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ANTIDUMPING AND COUNTERVAILING DUTIES

Congress and
Agencies Should Take
Additional Steps to
Reduce Substantial
Shortfalls in Duty
Collection





Highlights of [GAO-08-391](#), a report to congressional requesters

Why GAO Did This Study

U.S. Customs and Border Protection (CBP) has been unable to collect hundreds of millions of dollars in antidumping (AD) and countervailing (CV) duties. The Department of Commerce imposes these duties to remedy injurious unfair foreign trade practices (unfairly low prices or subsidies). The noncollection of AD/CV duties means that the U.S. government has not fully remedied the unfair trade practices and bears a substantial loss of revenue.

GAO was asked to examine the (1) nature and extent of uncollected AD/CV duties, (2) factors contributing to uncollected AD/CV duties and steps taken to address these factors, and (3) options for aiding duty collections. To analyze these issues, GAO reviewed CBP data for fiscal years 2001 through 2007, agency documents and reports, and interviewed government officials and private sector representatives.

What GAO Recommends

GAO suggests matters for congressional consideration to: improve reporting on uncollected duties; adjust requirements for new shipper reviews; and aid its consideration of options for improving the AD/CV duty system. GAO also makes recommendations for executive action, including reviewing CBP's standard practice for setting bond requirements for importers.

The Departments of Commerce and Homeland Security generally agreed with our recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-391](#). For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

ANTIDUMPING AND COUNTERVAILING DUTIES

Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection

What GAO Found

While over \$600 million in AD/CV duties dating back to 2001 remain uncollected, they are highly concentrated among a few products, countries of origin, and importers. For example, four products account for about 84 percent of the total amount of uncollected AD/CV duties. Also, a relatively small number of importers owe the vast majority of these uncollected duties. In addition, half of the 23,000 unpaid AD/CV duty bills are less than \$309, but the average duty bill is more than \$26,000 due to a relatively small number of very large bills. According to CBP officials, prospects for collecting a sizeable portion of these bills are slim, because many of the importers have disappeared, have no assets, or have declared bankruptcy. CBP reporting on uncollected AD/CV duties has been critical to congressional and public oversight of CBP's efforts to collect AD/CV duties. However, the law generating this reporting has been repealed.

Four key factors contribute to uncollected AD/CV duties, a few of which the U.S. government has partially addressed. First, because the U.S. AD/CV duty system involves the retrospective assessment of duties, the final amount of AD/CV duties an importer owes can significantly exceed the initial amount paid when the goods entered the country. Second, companies that did not previously export products subject to AD/CV duties, i.e., "new shippers," pose two types of risks for collections. For example, new shippers can be assigned an AD/CV duty rate based on as few as one shipment, which can significantly underestimate the final duty rate. Also, importers purchasing from new shippers were able to provide a bond in lieu of a cash payment to cover the initial AD/CV duties assessed. Congress addressed this risk by temporarily requiring all importers to pay initial AD/CV duties in cash. Third, all importers must provide a general bond to secure the payment of all types of duties, but CBP's standard practice for setting the amount of this bond inadequately protects AD/CV duty revenue. CBP addressed this by revising its bonding formula for products subject to AD/CV duties, but the revision has been tested on only one product and faces domestic and international legal challenges. Fourth, CBP collects minimal information regarding importers and does not conduct background or financial checks, which creates challenges to locating importers and collecting AD/CV duties.

Two sets of options exist for improving AD/CV duty collection, each of which involves potential advantages and disadvantages. One set of options involves revising U.S. law to eliminate the retrospective component of the U.S. AD/CV duty system by assessing final duties when the product arrives in the United States (i.e., a prospective system). But there would be trade-offs. For example, under a retrospective system, the amount of duties finally assessed reflects the actual amount of dumping by the exporter for the period of review. Under a prospective system, the amount of duties assessed may not match the amount of actual dumping or subsidization. However, in practice, a substantial amount of AD/CV duty bills are not collected under the U.S. retrospective system. The second set of options involves making adjustments within the existing system. For example, Congress could revise the standards for new shipper reviews and CBP could examine the option of revising bonding requirements to protect additional AD/CV duty revenue.

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Abbreviations

ACE	Automated Commercial Environment
ACS	Automated Commercial System
AD	antidumping
CBP	U.S. Customs and Border Protection
CDSOA	Continued Dumping and Subsidy Offset Act of 2000
CV	countervailing
Commerce	Department of Commerce
Justice	Department of Justice
ITC	International Trade Commission
Treasury	Department of the Treasury
WTO	World Trade Organization

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United States Government Accountability Office
Washington, DC 20548

March 26, 2008

The Honorable Robert C. Byrd
Chairman
The Honorable Thad Cochran
Ranking Member
Committee on Appropriations
United States Senate

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate

Since fiscal year 2001, U.S. Customs and Border Protection (CBP) has been unable to collect antidumping (AD) and countervailing (CV) duties imposed to remedy injurious unfair foreign trade practices totaling hundreds of millions of dollars.¹ These include AD duties imposed on products exported to the United States at unfairly low prices (i.e., dumped) and CV duties on products exported to the United States that were subsidized by foreign governments. This substantial amount of uncollected duties has caused concern on the part of Congress and the domestic industries affected by the dumped or subsidized products. The noncollection of those duties means that the U.S. government has not fully remedied the unfair trade practices and has lost out on a substantial amount of revenue.

The process for assessing and collecting AD/CV duties involves two key agencies and can take several years. The Department of Commerce (Commerce) is responsible for calculating the appropriate AD/CV duty rate.² CBP is then responsible for completing the processing of duties

¹In this report we use the phrase “uncollected AD/CV duties” to mean the sum of all open, unpaid bills for AD/CV duties issued by CBP, which includes those currently under protest. We include the principal amount of the bill, but not any accrued interest. This amount does not include revenue that is written off or foregone when CBP is unable to issue duty bills within statutory deadlines.

²19 U.S.C. §§ 1671d, 1673d.

(technically called “liquidating”), which may result in providing importers with a refund or sending an additional bill.³

To help reduce uncollected AD/CV duties, you asked us to examine the reasons why the duties are uncollected and what the U.S. government has done to address this problem. In addition, you asked us to identify options for improving the AD/CV duty system. Specifically, we examined (1) the extent and nature of uncollected AD/CV duties; (2) the key factors contributing to uncollected AD/CV duties and the steps taken to improve the collection of AD/CV duties; (3) interagency communications that affect the processing of AD/CV duties; and (4) potential options for improving AD/CV duty collections.

To meet these objectives, we analyzed U.S. government data and reports and interviewed officials from relevant government agencies and the private sector. To describe the extent and nature of uncollected AD/CV duties, we reviewed CBP data on all open, unpaid AD/CV duty bills for fiscal years 2001 through 2007, as of September 2007.⁴ To identify the key factors affecting CBP’s ability to collect AD/CV duties and the steps taken to improve collection, we analyzed CBP data; reviewed relevant statutes, regulations, and agency reports; and interviewed agency officials. We also analyzed CBP records documenting its efforts to collect AD/CV duties, reviewed agency reports and legislative changes, and interviewed agency and private sector representatives. To determine whether interagency processes inhibit the collection of AD/CV duties, we analyzed documentation related to interagency communications regarding AD/CV duties and interviewed agency officials. To identify and analyze potential options for improving AD/CV duty collection, we interviewed agency officials and private sector representatives and reviewed academic

³19 U.S.C. § 1500.

⁴Due to limitations in CBP data, we were unable to calculate the amount of AD/CV duties collected for bills issued during this time period. The numbers presented in this section of the report are based on data received from CBP’s Office of Finance. They include all open unpaid bills for AD/CV duties as of September 30, 2007. These data include key characteristics like the bill amount, whether or not the bill was under protest and the importer number. We assessed the reliability of the data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. Based on our data reliability assessment we deleted less than 1 percent of the original cases. Our analysis consisted of 120 unique AD/CV duty orders and more than 23,000 individual bills. We determined that the data we analyzed were sufficiently reliable for the purposes of this report.

literature. In addition, we obtained information from several foreign governments to understand how their AD/CV duty systems operate. We determined that the data presented in this report are sufficiently reliable for the purpose for which they are presented. Appendix I provides additional information regarding our scope and methodology. We conducted this performance audit from June 2007 to March 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

Over \$613 million in AD/CV duties from fiscal years 2001 through 2007 were uncollected as of September 2007, with the uncollected duties highly concentrated among a few industries, products, countries of origin, and importers. The agriculture/aquaculture industry represents 87 percent of the total amount of uncollected AD/CV duties. In addition, four products are responsible for approximately 84 percent of the total amount of uncollected AD/CV duties.⁵ Also, importers purchasing products from China are associated with 90 percent of the total amount of uncollected duties. Further, a relatively small number of importers owe the majority of uncollected AD/CV duties. Of the nearly 27,000 importers subject to AD/CV duties since fiscal year 2001, less than 2 percent have open, unpaid bills for AD/CV duties. Four companies account for more than one-third of the total amount of uncollected AD/CV duties, and 20 companies account for 63 percent of the total. Moreover, importers purchasing from companies undergoing a special “new shipper” review accounted for about 40 percent of uncollected AD/CV duties. Half of all uncollected AD/CV duty bills are less than \$309; however, a relatively small number of much larger bills increases the average duty bill to over \$26,000. The extent of uncollected AD/CV duties is affected by unresolved legal protests, which account for about 43 percent of the value of uncollected AD/CV duties. According to CBP officials, most of the nearly \$290 million referred to its Office of Chief Counsel will be written off.⁶ According to CBP officials, prospects for

⁵These four products, all from China, are crawfish tail meat (\$354 million), garlic (\$75 million), honey (\$43 million), and mushrooms (\$41 million).

⁶CBP data show that another approximately \$21 million (in addition to the nearly \$290 million referred to CBP’s Office of Chief Counsel) are prepared to be written off.

collecting these duties are slim, because many of the importers involved have disappeared, have no assets, or have declared bankruptcy. CBP's problems collecting AD/CV duties were first widely recognized following reporting based on the Continued Dumping and Subsidy Offset Act (CDSOA) of 2000.⁷ Private sector representative and congressional staff have found CBP's detailed reporting on uncollected AD/CV duties critical to conducting oversight of CBP's collection efforts. However, the law generating this reporting has been repealed.⁸

Four key factors contribute to uncollected AD/CV duties, a few of which the government has addressed. First, the retrospective component of the U.S. AD/CV duty system creates the risk of uncollected duties because the final amount of AD/CV duties an importer owes can exceed the amount it paid when goods entered the country. While AD duty rates typically stay the same (60 percent of the time) or decline (24 percent of the time), when they increase (16 percent of the time), they can go up significantly.⁹ While half of rate increases are 4 percentage points or less, the average rate increase is 62 percentage points, and some increases exceeded 200 percentage points. The long lag times between the entry of goods and the assessment of final duties also increase the risk of uncollected duties. On average this process takes more than 3 years, during which importers could cease operations or become unable to pay additional duties. Second, Commerce's reviews of companies that did not previously export products subject to AD/CV duties ("new shippers") pose two risks. One risk is related to importers' ability to provide a bond in lieu of cash payment to cover the estimated AD/CV duties required at the time of importation. In response, Congress temporarily suspended the bonding privilege and required all importers to pay estimated AD/CV duties in cash.¹⁰ The other

⁷19 U.S.C. § 1675c. CDSOA authorized the distribution of AD/CV duties collected to the domestic industries injured by the dumping or subsidization.

⁸Pub. L. No. 109-171, § 7601(a).

⁹To perform the rate analysis, we needed to select only those entries involving one AD/CV duty order because CBP's data do not separate out the liquidation rate applicable to each order if multiple orders were involved. Once we selected those records with only one AD/CV duty order, we calculated liquidation rates by dividing the liquidation amount by the line value. We are not reporting results related to changes in CV duty rates because one case (softwood lumber from Canada) accounted for the vast majority of entries in our data set, and thus would have unreasonably biased the results. We also excluded the AD order on softwood lumber from Canada from our analysis because the liquidation rate for those entries was set as a result of a binational political agreement, which is outside the typical practice.

¹⁰Pension Protection Act of 2006, Pub. L. No. 109-208, § 1632(a), 120 Stat. 780, 1165.

risk is related to the low levels of exports necessary to be eligible for a new shipper review, which can lead to a significant underestimate of the amount of AD/CV duties owed. Third, all importers must provide a general bond to secure the payment of all types of duties, but CBP's standard formula provides little protection of AD/CV duty revenue because it often sets bond requirements at a low level. CBP addressed this by revising its standard bond formula, but the revision has been tested on only one product and has been challenged in domestic courts and internationally.¹¹ Fourth, CBP collects minimal information regarding importers and does not conduct background or financial checks, which can contribute to challenges in locating and collecting AD/CV duties.

Despite some improvements, weaknesses in interagency communications impede CBP's ability to process the appropriate amount of AD/CV duties within the required 6 months.¹² In recent years CBP and Commerce have taken several steps to improve communication regarding AD/CV duties. For example, Commerce established a Customs Unit to serve as the focal point for CBP on customs issues. However, remaining weaknesses in the interagency liquidation process can impair CBP's ability to collect AD/CV duties. For instance, during the liquidation process, untimely action by Commerce and CBP's need to seek clarification from Commerce regarding liquidation instructions present challenges to completing the process within the statutory 6-month deadline.¹³ Many entries are not addressed in the time allowed, but the overall effect on revenue appears minimal. According to Commerce officials, human capital challenges affect the department's ability to effectively perform its role in the liquidation process. For example, as of January 2008, Commerce had less than half (103 of 211) of the staff authorized to perform responsibilities related to AD/CV duties. However, Commerce lacks a strategy or plan for understanding and addressing these human capital challenges.

¹¹*Seafood Exporters Ass'n of India v. United States*, 479 F. Supp. 2d 1367 (2007); *Nat'l Fisheries Inst., Inc. v. United States*, 465 F. Supp. 2d 1300 (2006); United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, WT/DS345; United States – Measures Relating to Shrimp from Thailand, WT/DS343.

¹²The liquidation process involves actions by Commerce and CBP and culminates in the assessment of final AD/CV duties. This process is required by statute to take no longer than 6 months. *See* 19 U.S.C. § 1504(d).

¹³19 U.S.C. § 1504(d).

Two sets of options exist for improving AD/CV duty collection, each of which involves potential advantages and disadvantages. One set of options involves revising U.S. law to eliminate the retrospective component of the U.S. AD/CV duty system by assessing final duties when a product arrives in the United States. Other major U.S. trading partners have AD/CV duty systems that, although they operate differently from one another, are fundamentally prospective in that AD/CV duties assessed at the time a product enters the country are essentially treated as final. The advantages and disadvantages of prospective and retrospective AD/CV duty systems differ and depend on specific design features, such as (1) timing for determining and collecting final AD/CV duties, (2) “accuracy” of AD/CV duties paid, and (3) administrative simplicity for customs officials. The second set of options involves making adjustments within the existing system and includes four types of changes. First, the process or standards for assigning AD/CV duty rates for “new shippers” could be revised. Second, the requirements for becoming an importer of record could be heightened. Third, CBP’s bonding requirements could be revised. Each of these adjustments would impose additional costs on both legitimate and illegitimate companies. Fourth, U.S. law could be changed to lengthen the time that CBP has to liquidate entries subject to AD/CV duties. Such a change could reduce the amount of foregone revenue, but could make collections more difficult in some situations.

