transportation Carrier
Licensed Customs Brokerage Firm*
Container Freight Station*
Commercial Warehouse/Foreign Trade Zone Operator*
Container Examination Station*
Deliver to Party

Role of the party to be reported. EAA recommends that the role of the party to be reported be utilized as the basis for determining the amount of information to be collected, as follows:

- *Consignee (or Sold to Party):* Sections 1 and 2 should be required
- *Importer of Record:* Sections 1 and 2 should be required, Section 3 optional

Regarding the suggested additional Parties listed above, CBP does collect significant information for some of these parties. Those parties marked with an asterisk * should require only Sections 1 and 2 to be reported.

EAA supports the use of a CBP Assigned Number in lieu of the reporting of a Social Security number (SSN) for shipments valued over $2,500 (formal entry). Express Consignment Operator Customs brokers do not wish to collect or store an individual's SSN (a very sensitive and personal identifier) in our systems.

We recommend CBP update the methodology to assign CBP Assigned Numbers, so the trade community is able to separate Non-Resident Importers of Record (who currently utilize CBP Assigned Numbers) from those individuals who wish to use a CBP Assigned Number in lieu of their Social Security number.

Please confirm that CBP Assigned Numbers will be accepted by Partner Government Agencies (PGA), for U.S. entities as well as non-resident Importers of Record. We are particularly interested to know whether the U.S. Food & Drug Administration will accept this alternate identifier.

The form instructions for the Customs Assigned Number are not clear: Does the party who checks Block 1E ("I have a SSN but wish to use a CSP-Assigned Number on all my entry documents") still have to provide their SSN in 1B to obtain a CBP Assigned Number? We would presume they do not, but the instructions should provide guidance.

EAA recommends that the licensed customs brokerage firm should be the party who requests Customs Assigned Numbers, preferably through ABI ACE (not a mobile application). CBP licenses and regulates customs brokerage firms, and they are a known entity.

4. **Ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology:**

CBP should not allow changes or updates to the 5106 form without collecting detailed information about the party submitting the changes.

CBP licenses and regulates the Customs brokerage firms who regularly gather and present 5106 data through the Automated Broker Interface (ABI). One of the concepts we have heard is that CBP could develop an 'online' or mobile application, allowing a corporation to provide the sensitive data required in Section 3. We believe CBP should consider the following points prior to moving forward with a mobile application:

- The criminal element – those individuals and companies who engage in schemes to avoid lawful payments of duties, including avoidance of antidumping or countervailing duties, importing Intellectual Property Rights violative goods, and generally seeking to circumvent the rules and

regulations of CBP – will not follow the rules, and a mobile application may provide them with a new avenue for importer identity theft.

- We recommend the initial 5106 be filed via ABI by the licensed Customs brokerage firm or an authorized surety company. When the information is filed, CBP should return to the broker/surety company a unique authorization code that can be utilized by the Importer of Record to provide the sensitive personal data requested in Section 3, particularly 3F, 3G and 3J via a secure online application.
- If CBP pursues the development of an 'app,' it must have significant security features built into it to tie to the correct 5106 record, and to ensure the party accessing the data has the authority to update the record, and they are who they say they are.
- With the submission of an email address in section 2E, CBP could initiate an email to that address, providing that individual with a link to update Section 3 information.
- CBP should consider notifying the original filer of the 5106 that there has been a change in the Section 1 and 2 data filed. This would greatly assist the brokerage filer in maintaining current records as well as providing a review mechanism that may recognize when an identity has been stolen or a record has been improperly changed. This feature should only be provided for importer of record data, not consignee/sold to party data.
- The Internal Revenue Service (IRS) does allow a non-resident entity who conducts business in the United States to apply for an IRS or Employer Identification Number (EIN). We believe CBP should allow these non-resident entities to utilize their EIN number in lieu of a CBP assigned number.
- For experienced importers who have ACE portal accounts, an ACE tool could be utilized to manage the 5106 data that CBP has on file for them.

5. **Annual costs to respondents or record keepers from the collection of information (a total capital/startup costs):**

EAA believes the average data collection cost per hour is approximately $25.00. This would reflect costs for personnel as well as information systems to transmit and store the data.

CHALLENGES

EAA wishes to remind CBP of the challenges the Customs brokerage community faces in gathering the correct 5106 information for submission to CBP. Information collection activities may be impacted as follows:

- Trade moves 24 hours daily/7 days a week whether the goods are in an express operator or a border clearance environment.
- The Customs broker often does not have a business relationship with the consignee (sold to party), especially if the Importer of Record is a non-

resident importer. Trying to collect the data from this unknown party can be challenging.

- The internet has opened borders, and the consignee (sold to party) may not even realize the article they ordered on line is coming across a border. Business to Consumer (B2C) activities will continue to increase, possibly requiring more and more information from casual importers.
- EAA believes many 5106 records placed on file are duplicates, and we recommend CBP take steps to prevent duplicate records.

OPPORTUNITIES

- CBP currently allows for cargo (entry) release of goods valued less than $2,500 per shipment (the informal entry limit) utilizing the transmission of the name and address of the US party receiving the goods. This is allowed, whether there is a single consignee or multiple consignees in a shipment, provided that any US party receiving goods valued greater than $2500 be identified with an appropriate EIN number. However, at the time of entry summary in the ACE environment, CBP's requirement is to present an EIN or unique identifier number like the CBP assigned number at the line level for each consignee receiving the goods, regardless of value. Because CBP has already performed their risk assessment based on the name/address of the consignee, we believe CBP should not require the consignee identifier information on the entrysummary, unless the value of goods for the individual consignee exceeds $2,500.

- If the reporting rules for informal values at entry summary are not changed, the Customs broker will be requesting numerous Customs Assigned numbers for individuals in lieu of a SSN. If CBP allows the transmission of the name/address for shipments valued less than $2,500 for both entry release and summary, it will prevent multiple CBP numbers from being assigned to the same individual, cluttering up CBP's data base.

- When an individual receives goods valued over $2,500 (formal entry), CBP should allow for the use of the CBP assigned number in lieu of an individual's Social Security number.

- It would be helpful for CBP's system to have some edits built in to recognize a valid address format recognized by the U.S. Post Office. We believe there is commercially available software available to assist with this.

EAA appreciates the opportunity to provide comments on the proposed changes to the CBP Form 5106, as the new requirements potentially could have a serious impact on brokerage operations.

For further information or to answer any questions, please contact me at 703 759-0369 or michael.mullen@expressamerica.org.

Sincerely,

Signed

Michael C. Mullen
Executive Director

FORWARDING WORLDWIDE

US Customs & Border Protection
Regulations and Rulings
Office of International Trade
90K Street NE
10th Floor
Washington DC 20229-1177
Attn. Tracey Denning
December 5, 2014

RE: comments for proposed revisions to CBP form 5106

Dear Ms. Denning,

JAS Forwarding USA Inc. is a customs broker and international freight forwarder. I would like to express the following comments in regards to the proposed revisions to the 5106 update. I believe more information is important but believe that a few of these items will be difficult to obtain as well as impeding international trade.

Collecting of SS # or passport number of an officer of a company will be extremely difficult. Identity theft is a real issue that many people are concerned about. Officers of companies work for those companies but do not normally have financial ties to the company such as ownership. The proposal is asking officers of the company to provide their SS#/passport in order to import product for their company not themselves. The SS number/passport is a person's private identity number with the government and should not be tied to the company they work for in order to import product.

If the broker is required to obtain in order to complete the 5106 the broker will then be responsible for protecting this information of personal data for the importer as well. This could be a burden to the broker as well as an issue for the officer of the company to expect the broker to keep this information confidential.

The requirement to provide a broker and broker telephone number also seems irrelevant and could change periodically. Some importers use multiple brokers for various business reasons so indicating 1 broker when they in fact may use more would be a burden.

Laurie Arnold
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December 4, 2014

Via Courier

US Customs and Border Protection
Attn: Ms. Tracey Denning
Regulations and Rulings
Office of International Trade
90 K Street N.E., 10th Floor
Washington, DC 20229-1177

CBP Form 5106

Dear Ms. Denning:

These comments are submitted on behalf of the Footwear Distributors and Retailers of America ("FDRA") in response to the request for comments on the proposed revisions to CBP Form 5106. 79 *Federal Register* 61091 (October 9, 2014).

FDRA is a trade association of some 130 retailers, importers, distributors and producers of footwear. FDRA members account for some 75 percent of United States retail sales and imports of footwear. Many FDRA members make entry using the First Sale principle and have a keen interest in ensuring that the proposed changes in the ICP do not unnecessarily burden importers or inhibit their ability to continue to rely on the principle.

Customs and Border Protection ("CBP") has proposed radical amendments in CBP Form 5106. The form is filed by importers prior to an initial importation, when changes in name and address occur and other occasions.

The principal amendments would mandate the disclosure of personal information about some of the importer's officers. This personal information (SSN, Passport No., etc.) would be required for those officers knowledgeable of the importing and financial aspects of the importer and have the legal authority to make decisions on its behalf. This sensitive personal information is not required at present. Other new information includes the D-U-N's number, primary banking institution, the state or country of incorporation of the importer. The form would be renamed "Create/Update Importer Identity Form".

The proposed amendments to CBP Form 5106 are intended is to enhance CBP's ability to make informed risk assessments. Given the sensitivity of this personal data, CBP must provide a much more robust justification. FDRA does not doubt that CBP may need additional information to assess the risk that a new importer may entail. However, it is not clear that this sensitive personal information will provide much assistance in this area. It seems obvious that other information such as the type of merchandise, the duty rate, the country or origin, whether the merchandise is subject to a restriction, the expected value of the imported merchandise, whether the importer will be dealing with related sellers, and similar inquiries would be more relevant to a risk assessment.

The form does not appear to take account of the fact that in some cases the importer filing the CBP form 5106 will be well known to CBP. Even assuming, as CBP does, that the information is useful, it should not be required when the importer is known to CBP. Established importers are sometimes required to submit the form. When a long-time importer establishes a new division or subsidiary it files a CBP Form 5106. By the same token, a CBP Form 5106 is necessary when an established importer adds a new suffix to an existing IOR. In these instances, the sensitive personal information is not necessary and should not be required. The same is true when a CBP Form 5106 is filed to record changes in an importer's address or name. In these circumstances, the information specified in Block 3 of the proposed form should not be required.

***

FDRA appreciates the opportunity to comment on these important matters and urges that the views expressed here be reflected in the final version of CBP Form 5106.

Sincerely,

McGUIREWOODS LLP

John B. Pellegrini

In Triplicate
cc: FDRA
62311256_1

NATIONAL ASSOCIATION OF BEVERAGE IMPORTERS INC.

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Washington, DC 200045
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202.393.6224
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1.877.393.6224 TOLL FREE

Tracey Denning
U.S. Customs and Border Protection
Regulations and Rulings
Office of International Trade
90 K Street NE., 10th Floor
Washington, DC 20229-1177

December 8, 2014

RE: Importer ID Input Record, *OMB Number:* 1651-0064, *Form Number:* CBP Form 5106

Dear Tracey,

Thank you for the opportunity to comment on revisions to CBP Form 5106. I am commenting on behalf of the National Association of Beverage Importers. NABI is a trade association representing the interests of beer, wine and spirits importers, their suppliers and colleagues in the supply chain. Our members annually import the majority of wine and beer products from unique worldwide suppliers to the U S market.

We are aware that the US Congress and the Administration are concerned about the bona fides of individuals filing for importer status on the current form 5106. CBP is proposing in the subject information collection request (ICR) to greatly expand the type and amount of information required of those seeking to deal with the government. NABI supports the work of CBP in gathering accurate information concerning the businesses and individuals with whom it interacts in the course of import and export activities. CBP has historically assured that there is little jeopardy to the revenues associated with importation by a system of bonding and Surety Company vetting. The collection of this additional detailed information seems to redouble the work of bonding companies who levy a premium for their services. There is no expectation that the Trade in return for this added disclosure will enjoy lower bonding costs.

The proposed ICR directs that individuals (officers) who have knowledge and decision making authority over importing activities provide the expanded information. In many large importing organizations officers and directors may have knowledge and authority

but rarely engage in importing activities that would be of interest to CBP. The definition of the type of official who is required to complete the revised form should be limited and better defined in the rule to impact the fewest and most appropriate individuals.

There is no indication in the proposed rule concerning the retroactivity of the new requirements. We recommend that any expanded information collection be applied prospectively without a requirement for all current CBP importer partners to resubmit.

In the spirit of CBP's "one government at the border" strategy you should be aware that much of this information is already collected and vetted by a partner US government agency for our industry. The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the US Treasury Department collects a full background questionnaire on responsible persons associated with a beverage alcohol importers basic permit. TTB not only collects much of the information called for in the 5106 revision but they also obtain information on the source of funds for the business and all officers and directors with 10% or more stock ownership in the firm. The beverage alcohol industry is highly regulated from supplier / importer to retailer. This is not the case for most other entities regulated by CBP, however dual information collection efforts by US government oversight agencies should seek to be reconciled rather than deferring the burden to the trade.

NABI appreciates the opportunity to provide these comments. We stand ready to further discuss our comments or other aspects of the CBP Form 5106 information collection.

William T. Earle

President

Linda M. Dempsey

Vice President
International Economic Affairs

December 5, 2014

Office of International Trade
U.S. Customs and Border Protection
90 K Street, NE
Washington, DC 20229-1177

ATTN: Tracey Denning, Regulations and Rulings

RE: Agency Information Collection Activities: Importer ID Input Record (CBP Form 5106)

Dear Ms. Denning:

The National Association of Manufacturers (NAM) is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Our membership includes both large multinational corporations with operations in many foreign countries and small and medium manufacturers engaged in international trade on a more limited scale. Our members utilize imported parts, components, and finished products to compete within the U.S. marketplace and abroad.

The proposed changes outlined by U.S. Customs and Border Protection (CBP) to the Importer ID Input Record (CBP Form 5106) would be a significant expansion of the information currently collected. Although we very much support CBP's stated objective to assess, based on risk, a company's compliance with U.S. customs laws, this revision requires information from importers and ultimate consignees – including personal data like the direct phone, email address, social security number and passport information for corporate officers – that is unrelated to that objective. Despite CBP's policy and operational emphasis on risk mitigation and "trusted trader" programs, this proposal would treat the importing community as a monolithic entity and require the same information from every importer regardless of company size, importing scale or whether the company is publicly traded or privately held.

The NAM does not agree with the proposed revisions of CBP Form 5106 to include Social Security numbers, passport numbers, passport country of issuance, passport expiration date, and passport type. This is particularly sensitive information, and CBP did not provide in its notice any indication as to its intended use or rationale for requiring this information from every importer. We do not believe that the personal information related to our company officers is necessary to the proper performance or functions of CBP, and manufacturers are concerned that the officers' personal information could be easily compromised should the information be transmitted via email or other electronic means. Currently, most sureties and customs brokers receive the information for CBP Form 5106 via e-mail and then submit this information with CBP Form 301 (Customs Bond). If the proposed changes are adopted, CBP would need to ensure these entities have the ability to transmit via a secure means – and that CBP has a secure means to receive the data.

Additionally, company officers – particularly for those of large corporations – do not typically handle day-to-day import activities. Rather, they rely on customs and import operations

staff that has the appropriate and necessary business knowledge on such customs, importation and related matters. Although company officers have legal authority to make decisions on behalf of the company, they are not acting in their personal capacities and they often defer to operational staff regarding decisions related to imports.

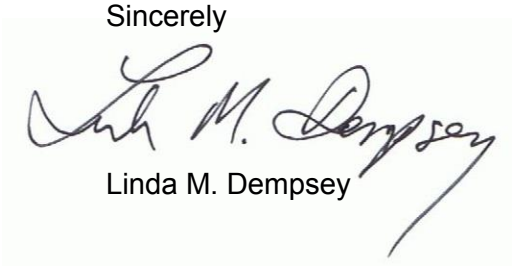
The proposed changes also seem to require data from officers of U.S. importers regardless of citizenship or residency. If that is the case, CBP could require companies to provide personal data for individuals who are residents or citizens of countries – including members of the European Union, Switzerland, Canada, Argentina, Chile, Uruguay, India and Australia – that have strong data privacy laws. Many of these countries consider it coercive for an employer to ask an employee for consent to share personal information.

While less sensitive in nature, we are also concerned by the proposed inclusion of the broker name, broker telephone number, and primary banking institution. That information is frequently subject to change, and filing updates to keep the information current on CBP Form 5106 could pose a significant administrative burden for importers without justification for why it is required.

In addition, the NAM encourages CBP to clarify which data elements on the CBP Form 5106 are required at which point. The current form is titled “Importer ID Input Record,” while the proposed form is titled “Create/Update Importer Identity Form.” If an existing importer needs to update their business address or add a new activity code to their bond (e.g., Drawback Payments Refund), would the importer need to complete all the new proposed sections on the CBP Form 5106? Would all importers need to file the new CBP Form 5106 within a certain timeframe? Or would certain data elements be required only for first-time importers? If the proposed revisions are adopted, we also suggest that CBP consider specifying that companies able to achieve "trusted trader" status or considered low-risk are exempt from providing additional information.

Based on these concerns, the NAM strongly opposes the Form 5106 revisions as proposed. We are happy to discuss our comments in more detail in a meeting with CBP.

Sincerely



Linda M. Dempsey

LMD/la

December 8. 2014

U.S. Customs and Border Protection
Regulations & Rulings Branch
90 K Street N.E., 10th floor
Washington, D.C. 20229-1177

Attention: Tracey Denning

Re: Importer ID Input Record – CBP Form 5106

Dear Ms. Denning:

The National Customs Brokers and Freight Forwarders Association of America ("NCBFAA") is writing in response to the request for comments on the proposed changes to CBP Form 5106. As the nationwide association of customs brokers, freight forwarders, and non-vessel operating carriers, the NCBFAA's members are responsible for submitting the vast majority of CBP Form 5106's on an annual basis.

The NCBFAA unequivocally supports the efforts of U.S. Customs and Border Protection ("CBP") to enhance the security of our nation's borders and we understand that gathering additional information about the companies that are importing merchandise into the United States is a strategy which could facilitate that mission. The Association's goal is to work with CBP to develop a process which will provide CBP with meaningful information without creating an undue burden on legitimate trade. With that in mind, we offer the following comments:

1. **The proposed information collection effort raises serious privacy concerns.** The proposed CBP Form 5106 requires companies (banking information) and corporate officers (direct email, social security numbers, passport information) to provide private and confidential information. This will expose this information to collection and retention by third party service providers (such as customs brokers) who may not have sophisticated procedures for maintaining the privacy of this type of information. While brokers are generally not permitted to disclosure their client's confidential business information to third parties, it is not reasonable to expect brokers to develop

internal security systems which go beyond the existing regulatory standards and require them to restrict access to this information from their own employees as a means of safeguarding the security of this personal data. Brokers who are unable to guarantee the safety of this information may face the loss of business and/or potential liability from impacted individuals. This is an unfair burden to impose on the customs brokerage industry.

2. **CBP has understated the amount of time required to prepare the CBP Form 5106**. Completion of the proposed CBP Form 5106 will likely require input from multiple individuals within an organization and it is highly unlikely that the various individuals required to provide this information will have the data readily available For example, whereas the import/logistics personnel may be able to complete sections 1 and 2, it is unlikely that they will have access to the NAICS code or DUNS Number (or even know what they are). The corporate information required in sections 3F, 3H and 3I will require the review of corporate records; the financial information required in section 3G will have to be obtained from the individual responsible for the finance function. The corporate officers responding to section 3J will have to review their personal records to provide their passport details. All of these individuals will require explanations and guidance from their service providers. Whereas CBP has suggested that the estimated time to complete form will be 30 minutes, it will more likely take most companies and their brokers several hours to complete and obtain the proposed CBP Form 5106.

3. **CBP needs to clarify when a new CBP Form 5106 will be required**. The proposed CBP Form 5106 requires a significant amount of corporate information in a non-static corporate environment. Companies move, re-organize and change officers on a regular basis. If an officer is no longer associated with the company, is there an obligation to submit a new CBP Form 5106? CBP needs to clarify when this information must be updated. Is it the importer's obligation to keep this information current?

4. **It is unclear which data elements are mandatory and which are optional**. The instructions to the proposed CBP Form 5106 seem to suggest that much of the information in section 3 of the proposed form is optional (with the exception of 3J). CBP should clarify this issue. Similarly, as there are number of different scenarios which will require the submission of a new CBP Form 5106 or an update to the existing information on file, CBP needs to clarify which data elements are required in these different scenarios. For example, it is highly unlikely that the importer will be able to obtain the section 3 information when a CBP Form 5106 is required for an ultimate consignee. What procedures are to be filed if one or more fields is not applicable to the importer? For example, a small or start-up company may not have a DUNS or NIACS code. Similarly, are all these fields required when a CBP Form 5106 if filed for a drawback claimant? In addition there are references to program codes, for example 1J, 1K, 1L. An explanation of the codes needs to be provided. We would like clarification on the proposed data element 3D which seems to link brokers

and self-filers into a data requirement. CBP should enhance the preparation instructions to clarify these issues.

5. **CBP needs to clarify when information on company officers will be required**. It has been suggested that the information required under section 3J of the proposed form would only be required for "new" importers. CBP needs to clarify this issue and define what constitutes a "new" importer.

The National Customs Brokers and Forwarders Association of America, Inc. appreciates the outreach CBP has conducted as the revisions to the Form 5106 were considered and further appreciates the opportunity to provide these comments. We would be happy to provide any further input which CBP would find helpful.

Yours truly,

Geoff Powell
President
National Customs Brokers and Forwarders Association of America, Inc.