In this report, we suggest three matters for congressional consideration and make three recommendations for executive action. We suggest that Congress require the Secretaries of Commerce, Homeland Security, and the Treasury to conduct an analysis and report to Congress on the relative advantages and disadvantages of prospective and retrospective AD/CV duty systems. We also suggest that Congress require CBP to publicly report on an annual basis on all uncollected AD/CV duties. We further suggest that Congress consider providing Commerce with the authority to establish, at its discretion, a minimum amount or value of exports from companies requesting a new shipper review. To increase the amount of AD/CV duty revenue protected by general bonds, we recommend that the Secretary of Homeland Security work with other relevant agencies to re-examine the current formulas for setting bond requirements. To improve the liquidation process, we recommend that the Secretary of Commerce work with the Secretary of Homeland Security to identify ways to improve the clarity of Commerce’s liquidation instructions. To ensure that the Import Administration has sufficient human capital to issue timely and clear liquidation instructions to CBP, we recommend that the Secretary of Commerce develop a strategic human capital plan encompassing its AD/CV duty operational offices.

We provided a copy of this report to the Departments of Commerce, Homeland Security, Justice, and the Treasury, as well as the United States International Trade Commission (ITC) and the Office of the U.S. Trade Representative. The Departments of Commerce, Homeland Security, and the Treasury provided formal comments. The Departments of Homeland Security and Commerce generally agreed with our recommendations and indicated a willingness to take steps to address them.

Background

The process for importing products into the United States involves several different private parties as well as the U.S. government. Exporters are companies that ship goods manufactured or produced in foreign countries to the United States. Importers may be companies that purchase the products from exporters or simply may be responsible for the facilitation of the importation of the goods. Importers are responsible for paying all duties, taxes, and fees on those products when they are brought into the United States. Importers also are required to obtain a general bond to secure the payment of their financial obligations. CBP is responsible for, among other things, collecting the duties, taxes, and fees assessed on those products and setting the formula for establishing importers' bond amounts.

The United States and many of its trading partners have established laws to remedy the unfair trade practices of other countries and foreign companies that cause injury to domestic industries. U.S. law authorizes the imposition of AD/CV duties to remedy these unfair trade practices, namely dumping (i.e., sales at less than normal value) and foreign government subsidies.¹⁴ While AD/CV duties are intended to protect U.S. industries and workers from unfair foreign trade practices, they also have become a substantial source of revenue for the U.S. government. CBP is the U.S. agency responsible for collecting all import duties, which amounted to over \$98 billion from fiscal years 2003 through 2006.¹⁵ A portion of these duties are AD/CV duties, of which CBP collected \$8 billion

¹⁴The authority for the imposition of these duties was created by the Tariff Act of 1930, June 17, 1930, c. 497, Title VII. AD duties are authorized in 19 U.S.C. § 1673 and CV duties are authorized in 19 U.S.C. § 1671.

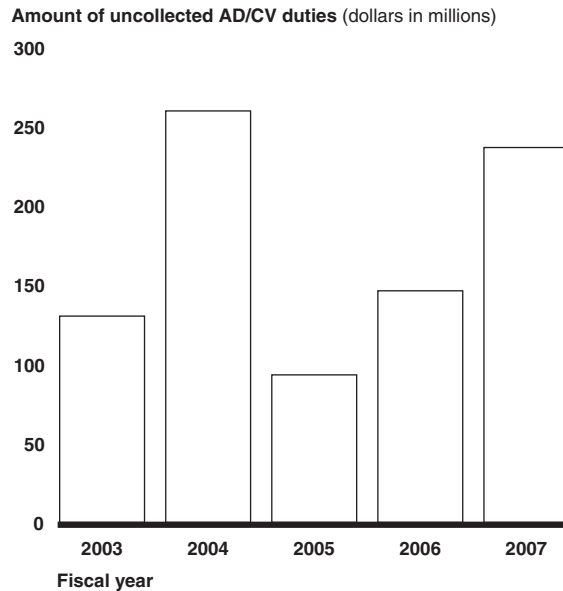
¹⁵Legal authority over customs revenue functions is vested in the Secretary of the Treasury and, under Treasury Order 165, was delegated to the U.S. Customs Service. In March 2003, the U.S. Customs Service was transferred to the Department of Homeland Security, and authority over customs revenue functions was delegated to the Department of Homeland Security. 68 Fed. Reg. 10777-01 (Mar. 6, 2003).

in cash deposits (or 7 percent of the total). A recent Department of the Treasury (Treasury) analysis estimated that for fiscal years 2003 through 2006, the overall collection rate for all duties exceeded 99 percent and the collection rate for AD/CV duties was somewhat lower (96 percent).¹⁶ However, Treasury also reported that the collection rate for AD duties owed as a result of an administrative review by Commerce was less than 50 percent. Treasury estimated that approximately \$589 million in total duties went uncollected during the period. Uncollected AD/CV duties represented 87 percent of that amount.

Figure 1 shows the amount of uncollected AD/CV duties owed for entries liquidated during each fiscal year, as of September 30. For example, for fiscal year 2007, CBP reported \$237 million in uncollected AD/CV duties for entries liquidated during the year, as of September 30, 2007. The amount of uncollected duties for entries liquidated during fiscal year 2007 could decrease based on additional collections made in subsequent years.

¹⁶Department of the Treasury, *Duty Collection Problems FY2003-2006* (Washington, D.C., 2007).

Figure 1: Amount of Uncollected AD/CV Duties Owed for the Fiscal Year, as of September 30, by Fiscal Year



Source: CBP, CDSOA Annual Reports fiscal years 2003 through 2007.

Note: The sum of these data exceeds the total amount of uncollected AD/CV duties as of the end of fiscal year 2007 because these data represent a snapshot of the amount of uncollected AD/CV duties at the end of each fiscal year. As noted above, the amounts shown in this figure could decrease based on additional collections in subsequent years.

According to government officials and private sector representatives, the substantial shortfalls in collecting AD/CV duties were first widely publicized after the enactment of CDSOA (also known as the Byrd Amendment) in 2001, which provided for the distribution of AD/CV duties to the injured domestic industries, instead of, as in the past, going to Treasury.¹⁷ Following the repeal of CDSOA in 2006 after a decision by the World Trade Organization (WTO) that the law violated WTO rules, AD/CV duties collected will again be paid to Treasury.

The process for investigating, calculating, and assessing AD/CV duties can be a lengthy process and involves three key agencies. Commerce is responsible for determining whether the imports at issue are being sold at

¹⁷A provision repealing CDSOA, but providing for the distribution of “duties on entries of goods made and filed before October 1, 2007,” was enacted in the Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7601(a).

less than fair value (dumped) or are being subsidized by a countervailable subsidy.¹⁸ The ITC is responsible for determining whether an industry in the United States is being injured by the imports at issue.¹⁹ Both ITC and Commerce must make affirmative determinations in their respective investigations for AD/CV duties to be imposed.²⁰ Commerce also sets the AD/CV duty, which is equal to the amount of dumping or subsidization.²¹ CBP is then responsible for collecting the AD/CV duties.²²

At the completion of its investigation, Commerce issues an AD/CV duty order, which specifies the products for which importers must pay AD/CV duties, and indicates the rates applicable to several specific exporters and a catch-all rate for all other exporters that did not receive a specific rate.²³ The AD/CV duty order also instructs CBP to collect cash deposits at the time of importation at those rates on all merchandise subject to the order. As shown in figure 2, the merchandise also can be subject to an administrative review by Commerce 12 months after the issuance of the AD/CV duty order.²⁴ During the administrative review, Commerce analyzes previous imports to determine the actual level of dumping or subsidization for those imports. At the conclusion of the administrative review (typically about 18 months after the review's initiation), the liquidation rate (i.e., the final duty rate) for the merchandise is established. Commerce communicates the final duty rate to CBP through liquidation instructions and CBP instructs staff at each port of entry to assess final duties on all relevant entries (i.e., applying the rate to the value of goods imported). The liquidation process is complete when CBP refunds money (if the cash deposit rate was higher than the liquidation rate) or issues a supplemental

¹⁸19 U.S.C. §§ 1671, 1673.

¹⁹19 U.S.C. §§ 1671, 1673. We use the term “injured” to encompass material injury, threat of material injury, or material retardation of the establishment of an industry.

²⁰19 U.S.C. §§ 1671, 1673.

²¹19 U.S.C. §§ 1671d, 1673d.

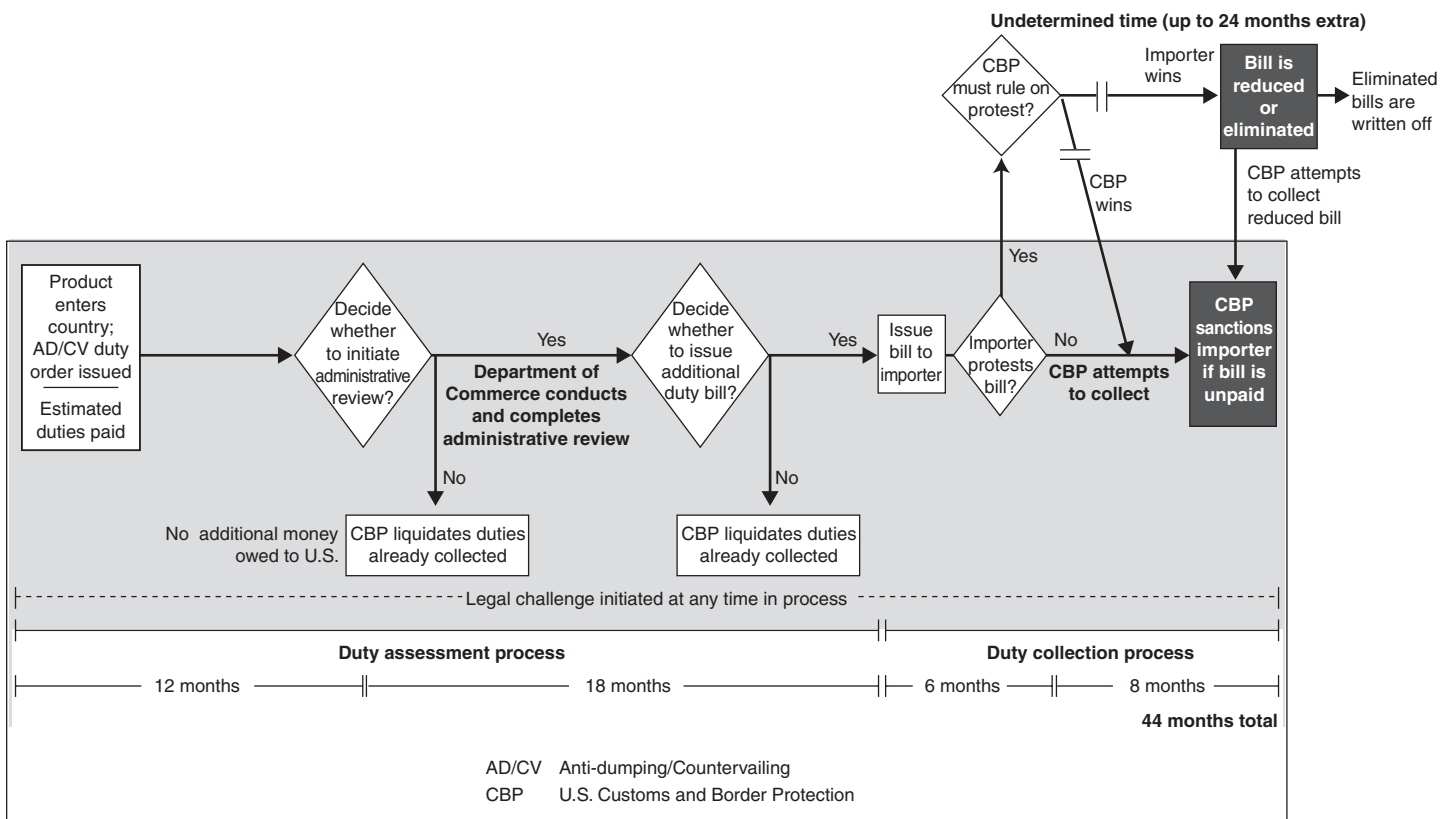
²²19 U.S.C. § 1500.

²³19 U.S.C. §§ 1671e, 1673e.

²⁴An administrative review may be requested by exporters subject to the AD/CV duty order, importers, the U.S. domestic industry, and the government of producing or exporting countries if they believe the rate to be incorrect. 19 C.F.R. § 351.213(b); 19 U.S.C. § 1677(9)(B). If no administrative review is requested, the estimated AD/CV duties importers paid when merchandise entered the country become the final duties, and CBP liquidates the entry. 19 U.S.C. § 1675.

bill (if the liquidation rate is higher than the cash deposit rate). If the cash deposit rate is equal to the liquidation rate, CBP does not issue a refund or a supplemental bill and the entry is liquidated “as entered.” These actions must be completed by Commerce and CBP within 6 months.²⁵ (App. III provides additional information regarding the AD/CV duty collection process.)

Figure 2: Illustration of the Process and Maximum Time Frames for Collecting AD/CV Duties



Source: GAO analysis of information from Commerce and CBP.

Note: This figure depicts the maximum lengths of time allowed by law, regulation, or agency practice for specific steps in the AD/CV duty process.

²⁵ 19 U.S.C. § 1504(d).

To collect additional AD/CV duties an importer owes, CBP sends the importer a monthly bill. An importer has 6 months from the date of liquidation or reliquidation to protest the bill amount.²⁶ After the protest period has expired, if an importer has not paid the bill, CBP requests payment from the surety (insurance) company that underwrote the bond the importer provided when the products entered the United States.²⁷ According to CBP officials, if CBP does not receive full payment of the bill within 8 months of sending the first bill, it “sanctions” the delinquent importer. CBP officials also explained that importers that have not been sanctioned are allowed to have their merchandise released from the port of entry without paying all estimated duties, taxes, and fees so long as they commit to make such payment within 15 days.²⁸ When importers are sanctioned, CBP revokes this privilege and requires the full payment of all estimated duties, taxes, and fees before products can leave the port of entry. If CBP does not receive payment within 1 year of issuing the first bill, CBP’s Revenue Division (which is responsible for collecting payment) refers the case to CBP’s Office of Chief Counsel, which determines the next course of action. In addition, the Office of Chief Counsel determines whether the bill should be written off.²⁹

While the time frames for completing each step in the process for assessing and collecting AD/CV duties are established by law, AD/CV duties also are subject to judicial review, which is not subject to time frames. According to CBP and Commerce officials, importers and surety companies frequently obtain legal injunctions or file protests related to the application of AD/CV duties. In instances where litigation occurs, the process can take months or years longer than described here.

²⁶19 U.S.C. § 1514.

²⁷In addition to paying estimated duties, taxes, and fees when products enter the country, importers also are required to provide a bond to help ensure that the government can recover additional duties, taxes, or fees that may be owed. *See* 19 C.F.R. § 142.4. Most importers obtain continuous bonds, which are bonds used to secure all of an importer’s shipments for the year.

²⁸For importers that participate in CBP’s Periodic Monthly Statement program, this period may be as long as 45 days.

²⁹31 U.S.C. § 3711 provides CBP’s statutory authority to write off duty bills. The statute provides several conditions under which CBP may write off duty bills.