Cc Mary Jo Muoio, Chair NCBFAA Customs Committee
Alan Klestadt, Esq., Customs Counsel to the NCBFAA

SIA SEMICONDUCTOR INDUSTRY ASSOCIATION

Comments of the
Semiconductor Industry Association (SIA)
On
Agency Information Collection Activities:
Importer ID Input Record
79 Fed. Reg. 61091 (October 9, 2014)

December 3, 2014

Tracey Denning
Customs and Border Protection
Regulations and Rulings
Office of International Trade
90 K St. NE, 10th Floor
Washington, DC 20229

The Semiconductor Industry Association (SIA), the voice of the U.S. semiconductor industry,[1] appreciates the opportunity to submit comments on U.S. Customs and Border Protection's (CBP's) proposal to revision of an existing collection of information. Semiconductor innovations form the foundation of America's $1.1 trillion technology industry affecting a U.S. workforce of nearly 6 million.

Founded in 1977 by five microelectronics pioneers, SIA unites both manufacturers and designers, accounting for over 80 percent of U.S. semiconductor production. SIA seeks to strengthen U.S. leadership of semiconductor design and manufacturing by working with Congress, the Administration and other key industry groups to promote policies and regulations that fuel innovation, propel business and drive international competition in order to maintain a thriving semiconductor industry in the United States.

CBP invited public comments on proposed CBP revisions to Form 5106, "by gathering additional information about the company and its officers. This will enhance CBP's ability to make an informative assessment of risk prior to the initial importation and will provide CBP with improved awareness regarding the company and its officers who have chosen to conduct business with CBP." The notice continues that, "this detailed information will provide CBP with a greater knowledge about the company and its' previous business practices." CBP seeks comments addressing, "(w)hether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility".

SIA believes nearly all the additional information to be requested in Form 5106 has already been submitted to other government agencies. CBP should coordinate with those agencies to obtain this additional information and not burden companies to re-state it to CBP. Since this information is already known to several other federal agencies, SIA does not believe that CBP collection of the information is necessary for its proper performance. At a minimum, SIA would propose that the social security

[1] Additional information on SIA is available at www.semiconductors.org.

numbers of corporate officers should not be required, as this poses a security risk to the individuals.

Finally, if these changes are based on assessment of risk, companies that are members of the Customs-Trade Partnership Against Terrorism (C-TPAT) should be exempted from sending this additional information to CBP.

SIA appreciates CBP's consideration of our views, and we look forward to continuing to work with CBP to strike an appropriate balance in the collection of information for Importer ID Input Records.

Southern Shrimp Alliance
P.O. Box 1577 Tarpon Springs, FL 34688
955 E. MLK Dr. Suite D Tarpon Springs, FL 34689
727-934-5090 Fax 727-934-5362

December 4, 2014

Via Electronic Mail

Tracey Denning
Regulations and Rulings
Office of International Trade
U.S. Customs and Border Protection
90 K St., NE
10th Floor
Washington, DC 20229-1177

Re: **60-Day Notice and Request for Comments; Revision of an Existing Collection of Information; Comments of the Southern Shrimp Alliance**

Dear Ms. Denning:

The following comments are submitted on behalf of the Southern Shrimp Alliance in response to the notice published in the Federal Register (79 Fed. Reg. 61,091) by U.S. Customs and Border Protection ("CBP") on October 9, 2014 inviting comments regarding CBP's proposed revision of an existing collection of information relating to the Importer ID Input Record (CBP Form 5106).

The Southern Shrimp Alliance is a non-profit alliance of members of the shrimp industry in eight states committed to preventing the continued deterioration of America's domestic shrimp industry and to ensuring the industry's future viability. The Southern

Shrimp Alliance serves as the national voice for the shrimp industry in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

The Southern Shrimp Alliance's interest in the agency's proposed revision to the Importer ID Input Record (CBP Form 5106) stems from the organization's efforts to enhance enforcement of the antidumping duty orders issued in February 2005 regarding certain imported shrimp. During the life of these trade remedies, the effectiveness of the relief against unfairly traded imports has been diminished and undermined through abuse of the legal process of importation, particularly through the proliferation of paper shell-companies acting as consignees and importers of record and foreign entities acting as importers of record. Fraudulent tactics employed by bad actors are not limited in design to the circumvention of duty payment, but are also used to evade general regulation of imported goods through the utilization of importers of record that are effectively judgment-proof. For example, the utility of the U.S. Food and Drug Administration's Import Alerts has been significantly mitigated by false designations of manufacturers and shippers through declarations made upon entry by paper shell-companies and foreign entities acting as importers of record.

Based on our experience, the Southern Shrimp Alliance supports the revisions proposed by CBP as they significantly strengthen the agency's capacity to enforce the trade laws and identify importers that pose a risk to revenue. Per the Federal Register notice, CBP instructs that "comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) annual costs to respondents or record keepers from the collection of information (a total capital/startup costs, operations and maintenance costs)." The Southern Shrimp Alliance's comments, set out below, focus principally on category (a) and seek to demonstrate that the collection of information is necessary and, moreover, vital for the proper performance of the functions of CBP and, further, that this information has essential practical utility.

I. Shell Companies Acting as Importers of Record and Non-Resident Importers Pose Substantial Challenges to Trade Regulation

Trade fraud takes numerous forms, each of which presents different enforcement challenges. The use of foreign entities as importers of record or paper shell-companies as importers of record reduces the risk of detection of circumvention schemes while, at the same time, precludes the collection of duties, fines, and fees due regarding these import entries following detection.

Shell and front companies, along with unscrupulous foreign entities, are a central component of various forms of evasion:

- Mislabeling, misclassification, and misidentification schemes that falsely declare imports as not subject to duties or additional regulatory obligations;
- Undervaluation schemes that understate the value of imported merchandise declared to be subject to duties thereby reducing duties owed; and
- Abuse of the retrospective antidumping and countervailing duty assessment system (obtaining low or zero percent cash deposit rates through U.S. Department of Commerce ("Commerce") review of a small number of shipments in a new shipper review or administrative review).

CBP has long recognized the threat posed by shell-company and non-resident importers with respect to the third category of schemes. For example, in reports to Congress regarding the collection of antidumping and countervailing duties, the agency has observed:

> The U.S. AD/CVD system is a retrospective system, meaning that the AD/CVDs that CBP collects at the time of entry are only estimated duties. The actual AD/CVD an importer should have paid is not known until after Commerce conducts a review of the AD/CVD order, which is usually 1 to 2 years after entry has occurred. If the actual AD/CVD rate established by Commerce's review is greater than the estimated AD/CVD paid at entry, CBP is required to issue a bill to the importer to collect the additional duties. ***However, there are importers who are unwilling, unable, or simply have no intention of paying the actual duties and go out of business when CBP issues a bill.***[1]

This state of affairs is a necessary byproduct of a system that allows virtually anyone to act as an importer of record. Because there are only minimal requirements for those wishing to act as an importer of record, importing entities can be created easily and disappear even more easily. As CBP observed in a more recent report to Congress:

> In addition, this minimal capitalization allows undercapitalized companies easy entrance into the AD/CVD markets (no statutory qualifications or

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[1] U.S. Customs and Border Protection, Report to Congress on (1) U.S. Customs and Border Protection's Plans to Increase AD/CVD Collections and (2) AD/CVD Enforcement Actions and Compliance Initiatives, Fiscal Year 2008 p.3 (emphasis added). See also U.S. Customs and Border Protection, AD/CV Duty Enforcement Actions and Compliance Initiatives, Fiscal Year 2009 Report to Congress (March 3, 2009) p.8 ("However, there are importers who are unwilling, unable, or simply have no intention of paying the actual duties and go out of business when CBP issues a bill.") and U.S. Customs and Border Protection, Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: Fiscal Year 2010, Fiscal Year 2011 Report to Congress (May 24, 2011) p.2 ("Some importers are unwilling or unable to pay the actual duties, and some are no longer in business when CBP issues a bill, leading to uncollected AD/CV duties.").

> criteria must be satisfied to become an importer of record), and allows importers to quickly "disappear" if so inclined.[2]

In its most recent report to Congress regarding enforcement of antidumping and countervailing duty orders, CBP provided a more expansive discussion and explanation of the challenges presented by shell-companies and non-resident entities to the integrity of the legal process of importation:

> Pursuant to law and regulation, the importer of record, which could be a foreign-based company, is liable for the additional duties in addition to the surety listed on the associated bond. ***Some importers are unwilling or unable to pay the actual duties, and some are no longer in business when CBP issues a bill, leading to uncollected AD/CVD.*** Undercapitalized importers with few assets, if still in business by the time bills for final AD/CVD are issued, often have difficulties in paying these bills. ***Other importers, often in the form of shell companies and foreign non-resident importers, have no intention of paying any final duties, and disappear as soon as there is any indication that final duties may increase.*** This is particularly true for AD/CVD orders covering imports from China, and Chinese agriculture/aquaculture imports in particular . . . . In addition, some importers participate in schemes to intentionally evade AD/CVD by filing incorrect entries, leading to additional uncollected AD/CVD.
>
> ***CBP faces significant challenges in collecting unpaid duties from importers with no assets in the United States.*** In addition, CBP has limited legal recourse in collecting debts from importers located in other countries. Reciprocal revenue agreements between the United States and foreign countries could enhance CBP's ability to collect from foreign-based entities. When CBP cannot collect from the importer, the amount of the bond is often insufficient to cover the additional duties.[3]

The risk to revenue created by these practices has been substantial:

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[2] U.S. Customs and Border Protection, Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: Fiscal Year 2012, Fiscal Year 2013 Report to Congress (July 19, 2013) p.13.

[3] U.S. Customs and Border Protection, Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: Fiscal Year 2013, Fiscal Year 2014 Report to Congress (Aug. 19, 2014) p.9 (emphases added).

> There are approximately 36,000 unpaid AD/CVD bills from FY 2001 through FY 2013 totaling $1.83 billion, for which CBP is pursuing collection. Of this amount, $154.1 million was under protest and $71.5 million involves bankrupt debtors. Further amounts are owed by importers that have disappeared or dissolved without going through the bankruptcy process. Additionally, tens of millions of dollars are owed by sureties that are in rehabilitation or receivership.[4]

In comparison, a grand total of $449.8 million in antidumping and countervailing duties was deposited during fiscal year 2013[5] – an amount less than one-quarter the total unpaid antidumping and countervailing duties reported by CBP.

Reviewing CBP's experience with the collection of antidumping and countervailing duties, the U.S. Department of Treasury ("Treasury") has reached similar conclusions. In testimony before Congress, a Treasury official observed:

> Although CBP's overall duty collection rate is over 99 percent, CBP is able to collect less than 50 percent of antidumping and countervailing duties that have been retrospectively assessed. The conclusion of our reports is that the chief obstacle to ensuring collection of retrospectively assessed duties is the absence of adequate security, such as cash deposits or bonds. ***This problem has been exacerbated by unscrupulous importers who knew they were likely to incur retrospective duty assessments and absconded when payment was due***.[6]

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[4] Id. p.14.

[5] Id.

[6] Statement of Timothy E. Skud, Deputy Assistant Secretary for Tax, Trade, and Tariff Policy, U.S. Department of the Treasury, Testimony before the Subcommittee on Trade, Committee on Ways and Means (May 20, 2010) (emphasis added). See also Testimony of Timothy E. Skud, Deputy Assistant Secretary for Tax, Trade, and Tariff Policy, U.S. Department of the Treasury, Before the Senate Finance Committee (June 24, 2008) ("Although CBP's collection rate is over 99 percent for duties overall, CBP is able to collect less than 50 percent of antidumping and countervailing duties that have been retroactively assessed in excess of bonds or cash deposits. We concluded in the report that the chief obstacle to ensuring collection of such duties is the difficulty of obtaining adequate security (cash deposits, bonds, or other instruments). ***This problem appears to have been exacerbated in some cases by unscrupulous***

In a formal report issued in July 2007, Treasury emphasized the severity of the challenge faced by CBP in collecting antidumping and countervailing duties:

> While antidumping and countervailing duties accounted for only 14.9 percent of all duties that should have been collected, *uncollected* antidumping and countervailing duties represent 87 percent ($512.9 million) of *all uncollected* duties from FY 2003 through FY 2006.[7]

Identifying the reasons underlying the lack of collection of antidumping and countervailing duties, Treasury observed that some importers intended from the outset to evade payment of duty obligations:

> **Some Importers May Be Bankrupted, But Others "Game" the System**
>
> In some cases, importers are unable to pay the final duty bill because the bill exceeds their assets. In other cases, it appears that some importers expect that their final assessment will exceed their cash deposit, and that these importers plan to be "unavailable" to pay their duty obligations. ***Some importers establish shell companies that they intend to close if CBP attempts to collect any duties that are determined retrospectively.*** In some cases, importers do not have sufficient attachable assets available for the government to pursue. In all these cases, the increase of the duty creates an unsecured obligation to the government. . . .[8]

Per Treasury's report, the problem was particularly evident with respect to importers of agricultural and aquacultural goods who "tended to be undercapitalized":

> CBP also determined that the principal entities responsible for uncollected duties were importers of agriculture/aquaculture merchandise subject to antidumping duties. Based on CBP's analysis, the collection problem with respect to this merchandise appeared to be attributable to the fact that

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importers who imported knowing they were likely to incur duties not fully secured by bonds or cash deposits following retrospective duty assessment and who then absconded when payment was due." (emphasis added)).

[7] U.S. Department of the Treasury, *Duty Collection Problems FY 2003-2006* (July 2007) 4 (emphasis in original).

[8] Id. 9 (emphasis of heading in original; other emphasis added).

> importers of agriculture/aquaculture merchandise tended to be undercapitalized, and that by the time final liability was assessed (typically one or more years after the goods had entered), many of the companies were no longer in operation. Because the antidumping duties finally assessed often significantly exceeded both the cash deposit and the bond amount, CBP was left unable to collect the unsecured (retrospectively assessed) portion of the duties assessed.[9]

Similarly reviewing CBP's difficulty in collecting antidumping and countervailing duties, the United States Government Accountability Office ("GAO") discussed the role limited information regarding importers plays in undermining enforcement efforts:

> CBP collects a minimal amount of information from companies applying to be importers of record, which challenges its ability to subsequently locate and collect duties from delinquent debtors. Aside from basic information such as an importer's name and its mailing address, CBP requires one additional unique identifying number. This number can be an Internal Revenue Service Taxpayer Identification Number (for a company) or a Social Security number (for an individual). In addition, applicants can request that CBP assign them a unique number for CBP's tracking purposes. ***Companies seeking to avoid paying AD/CV duties can easily drop identification numbers and obtain new ones, making the numbers an ineffective tool for enforcement.*** Regardless of the type of unique identifying number the importer uses, the company (or individual) is not subject to any credit or background checks before being allowed to import products into the United States. ***With such limited information about importers, locating them can be difficult, especially if they are trying to evade duties.*** According to CBP officials responsible for attempting to collect delinquent AD/CV duties, their collection efforts often are ineffective because by the time they are able to attempt to collect, importers have ceased business operations.[10]

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[9] Id. p.10.

[10] U.S. Government Accountability Office, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, GAO-08-391 (Mar. 2008) pp. 28-29 (emphases added).

The lack of meaningful information regarding importers allows individuals and companies owing substantial sums of money to Treasury to continue to import merchandise under new identities.

As noted by the CBP officials interviewed by the GAO, substantial amounts of uncollected antidumping and countervailing duties are deemed uncollectible and are ultimately written off, never to be recovered: "CBP officials expect that most of the nearly $290 million referred to its Office of Chief Counsel will be written off after proper legal review."[11] Explaining how CBP's Office of Chief Counsel makes its determination to write off debts owed, the GAO reported:

> The Office of Chief Counsel cited several reasons for writing off outstanding bills, including (1) CBP is unable to locate the debtor(s), (2) the importer has no assets, (3) the debt against the debtor has been discharged in bankruptcy, and (4) the cost of collection is anticipated to exceed the amount recoverable.[12]

The GAO's report further provided a detailed explanation of the practical impossibility of collecting duties from non-resident importers of record, where such parties do not voluntarily meet their obligations:

> ***When the delinquent importer is a foreign importer of record, the option of pursuing litigation presents certain challenges***. According to Justice officials, before pursuing litigation in a foreign country, they consider the ability to collect, the likelihood of success, and the cost of collection efforts versus the amount of debt. Justice also must consider whether the nature of the proposed action is one that can be the subject of a lawsuit in a foreign court. Because foreign courts generally do not enforce taxes or duties imposed by other countries, in the case of a collection action based upon delinquent duties owed by a foreign entity, Justice would have to be satisfied that the foreign court would be willing to

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[11] Id. p.18.

[12] Id.

> hear such an action or enforce a judgment that might otherwise be obtained. In addition, it would be particularly challenging to bring any CV duty cases because, by definition, the foreign government caused the unfair trade by providing a countervailable subsidy. Justice officials stated that given those challenges, ***it is unlikely that collection actions based upon delinquent duties can be successfully brought in foreign courts.*** For that reason, Justice officials were not aware of any referrals from CBP to initiate legal cases brought in foreign courts against foreign importers of record that owed AD/CV duties.[13]

CBP officials noted additional concerns regarding non-resident importers:

> CBP officials pointed out that ***foreign companies and individuals are allowed to be importers, and that CBP's ability to collect from such importers, especially illegitimate ones, is very limited.*** According to CBP officials, the number of nonresident importers (i.e., foreign importers of record) seems to be growing and poses unique issues when it comes to collecting AD/CV duties. CBP officials indicated that if foreign importers of record do not pay supplemental duties, the cost of attempting to collect the duties would be high and would likely exceed the amount collected.[14]

Thus, CBP's experience demonstrates that certain types of importers (particularly those without assets and non-resident importers) pose particularized, acute risks to revenue.

In a more recent review of enforcement challenges, the GAO provided a fulsome summary regarding how the ease of becoming an importer of record facilitated circumvention of antidumping and countervailing duties:

> ***Entities engaging in evasion can exploit the ease of becoming an importer of record, impeding CBP's ability to target and take deterrent action against them.*** As noted earlier, importers of record are responsible for paying all estimated duties, taxes, and fees on products when they are brought into the United States. However, ***importers seeking to evade AD/CV duties can exploit the ease of becoming an importer of record in several ways.*** First, according to CBP officials, companies can easily adopt new importer names and identification numbers, making it difficult for CBP to track their importing activity and

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[13] Id. p. 19 n.38 (emphases added).

[14] Id. p. 29 (emphasis added).

> gather evidence needed to prove that they are engaging in evasion. CBP officials stated that they suspect some importers evading AD/CV duties set up new names and identification numbers in advance to have ready for use in anticipation of CBP targeting efforts. Second, as our prior work has noted, ***CBP collects a minimal amount of information from companies applying to be importers of record, which evaders can take advantage of to elude CBP efforts to locate and collect revenues from them.*** For instance, companies are not subject to any credit or background checks before being allowed to import products into the United States. Third, foreign companies and individuals are allowed to import products into the United States, but CBP can have difficulty collecting duties and penalties from foreign importers—especially illegitimate ones—when the importers have no attachable assets in the United States. For example, as of February 2012, CBP had collected about $5 million, or about 2 percent, of the approximately $208 million it assessed in civil penalties between fiscal years 2007 and 2011. CBP attributed its collection difficulties, in part, to challenges experienced in collecting from foreign importers of record. CBP officials stated that, due to this risk of noncollection, a factor they consider when deciding whether or not to impose a penalty against a confirmed evader is whether or not it has assets in the United States.[15]

Summarizing the enforcement challenges faced by CBP, the GAO identified:

> the inherently difficult and time-consuming process of uncovering evasive activity conducted through clandestine means, inconsistent access to foreign countries that limits CBP's ability (as well as ICE's) to gather necessary evidence, and the ease with which importers attempting to evade duties can change names and identification numbers to elude detection.[16]

In recognition of the challenges presented by commonly employed circumvention schemes facilitated through shell-company and/or non-resident importers, Congress has proposed and considered legislative amendments to augment CBP's regulation of importer entities. For example, in September 2011, Senator Claire McCaskill (MO)

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[15] U.S. Government Accountability Office, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion*, GAO-12-551 (May 2012) pp. 17-18 (emphases added).

[16] Id. p. 30.

introduced the *Fighting for American Industry's Right (FAIR) to Enforcement Against Duty Evasion Act of 2011*[17] that would have mandated the creation of an "importer of record database," to be updated on a regular basis and be accompanied by routine reports to Congress regarding "improvements made to the importer of record program . . . ."[18] Separately, in December 2012, Rep. Kevin Brady (TX) – then the Chairman of the House Ways & Means Trade Subcommittee – introduced the *Customs Trade Facilitation and Enforcement Act of 2012*.[19] Chairman Brady's bill dealt with numerous trade and CBP-related issues, including the establishment of an "importer of record program."[20] Section 221 of the introduced legislation required the establishment of a program to "assign and maintain importer of record numbers," as follows:

> **SEC. 221. IMPORTER OF RECORD PROGRAM.**
>
> (a) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish an importer of record program to assign and maintain importer of record numbers.
>
> (b) REQUIREMENTS.—The Secretary of Homeland Security shall ensure that, as part of the importer of record program, the U.S. Customs and Border Protection Agency—
>
> (1) develops criteria that importers must meet in order to obtain an importer of record number, including—

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[17] See "McCaskill cracks down on unfair trade practices, boosts jobs," (Sept. 20, 2011) available at: http://www.mccaskill.senate.gov/media-center/news-releases/mccaskill-cracks-down-on-unfair-trade-practices-boosts-jobs.

[18] See "Fighting for American Industry's Right (FAIR) to Enforcement Against Duty Evasion Act of 2011," S. 1581 (Sept. 20, 2011) § 4.

[19] See "Brady Introduces Customs Trade Facilitation and Enforcement Act of 2012" (Dec. 7, 2012) available at: http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=314803.

[20] See "Customs Trade Facilitation and Enforcement Act of 2012," H.R. 6642 (Dec. 7, 2012) § 221.