Uncollected AD/CV Duties Are Substantial and Highly Concentrated

Uncollected AD/CV duties from fiscal years 2001 through 2007 amount to over \$613 million and are highly concentrated among a few industries, products, countries of origin, and importers. For example, uncollected AD/CV duties are highly concentrated in four products from one country. In addition, a relatively small number of large AD/CV duty bills and unresolved legal protests accounts for a sizeable portion of the uncollected AD/CV duties. According to CBP billing records, about \$350 million worth of AD/CV duty bills are in various stages of the collection process. Of those bills, CBP officials expect that most of the nearly \$290 million referred to its Office of Chief Counsel will be written off. Private sector representative and congressional staff have found CBP's detailed reporting on uncollected AD/CV duties critical to conducting oversight of CBP's collection efforts. However, the law generating this reporting has been repealed.³⁰

Uncollected AD/CV Duties Are Highly Concentrated

Data on all open, unpaid bills for AD/CV duties as of September 2007 (which amounted to more than \$613 million) show that uncollected AD/CV duties are highly concentrated in five ways: by (1) industry, (2) product, (3) country of origin, (4) exporter's new shipper status, and (5) importer.³¹ In this report we use the phrase "uncollected AD/CV duties" to mean the sum of all open, unpaid bills for AD/CV duties issued by CBP, which includes those currently under protest.³² Nearly 100 percent of these uncollected duties are AD duties.³³

As shown in figure 3, uncollected AD/CV duties are highly concentrated in four ways:

³⁰Pub. L. No. 109-171, § 7601(a).

³¹The numbers presented in this section of the report are based on data received from CBP's Office of Finance. They include all open, unpaid bills for AD/CV duties as of September 30, 2007. These data include key characteristics like the bill amount, whether or not the bill was under protest, and the importer number. We assessed the reliability of the data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. Based on our data reliability assessment, we deleted less than 1 percent of the original cases. Our analysis consisted of 120 unique AD/CV duty orders and more than 23,000 individual bills. We determined that the data we analyzed were sufficiently reliable for the purposes of this report.

³²We also analyzed bills not subject to ongoing protests. The results from both analyses were similar.

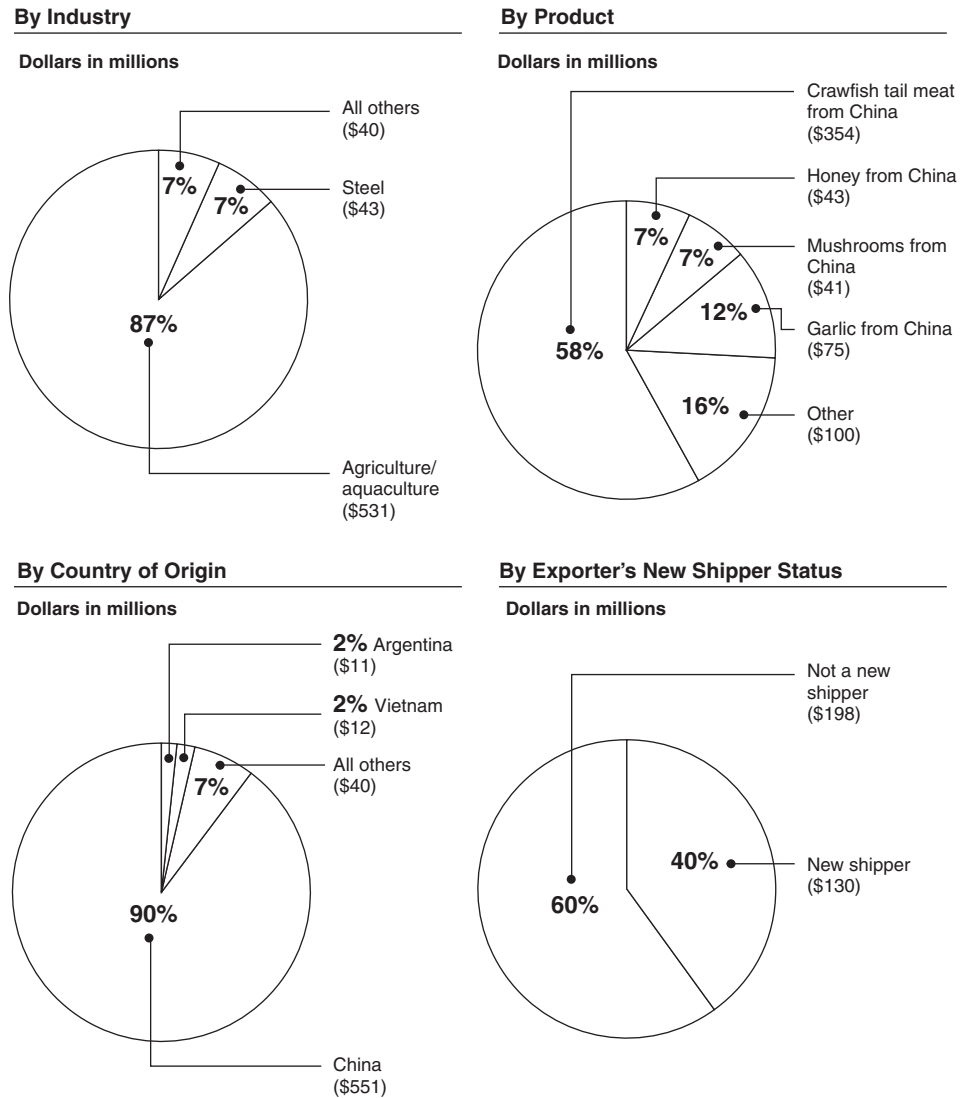
³³Of this amount, less than 0.1 percent (\$280,000) is CV duties.

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- *By industry.* The agriculture/aquaculture industry accounts for 87 percent of the total, and the steel industry accounts for 7 percent.
 - *By product.* Since fiscal year 2001, CBP has assessed AD/CV duties related to 597 AD/CV duty orders on specific products. Of those, as of September 2007, 120 duty orders have some amount of uncollected duties. Approximately 84 percent of the total amount of uncollected AD/CV duties is associated with four products, all from China: crawfish tail meat, garlic, honey, and mushrooms.
 - *By country of origin.* Importers purchasing from China are responsible for 90 percent of all uncollected AD/CV duties.
 - *By exporter's "new shipper" status.* Importers that purchased goods from companies undergoing a special "new shipper" review account for a substantial amount of uncollected duties. As will be discussed in more detail later in this report, under U.S. law, these importers were allowed, until recently, to pay estimated AD/CV duties by posting a bond instead of paying in cash as other importers are required to do.³⁴ Importers that purchased goods from companies undergoing a "new shipper" review are responsible for approximately 40 percent of uncollected AD/CV duties.³⁵

³⁴See 19 U.S.C. § 1675(a)(2)(B) and Pub. L. No. 109-280, § 1632(a).

³⁵To identify new shippers with open, unpaid bills and the amount of those bills identified by CBP as being under protest, we merged two data sets received from CBP. One data set included all open, unpaid AD/CV duty bills. The other data set included all entries subject to AD/CV duties that were liquidated between October 2000 and July 2007, the order date, and whether the estimated AD/CV duties paid at entry were secured using cash or a bond. We identified entries as involving a company undergoing a new shipper review as those where the importer was allowed to post a bond to secure AD/CV duties after the AD/CV duty order was issued and the entry date was before April 2006. In addition, we needed to select only those entries involving one entry line because CBP's data regarding open, unpaid bills do not separate out the amount attributable to individual AD/CV duty orders if multiple orders were involved. Our analysis of new shippers consisted of 559 orders and approximately 1.4 million entries. Approximately 33 percent of the amount of uncollected AD/CV duties owed by importers purchasing from new shippers is currently under protest. We assessed the reliability of the data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that the CBP data we analyzed were sufficiently reliable for the purposes of this report.

Figure 3: Uncollected AD/CV Duties, by Industry, Product, Country of Origin, and Exporter's New Shipper Status, as of September 2007



Source: GAO analysis of CBP data.

Note: The analyses by industry, product, and country of origin are based on a total of \$613 million in uncollected AD/CV duties. The analysis by exporter's new shipper status is based on \$328 million of uncollected AD/CV duties for which it was possible to determine the exporter's new shipper status.

Uncollected AD/CV duties also are highly concentrated among a group of importers. CBP data show that from October 2000 through July 2007, about 27,000 importers were subject to AD/CV duties. Of those, 520 (or less than 2 percent) had uncollected AD/CV duties as of September 2007.

Among those importers that owe AD/CV duties, the majority of the amount of uncollected AD/CV duties is owed by a relatively small number of companies. As shown in table 1, the top 4 importers that owe the most AD/CV duties account for more than one-third of the total amount of uncollected AD/CV duties, and the top 20 importers account for 63 percent. For example, as of September 2007, “Importer 1” had 133 outstanding AD/CV duty bills amounting to \$122 million, which was secured by a bond of \$700,000.

Table 1: Distribution of Uncollected AD/CV Duties by Importer, as of September 2007

Importer	Number of Open, Unpaid AD/CV Duty Bills	Bond Amount	Uncollected AD/CV Duties (in millions)	Percentage of Total Uncollected AD/CV Duties	Cumulative Percentage
Importer 1	133	\$700,000	\$122	20	34%
Importer 2	94	\$500,000	\$35	6	
Importer 3	311	\$60,000	\$27	4	
Importer 4	32	\$50,000	\$26	4	
Importer 5	61	\$600,000	\$22	4	63%
Importer 6	282	\$50,000	\$14	2	
Importer 7	371	\$500,000	\$14	2	
Importer 8	9	\$50,000	\$13	2	
Importer 9	275	\$50,000	\$12	2	
Importer 10	24	\$200,000	\$11	2	
Importer 11	27	\$50,000	\$11	2	
Importer 12	36	\$50,000	\$11	2	
Importer 13	36	\$50,000	\$10	2	
Importer 14	48	\$130,000	\$10	2	
Importer 15	33	\$100,000	\$9	2	
Importer 16	71	\$50,000	\$9	2	
Importer 17	43	\$50,000	\$8	1	
Importer 18	102	\$60,000	\$8	1	
Importer 19	160	\$50,000	\$8	1	
Importer 20	67	\$50,000	\$7	1	
Remaining 500 importers	20,843	N/A	\$226	37	

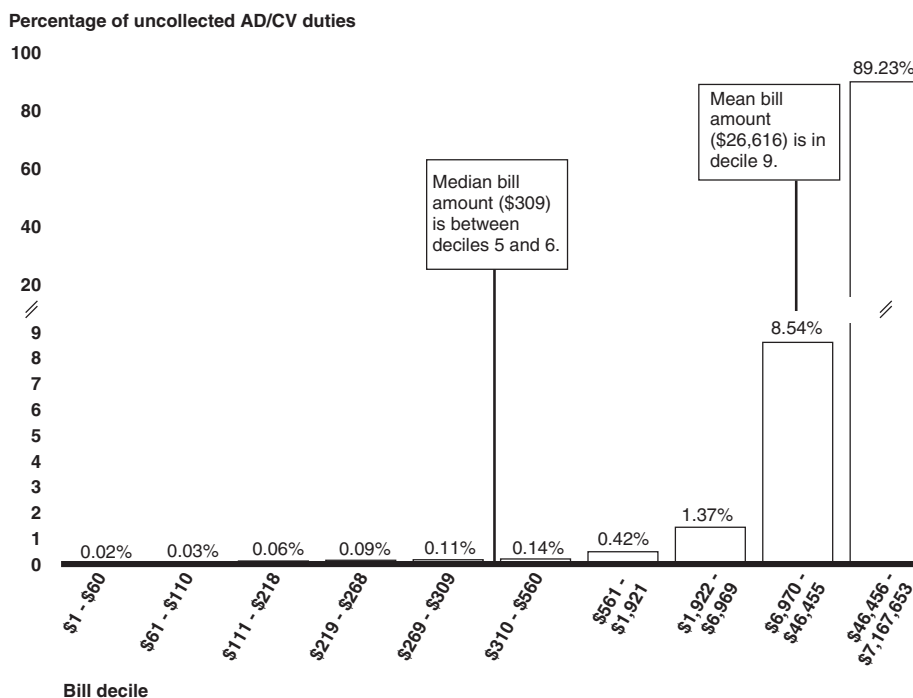
Source: GAO analysis of CBP data.

Note: According to CBP, publishing the names of these importers is prohibited under both the Trade Secrets Act (18 U.S.C. § 1905) and the Privacy Act (5 U.S.C. § 552a). According to CBP, as of January 2008, none of the 20 companies were active importers.

Most AD/CV Duty Bills Are Small, but a Few Are Very Large

As shown in figure 4, most AD/CV duty bills are small, but a relatively few large bills skew the average bill amount. Our analysis of CBP billing records shows that for the approximately 23,000 open, unpaid AD/CV duty bills as of September 2007, the median bill amount was \$309, which means that half of AD/CV duty bills were less than \$309 and half of the bills were more. However, a relatively small number of bills for more than \$1 million increased the average (mean) bill amount to more than \$26,000.

Figure 4: Distribution of Uncollected AD/CV Duty Bills, by Decile, as of September 2007



Source: GAO analysis of CBP data.

Note: Each bill decile includes 2,306 bills.

Unresolved Protests Affect the Amount of Uncollected AD/CV Duties

Unresolved protests of AD/CV duty bills substantially affect the collection of AD/CV duties. After the completion of Commerce's administrative review, importers and surety companies can protest the amount of duties CBP has assessed. As of September 2007, approximately \$265 million (or 43 percent) of the total amount of uncollected AD/CV duties was subject to protests. These protests affect the extent of uncollected AD/CV duties in two key ways. First, until the protest is decided, CBP does not take additional collection action. According to CBP officials, delays in its ability

to take collection action can impair their ultimate ability to collect the full amount of duties owed. Second, if an importer or surety prevails in its protest, the AD/CV duty bill is reduced or eliminated.

A Sizeable Amount of AD/CV Duty Bills Is Likely to Be Written Off

According to CBP billing records, about \$350 million worth of AD/CV duty bills are in various stages of the collection process. Approximately \$290 million of these unpaid AD/CV duty bills has been sent to CBP's Office of Chief Counsel to determine the appropriate legal action. The Office of Chief Counsel may take additional collection action such as sending importers and sureties formal demands for payment or referring the case to the Department of Justice (Justice) for litigation. In cases where at least one viable party is located, the case is referred to Justice for litigation unless the cost of collection is anticipated to exceed the amount recoverable. The Office of Chief Counsel reports that it is currently working with Justice to collect over \$80 million in outstanding AD/CV duties from two sureties that are undergoing insolvency proceedings.³⁶

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. From fiscal years 2001 through 2007, CBP wrote off approximately \$34 million in AD/CV duties, most of which (\$28 million) was written off in fiscal years 2006 or 2007.³⁷ 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

³⁶CBP's Office of Chief Counsel reports that, over the past 5 years, it has received judgments or settlements in excess of \$14 million through litigation and has collected additional money through the bankruptcy process.

³⁷The products with the greatest amount of AD/CV duties written off include crawfish tail meat from China (approximately \$10 million), manganese metal from China (approximately \$5 million), and carbon steel plate from Germany (approximately \$4 million).

has been discharged in bankruptcy, and (4) the cost of collection is anticipated to exceed the amount recoverable.³⁸

Law Which Generated CBP Reporting on Uncollected AD/CV Duties Has Been Repealed

According to private sector representatives from industries receiving payments under CDSOA, the reporting required by CDSOA allowed them for the first time to easily identify the amount of money collected for each AD/CV duty order. Though not required by CDSOA, in fiscal year, 2003 CBP began publicly reporting the amount of uncollected duties. This reporting included detailed data on the amount of AD/CV duties uncollected for each product subject to AD/CV duties. According to private sector representatives and congressional staff, such reporting has been critical to oversight of CBP's efforts to collect AD/CV duties.