(A) criteria to ensure sufficient information is collected to allow the U.S. Customs and Border Protection Agency to verify the existence of the importer requesting the importer of record number;

(B) criteria to ensure sufficient information is collected to allow the U.S. Customs and Border Protection Agency to identify linkages or other affiliations between importers that are requesting or have been assigned importer of record numbers; and

(C) criteria to ensure sufficient information is collected to allow the U.S. Customs and Border Protection Agency to identify changes in address and corporate structure of importers;

(2) provides a process by which importers are assigned importer of record numbers;

(3) maintains a centralized database of importer of record numbers, including a history of importer of record numbers associated with each importer, and the information described in subparagraphs (A), (B), and (C) of paragraph (1);

(4) evaluates the accuracy of the database; and

(5) takes measures to ensure that duplicate importer of record numbers are not issued.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the importer of record program established under subsection (a).

(d) NUMBER DEFINED.—In this subsection, the term ‘‘number’’, with respect to an importer of record, means a filing identification number described in section 24.5 of title 19, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act).

Although the proposed legislation discussed has not yet been adopted, the agency’s proposed changes to CBP Form 5106 are consistent with Congressional concerns regarding CBP’s compilation of information regarding entities acting as importers of record. Requesting additional information regarding importers of record creates minimal additional burden on a party seeking to act as an importer of record

while affording CBP with a stronger basis for assessing the risk to revenue posed by the entity. Through the collection of the information that would be obtained by the proposed revisions to CBP Form 5106, the agency will be able to further concentrate enforcement resources to areas of greater risk and reduce impediments to legitimate trade.

In this vein, the Southern Shrimp Alliance fully supports CBP's proposed revisions to CBP Form 5106 and appreciates the agency's efforts to augment its response to trade fraud. The Southern Shrimp Alliance additionally supports the changes and additions proposed by the Committee to Support U.S. Trade Laws in that organization's separate submission on this topic. In particular, the Southern Shrimp Alliance believes that the CBP Form 5106 should be improved as much as possible to facilitate the collection of information that would allow CBP "to identify linkages or other affiliations between importers that are requesting or have been assigned importer of record numbers" consistent with the goals of the *Customs Trade Facilitation and Enforcement Act of 2012*. As discussed in more detail below, past trade law enforcement efforts provide insight into how networks of linked, affiliated, and related companies are created and utilized to frustrate and evade trade regulation. CBP should endeavor, to the greatest extent possible, to identify linkages between these ostensibly independent companies as early as possible. CBP Form 5106 provides a unique opportunity to obtain relevant information for this objective.

II. Past Enforcement Efforts Underscore the Use of Networks of Shell-Companies

Unscrupulous importers establishing shell-company vehicles that act as importers of record is a common feature of circumvention schemes, including schemes

unrelated to manipulation of low cash deposit rates that eventually become high assessment rates. In these conspiracies, multiple front companies are established to evade payment of duties and fees and frustrate efforts to keep unsafe merchandise out of the U.S. market. The intentional design of these circumvention schemes has been well documented in multiple criminal prosecutions of trade fraud as well as in civil proceedings.

For example, in the criminal prosecution of Hung Ta Fan for evasion of antidumping duties on Chinese honey through transshipment, a U.S. Immigration and Customs Enforcement ("ICE") Special Agent explained that Mr. Fan "was the registered agent of multiple California-based honey import companies, including Blue Action Enterprise, Inc. ('Blue Action'); 7 Tiger Enterprises, Inc. ('7 Tiger'); Honey World Enterprise Inc. ('Honey World'); and Kashaka USA, Inc. ('Kashaka') . . . ."[21] Mr. Fan used these companies "to act as registered importers of record to import and enter Chinese-origin honey into the United States."[22] The creation of multiple shell companies was designed to avoid CBP scrutiny:

> FAN also told ICE agents that he created Honey World on the advice of ALW United States Executive 2, who told FAN that a high volume of imports by a single company would be noticed by CBP. FAN also stated that he acted upon additional advice provided to him by an employee of the FAN Companies, who advised FAN that ***he should import into the United States using multiple companies to avoid added scrutiny and***

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[21] Declaration of Immigration and Customs Enforcement, United States v. Fan, Case No. 1:10-cr-00198 (Mar. 12, 2010 N.D. Ill.).

[22] Id.

> ***attention by CBP*** and that this advice was seconded by ALW Executives in at least one-in-person meeting with FAN.[23]

Mr. Fan registered these paper importing companies at different addresses, some of which had been used for other companies not discussed on the record of the criminal case.[24]

In the criminal case brought against Jun Yang three years later for another trade evasion scheme involving transshipped honey, the U.S. Attorney's sentencing position paper again noted the role of shell-company importers in effectuating the fraud:

> As part of the fraudulent practice, ***YANG ordered honey from Chinese honey suppliers, including "Chinese Transshipper A," knowing that the Chinese honey suppliers would send Chinese-origin honey to countries of intermediate destination, including Malaysia and India, where the honey was mislabeled as to country of origin before the honey passed through a United States customhouse as non-Chinese-origin honey.*** YANG and National Commodities also (a) caused the formation of at least three companies, including CCM Foods, Inc.; Kota Imports, Inc.; and Madu Jaya Inc.; and used at least one other company, Wintex Group, Inc. (collectively the "companies"), to import and enter honey supplied by Chinese Transshipper A knowing that all or some of the honey was Chinese in origin; (b) benefitted from the companies filing CBP entry forms 3461 and 7501 that falsely and fraudulently declared all the honey as originating from Malaysia and India; (c) purchased honey imported by the companies despite knowing that some or all the honey was Chinese in origin, but declared at the time of

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[23] Id. (emphasis added).

[24] Blue Action and Kashaka were both registered at 23441 Golden Springs Dr. #208, Diamond Bar, CA. Mr. Fan also registered Sweet Spray, Inc.; Zitabs Enterprise, Inc.; Redsun Enterprises, Inc.; and Springkim Enterprise, Inc. at this address. Several other companies have been registered at this address. 7 Tiger was registered at 1107 Fair Oaks Ave., #438, S. Pasadena, CA 91030, the same address used for a company called Woody's Syrup, Inc. Honey World was registered at 2213 Wind River Lane, Rowland Heights, CA 91748. This residential address has also been used for corporate and trademark registrations of other companies as well. Each of the companies registered at these three addresses are currently listed as either "dissolved" or "suspended" in the California Secretary of State's database.

> importation and entry as entirely originating from Malaysia and India; and (d) wire transferred funds to the companies as payment for the purchase of honey that fraudulently entered the United States.[25]

Similarly, in the criminal case against Katy Lin regarding even more transshipped honey, the creation of front companies to act as importers of record was again a central component of the fraud. Here, however, the front companies were "controlled" by foreign entities. Responding to the defendant's objection to the pre-sentencing report, the U.S. Attorney provided a fulsome discussion of the scheme:

> KBB Express Inc. was a freight forwarding company located in South El Monte, California that provided nationwide transportation, delivery, and other logistical services for imported and entered merchandise, including Chinese-origin honey. LIN owned and operated KBB Express Inc., and also served as the U.S. agent for at least twelve importers of record that were controlled by Chinese honey producers and manufacturers. These

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[25] "The Government's Position Paper as to Sentencing Factors," United States v. Yang, Case No. 1:13-cr-00139 (Nov. 8, 2013 N.D. Ill.) pp. 8-9 (emphasis added).

While heavily involved in honey trade fraud, Mr. Yang's principal expertise was in seafood imports. Thus, at the same addresses as the shell company importers formed to facilitate the honey scheme, different companies were registered that facilitated the importation of "Malaysian" shrimp. Priority Seafood Company, for example, was registered at the same address as Madu Jaya (11152 Westheimer Rd. #199, Houston, TX 77042-3208). YZ Marine Inc. was registered at the same address as Kota Imports (5905 Sovereign Dr. #M-053, Houston, TX 77036-2309). And the address for the registered agent of both Kota Imports and Priority Seafood (10901 Meadowglen Lane, #302, Houston, TX 77042) was the same address used by a company named American Fisheries Inc. on its application for the trademarks "Easy Choice" and "Melody."

During the course of Mr. Yang's criminal case, American Fisheries Inc. filed an emergency motion seeking to recoup amounts paid by Mr. Yang to the U.S. Government as part of his plea agreement. In its emergency motion, American Fisheries argued that Mr. Yang had failed to make full payment for shrimp sold to raise the funds to pay his criminal penalties and fines. As an attachment to the emergency motion, American Fisheries included the container number for each shipment of "Malaysian" shrimp that eventually ended up in Mr. Yang's possession. The container numbers reported can be matched with bills of lading indicating that the consignee for each of these shipments was YZ Marine.

> importers of record included Bright Step (United States) Limited; Sweet Campo Co., Ltd.; Migrow Trading Inc.; Chix Trading Inc.; Rouka International Inc.; Oliv Amber Trading Co., Ltd.; Titto International Inc.; Stariver Trading Inc.; Tobest Trading Co., Ltd.; Russa International Inc.; Sunny (USA) Trading Inc.; and Silver Spoon International Inc. As the U.S. agent for these companies, ***LIN handled the process of importing***, and coordinated with customhouse brokers ***to enter and bring in, Chinese-origin honey into the United States without paying antidumping duties*** and honey assessment fees.[26]

Outside of trade in honey, the creation of shell-company importers to frustrate trade remedy enforcement was also documented in a False Claims Act suit involving evasion of antidumping and countervailing duties imposed on aluminum extrusions from China. In the U.S. Department of Justice's complaint intervening in part of the civil action initiated in 2011, the Government explained how importers of aluminum extrusions conspired to create a sham enterprise to act as the importer of record for falsely described merchandise.[27] The creation of the shell company importer was, according to the Department of Justice, an effort to insulate the actual purchasers from liability for their criminal acts and depended upon the participation of freight-forwarding (shipping) agents/logistic companies and customs brokers in a scheme developed by the Chinese supplier. The explanation of the scheme set out in the Complaint is

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[26] "Government's Response to Defendant's Objection to the PSR," United States v. Lin, Case No. 1:13-cr-00125 (Sept. 25, 2013 N.D. Ill.) pp. 4-6 (emphases added).

[27] "United States' Complaint in Intervention and Demand for Jury Trial," United States ex rel. Valenti v. Wingfield, Case No. 1:11-cv-00368 (Nov. 14, 2013, M.D. Fla.) pp. 34-38.

comprehensive;[28] the section addressing the shell company importer is set out in full below:

> **E. Northeastern and Ma Knowingly Evaded or Caused the Evasion of Duties**
>
> 147. William Ma worked for JKMY Logistics LLC and Teamwork Logistics, which were freight forwarding companies used to ship some of the containers of Tai Shan aluminum extrusions to customers after they cleared U.S. Customs.
>
> 148. Ma was asked by an employee of Ocean Bridge International Logistics Co. Ltd., which was Tai Shan's shipping agent responsible for shipping Tai Shan aluminum extrusions from the PRC through Malaysia to the United States, to form Northeastern and serve as the importer of record on future shipments of Tai Shan aluminum extrusions.
>
> 149. Ma and Northeastern joined the conspiracy on or about November 15, 2010, when Ma formed Northeastern for the purpose of serving as the importer of record of Tai Shan aluminum extrusions.
>
> 150. From December 6, 2010 through at least March 20, 2011, Northeastern served as the importer of record for Tai Shan aluminum extrusions entering the United States.
>
> 151. Nonetheless, neither Ma nor Northeastern was the owner, purchaser, or consignee of the aluminum extrusions for which Northeastern acted as the importer of record.
>
> 152. Ma communicated with Tai Shan employee Michael Wu regarding the entries he made of Tai Shan aluminum extrusions.
>
> 153. Although Ma and Northeastern facilitated the entry of these shipments into the United States, neither Ma nor Northeastern had any independent knowledge of the sender, contents of the containers, or origin and value of the merchandise.
>
> 154. Ocean Bridge International paid Ma $100 per entry to be the importer of record for shipments of Tai Shan aluminum extrusions.
>
> 155. Despite being the importer of record, Northeastern never received the containers of aluminum extrusions, which were shipped directly to the

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[28] Remarkably, the Government's allegations describe a paltry amount paid to the party responsible for administering the shell-company importer's entries. As noted in the reproduced excerpt, for a mere $100 per entry, hundreds of thousands of dollars in antidumping and countervailing duties that might eventually be assessed upon discovery of the scheme could be avoided.

purchasers, including CRL, Southeastern, and Waterfall, upon clearing U.S. Customs.

156. Northeastern and Ma knew or should have known that Northeastern did not qualify as an importer of record for the shipments of Tai Shan aluminum extrusions.

157. Upon becoming the importer of record, Northeastern, through its customs brokers, ***continued to declare Malaysia as the country of origin*** of Tai Shan aluminum extrusions.

158. Upon becoming the importer of record, Northeastern, through its customs brokers, ***continued to undervalue the merchandise, and therefore failed to declare and pay the full amount of regular duties owed on these imports***.

159. Upon becoming the importer of record, Northeastern, through its customs brokers, ***continued to fail to declare and pay any antidumping or countervailing duties on these imports***.

160. At all times between November 15, 2010 and March 20, 2011, Northeastern and Ma had actual knowledge that for those imports of aluminum extrusions from Tai Shan where Northeastern was the importer of record, ***the Entry Summaries were false, or Northeastern and Ma acted in deliberate ignorance or with reckless disregard of the truth of those Entry Summaries, in that the Entry Summaries failed to declare that countervailing or antidumping duties were owed and declared that Malaysia was the country of origin.*** Northeastern and Ma had actual knowledge that this information was false, or acted in deliberate ignorance or with reckless disregard of the truth of the information, because Northeastern and Ma knew (1) that the aluminum extrusions were manufactured by Tai Shan in the PRC, (2) that instead of Tai Shan or Innovative invoices, invoices purporting to be from various Malaysian companies were provided, (3) that the aluminum extrusions fell within the scope of the antidumping and countervailing duty orders, (4) that the only reason to ship the aluminum extrusions through Malaysia was to evade duties on imports of aluminum extrusions from the PRC, (5) that Northeastern was holding itself out to be the importer of record of aluminum extrusions even though it was not the owner, purchaser, or consignee of the extrusions, and (6) that Northeastern was filing Entry Summaries with Customs based solely on information provided to it without ever having seen the goods.

161. At all times between November 15, 2010 and March 20, 2011, Northeastern and Ma had actual knowledge that for those imports of aluminum extrusions where Northeastern was the importer of record, the Entry Summaries were false, or Northeastern and Ma acted in deliberate

> ignorance or with reckless disregard of the truth of those Entry Summaries, in that the Entry Summaries undervalued the aluminum extrusions and therefore also failed to declare the full amount of regular duties owed. Northeastern and Ma had actual knowledge that this information was false, or acted in deliberate ignorance or with reckless disregard of the truth of the information, because Northeastern and Ma knew (1) that Northeastern was not a valid importer of record, (2) that Northeastern was filing Entry Summaries with Customs based solely on information provided to it without ever having seen the goods, (3) that Malaysia was not the country of origin for the aluminum extrusions even though that was what Northeastern declared, and (4) that, if Northeastern was provided with false country of origin information for use in filing Entry Summaries with Customs, it was likely other information, which also impacted the amount of duties calculated, was also false.
>
> 162. At all times between November 15, 2010 and March 20, 2011, Northeastern and Ma had actual knowledge that the full amount of duties owed on imports of Tai Shan aluminum extrusions had not been paid, or acted with deliberate ignorance or reckless disregard as to whether the full amount of the duties had been paid.
>
> 163. At all times between November 15, 2010 and March 20, 2011, Northeastern and Ma had actual knowledge that they were causing a false record or statement material to an obligation to pay money to the United States to be made or used with regard to imports of Tai Shan aluminum extrusions for which Northeastern served as importer of record, or Northeastern and Ma acted with deliberate ignorance or reckless disregard as to whether they were causing such false records or statements to be made.
>
> 164. Despite this knowledge, Northeastern and Ma failed to correct the false information submitted to Customs in relation to imports of Tai Shan aluminum extrusions for which Northeastern served as importer of record, and failed to submit the correct amount of duties owed on those imports.[29]

The facts alleged in the Government's complaint appear to be typical of the structure and operation of schemes employed to evade the payment of lawfully owed antidumping duties. Central to these schemes is the concealment of links between entities through the creation of paper entities. The additional information requested in

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[29] Id. (emphasis added).

the proposed revisions to CBP Form 5106, coupled with the requirement that answers to the form be certified with the understanding that if the certifying party is to "make an intentional false statement, or commit deception or fraud in this 5106 document, I may be fined or imprisoned (18 U.S.C. § 1001)," should make it more difficult for companies to conceal links that would otherwise facilitate trade fraud. Even more information can and should be collected – such as, for officers of the applicant company, the names of all other companies for which the individual has served or currently serves as an officer and, for non-resident importers, information regarding the registered agent – to further assist in the identification of such linkages. Requesting more information simultaneously improves the information available to CBP while further discouraging parties that may otherwise consider participating in trade fraud.

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Pursuant to the instructions from U.S. Customs and Border Protection, these written comments have been directed to Tracey Denning, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection.

We are grateful for any consideration provided to the foregoing.

Respectfully submitted,

John Williams
Executive Director

UPS Supply Chain Solutions

PO Box 164
219 Bank Street
Sweet Grass, MT 59484-0164

November 21, 2014

U.S. Customs & Border Protection
Office of International Trade
90 K Street NE – 10th Floor
Washington, DC 20229-1177

Attention: Tracy Denning
Office of Regulations and Rulings

RE: Comments on "Agency Information Collection Activities: Importer ID Input Record"
OMB Number 1651-0064

Dear Ms. Denning:

UPS Supply Chain Solutions, Inc. (UPS) appreciates the opportunity to submit comments on the Agency Information Collection Activities for the CBP Form 5106, otherwise known as the Importer ID Input Record.

UPS is a licensed and permitted Customs brokerage firm, providing Customs brokerage services to our importer customers, whether in the express courier or the heavy freight environment. We regularly interface with U.S. Customs & Border Protection (CBP) and other partner government agencies to facilitate the entry of goods on our customers' behalf. As a customs broker we collect, place on file and maintain the [current] CBP Form 5106 data on behalf of our customers and their customers.

We have categorized our comments in the five areas requested by the Federal Register Notice.

1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility:

UPS understands the challenges faced by CBP in the identification of the proper party who may act as the Importer of Record, the Consignee (or Sold to Party), or a Drawback Claimant. CBP utilizes risk assessment methodologies to make exam and admissibility decisions, and CBP depends on the accuracy of the information presented to them. UPS supports the basic collection of information as necessary, but offer comments in Section 3 below to better define the correct amount of information collected.

We believe the role of the party to be reported factors into the amount of information required, and we recommend CBP formulate their final rule, ensuring "over collection" of information and data is avoided:

- Reporting all data elements (Sections 1, 2, 3 and 4) for a casual or infrequent importer does not appear to be practical or efficient use of time and resources
- Requiring more information from an Importer of Record than from a party receiving infrequent personal shipments is prudent – CBP needs to balance the role of the party with the amount of data collected

2) The accuracy of the agency's estimates of the burden of the collection of information:

UPS does not believe the agency's estimates of the burden of the collection of information accurately reflects the amount of time it takes to collect the information in order to provide the information to CBP. We provide the following estimates from our perspective:

- Collection of current 5106 information: we believe the 15 minute estimate does not accurately reflect the time it takes to identify and locate the right party, contact them, collect the information and then provide the information to CBP. A better estimate of collection time for the existing form would be 30 to 60 minutes.
- Collection of new 5106 information for a *Consignee (or Sold to Party)*: UPS estimates the collection time would average 60 minutes, with 30 minutes being the least amount of time and 2 hours or 120 minutes being the maximum amount of time. Much of the time spent is locating the correct party, contacting the party, explaining to the party why the information is needed, then formatting the information and electronically transmitting the information to CBP.
- Collection of new 5106 information for the *Importer of Record:* UPS estimates the collection of time would average 120 minutes, with 60 minutes being the least amount of time and 4 hours or 240 minutes being the maximum amount of time. While we anticipate the amount of information that UPS would collect from the *Importer of Record* would be similar to the collection of information from a *Consignee (or Sold to Party)* we are anticipating the amount of time the Importer of Record might spend in collecting and submitting the information in Section 3 of the proposed new form.

3) Ways to enhance the quality, utility and clarity of the information to be collected:

3A. DATA REQUIREMENTS – REQUIRED OR OPTIONAL:

It is important to identify what data elements are required versus optional, understanding that the only the very basic information should be required or mandatory. We believe CBP should utilize the available information to make admissibility decisions, as they do today. The role of the party being reported should be considered in CBP's risk assessment methodology.

UPS recommends that CBP make mandatory all fields in Section 1 and 2 with certain exceptions as follows:

- 1B – should remain blank if applicant is applying for a CBP assigned number
- 1C - may be left blank if not applicable
- 1D – may be left blank if not applicable
- 1E – may be left blank if 1B is completed with an IRS or EIN number
- 1F – may be left blank – this field should be utilized to update information about an entity that has already received a CBP assigned number
- 1J, 1K, 1L and 1M – until the program code fields are defined, these may be left blank
- 2D – may be left blank if not applicable OR allow n/a or none
- 2E – may be left blank if not applicable OR allow n/a or none

- 2F – may be left blank if not applicable OR allow n/a or none

Please note when we reference "if not applicable" this may mean the information may not be available or the information requested does not exist.