However, in February 2006, CDSOA was repealed.³⁹ Nonetheless, ensuring that Congress and the affected domestic industries have access to detailed data on uncollected AD/CV duties is critical to the oversight of CBP's collection efforts. For example, representatives of the crawfish and steel industries (for which some imports are subject to AD/CV duties) indicate that detailed reporting on uncollected AD/CV duties is necessary to ensure that injured U.S. industries are receiving the full amount of protection intended by the imposition of AD/CV duties.

³⁸When 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 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.

³⁹Pub. L. No. 109-171, § 7601(a).

Four Key Factors Contribute to Uncollected AD/CV Duties; the Government Has Addressed Some of These Factors

Four key factors contribute to uncollected AD/CV duties; the U.S. government has addressed some of these factors. First, the retrospective component of the U.S. AD/CV duty system creates the risk of uncollected duties because the final amount of AD/CV duties an importer owes can exceed the amount it paid when goods entered the country. Second, “new shipper” reviews pose two types of risks for the collection of AD/CV duties. Congress addressed one of these risks by temporarily suspending importers’ ability to post bonds and requiring a cash payment to cover the estimated AD/CV duties owed at the time of importation when purchasing from a new shipper.⁴⁰ Third, all importers must provide a general bond to secure the payment of duties, but CBP’s standard bond formula provides little protection of AD/CV duty revenue because it sets bond amounts at a low level. CBP addressed this by revising its standard bond formula for imports subject to AD/CV duties, but the revision has only been applied to one product and faces challenges in domestic courts and internationally.⁴¹ Fourth, CBP collects minimal information regarding importers and does not conduct background or financial checks, which creates challenges to locating and collecting AD/CV duties.

Retrospective Component of U.S. AD/CV Duty System Creates Risk for Duty Collection

Two aspects of the retrospective component of the U.S. AD/CV duty system create risk for duty collection. First, under the U.S. AD/CV duty system, the amount of duties owed (determined through an administrative review by Commerce) can exceed the amount of estimated AD/CV duties an importer paid at the time of importation. Second, the long lag time between the time of importation and the time when final AD/CV duties are assessed creates a risk that CBP will be unable to collect the full amount of AD/CV duties owed. During this time, importers may disappear, cease business operations, or declare bankruptcy, which has created challenges to CBP’s ability to collect AD/CV duties owed.

⁴⁰Pub. L. No. 109-280, § 1632(a).

⁴¹*Seafood Exporters Ass’n of India*, 479 F. Supp. 2d 1367; *Nat’l Fisheries Inst., Inc.*, 465 F. Supp. 2d 1300; United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, WT/DS345; United States – Measures Relating to Shrimp from Thailand, WT/DS343.

Retrospective Calculation of Final Duties Creates Risk of Uncollected Duties

Under the U.S. AD/CV duty system, importers must pay estimated AD/CV duties at the time of importation,⁴² but the final amount of duties is not determined until later.⁴³ As a result, after Commerce conducts an administrative review to establish final AD/CV duty rates, the final amount of duties owed can exceed the estimated amount of duties the importer paid at the time of importation. In these cases, CBP must attempt to collect the duties from importers who are, at times, unable or unwilling to pay. According to a 2007 Treasury report on major duty collection problems, these situations create the most significant collection problems.⁴⁴ Some importers are unable to pay the additional amount because it exceeds their available assets. Others, such as illegitimate importers, expect that their final assessment will exceed their cash deposit and plan to avoid their final duty obligation, according to Treasury officials.

Final AD duty rates are lower or the same as the estimated duty rates the vast majority of the time. However, in some cases, final duty rates are significantly higher. In analyzing more than 6 years of CBP data covering over 900,000 entries subject to AD duties, we found that duty rates went up 16 percent of the time, went down 24 percent of the time, and remained the same 60 percent of the time.⁴⁵ In instances when rates increased, the median increase was less than 4 percentage points, meaning that half of the time the rate increased less than 4 percentage points.⁴⁶ However, because of some large increases, the average rate increase was 62

⁴² 19 U.S.C. § 1505.

⁴³ 19 U.S.C. § 1675.

⁴⁴ Department of the Treasury, *Duty Collection Problems FY 2003-2006* (Washington, D.C., July 2007).

⁴⁵ To perform the rate analysis, we needed to select only those entries involving one AD/CV duty order because CBP's data do not separate out the liquidation rate applicable to each order if multiple orders were involved. Once we selected those records with only one AD/CV duty order, we calculated liquidation rates by dividing the liquidation amount by the line value. We are not reporting results related to changes in CV duty rates because one case (softwood lumber from Canada) accounted for the vast majority of entries in our data set, and thus would have unreasonably biased the results. We also excluded the AD order on softwood lumber from Canada from our analysis because the liquidation rate for those entries was set as a result of a binational political agreement, which is outside the typical practice. We further excluded those entries for which it was impossible to calculate the percentage change in the AD/CV duty rates because they had an initial rate of 0.

⁴⁶ The median percentage increase was 3 percent; this reflects the difference between the estimated duty rate and the final duty rate, divided by the estimated duty rate.

percentage points, and some exceeded 200 percentage points.⁴⁷ When there was a rate decrease, the median decline was 7 percentage points, meaning that half of the time the rate decreases were less than 7 percentage points.⁴⁸ However, some larger decreases caused the average rate decrease to be 21 percentage points.⁴⁹

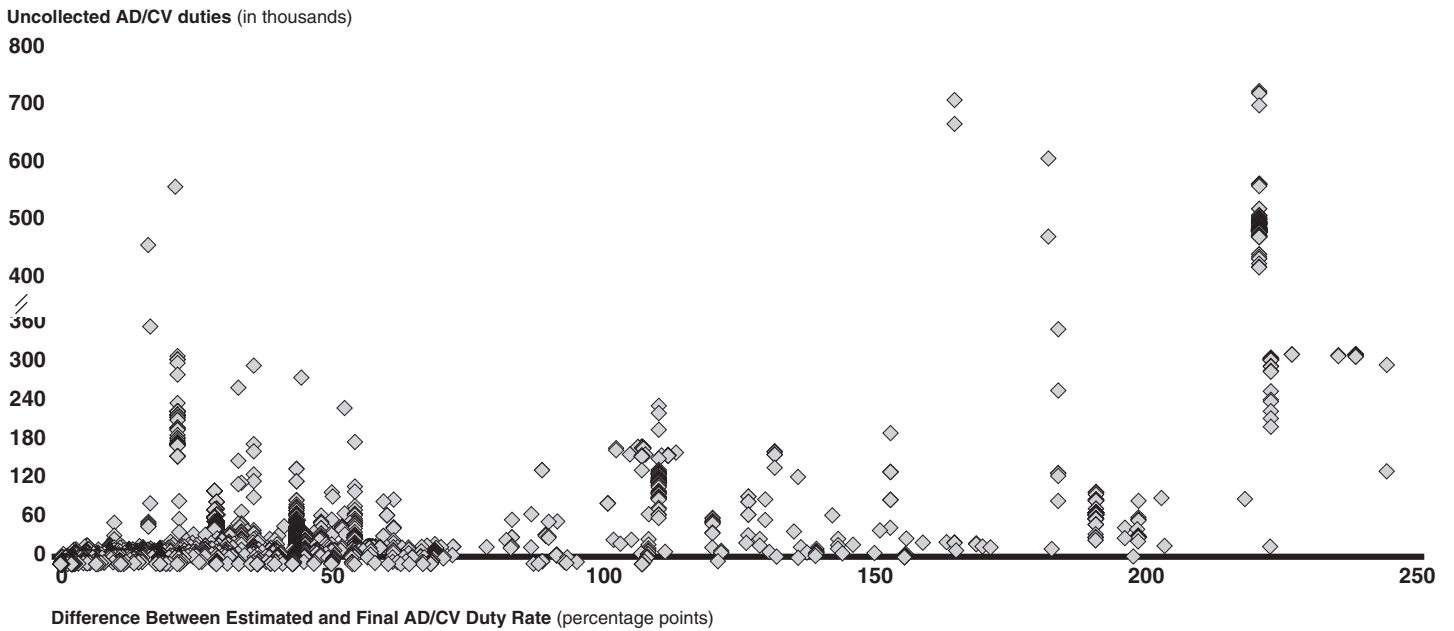
When these rate changes were applied to each entry, CBP provided refunds or issued supplemental bills to the importers. In part because there were more refunds than supplemental bills, on balance, the average result was a refund of \$324. For the 24 percent of the entries that had a rate decrease, the average refund amount was \$2,733. For the 16 percent of the entries that had a rate increase, the average supplemental bill was \$2,137, but one was more than \$7 million. Notably, the majority (58 percent) of uncollected duty bills over \$500,000 are attributed to rate increases greater than 150 percentage points. Figure 5 shows the amounts of uncollected AD/CV duties by various levels of rate increases.

⁴⁷The mean percentage increase was 8 percent; this reflects the difference between the estimated duty rate and the final duty rate, divided by the estimated duty rate.

⁴⁸The median percentage decrease was 1 percent; this reflects the difference between the estimated duty rate and the final duty rate, divided by the estimated duty rate.

⁴⁹The mean percentage decrease was 1 percent; this reflects the difference between the estimated duty rate and the final duty rate, divided by the estimated duty rate.

Figure 5: Uncollected AD/CV Duties, by Change in Rate (0-250 percentage points), as of July 2007



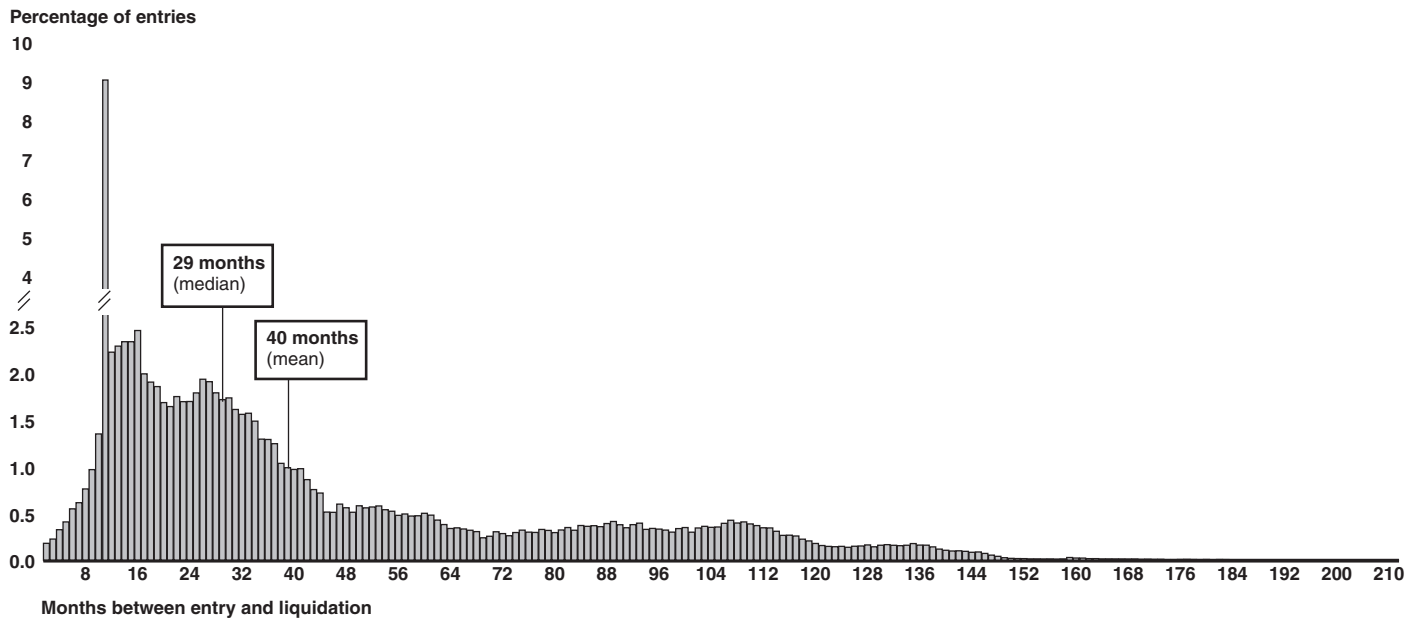
Source: GAO analysis of CBP data.

Note: This figure depicts the distribution of approximately 18,000 open, unpaid AD/CV duty bills for which the estimated AD/CV duty rate was between 0 and 250 percentage points lower than the final AD/CV duty rate. It excludes 23 AD/CV duty bills with rate increases greater than 250 percentage points, which accounted for \$3.3 million in uncollected duties. This figure also excludes 22 AD/CV duty bills for more than \$750,000—all of which were related to an AD order on crawfish tail meat from China—totaling \$55.7 million.

Long Lag Times Increase the Risk for Uncollected AD/CV Duties

Long lag times between initial entry of a product and final assessment of duties further increase the risk of uncollected duties, especially when dealing with illegitimate importers. According to CBP officials, the more time that elapses between the entry of goods and the assessment of final duties, the lower the likelihood they will be able to collect any additional duties owed because importers may disappear, cease business operations, or declare bankruptcy. As seen in figure 6, half of all entries subject to AD/CV duties took 29 months (about 2.4 years) or less to liquidate (i.e., close the entry or issue a bill or refund). For one entry, however, more than 18 years elapsed between the entry of the goods and when the entry was liquidated. On average, this process took about 3.3 years.

Figure 6: Percentage of Entries Subject to AD/CV Duties Liquidated from September 2000 through July 2007, by Number of Months Between Entry and Liquidation



Source: GAO analysis of CBP data.

According to CBP and Treasury officials, some importers attempting to avoid AD/CV duties take advantage of the long lag times created by the system to deliberately evade paying AD/CV duties. Since, on average, more than 3 years elapse between the entry of the goods and the final assessment of duties, importers can bring in a large volume of merchandise subject to AD/CV duties before final duties are assessed.

New Shipper Reviews Enhance Risk for Uncollected AD/CV Duties; Congress Has Partially Addressed This Risk

U.S. law pertaining to the application of AD/CV duties to “new shippers” poses two types of risks related to the collection of these duties. The first risk is linked to the ability of importers purchasing from new shippers to post bonds instead of having to pay cash deposits. In the course of an AD/CV duty investigation, Commerce typically determines an AD/CV duty rate applicable to a good associated with several specific manufacturers and exporters as well as a rate for all those manufacturers and exporters of the good not individually investigated. After the conclusion of an AD/CV duty investigation, some exporters who are not individually investigated may request a review in order to receive their own rates because they believe they could receive a lower rate. A “new shipper” (a manufacturer/exporter) who did not export the subject merchandise

during the initial period of investigation and is not affiliated with any exporter who exported the subject merchandise can request that Commerce conduct a review to establish the shipper's own individual AD/CV duty rate. Once Commerce initiates a new shipper review, importers purchasing from the manufacturer/exporter undergoing the review used to have the option of paying estimated AD/CV duties by providing a bond in lieu of paying cash. As discussed earlier in this report, importers that were allowed to provide bonds in lieu of cash deposits are responsible for about 40 percent of the amount of uncollected AD/CV duties.