With regard to Section 3, UPS recommends that the sensitive company data not be required data elements when initially filing the 5106 form. As a Customs broker, we are willing to collect some of the data elements for Importers of Record requested in Section 3 as follows:

- Willing to collect and submit if available: 3A, 3B, 3C, 3D, 3E, 3H, and 3I
- While the Customs broker may have at least one name of a corporate officer for an entity that is an Importer of Record, the broker does not wish to collect or report the sensitive information requested in 3F or 3J

3B. DATA REQUIREMENTS – RECOMMENDATIONS

1H. UPS recommends the data ranges in 1H be changed or modified as follows:

- Ranges appear to be too small. Suggest the ranges should be 1-5 per year, 6-100 per year, 101 or more per year
- Clarify in the instructions that the Importer of Record must select one of the data range boxes (1-5, 6-100, 101 or more)
- Clarify in the instructions that the infrequent personal shipper should only check a single box, likely 'infrequent personal shipments'
- UPS does not understand when a party would check the box "I do not intend to import." And we would appreciate clarification in the instructions or another guidance on the use of the CBP 5106 form when a party would check that box.

1I. UPS recommends the following for this data collection box:

- UPS requests confirmation in the instructions that the importer/consignee would check all boxes or options that would apply on the date the form is first completed. We understand that an importer or consignee's importing intentions and habits may change over time.
- For the Consignee/Ultimate Consignee block, UPS recommends that CBP remove the word "Ultimate Consignee" as the word "ultimate" has been removed from the lexicon in the ACE world. Removing this word as an adjective from the form would comport with that desire. We believe this party is better described as the "Consignee or Sold to Party"
- UPS suggests CBP add definitions in the instructions for "Importer of Record" and "Consignee or Sold to Party" to assist the trade community in understanding what the selection means
- Parties other than Importers of Record, Consignees, Drawback Claimants, etc. will utilize this form. We recognize that these parties could be identified utilizing the block marked "Other." Would CBP benefit from adding additional Role selections to the form? If so, we suggest:
    - Transportation Carrier
    - Licensed Customs Brokerage Firm*
    - Container Freight Station*
    - Commercial Warehouse/Foreign Trade Zone Operator*
    - Container Examination Station*
    - Deliver to Party

3H. UPS recommends the term 'locator ID' should be changed to State Code or ISO code. We do not believe 'locator ID' is a good descriptor to be used on the form itself.

3C. ROLE OF THE PARTY TO BE REPORTED:
UPS suggests that the role of the party to be reported be utilized as the basis for determining the amount of the information to be collected:

- *Consignee (or Sold to Party):* Sections 1 and 2 should be required
- *Importer of Record* – Sections 1 and 2 should be required, Section 3 optional
- Please note our comments in item 3A above – some fields in Section 1 and 2 may be left blank if not applicable
- Regarding the suggested additional Parties in 3B above, CBP does collect significant information for some of these parties . Those parties marked with an asterisk * should require Sections 1 and 2 to be reported only.

3D. CBP ASSIGNED NUMBER:
UPS supports the use of a CBP Assigned Number in lieu of the reporting of a Social Security number (SSN) for shipment valued over $2,500 (formal entry). As a Customs broker, we do not wish to collect or store an individuals' SSN (a very sensitive and personal identifier), in our systems.

We recommend CBP update their methodology to assign CBP Assigned Numbers, so the trade community is able to separate Non-Resident Importers of Record (who currently utilize CBP Assigned Numbers) from those individuals who wish to use a CBP Assigned Number in lieu of their Social Security number.

Please confirm that CBP Assigned Numbers will be accepted by Partner Government Agencies (PGA), for U.S. entities as well as non-resident Importers of Record. We are particularly interested to know whether the U.S. Food & Drug Administration will accept this alternate identifier.

The form instructions for the Customs Assigned Number are not clear: Does the party who checks Block 1E "I have a SSN but wish to use a CBP-Assigned Number on all my entry documents" still have to provide their SSN in 1B to obtain a CBP Assigned Number? We would presume they do not, but the instructions should provide guidance.

UPS recommends that the licensed customs brokerage firm employees should be the party who requests Customs Assigned Numbers, preferably through ABI ACE (not a mobile application). CBP licenses and regulates customs brokerage firms, and they are a known entity.

4) Ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology:

CBP should not allow changes or updates to the 5106 form without collecting detailed information about the party submitting the changes.

4A. MOBILE APPLICATION TO COLLECT THE DATA
CBP licenses and regulates the Customs brokerage firms who regularly gather and present 5106 data through the Automated Broker Interface (ABI). One of the concepts we have heard is that CBP could develop an 'online' or mobile application, allowing a corporation to provide the sensitive data required in Section 3. We believe CBP should consider the following points prior to moving forward with a mobile application:

- The criminal element – those individuals and companies who engage in schemes to avoid lawful payments of duties, including avoidance of antidumping or countervailing duties, import Intellectual Property Rights violative goods, and generally seek to

circumvent the rules and regulations of CBP – will not follow the rules, and a mobile application may provide them with a new avenue for importer identity theft.

- We recommend the initial 5106 be filed via ABI by the licensed Customs brokerage firm or authorized surety company, and when the information is filed, CBP returns to the broker/surety company, a unique authorization code that can be utilized by the Importer of Record to provide the sensitive personal data requested in Section 3, particularly 3F, 3G and 3J via a secure online application.
- If CBP pursues the development of an 'app' it must have significant security features built into it to tie to the correct 5106 record, and to ensure the party accessing the data has the authority to update the record, and they are who they say they are.
- Some additional thoughts:
    - With the submission of an email address in section 2E, CBP could initiate an email to that address, providing that individual with a link to update Section 3 information
    - CBP should consider notifying the original filer of the 5106 that there has been a change in the Section 1 and 2 data filed. This would greatly assist the brokerage filer in maintaining current records as well as provide a review mechanism that may recognize when an identity has been stolen or a record has been improperly changed. This feature should only be provided for importer of record data, not consignee/sold to party data.

4B. ALTERNATIVE IDENTIFIERS FOR NON-RESIDENT IMPORTERS OF RECORD

The Internal Revenue Service (IRS) does allow for a non-resident entity who conducts business in the United States to apply for an IRS or Employer Identification Number (EIN). UPS has a number of Canadian clients who have an IRS EIN number assigned to them. We believe CBP should allow these non-resident entities to utilize their EIN number in lieu of a CBP assigned number.

4C. ACE WEB PORTAL

In our opinion, the ACE Web Portal was never intended to be utilized by all importers bringing goods into the United States, however for those experienced importers who have ACE portal accounts, an ACE tool could be utilized to manage the 5106 data that CBP has on file for them.

4D. UTILIZATION OF THE ENCRYPTED NUMBER

The CBP query function which allows a Customs broker to obtain an encrypted number should be upgraded, taking advantage of search technology advancements. A better query function and the ability to utilize an encrypted number in lieu of an EIN number at time of entry release or entry summary could prevent numerous 5106 records from being built for the same entity.

We believe the current utilization of the encrypted number at time of entry release is very low, due to the inefficient query function, and the fact that the Customs broker is required to obtain a valid EIN for entry summary purposes. Use of the encrypted number at release helped move the freight, however the requirement to obtain an EIN number from a party the Customs broker doesn't necessarily have a relationship with (consignee/sold to party) was very difficult. The function was originally developed at the request of brokers operating on the US northern border in a 24/7 environment.

CBP should continue to allow for the use of encrypted numbers (obtained by the Customs broker utilizing an ABI query) to identify a consignee at time of entry release. CBP should change their policy and allow for the use of the encrypted number at time of entry summary, and

no longer require the Customs broker to contact the consignee to obtain a number that is already in CBP's system.

Upgrading the encrypted number query, and allowing the utilization of the encrypted number on entry summary could have the following effect:

- Fewer duplicate 5106 records filed
- Better history of importations by a consignee for targeting purposes

5) Annual costs to respondents or record keepers from the collection of information (a total capital/startup costs):

UPS believes the average data collection cost per hour is approximately $25.00. This is would reflect costs for personnel as well as information systems to transmit and store the data.

CHALLENGES

UPS wishes to remind CBP of the challenges the Customs brokerage community faces in gathering the correct 5106 information for submission to CBP. Information collection activities may be impacted as follows:

- Trade moves 24 hours daily/7 days a week whether the goods are in an express courier or a border clearance environment.
- The Customs broker often does not have a business relationship with the consignee (sold to party), especially if the Importer of Record is a non-resident importer. Trying to collect the data from this unknown party can be challenging.
- The internet has opened borders, and the consignee (sold to party) may not even realize the article they ordered on line is coming across a border. The Business to Consumer (B2C) activities continue to increase, possibly requiring more and more information from casual importers.

UPS would like to know how many 5106 records placed on file are duplicates. We recommend CBP take steps to prevent duplicate records.

OPPORTUNITIES

USE OF NAME & ADDRESS

CBP currently allows for cargo (entry) release of goods valued less than $2,500 per shipment (the informal entry limit) utilizing the transmission of the name and address of the US party receiving the goods. This is allowed, whether there is a single consignee or multiple consignees in a shipment, provided that any US party receiving goods valued greater than $2500 be identified with an appropriate EIN number. However, at the time of entry summary in the ACE environment, CBP's requirement is to present an EIN or unique identifier number like the CBP assigned number at the line level for each consignee receiving the goods, regardless of value. Because CBP has already performed their risk assessment based on the name/address of the consignee, we believe CBP should not require the consignee identifier information on the entry summary, unless the value of goods for the individual consignee exceeds $2,500.

If the reporting rules for informal values at entry summary are not changed, the Customs broker will be requesting numerous Customs Assigned numbers for individuals in lieu of a SSN. If CBP allows the transmission of the name/address for shipments valued less than $2,500 for both

entry release and summary, it will prevent multiple CBP assigned numbers to be assigned to the same individual, cluttering up CBP's data base.

When an individual receives goods valued over $2,500 (formal entry), CBP should allow for the use of the CBP assigned number in lieu of an individual's Social Security number.

It would be helpful for CBP's system to have some edits built in to recognize a valid address format recognized by the U.S. Post Office. We believe there is commercially available software available to assist with this.

REQUEST CLARIFICATION IN FINAL INSTRUCTIONS

We do recommend that CBP clarify the following questions for the trade community:

- If an existing 5106 is on file, when will a new form (with the extra data elements) be required to be filed? If there is a change in an IOR's surety bond?
- What is the obligation of the IOR to maintain the 5106 information filed with CBP? What if their bank account information changes? Or there is a change in corporate officers? Or their filer has changed?
- Recommend that firms participating in C-TPAT or ISA programs not be required to submit the elements required in Section 3 if or when a new 5106 is filed

UPS Supply Chain Solutions appreciates the opportunity to provide comments on the proposed changes to the CBP Form 5106, as the forms' requirements will be impactful to our brokerage operations should they be changed or updated. Please contact the undersigned if you have any questions concerning this submission.

Sincerely,

UPS Supply Chain Solutions Inc.

Mary Ann Comstock

Brokerage Compliance Manager

Maryann.comstock@ups.com

Phone (406) 335-2212

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Cc: UPS Supply Chain Solutions Inc.

Mark Shacklette

John Van Wallaghen

UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

December 8, 2014

USCIB Comments for Federal Register Notice: FR Doc No: 2014-24199

U.S. Customs and Border Protection
ATTN: Tracey Denning
Regulations and Rulings
Office of International Trade
90 K St, NE 10th Floor
Washington, DC 20229-1177

Dear Ms. Denning,

USCIB thanks U.S. Customs and Border Protection (CBP) for the opportunity to comment on Federal Register Notice Doc No: 2014-24199. We appreciate CBP's commitment to comply with the data collection and submission to the Office of Management and Budget (OMB) for the review and approval in accordance with the Paperwork Reduction Act: Importer ID Input Record (CBP Form 5106).