Congress has partially addressed this risk of uncollected AD/CV duties associated with new shipper reviews. In August 2006, Congress temporarily suspended the "new shipper bonding privilege" that allowed importers who purchased from companies undergoing a new shipper review to provide a bond, instead of cash, to cover the estimated AD/CV duties due at entry.⁵⁰ As a result, all importers must now provide a cash deposit to cover the estimated duties at entry until July 2009. This new policy eliminated the risk of uncollected AD/CV revenues when the final duty amounts were assessed at the cash deposit rate or less because CBP does not have to issue a bill for the bonded amount. However, supplemental duties due to rate increases remain unprotected.

The new law also required CBP to apply the revised policy retroactively to April 1, 2006.⁵¹ Thus, those importers who already had obtained bonds for AD/CV duties on shipments from new shippers during the approximately 4.5 months preceding the legislation were required to make cash payments for these shipments. CBP identified \$96 million worth of such bonds that needs to be replaced with cash. While CBP has taken steps to collect this money, as of January 2008, it had collected only approximately \$100,000 in total.⁵²

The second risk is linked to the level of imports required to obtain an AD/CV duty rate as a result of a new shipper review. U.S. law does not specify any minimum amount of exports or number of transactions that a

⁵⁰Pub. L. No. 109-280, §1632(a).

⁵¹Pub. L. No. 109-280, §1632(a).

⁵²Because these entries were not liquidated by the end of fiscal year 2007, they are not included in the total amount of uncollected AD/CV duties cited elsewhere.

manufacturer or exporter must make to be eligible for a new shipper review.⁵³ As a result, an exporter can be assigned its own individual AD/CV duty rate based on a very minimal amount of exports. For example, a new shipper can purposely make one commercial shipment to the United States at a relatively high price for which the importer would pay a relatively high AD/CV duty rate,⁵⁴ then request a review of that shipment. Commerce's review (based on the one shipment) will determine that the new shipper was not dumping the product in the United States and assigns a 0 percent AD/CV duty deposit rate. Once Commerce assigns the new shipper a 0 percent AD/CV duty rate, the AD/CV duties the importer paid on the one commercial shipment are refunded, with interest. In addition, no AD/CV duty deposits are collected on future shipments, but additional duties may be owed if those shipments are determined to have been dumped or subsidized when an administrative review is completed in approximately 12 to 18 months.

CBP's Standard Bond Formula Provides Little Protection of AD/CV Duty Revenue; CBP Has Taken Steps to Address This Risk, but Faces Challenges

CBP's standard bond setting formula provides little protection for securing AD/CV duty revenue when the final amount of AD/CV duties owed exceeds the amount paid at the time of importation. To ensure payment of unforeseen obligations to the government, all importers are required to post a security, usually a general obligation bond, when they import products into the United States.⁵⁵ This bond is an insurance policy protecting the U.S. government against revenue loss if an importer defaults on its financial obligations. CBP determines the appropriate amount of a bond required for each importer. In general, the importer is required to obtain a bond equal to 10 percent of the amount the importer was assessed in duties, taxes, and fees, over the preceding year (or \$50,000, whichever is greater).

As seen in table 1 earlier in this report, CBP's standard bond formula is insufficient to protect AD/CV duty revenue in some cases. Table 1 presents data on the top 20 importers with uncollected AD/CV duties and their bond amounts, which are insufficient to protect AD/CV duty revenue for all 20

⁵³According to Commerce officials, the new shipper review provisions do not provide them the discretion to create any such requirement. 19 U.S.C. § 1675(a)(2)(A)-(B)(i).

⁵⁴For that shipment, the importer must pay a cash deposit at the "all others" AD/CV duty rate if the entry is made before importers are allowed to post bonds in lieu of cash deposits.

⁵⁵19 C.F.R. § 142.4.

importers. When AD/CV duties are retrospectively increased, the standard bond formula can be insufficient to cover the importer's new obligation. If an importer fails to pay the supplemental AD/CV duties, CBP can collect from the surety, up to the amount of the bond that was provided at the time of importation. However, CBP frequently faces a lengthy process of trying to collect from bonding agents who can, and often do, protest CBP's decision to collect the bond amount. According to Treasury's analysis, if an importer defaults and the amount of the bond is insufficient to cover the importer's new obligations, duties due in excess of the bond coverage are often uncollected.

In July 2004, in response to problems collecting AD duties, CBP announced a revision to its standard bond policy for bonds covering certain imports subject to AD/CV duties. The revised bond formula was intended to reduce the risk of uncollected duties, but CBP has tested it on only one product subject to AD duties. The revised policy requires importers to obtain a bond equal to 100 percent of the estimated AD/CV duties for items imported over the previous 12 months.⁵⁶ Essentially, the new requirement doubles the AD/CV duty revenue protected in that CBP now receives a cash deposit, plus an increased bond approximately equal to the cash deposit. In February 2005, CBP applied the revised policy to imports of shrimp from six countries subject to AD duties as a "test case" before applying the policy more broadly.

In October 2006, we reported on the implementation of the test case and its effects.⁵⁷ We found that the revised bonding requirement achieved its goal of increasing the amount of AD duties secured. CBP data showed that the policy increased the amount of duty revenue protected by 85 percent, but that the costs imposed on shrimp importers as a result of the revised policy are substantial. For example, shrimp importers must pay higher premiums and often are required by sureties to provide 100 percent collateral. According to shrimp importers, this reduced the amount of funds available to operate their business, tied up collateral for several years, and strained the borrowing capacity of some importers.

⁵⁶See Amendment to Bond Directive 99-3510-004 for Certain Merchandise Subject to Antidumping/Countervailing Duty Cases (July 9, 2004).

⁵⁷See GAO, *International Trade: Customs' Revised Bonding Policy Reduces Risk of Uncollected Duties, but Concerns about Uneven Implementation and Effects Remain*, GAO-07-50 (Washington, D.C.: Oct. 18, 2006).

While the policy has protected revenue and had some negative impacts on importers, it is not possible to assess its full effects on AD/CV duty collections for three reasons. First, it has been applied to one product, shrimp, which has little history in terms of duty collections. Second, the domestic shrimp industry and over 100 shrimp exporters reached agreements to not request that Commerce conduct administrative reviews.⁵⁸ In exchange for cash payments from exporters and the cooperation of the exporters on issues related to illegal antibiotics and circumvention, the domestic industry agreed not to request an administrative review of these exporters. This eliminated the possibility of duty rate increases which can result in uncollected duties. Thus, it is not possible to separate the effects of the policy from the effects of the agreements. Third, some U.S. importers and WTO members have challenged the legality of the policy.⁵⁹ The U.S. Court of International Trade has issued an injunction on the implementation of the policy for some importers,⁶⁰ and a WTO dispute settlement panel issued a report in February 2008 indicating that the revised policy as applied to imports of shrimp from India and Thailand is inconsistent with WTO rules.⁶¹ The policy is currently still being applied to most shrimp importers, but it has not been applied to importers of other products.

CBP Collects Little Information Regarding Importers of Record, Creating Challenges to Locating Debtors and Collecting Duties

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

⁵⁸According to CBP officials, these exporters accounted for the majority of U.S. shrimp imports.

⁵⁹*Seafood Exporters Ass'n of India*, 479 F. Supp. 2d 1367; *Nat'l Fisheries Inst., Inc.*, 465 F. Supp. 2d 1300; United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, WT/DS345; United States – Measures Relating to Shrimp from Thailand, WT/DS343.

⁶⁰*Nat'l Fisheries Inst., Inc.*, 465 F. Supp. 2d at 1337.

⁶¹United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, WT/DS345/R; United States – Measures Relating to Shrimp from Thailand, WT/DS343/R. Under WTO rules, any party to the dispute has the right to request that the Appellate Body review the case.

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.

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.

Although Improvements Made, Weaknesses in Interagency Communication Impede Processing of AD/CV Duties, but the Overall Revenue Effect Appears Minimal

Despite some improvements, weaknesses in interagency communications impede CBP's ability to process the final amount of AD/CV duties within the required 6 months. In recent years, CBP and Commerce have taken several steps to improve communication regarding AD/CV duties, but untimely action by Commerce and CBP's need to seek clarification from Commerce during the liquidation process present challenges to completing the process in the time allowed. Many entries are not addressed within the statutory 6-month period,⁶² though the overall effect on revenue appears minimal. Human capital challenges at Commerce affect its ability to effectively perform its role in the liquidation process, but Commerce lacks a strategy for addressing these challenges.

⁶²19 U.S.C. § 1504(d).

Agencies Have Taken Steps to Improve Communication

In recent years, agencies have taken steps to improve communication related to processing AD/CV duties. First, Commerce established a Customs Unit within the Import Administration in January 2005 that provides essential customer services and information to both government and private sector stakeholders involved in the AD/CV duty process. The Customs Unit serves as the focal point for CBP on customs issues, maintains a call center, and fosters communication daily with CBP via e-mail and telephone. Both CBP and Commerce officials agree that the formation of the Customs Unit has improved their interagency communication. Commerce also has taken steps to improve the template it uses to guide the development of liquidation instructions. In addition, according to Commerce, officials from Commerce, CBP, Immigration and Customs Enforcement,⁶³ and occasionally the Department of Justice or U.S. Attorney's Office attend a monthly trade enforcement meeting at which they discuss AD/CV duty collections, including open and potential fraud cases.

CBP and Commerce also have taken steps to improve their handling of the protests filed by importers and surety companies regarding the amount of duties owed. For instance, according to Commerce officials, in 2006, Commerce increased the number of staff processing protests from one to five, enabling the agencies to reduce the backlog of 250 protests. In addition, CBP enhanced its tracking system to monitor the status of the protests it sends to Commerce for advice on how to resolve the protest. Also, CBP is in the process of clarifying instructions to its ports on procedures for handling AD/CV duty-related protests.

CBP is undertaking steps to improve its data systems for processing AD/CV duties, as part of the agency's larger project to replace its 20-year-old data system—called the Automated Commercial System (ACS)—with the Automated Commercial Environment (ACE). CBP is building a separate AD/CV duty module within ACE, soliciting input from Commerce officials throughout the project. According to CBP officials, ACE will enhance its ability to handle more AD/CV duty tasks automatically. Currently, thousands of entries subject to AD/CV duties require manual entry for liquidation, which is resource and time intensive. According to

⁶³U.S. Immigration and Customs Enforcement, within the Department of Homeland Security, is the federal agency responsible for investigating alleged schemes by U.S. importers to avoid the payment of AD/CV duties. It works with CBP and Commerce to investigate and refer substantial violators for criminal and civil actions.

CBP officials, the AD/CV duty module in ACE is expected to be completed sometime after January 2011.

Weaknesses in Interagency Communication Create Impediments, Impairing CBP's Ability to Process AD/CV Duties

Communication weaknesses in the interagency process for liquidating entries subject to AD/CV duties impede CBP's ability to process AD/CV duties in a timely manner. This process involves action by both Commerce and CBP and is governed by statutory and self-imposed deadlines. However, untimely and unclear communication creates impediments to completing the process within these time frames. Many entries are not liquidated within the specified time frame, though the amount of revenue lost or gained appears to be minimal. Human capital challenges at Commerce contribute to these weaknesses, but Commerce lacks a strategy for addressing these challenges.

Liquidation Process Involves Action by Commerce and CBP and Is Governed by Statutory and Self-Imposed Deadlines

Commerce and CBP must take several steps in order to liquidate an entry subject to AD/CV duties that has undergone an administrative review. Under U.S. law, this process must be completed (by sending a bill or refund or closing the transaction) within 6 months of Commerce publishing a notice in the *Federal Register* specifying (1) the final AD/CV duty rates or (2) a final court decision to liquidate entries that were enjoined subject to litigation, whichever comes later.⁶⁴ There are three basic steps in the liquidation process.

First, after concluding an administrative review, Commerce publishes the review's final results in the *Federal Register*, and commits to sending specific instructions to CBP within 15 days after the notice in the *Federal Register* or the lifting of any injunction. Commerce often prepares these liquidation instructions using a template. Commerce then sends the instructions to CBP headquarters to liquidate the covered entries at the final AD/CV duty rate determined by the administrative review. Second, CBP headquarters reviews the instructions sent by Commerce to ensure they are sufficiently clear. CBP headquarters then forwards the instructions to each port of entry. Third, CBP staff at ports of entry liquidate the entries in one of three ways: (1) refunding the difference to the importer when the final duty liability is lower than the cash deposit collected at the time of importation; (2) issuing a bill to the importer for the difference when the final duty liability is higher than the cash deposit

⁶⁴19 U.S.C. § 1504(d).

Untimely and Unclear
Liquidation Instructions Create
Impediments to Liquidation

collected at the time of importation; or (3) closing the entry when the cash deposit is the same as the final duty liability.

We identified two main impediments to CBP's ability to liquidate entries subject to AD/CV duties. One impediment is untimely liquidation instructions from Commerce. Specifically, we identified instances where Commerce failed to send the liquidation instructions within its self-imposed 15-day deadline. Since approximately January 2006, CBP has been documenting "message logs" for the purpose of tracking the timeliness of Commerce's delivery of liquidation instructions. In reviewing these logs for a 4-month period, we determined that Commerce sent the liquidation instructions to CBP headquarters within 15 days of publishing the relevant *Federal Register* notice approximately 20 percent of the time.⁶⁵ In addition, almost 30 percent of the instructions were sent more than 100 days after the *Federal Register* notice was published. After reviewing the instances we identified where instructions were sent more than 100 days after the *Federal Register* notice, Commerce officials determined that such a delay was often (about 70 percent of the time) beyond their control. For example, Commerce officials noted that some cases are subject to legal injunctions or North American Free Trade Agreement rules which allow longer time frames for the issuance of liquidation instructions. However, they also noted that some liquidation instructions are sent more than 100 days after the publication of the *Federal Register* notice or the lifting of any injunction because of administrative oversight due primarily to heavy workload.

According to Commerce officials, they recognize the importance of sending liquidation instructions in a timely manner, but lacked a mechanism for ensuring that this occurred. After we made Commerce officials aware of the untimely liquidation instructions we identified, in December 2007, the Deputy Assistant Secretary for AD/CV Duty Operations sent a memo to each of the nine Office Directors responsible for AD/CV duty operations reiterating the need to ensure that liquidation instructions are timely. He also announced a plan for tracking the

⁶⁵Commerce officials noted that CBP does not always review and act on Commerce's instructions in a timely manner. According to the 1988 Memorandum of Understanding between Commerce and CBP, CBP agrees to "review and act on" instructions received from Commerce "within 24 hours of receipt." According to Commerce, there are numerous instances where CBP did not review and act on Commerce's instructions within the agreed-upon time frame. For instance, beginning in October 2007, a number of the instructions sent to CBP were "backlogged."

timeliness of liquidation instructions, including a requirement that each of the Office Directors report quarterly on their office's efforts to meet the goal of issuing instructions 15 days after the pertinent notice in the *Federal Register* or the lifting of any injunction.

A second impediment to the timely liquidation of some entries subject to AD/CV duties is a lack of clarity in Commerce's liquidation instructions and the extra time taken by CBP to obtain clarification. CBP and Commerce officials acknowledge that liquidation instructions can be complicated and difficult to draft and may be very detailed. However, according to CBP headquarters officials, they are unable to send liquidation instructions to field offices to act upon in a significant percentage of cases because Commerce's instructions are unclear.

Commerce communicates its instructions to CBP through ACS. If CBP needs to clarify or correct liquidation instructions, it will return the instructions back to Commerce through ACS. Our analysis of CBP's log of instructions returned to Commerce for clarification found that CBP sought clarification for approximately 21 percent of liquidation instructions that Commerce sent within the 7-month period we reviewed.⁶⁶ Further, CBP's log noted that several instructions were sent back for clarification for a second or third time.

Many Entries Not Liquidated Within 6-Month Deadline, but Revenue Lost or Gained Appears Minimal

We identified over 37,000 entries out of a total of approximately 3.1 million entries (approximately 1 percent) subject to AD duties liquidated from October 2004 through June 2007 that were "deemed liquidated" (i.e., CBP failed to complete the liquidation process within the 6-month period). If CBP cannot complete the liquidation process within 6 months of Commerce's notice in the *Federal Register*, it may not collect the appropriate amount of AD/CV duties. When CBP fails to complete the liquidation process within 6 months, an entry is "deemed liquidated" and the entry is liquidated at the rate asserted by the importer at the time of entry (e.g., the cash deposit rate).⁶⁷ This precludes CBP from attempting to collect any supplemental additional duties that might have been owed because of an increase in the AD/CV duty rate. Similarly, it means that

⁶⁶Commerce officials acknowledged that some instructions are legitimately rejected by CBP because they are unclear or inaccurate; however, these officials also believe that CBP unnecessarily rejects some instructions.

⁶⁷19 U.S.C. § 1504(d).

Human Capital Challenges at
Commerce Affect Liquidation
Process, but Commerce Lacks
a Strategy for Addressing the
Challenges

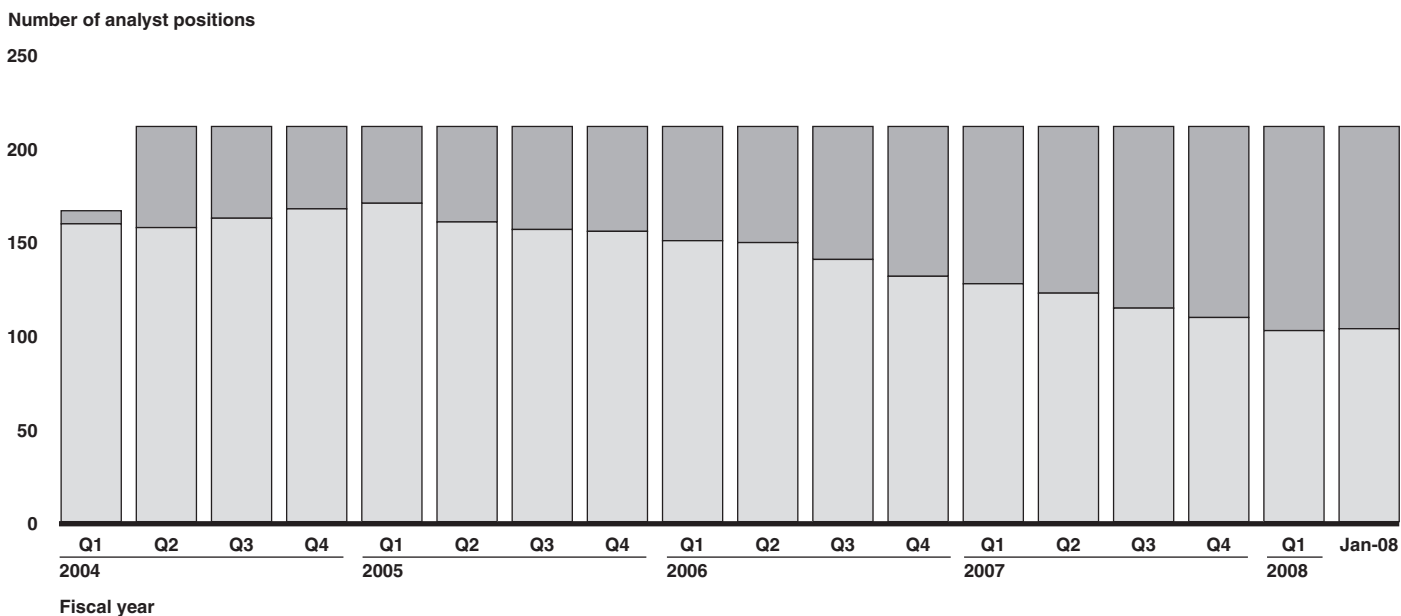
CBP does not refund money owed to importers as a result of a decrease in the AD/CV duty rate.⁶⁸

The potential revenue lost or gained on entries deemed liquidated appears minimal. In the vast majority of the 37,000 cases of deemed liquidation we identified, no revenue appears to have been lost or gained as a result of the deemed liquidation. We identified 507 entries which should have resulted in the collection of additional revenue, but were deemed liquidated. Our analysis showed that the United States did not receive approximately \$106,000 in revenue for these entries. More significantly, we identified 171 entries which should have resulted in approximately \$1.5 million of refunds to importers, but were deemed liquidated.

Commerce officials acknowledge that human capital challenges limit their ability to draft clear and timely liquidation instructions in some cases, but they have no clear strategy for addressing these challenges. They attribute these human capital challenges to a hiring freeze that has been in place since January 2006, which affected the hiring of International Trade Compliance Analysts who are responsible for drafting AD/CV duty liquidation instructions. According to Commerce officials, the AD/CV duty operations offices have lost 46 International Trade Compliance Analysts since January 2006, and they had been unable to refill these positions due to the hiring freeze. As a result, as shown in figure 7, as of January 2008, the Import Administration had less than half (103 of 211) of the International Trade Compliance Analysts which it was authorized.

⁶⁸According to CBP, in accordance with the decision of the Court of Appeals for the Federal Circuit in *Koyo Corp. of U.S.A. v. United States*, 497 F.3d 1231 (Fed. Cir. 2007), CBP is granting properly filed, valid protests of deemed liquidations, filed by importers seeking refunds based on the final results rate, provided that the protests do not raise nonprotestable claims of errors by Commerce.

Figure 7: Authorized vs. Actual Staffing Levels for International Trade Compliance Analysts (first quarter, fiscal year 2004 to January 2008)



Number of analysts (authorized)
 Number of analysts (actual)

Source: GAO analysis.

Despite the substantial decline in the number of staff, there has been only a slight decline in caseload since fiscal year 2004. As shown in table 2, the caseload per analyst has increased substantially since fiscal year 2004. According to Commerce officials, this growth in caseload for International Trade Compliance Analysts is a key reason that some liquidation instructions are not sent in a timely manner.

Table 2: International Trade Compliance Analyst Caseload, by Fiscal Year

	FY04	FY05	FY06	FY07	Estimated FY08
Number of analysts (3rd qtr)	162	156	140	114	114
Number of AD/CV duty determinations	308	398	359	336	380
Determinations per analyst	1.9	2.6	2.6	2.9	3.3

Source: GAO analysis of Commerce data.

Note: "Number of determinations" is a measure used by Commerce to assess workload. It included the number of AD/CV duty determinations issued within the statutory and/or regulatory deadline.

Commerce has taken some steps to improve its human capital, but lacks a clear strategy for addressing its human capital challenges. For instance, Commerce officials report that the agency released a job announcement for the International Trade Compliance Analyst position to support the nine AD/CV duty operational offices, and they have hired nine new analysts since September 2007. They also have requested additional funding to establish an additional office to focus on CV duty investigations involving nonmarket economies. However, according to Commerce officials, they have not conducted a comprehensive analysis to understand its human capital challenges and have no formal human capital plan to address these challenges.

Options for Improving the Collection of AD/CV Duties Have Potential Advantages and Disadvantages

Congress and the relevant agencies face two sets of options to consider in attempting to improve the collection of AD/CV duties. Each set has both potential advantages and disadvantages. One set of options would be for Congress to fundamentally alter the U.S. AD/CV duty system by eliminating its retrospective component and making it prospective. The other set of options involves adjusting specific aspects of the current U.S. AD/CV duty system while retaining its retrospective nature. This set includes such options as adjusting the requirements for “new shippers,” heightening the requirements for becoming an importer of record, revising the bond requirements for importers, and lengthening the statutory deadline for assessing final AD/CV duties. Consideration of any option should include analysis of whether the change would be consistent with international trade agreements, including WTO rules.

Congress Could Eliminate the Retrospective Component of the U.S. AD/CV Duty System

U.S. law could be changed to eliminate the retrospective component of the U.S. AD/CV duty system and, instead, treat AD/CV duties assessed at the time the product enters the country essentially as final. Under the current U.S. AD/CV duty system, when Commerce issues an AD/CV duty order, it establishes estimated AD/CV duty rates. Commerce then instructs CBP to collect estimated duties at those rates from importers when products subject to the order enter the country. However, as discussed earlier, Commerce often conducts an administrative review, during which it analyzes additional imports (typically 1 year of entries) and calculates the final duty rates (and thus the amount of duties owed by the importer). In this way, the U.S. system is retrospective in nature, in that the final amount of duties is based on the actual amount of dumping or subsidization for that year.

The Prospective AD/CV Duty
Systems of Other Countries
Present Alternatives

Other countries we reviewed do not determine their final AD/CV duties by calculating actual amount of duties owed after products enter the country. While each country's AD/CV duty system operates differently, major U.S. trading partners such as Canada, Australia, and the European Union have AD/CV duty systems that are fundamentally prospective. Under these countries' systems, the AD/CV duties assessed at the time a product enters the country are essentially treated as final.⁶⁹ App. II provides illustrative examples of the calculation of AD/CV duties under different scenarios. If and when the AD/CV duty rate is changed, it is applied only to future imports and has no effect on the amount of duties owed for previous imports.⁷⁰ As a result, other countries reported that they have no major problems collecting AD/CV duties.

Canada's AD duty system often is referred to as a prospective normal value system.⁷¹ Canadian officials conduct investigations to determine whether imports are being dumped or subsidized and whether they are causing injury to Canadian industry; if so, they impose AD/CV duties. According to Canadian officials, when the government finds that dumping is occurring, the Canadian government calculates a "normal value" for the product, which is used to calculate the amount of AD duties applicable on all future shipments to Canada.⁷² For all future imports, if the normal value of the goods exceeds the export price, the importer owes AD duties in an amount equal to the difference between the two prices. Thus, the amount of duties owed, if any, varies based on the export price. The lower the export price, the greater the duties owed, and vice versa. If the export price is equal to or higher than the normal value, the importer owes no AD duties.⁷³ Officials stated that this normal value is used until the Canadian government conducts a review to update it, which typically occurs annually. These reviews are initiated either by the government or at the

⁶⁹WTO members are required to allow importers to request reviews of the amount of AD duties they have paid if they believe they are owed a refund. WTO Antidumping Agreement Art. 9.3.2

⁷⁰According to Commerce officials, some U.S. exporters complain that other countries' prospective systems do not regularly conduct reviews to adjust AD/CV duty rates.

⁷¹CV duties also are imposed prospectively, but are based on calculated amounts of subsidy rather than normal values.

⁷²The "normal value" is based on the price at which the exporter sells like goods for domestic consumption.

⁷³Because the amount of the duty increases with the degree of dumping, the Canadian system provides a direct financial incentive for firms to reduce or eliminate dumping.

request of an importer or exporter based on market or price changes. Following the completion of a review, the new normal value is used for all future imports, but is not used to recalculate the amount of duties owed on prior imports (unlike in the U.S. system). Officials further explained that under Canadian law, importers and certain exporters (for example, those from the United States and Mexico) also may request a redetermination of the normal value or export price after duties have been assessed on a transaction for the purpose of obtaining a refund. Any duties found to have been paid in excess as a result of the redetermination will be refunded to the importer. As of November 2007, Canada imposed AD duties on 17 products and CV duties on 6 products. In 2006, Canada collected approximately \$24 million in AD/CV duties.

Australia's AD duty system also is prospective and the duties are assessed based on the normal value calculated during an investigation of unfairly priced imports. However, as Australian officials explained, the AD duties owed may have two components: one fixed and one variable. The fixed component is the difference between the normal value and the export price during the AD duty investigation. This amount is assessed on all future imports on a per-unit basis. The variable component is the additional duties that will be assessed if an exporter lowers its price for an individual transaction below what it charged during the investigation. The additional duties will be assessed at an amount equal to the difference between the two prices.⁷⁴ Like the Canadian system, Australia periodically reviews the normal value and makes any adjustments on a prospective basis. As of October 2007, Australia imposed AD duties on 35 products and CV duties on 1 product.

The European Union's (EU) AD/CV duty system also is prospective, with the amount of the duties based on the amount of dumping or subsidization applied on an ad valorem (percentage) basis.⁷⁵ EU officials stated that they conduct an investigation to determine whether imports are being dumped or subsidized and whether they are causing injury to a European industry. If so, they then establish the normal value for the product and compare this to the export price. Officials further explained that they calculate the

⁷⁴As such, the Australian system provides only limited financial incentive for firms to discontinue dumping.

⁷⁵If the European Union determines that the injury caused by the unfair imports can be remedied with a lesser amount of duties than the margin of dumping or subsidization, it imposes duties at a lower rate.

percentage difference between these two prices and set this as the AD/CV duty rate. This rate is then applied to all future imports of the product. As a result, the amount of the AD/CV duties owed is a simple percentage the current export price. Thus, the lower the export price, the lesser the amount of duties owed; the higher the price, the greater the amount of duties owed.⁷⁶ According to EU officials, EU regulations allow for the periodic review of AD/CV duties as well as for the refund of any duty paid determined to be in excess of the actual margin of dumping and/or subsidization of the exporter concerned. Officials stated that these periodic reviews have a prospective effect, that is, the new rate of duty will affect only future imports (contrary to the U.S. system, the amount of duty cannot be increased retrospectively). Separately, importers have the opportunity to request a refund review, which would concern past imports. As of December 2006, the European Union had 134 AD measures and 2 CV measures in force. The AD measures covered 59 products and 32 countries, while the CV measures covered 10 products and 5 countries.

Trade-Offs Involved When Considering Prospective and Retrospective AD/CV Duty Systems

Prospective and retrospective AD/CV duty systems differ in a variety of ways, and the specific design features of each system influence their relative advantages and disadvantages.⁷⁷ The types of trade-offs associated with each system can be illustrated by comparing three specific characteristics:

- *Timing for determining and collecting final AD/CV duties.* In prospective AD/CV duty systems, the amount of AD/CV duties paid by the importer at the time of importation is essentially treated as final. This eliminates the risk of being unable to collect AD/CV duties. Establishing the final amount of AD/CV duties owed at the time of importation also creates certainty for importers. This enables legitimate importers to plan their business operations. In addition, some prospective AD/CV duty systems and retrospective systems assess AD/CV duties that increase or decrease as the degree of dumping or subsidization increases or decreases, which can provide exporters an incentive to eliminate or reduce dumping. For example, under Canada's "prospective normal value" AD/CV duty system, Canada's investigation results in establishing a normal

⁷⁶As such, the EU system provides no direct financial incentive for firms to discontinue dumping.