We understand that the Federal Register notice states "Each person, business firm, government agency, or any other organization that intends to file an import entry shall file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form is also filed for the ultimate consignee for whom an entry is being made." We ask CBP that in the future to not require extend the data requirements contained in this form to all importers.

We believe the nature of such an expansion of data collection goes beyond the parameters of risk assessment. USCIB feels some of the information being requested on Form 5106 (including social security numbers and passport numbers) is an overly broad intrusion into the personal privacy of company managers will be over-burdensome for importer companies filing their first entry.

The organization would need to ensure their staff records are current despite frequent personnel changes. It is also unclear from the Federal Register Notice who in the company would be required to store this information: often, employees who store data are different than those individuals who submit the importation information to CBP are not the same. This could lead to incorrect information submitted. CBP has not provided any reasonable justification for requiring such extensive and intrusive personal information.

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ATA Carnet System

The officers of a company responsible for financial information are often removed from the import operations of the company. There is no compliance need for the personal passport, social security and bank account numbers of such individuals. The privacy and personal security issues raised by providing such personal information are significant especially in the internet age of rampant identify theft.

We understand CBP's focus on continuing their mission of collecting data on importers who do not operate in the U.S. or who are "shell" companies that do not have a real presence in the U.S. It is recognized that there are legitimate reasons for shell companies as well as illicit issues where persons try to prevent authorities from know who may be behind the shipments of imports on either end of the transactions. We completely understand CBP's wish to update its 5106 form to require more information so it can better assess risk. However, we believe that companies who already use the form, most of whom are established importers, should not have to submit additional staff information.

If CBP's concerns are in regard to non-resident importers, identifying new importers and performing risk assessments on those new entities, we suggest amending the non-resident importer regulation and adding additional requirements without burdening established importers. We suggest creating a risk-based approach instead, working with individual companies when issues arise and seeking information that way. This approach will allow CBP to be more strategic and targeted with their resources and help close any security gaps regarding smaller importers operating outside of the United States. We suggest asking if the company has been importing for less than a year, and if so, they would proceed to provide additional information regarding their managers, but not requiring it for companies who have been importing for more than a year.

The Federal Register Notice is unclear regarding how the information will be collected, stored, the duration of data storage, and how this information will assist CBP in achieving its goal. If CBP is concerned about data collection, there are other ways to ask for information that are not over-burdensome and personally intrusive. Additionally, for established U.S. based importers, it is unclear if brokers, who obtain companies' information before goods are shipped, will now need to complete the new 5106 form. If this is the case, it could result in a delay in moving goods.

USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. USCIB's vision and strength are provided by an active membership of over 300 leading corporations and organizations, while our unique global network helps turn the vision into reality. USCIB also provides a range of business services, including the ATA Carnet in partnership with CBP (since 1969), for temporary imports and exports, to facilitate overseas trade and investment.

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We are the American affiliate of the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee (BIAC) to the OECD, and the International Organization of Employers (IOE). We officially represent U.S. business positions both in the main intergovernmental bodies and vis-à-vis foreign business communities and their governments. USCIB also represents our international affiliate, the ICC, at the WCO particularly in the Harmonized System Committee.

USCIB believes a risk-based approach taken up on a case-by-case basis will allow CBP to be more targeted and successful in their goal of closing all security gaps within data collection. We look forward to continuing to work with CBP to close all risk assessment gaps. Again, we thank you for the opportunity to comment on this form change.
Sincerely,

Kristin Isabelli

Kristin Isabelli
Director, Customs and Trade Facilitation
United States Council for International Business

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UNITED STATES FASHION INDUSTRY ASSOCIATION

December 8, 2014

US Customs and Border Protection
Attn: Ms. Tracey Denning
Regulations and Rulings
Office of International Trade
90 K Street N.E., 10th Floor
Washington, DC 20229-1177

RE: CBP Form 5106

Dear Ms. Denning:

The United States Fashion Industry Association ("USFIA") submits the following comments on the proposed changes to CBP Form 5106.

USFIA represents textile and apparel brands, retailers, importers, and wholesalers based in the United States and doing business globally. Founded in 1989 as the United States Association of Importers of Textiles & Apparel with the goal of eliminating the global apparel quota system, USFIA now works to eliminate the tariff and non-tariff barriers that impede the industry's ability to trade freely and create economic opportunities in the United States and abroad.

Customs and Border Protection ("CBP") has proposed major changes to CBP Form 5106. This form is filed by importers at the time of their first entry and other occasions. 79 Federal Register 61091 (October 9, 2014).

The major change in the form is to require much more information about the importer and its officers. Specifically, the form requires personal information (SSN, Passport No., etc.) for those officers who have importing and financial business knowledge of the importer and the legal authority to make decisions on its behalf. This information is not required on the current form. Other new information required includes the importer's D-U-N's number, its primary banking institution, the state or country in which it is incorporated and a unique identifying number for the appropriate Certificate of Incorporation. Finally the form would be renamed "Create/Update Importer Identity Form".

The stated purpose of the changes to CBP Form 5106 is to enhance CBP's ability to make an informed risk assessment prior to an initial importation. Why personal information such as an officer's SSN or Passport No. will enhance that process is not addressed. Given its sensitivity a fuller explanation of the need for the personal data is necessary.

Given the stated purpose, any personal details required to complete the revised CBP Form 5106 should be limited to those circumstances where the importer is not known to CBP.

Although CBP Form 5106 primarily is used by new importers, established importers will have occasion to use it as well. For example, an established importer may wish to establish a new division or subsidiary. It will be necessary to file a CBP Form 5106 in that circumstance. By the same token, the CBP Form 5106 is necessary in order to add a new suffix to an existing IOR. Under these circumstances, the personal information is not necessary since it will not enhance CBP's knowledge of the importer. CBP has experience with the importer. Accordingly, the form and/or the governing regulations should be revised to make it clear that in the circumstances described above, personal data is not necessary.

Section 24.5(a) of the Customs Regulations requires a CBP Form 5106 when there are changes in an importer's address or name. There is no justification for personal data in that case.

If there is a change in officers, it is necessary to file personal data about the new officers? Would this depend on how long the importer that has been operating? Certainly, an importer that has been operating for a decade or so without problem should not be required to provide personal information about new officers. The fact that the importer has been operating for an extended period of time should be more than sufficient to assure CBP that the risk of continuing to deal with that importer, even with new officers, is minimal or non-existent.

The same observation applies to other of the new information such as the importer's primary banking institution. It is difficult to conceive how this information will enable CBP to make a more accurate risk assessment of the importer. On the other hand, there is information that would be useful to CBP in making a risk assessment. This information might include the nature of the merchandise to be imported, the potential countries of origin, whether the merchandise is subject to a trade remedy or trade restriction, etc. This information would enable CBP to make a more accurate risk assessment. However, much of the information sought in the form does not appear to further that purpose.

USFIA appreciates the opportunity to comment on these important matters and urges that the final form reflect its views.

With best regards,

Julia K. Hughes

Julia K. Hughes
President
United States Fashion Industry Association (USFIA)

cc: John B. Pellegrini, USFIA Customs Counsel, McGuireWoods LLP

xylem
Let's Solve Water

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December 2, 2014

U.S. Customs and Border Protection
Regulations and Rulings
Office of International Trade
90 K Street, NE
Washington, DC 20229-1177

Attn: Ms. Tracey Denning

Re: Comments on Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61,091 (Oct. 9. 2014); OMB No.: 1651-0064

Dear Ms. Denning,

On behalf of Xylem Inc., we are writing to provide U.S. Customs and Border Protection (CBP) with our comments on CBP's proposal to amend CBP Form 5106, as set forth in Federal Register Notice and Request for Comment, Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61,091 (Oct. 9, 2014) ("Notice"). We appreciate the opportunity to provide the agency with our comments.

As an initial matter, we wish to note that CBP's proposal represents a significant change from past practice. While we have serious concerns with the substance of the proposal itself (discussed in detail below), we are also concerned that CBP would propose such a significant change without first obtaining meaningful input from the trade community. It is not clear from the Notice to what extent (if at all) this proposal was reviewed with the Commercial Operations Advisory Committee or other groups before publication. The proposal has clearly suffered as a result. We believe that CBP should have engaged with the trade community earlier in this process and that, if it had done so, a more acceptable/effective proposal could have been put forth.

In terms of the substance of the proposal, we believe that it is deficient in several important respects.

We believe that in most cases, much of the information sought to be collected will not actually help CBP achieve its stated goal.. According to the Notice, that goal is to "enhance CBP's ability to make an informative assessment of risk prior to the initial importation, and [to] provide CBP with improved awareness regarding the company and its officers who have chosen to conduct business with CBP." 79 Fed. Reg. at 61,092.

CBP has not explained how a corporate officer's social security number or passport number will help the agency form a risk assessment. We submit that it will not. While such information may "provide CBP with improved awareness" of a company and its officers in some general sense, it is not clear what value such improved awareness would have in most cases. It appears that the request for personally identifiable information has more to do with post-importation enforcement concerns than it does with forming a risk profile or being more "aware" of a new importer/ultimate consignee.

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Before CBP requires importers/ultimate consignees to provide such highly confidential, personally identifiable information, it should articulate how such information will actually help CBP achieve its stated goal.

In addition, the proposal seeks to treat the importing community as a homogeneous unit; requiring the same information from all importers/ultimate consignees. If CBP is serious about using the information provided in the CBP Form 5106 to help form a risk profile, it should recognize that different entities present different risks and tailor its request accordingly. For example, the risk presented by a large, public company that imports $500+ million per year likely differs from the risk presented by a private, solo proprietor that imports less than a $1 million per year. The use of even a few high-level factors (e.g., publicly-traded companies subject to Sarbanes-Oxley requirements vs. private companies that are not; large importers vs. small importers; established companies vs. newly-formed companies; etc.) would help ensure that any additional information CBP seeks to collect is narrowly tailored and actually useful.

We also believe that CBP has significantly underestimated the time required to collect this data. While some of the requested data will already be in the possession of the importer/ultimate consignee, the more sensitive data elements will require individual participation on the part of the corporate officers. For instance, most businesses do not retain the passport information of their corporate officers—such data will need to be collected individually. In the case of larger businesses, which may have as many as a dozen corporate officers, the time required to collect this personal data could easily exceed two hours (an eightfold increase over CBP's estimated time to complete the current version of Form 5106).

In short, rather than trying to implement a one-size-fits-all approach to collecting highly- confidential, personally identifiable information which will have limited value to the agency in any case, CBP should share its risk assessment matrix with the trade community and work with that community to develop a revised proposal that is better tailored to achieve the stated goal.

For the procedural and substantive reasons set forth above, we oppose the proposed amendment to CBP Form 5106 and respectfully urge CBP to withdraw it.

Sincerely,

Charles T. Mooney
Director, Trade Compliance