⁷⁷For ease of discussion, we have grouped together a variety of systems and categorized them as "prospective" systems. As discussed with regard to the Canadian, Australian, and EU AD/CV duty systems, each system is prospective, but the specific design characteristics of each system (and thus the relative advantages and disadvantages) vary.

value which is known to all parties. Exporters can then raise their prices up to that normal value, thereby eliminating their dumping and avoiding any AD/CV duties.⁷⁸

In a retrospective AD/CV duty system, the amount of AD/CV duties owed is not determined until well after the time of importation. Importantly, our analysis showed that, in the U.S. system, final duties are assessed, on average, more than 3 years after importation. This time lag, which often is the result of the time required to conduct the administrative review necessary to calculate final AD/CV duties and any judicial review of the results of the review, has several potential implications. First, the threat of an administrative review can deter some companies from dumping. An administrative review could result in AD/CV duty rates being increased from the estimated rate paid at the time of importation, which could mean significant new duty liability for an importer. As such, since legitimate importers seek price certainty, they may be less inclined to purchase from exporters whose AD/CV duty rates fluctuate substantially over time. Second, the time lag creates collection risks for the U.S. government. As discussed earlier, the long lag times between entry and final duty assessments in the U.S. system increase the risk of uncollected duties, as importers may become unable or be unwilling to pay the final amount of AD/CV duties when they are assessed. Third, the time lag can result in “bad actors,” those importers who intentionally avoid paying required duties, not being identified until they have been importing for a long time. Only after its collections efforts are unsuccessful does the government clearly know that duties owed by this importer are at serious risk for noncollection. During this time lag, the importer may continue to import dumped or subsidized products into the country, thus incurring additional duty liability and increasing the U.S. government risk for noncollection.

- *“Accuracy” of AD/CV duties paid.* Under a prospective AD/CV duty system, the amount of duties assessed may not match the amount of actual dumping or subsidization. Under some prospective systems, the amount of AD/CV duties an importer is assessed is based on dumping or subsidization that occurred in a previous period. As a result, if the amount of dumping or subsidization changes, the amount of duties paid in the current period may not equal the amount of dumping or subsidization that is currently occurring. However, the government is able to collect the full

⁷⁸The Australian and EU AD/CV duty systems, while eliminating uncertainty in duty rates, provide little or no direct financial incentive for firms to reduce dumping.

amount of AD/CV duties assessed because the duties are paid at the time of importation.

Under a retrospective AD/CV duty system, the amount of duties assessed reflects the actual amount of dumping by the exporter for the period of review. The amount of the final AD/CV duty liability may not be established until the government reviews all the imports for a given period and calculates the amount of dumping or subsidization that has occurred. As a result, a retrospective system can assess duties that exactly reflect the amount of dumping or subsidization. However, in practice, a substantial amount of retrospective AD/CV duty bills are not collected. This gap between the amount of duties assessed and the amount collected means that the government is not fully remedying the unfair trade practice. This suggests that assessing a more accurate duty rate does not necessarily result in receiving more accurate duty amounts from importers. It also raises concerns about the equity of the system, as those who evade AD/CV duties gain a competitive advantage at the expense of those companies that pay the full amount of duties owed.

- *Administrative simplicity for customs officials.* Both prospective and retrospective AD/CV duty systems may involve complex processes for determining appropriate AD/CV duty rates. However, they differ with respect to their simplicity for customs officials responsible for collecting AD/CV duties.

Prospective AD/CV duty systems create a smaller burden for customs officials because the full and final amount of AD/CV duties is assessed at the time of importation. For example, according to Canadian customs officials, its AD/CV duty system places little burden on customs officials. Since all duties are paid when products enter the country, customs officials face little, if any, additional work to process imports subject to AD/CV duties.

Retrospective AD/CV duty systems can create a substantial burden for customs officials. According to CBP officials, the U.S.'s retrospective AD/CV duty system places a unique and significant burden on its resources. For example, it creates a considerable amount of administrative duties related to identifying, tracking over time, and properly processing entries subject to AD/CV duties. When CBP needs to collect additional duties beyond those paid at the time of importation, additional resources also are needed to attempt to collect those duties, which can involve attempting to locate importers that have disappeared or collecting from importers that have declared bankruptcy, and may also necessitate

working with other agencies such as Justice. According to CBP officials, the retrospective AD/CV duty system increases workload and diverts focus from other priority trade issues.

Congress and Agencies Could Adjust Specific Aspects of the Current U.S. AD/CV Duty System

Adjustments to specific aspects of the U.S. AD/CV duty system could be made without altering its retrospective nature. We identified four types of changes. One type of change includes revising the requirements related to “new shippers.” A second adjustment involves heightening the requirements for becoming a U.S. importer. A third type of change includes revising the bond requirements for importers. Each of these changes would impose additional costs on both legitimate and illegitimate companies. A final change includes lengthening the amount of time CBP is provided to make a final assessment of AD/CV duties. Such a change could reduce the amount of foregone revenue, but could make collections more difficult in some situations.

Congress Could Make Adjustments to the Requirements for New Shipper Reviews

Requirements for new shipper reviews could be adjusted in two different ways. First, Congress could extend or make permanent its suspension of the new shipper bonding privilege. Doing so would require all importers to pay estimated AD/CV duties in cash at the time of entry, thus eliminating the need to attempt to collect from surety companies.

Second, Congress could revise the level of exports required for exporters applying for “new shipper” status to potentially reduce the risk of uncollected duties.⁷⁹ As discussed previously, under U.S. law, a company applying to be a new shipper is entitled to an expedited review of its exports for the purpose of establishing an AD/CV duty rate to that company’s exports in the future.⁸⁰ According to Commerce officials, since such companies typically have exported only one shipment of the goods subject to AD/CV duties, which is almost always at a relatively high price, they typically calculate a cash deposit rate of 0 percent. As a result, importers purchasing from these companies pay no AD/CV duties at the time of importation. However, Commerce may later determine that the exports were dumped or subsidized, and therefore retrospective bills would be issued. As described earlier, these retrospective bills are a key factor contributing to uncollected AD/CV duties. To mitigate this risk,

⁷⁹According to Commerce officials, they do not have the legislative authority to create any such requirement.

⁸⁰19 U.S.C. § 1675(a)(2)(B).

Congress could choose to provide Commerce the discretion to require companies applying for a new shipper review to have a greater volume of imports before establishing an individual AD/CV duty rate. According to Commerce officials, such discretion would be useful because it could help mitigate the risks posed by establishing an AD/CV duty rate based on one shipment.

Revising the requirements for new shippers could reduce the risk of uncollected duties by making it harder for exporters to manipulate new shipper reviews and evade duties. However, a large volume of imports may be required to prevent some exporters from intentionally manipulating the new shipper review process. In addition, requiring a greater volume of imports could unfairly burden legitimate new shippers by requiring them to export more than they otherwise might before they could obtain an individual cash deposit rate.

Requirements for Becoming an Importer of Record Could Be Heightened

CBP or Congress could heighten the requirements for a company applying to be an importer of record to potentially reduce the likelihood that importers would prove unable to pay their duty liabilities. As discussed previously, the requirements for becoming an importer in the United States are minimal and do not involve any financial or background checks. Heightened requirements might include mandatory financial or background checks. However, according to CBP officials, performing financial checks would provide a limited assessment of importers' future ability to pay additional AD/CV duties because their financial situations can change quickly. Additionally, a financial check does not address a company's willingness to pay additional AD/CV duties. It also would create a significant new burden on CBP, which would need to conduct or oversee these financial or background checks. For example, CBP data indicate that from fiscal years 2005 through 2007, there was an average of over 350,000 importers of record. Of those, about 130,000, on average, were new importers each year. Moreover, these financial or background checks would need to be updated periodically, which would compound the resource requirements over time. In addition, it is possible that the heightened requirements would be imposed on all importers to be fair. Given that the vast majority of importers comply with customs laws and pay their duty liabilities, such a broad approach may not be a cost-effective way to improve the collection of AD/CV duties.

CBP Could Revise Its Bonding Requirements

Bond requirements could be modified to provide additional protection in the case that importers are unable or unwilling to pay their duty bills. One option would be for CBP to expand the application of its revised bond policy for imports subject to AD/CV duties. As explained earlier, this

policy was established in July 2004, and significantly increased the value of bonds required of importers. At the time it was initially implemented, CBP officials envisioned applying the policy to shrimp imports as a test case and subsequently applying the policy to additional imports they believe pose a significant risk for uncollected AD/CV duties. To date, the policy has been applied only to imports of shrimp from six countries subject to AD/CV duties. As we have previously reported, this policy effectively doubled the amount of revenue protected by requiring (in addition to the cash deposits required at the time of entry) a continuous bond essentially equal to the cash deposits.⁸¹ However, expanding the application of the policy entails substantial drawbacks. For example, some importers covered by the expanded policy would face a significant increase in their costs. Shrimp importers reported that they experienced increased costs due largely to substantial collateral requirements needed to obtain the bonds. According to importers, these costs reduced their profitability and forced some importers to exit the industry. In addition, the revised continuous bonding policy has been challenged in U.S. court and at the WTO.⁸² The U.S. Court of International Trade has issued an injunction on the implementation of the policy for some importers,⁸³ and a WTO dispute settlement panel issued a report in February 2008 indicating that the revised policy as applied to imports of shrimp from India and Thailand is inconsistent with WTO rules.⁸⁴

CBP also could set new bond requirements based on its assessments of an importer's likely ability to pay AD/CV duties. CBP could create a set of criteria to judge each importer's ability to pay and require larger bonds of companies judged to have a lower likely ability to pay, which would increase the amount of AD/CV duty revenue protected. Such an approach could allow CBP to target importers considered to be at high risk for uncollected AD/CV duties and require them to provide larger bonds. However, performing such analyses of individual importers' likely ability to pay retrospective AD/CV duties, like background and financial checks,

⁸¹GAO-07-50.

⁸²*Seafood Exporters Ass'n of India*, 479 F. Supp. 2d 1367; *Nat'l Fisheries Inst., Inc.*, 465 F. Supp. 2d 1300; United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, WT/DS345; United States – Measures Relating to Shrimp from Thailand, WT/DS343.

⁸³*Nat'l Fisheries Inst., Inc.*, 465 F. Supp. 2d at 1337.

⁸⁴WT/DS345/R; WT/DS343/R. Under WTO rules, any party to the dispute has the right to request that the Appellate Body review the case.

would create a substantial administrative burden for CBP. Such analyses would create a substantial new workload because of the likely complexity of the analyses, the large number of importers (approximately 350,000), and the need to regularly update the analyses.

CBP also could require importers to provide an additional bond for each entry subject to AD/CV duties in addition to the already required continuous bond. Some representatives from surety companies said that this requirement could protect additional revenue while creating only a minimal burden on CBP. They suggest that this type of requirement would allow surety companies to identify, in advance, when they are insuring the payment of AD/CV duties, which are at greater risk of nonpayment by importers. Since they face a greater risk of having to pay out on bonds related to AD/CV duties, surety companies would likely increase the cost to importers of obtaining the bond, perhaps through increased premium rates or collateral requirements. These increased costs could deter malfeasance by illegitimate importers by increasing the cost of importing merchandise subject to AD/CV duties. However, it may impose costs on legitimate importers that pose little risk of failing to pay retrospective AD/CV duties. At the same time, competition among surety companies could force them to offer better bond prices for lower-risk importers, reducing the costs for importers not at risk of uncollected duties.

Congress Could Extend the Length of Time Allowed for CBP to Liquidate Entries Subject to AD/CV Duties

Congress could choose to extend the time frame allowed by law for CBP to liquidate entries subject to AD/CV duties.⁸⁵ As discussed earlier, CBP has 6 months to liquidate entries subject to AD/CV duties from the time that Commerce publishes a notice in the *Federal Register* establishing (1) the final AD/CV duty rates or (2) the lifting of an injunction against liquidation, whichever comes last. According to CBP officials, this 6-month deadline can be very hard to meet, especially when a large volume of imports needs to be liquidated or a case is extremely complex. According to CBP officials, for most imports, the Harmonized Tariff System code for a product determines the applicable duty. However, in some AD/CV duty cases, no Tariff code exists for the specific products that Commerce investigated and imposed duties on. An example is wooden bedroom furniture from China. According to CBP officials, there is a Tariff code for wooden furniture, but there is not one for wooden bedroom furniture, for which there is an AD order in effect. As a result, CBP needs to examine the invoices for every entry of wooden furniture from China to see if it falls

⁸⁵This time frame is set out in 19 U.S.C. 1504(d).

within the scope of the AD order. This is very labor intensive and creates an opportunity for companies to circumvent the duties. Extending the amount of time for CBP to liquidate entries subject to AD/CV duties could reduce the potential for entries to be “deemed liquidated,” which can lead to foregone revenue if additional duties should have been paid. However, extending this time frame could delay refunds to some importers. As discussed earlier, the more time between a product’s entry into the country and when entries are liquidated, the greater the chance duties will be uncollected.

Conclusions

The existence of a substantial amount of uncollected AD/CV duties undermines the effectiveness of the U.S. government’s efforts to deter unfair foreign trade practices and reduces the amount of revenue available to the U.S. government. With more than \$600 million in AD/CV duties currently uncollected, a large portion of which is likely to be written off, the U.S. government’s efforts to remedy injurious unfair trade practices also has been seriously compromised. This problem was first widely recognized after 2000, and has gained increased prominence and visibility based on annual public reporting by CBP. However, a recent change in U.S. law⁸⁶ eliminated the legal requirement that generated CBP’s reporting on uncollected AD/CV duties.

While Congress and the relevant agencies have taken some steps in recent years, they have not yet fully addressed the factors contributing to uncollected AD/CV duties, and serious risks remain. Some of these factors stem from shortfalls in the capabilities and operation of the relevant agencies. For instance, human capital deficiencies at Commerce and untimely or unclear liquidation instructions have hampered the imposition and collection of AD/CV duties. Increased attention and interagency coordination in these areas could help ensure the steps in the AD/CV duty process are completed in a timely manner.

Taking additional steps to mitigate the risk to AD/CV duty collections, however, requires consideration of additional options and evaluation of their relative advantages and disadvantages. Certain adjustments could be made within the existing framework of the U.S. AD/CV duty system to further protect AD/CV duty revenue. Adjustments such as altering importers’ bond requirements would protect additional revenue, but also

⁸⁶See Pub. L. No. 109-171, § 7601(a).

could have significant implications for the trade community and our trading partners, which would need to be carefully considered. Providing Commerce with the discretion to establish a minimum level of exports needed to qualify for a special new shipper review could reduce the possibility of uncollected AD/CV duties and would affect both legitimate and illegitimate importers and exporters. On the other hand, additional analysis is required to determine whether eliminating the retrospective aspect of the duty collection process could help achieve the AD/CV duty system's intended purposes more effectively. Such fundamental alteration of the system would entail weighing the implications for a variety of stakeholder groups including affected domestic producers, exporters, importers, and the relevant federal agencies.

Matters for Congressional Consideration

In order to help reduce the amount of uncollected AD/CV duties, Congress should consider taking the following three actions:

First, Congress should require the Secretaries of Commerce, Homeland Security, and the Treasury to work together to conduct an analysis and report to Congress on the relative advantages and disadvantages of prospective and retrospective AD/CV duty systems. The report should address the extent to which each type of AD/CV duty system would likely achieve the goals of remedying injurious dumping or subsidized exports, minimizing uncollected duties, reducing incentives and opportunities for importers to evade AD/CV duties, effectively targeting high-risk importers, and creating a minimal administrative burden. To ensure the report is completed in a timely manner, Congress should establish a specific date by which the report is to be delivered.

Second, Congress should require CBP to publicly report on an annual basis regarding the amount of uncollected duties for that year for each AD/CV duty order. In addition, the report should indicate the total amount of all open, unpaid bills for each AD/CV duty order.

Third, Congress should consider providing Commerce with the authority to establish, at its discretion, a minimum amount or value of exports from companies requesting a new shipper review.

Recommendations for Executive Action

In order to help ensure the full collection of AD/CV duties and improve the liquidation process, we make the following three recommendations for executive action:

First, the Secretary of Homeland Security, in consultation with other relevant agencies, should determine whether CBP can adjust its bonding requirements to further protect revenue without violating U.S. law or international obligations and without imposing unreasonable costs upon importers.

Second, the Secretary of Commerce should work with the Secretary of Homeland Security to identify opportunities to improve the clarity of liquidation instructions. The Secretary of Commerce should report to Congress within 1 year on the steps it has taken to improve the clarity of liquidation instructions.

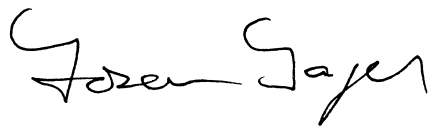
Third, to ensure that the Import Administration has sufficient human capital to issue timely and clear liquidation instructions to CBP, the Secretary of Commerce should develop a strategic human capital plan encompassing its AD/CV duty operational offices.

Agency Comments and Our Evaluation

We provided a copy of this report to the Departments of Commerce, Homeland Security, Justice, and the Treasury, as well as the U.S. International Trade Commission and the Office of the U.S. Trade Representative. The Department of Commerce's comments are contained in appendix IV. The Department of Homeland Security's comments are contained in appendix V. The Department of the Treasury's comments are contained in appendix VI. The Departments of Homeland Security and Commerce agency generally agreed with our recommendations. In addition, we received technical comments from the Departments of Commerce, Homeland Security, and Justice, as well as the United States International Trade Commission and the Office of the U.S. Trade Representative. We have incorporated these comments as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time we will send copies of this report to the appropriate congressional committees as well as the Secretaries of Commerce, Homeland Security, Justice, and the Treasury, the Chairman of the U.S. International Trade Commission, and the U.S. Trade Representative. We will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report or need additional information, please contact me at (202) 512-4347 or YagerL@gao.gov. Contact points for our offices of Congressional Relations or Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VII.

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive style with a large initial "L" and "Y".

Loren Yager
Director, International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

To help reduce uncollected antidumping (AD) and countervailing (CV) duties, the Senate Appropriations and Finance Committees asked us to review the reasons why the duties are uncollected and what the U.S. government has done to address this problem. In addition, they asked us to identify options for improving the AD/CV duty system. Specifically, we examined (1) the extent and nature of uncollected AD/CV duties, (2) the key factors contributing to risks for uncollected AD/CV duties and the steps taken to improve the collection of AD/CV duties, (3) interagency communications that affect the processing of AD/CV duties, and (4) potential options for improving AD/CV duty collections.

To analyze the extent and nature of uncollected AD/CV duties, we analyzed data received from U.S. Customs and Border Protection's (CBP) Office of Finance. They include all open, unpaid bills for AD/CV duties as of September 30, 2007. These data include key characteristics like the bill amount, whether or not the bill was under protest, and the importer number. The bill amount includes the principal amount of the bill, but not any accrued interest. While we include in our reporting uncollected AD/CV duties subject to ongoing protests, we also analyzed bills not subject to protests. The results from both analyses were similar. We assessed the reliability of the data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. Based on our data reliability assessment we deleted less than 1 percent of the original cases. Our analysis consisted of 120 unique AD/CV duty orders and more than 23,000 individual bills. We determined that these data were sufficiently reliable for the purposes of this report.

To identify new shippers with open, unpaid bills; new shippers with bills under protest; and differences between estimated and final duty rates, we merged two data sets received from CBP. One data set included all open, unpaid AD/CV duty bills since fiscal year 2001, as of September 30, 2007, and indicated whether the bills were under protest. The other data set included all entries subject to AD/CV duties that were liquidated between October 2000 and July 2007, the AD/CV duty order date, and whether the estimated AD/CV duties paid at entry were secured using cash or a bond. We identified entries involving a company undergoing a new shipper review as those where the importer was allowed to post a bond to secure AD/CV duties after the AD/CV duty order was issued. In addition, we needed to select only those entries involving one entry line because CBP's data regarding open, unpaid bills do not separate out the amount attributable to individual AD/CV duty orders if multiple orders were

involved. Our analysis of new shippers consisted of 559 orders and approximately 1.4 million entries.

To analyze the differences between estimated and final AD/CV duty rates, we needed to select only those entries involving one AD/CV duty order because CBP's data do not separate out the liquidation rate applicable to each order if multiple orders were involved. Once we selected those records with only one AD/CV duty order, we calculated liquidation rates by dividing the liquidation amount by the line value. We are not reporting results related to changes in CV duty rates because one case (softwood lumber from Canada) accounted for the vast majority of entries in our data set, and thus would have unreasonably biased the results. We also excluded the AD order on softwood lumber from Canada from our analysis because the liquidation rate for those entries were set as a result of a binational political agreement, which is outside the typical practice.

We assessed the reliability of the data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that these data were sufficiently reliable for the purposes of this report.

To identify the key factors that contribute to uncollected AD/CV duties and the steps taken to improve the collection of AD/CV duties, we reviewed reports and documents related to AD/CV duty collections from CBP and the Departments of Commerce and the Treasury. We further reviewed reports from the Congressional Research Service as well as legal journals. To determine the length of time it took Commerce to send AD/CV liquidation instructions to CBP, we analyzed CBP's internal "message log" spreadsheets for the period of April 2007 through July 2007. These spreadsheets indicated the dates CBP received and posted liquidation instructions from Commerce. To determine reasons why Commerce sometimes delayed sending instructions to CBP, we requested that Commerce analyze the circumstances of 63 entries where it took Commerce more than 100 days to send AD/CV duty liquidation instructions to CBP. We analyzed CBP's internal "reject log" spreadsheets from January 2007 through July 2007, which logged the instructions that CBP sent back to Commerce for clarification. We additionally analyzed data from Commerce related to the authorized versus actual staffing levels for the International Trade Compliance Analyst position from fiscal year 2004 through January 2008. We further examined Commerce data to assess caseload growth for this Analyst position. In addition, we interviewed a variety of Department of Homeland Security officials. This included

officials from CBP's Offices of International Trade, Finance, and Field Operations. We interviewed officials from Immigration and Customs Enforcement's Office of Commercial Fraud Investigations. Additionally, we interviewed officials from the Departments of the Treasury, Justice, and Commerce. To obtain information on private sector views on the factors contributing to uncollected AD/CV duties, we interviewed officials from domestic trade industries as well as importer and surety associations.

To determine the steps the U.S. government has taken to improve collection of AD/CV duties, we analyzed CBP policies and procedures for collection of duties. We interviewed CBP officials in the Office of Technology, Office of International Trade, and Office of Field Operations, as well as its Debt Management Branch in Indianapolis. We also interviewed officials at the Department of Commerce International Trade Administration's Customs Unit and the Department of the Treasury. We requested and reviewed documentation from the Department of Commerce and CBP regarding steps they have taken to improve the collection of AD/CV duties. In addition, we reviewed the Department of the Treasury's July 2007 report on major duty collection problems. We interviewed representatives of domestic industries and importers affected by AD/CV duties and trade lawyers and academics with expertise in AD/CV duty issues. We reviewed governmentwide guidance on debt collection, including OMB Circular A-129—Policies for Federal Credit and Non-Tax Receivables and segments of the Debt Management Improvement Act. Our analysis included reviewing our prior report on CBP's revised continuous bonding policy.¹

To identify and analyze potential options for improving AD/CV duty collections, we reviewed academic literature regarding the operation of various countries' AD/CV duty systems and their relative advantages and disadvantages. Additionally, we obtained information from the governments of Australia, Canada, and the European Union regarding how their AD/CV duty systems operate and whether lessons could be learned from the operation of their systems. We did not independently analyze the laws and regulations of Australia, Canada, or the European Union. We also interviewed agency officials, including officials from CBP and the Department of Commerce's Trade Remedy Compliance Staff, which are responsible for helping U.S. exporters understand other countries' AD/CV

¹[GAO-07-50](#).

duty systems. We interviewed private sector representatives including both domestic producers and importers in a variety of industries such as steel and agriculture/aquaculture. In addition, we interviewed representatives from an association of retailers and the surety industry.

We conducted this performance audit from June 2007 to March 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Examples of the Calculation of AD/CV Duties in the United States, Australia, Canada, and the European Union

Assumptions: Normal value calculated during investigation = \$110; average import price calculated during investigation = \$100

		United States	Canada	Australia	European Union
Method for calculating AD/CV duties		At entry: Percentage difference between the normal value and average import price during the investigation (10%)	Amount difference between the normal value and the current import price	Sum of two components: (1) Difference between the normal value and the average import price during the investigation [\$10] PLUS (2) If the current import price decreases, the difference between the current import price and the average import price during the investigation	Percentage difference between the normal value and average import price during the investigation (10%)
		At liquidation: Percentage difference between the normal value and the current import price			
Amount of duties owed ^a	<i>Scenario 1: Exporter raises price by \$15</i>	At entry: $\$115 \times 10\% = \mathbf{\$11.50}$	\$0 owed because the current import price exceeded the normal value	($\$110 - \100) + \$0 because the current import price did not decrease = \$10^b	$\$115 \times 10\% = \mathbf{\$11.50}$
		At liquidation: \$0 owed because import price exceeded the normal value ^c			
	<i>Scenario 2: Price is unchanged</i>	At entry: $\$100 \times 10\% = \mathbf{\$10}$	$\$110 - \$100 = \mathbf{\$10}$	($\$110 - \100) + \$0 because the current import price did not decrease = \$10	$\$100 \times 10\% = \mathbf{\$10}$
		At liquidation: $\$100 \times 10\% = \mathbf{\$10}$			
	<i>Scenario 3: Exporter lowers price by \$15</i>	At entry: $\$85 \times 10\% = \mathbf{\$8.50}$	$\$110 - \$85 = \mathbf{\$25}$	($\$110 - \100) + ($\$100 - \85) = $\$10 + \$15 = \mathbf{\$25}$	$\$85 \times 10\% = \mathbf{\$8.50}$
		At liquidation: $\$85 \times 29\% = \mathbf{\$25}$			
Total price (Import price + duties)	<i>Scenario 1: Exporter raises price by \$15</i>	At entry: $\$115 + \$11.50 = \mathbf{\$126.50}$	$\$115 + 0 = \mathbf{\$115}$	$\$115 + \$10 = \mathbf{\$125}$	$\$115 + \$11.50 = \mathbf{\$126.50}$
		At liquidation: $\$115 + 0 = \mathbf{\$115}$			
	<i>Scenario 2: Price is unchanged</i>	At entry: $\$100 + \$10 = \mathbf{\$110}$	$\$100 + \$10 = \mathbf{\$110}$	$\$100 + \$10 = \mathbf{\$110}$	$\$100 + \$10 = \mathbf{\$110}$
		At liquidation: $\$100 + \$10 = \mathbf{\$110}$			
	<i>Scenario 3: Exporter lowers price by \$15</i>	At entry: $\$85 + \$8.50 = \mathbf{\$93.50}$	$\$85 + \$25 = \mathbf{\$110}$	$\$85 + \$25 = \mathbf{\$110}$	$\$85 + \$8.50 = \mathbf{\$93.50}$
		At liquidation: $\$85 + \$25 = \mathbf{\$110}$			

Source: GAO analysis of information from Commerce and the governments of Australia, Canada, and the European Union.

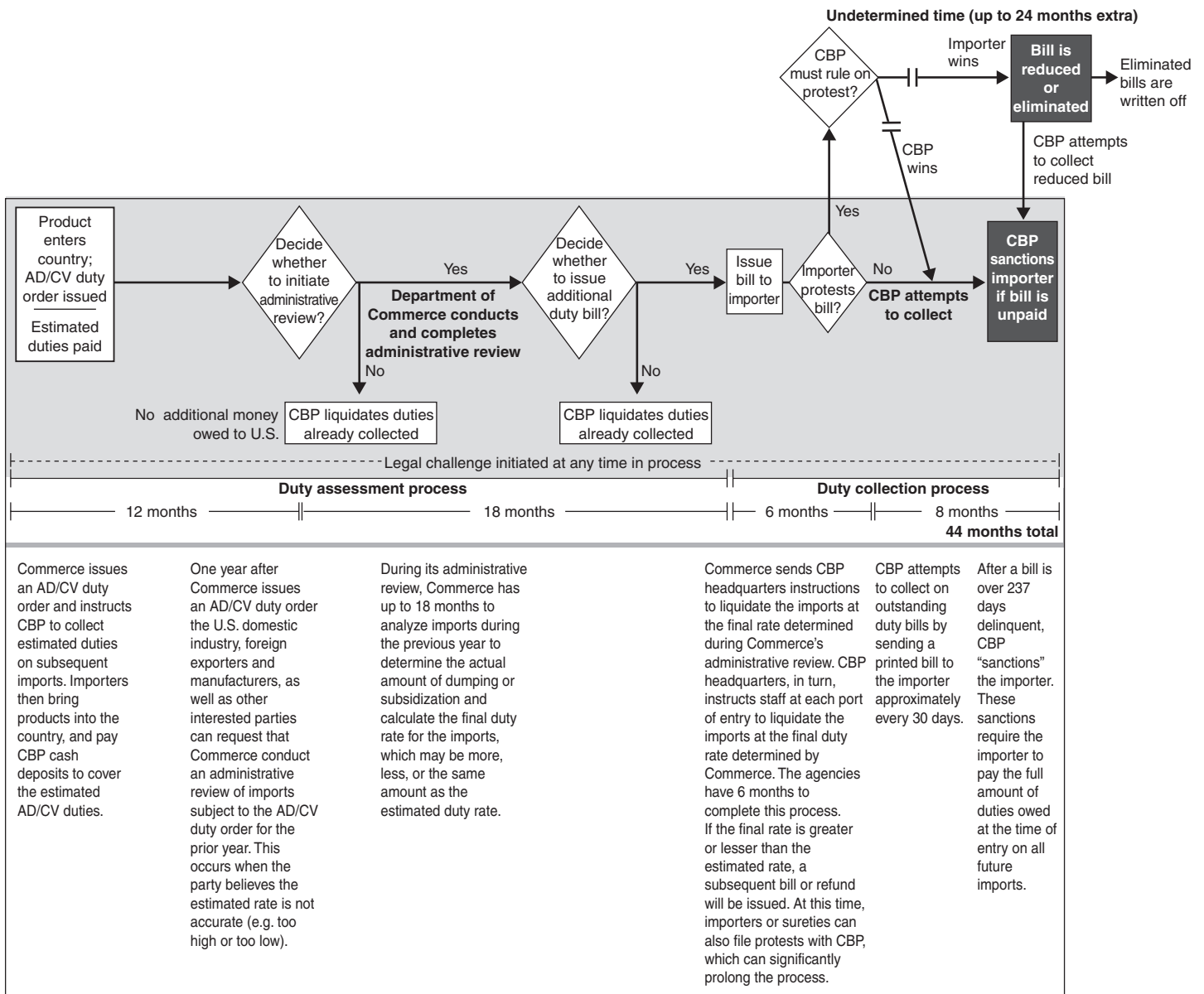
^aThis reflects the amount of duties assessed under each system. As discussed in the body of the report, in the United States, there can be a substantial difference between the amount of duties assessed and the amount paid.

**Appendix II: Examples of the Calculation of
AD/CV Duties in the United States, Australia,
Canada, and the European Union**

^bAccording to Australian officials, if the importer in this scenario made a duty assessment application, all other things being equal, it would be entitled to a \$10 refund as the export price of \$115 is above the normal value calculated during the investigation.

^cThe United States would have refunded \$11.50 to the importer.

Appendix III: Illustration of the Process and Maximum Time Frames for Collecting AD/CV Duties



AD/CV Anti-dumping/Countervailing

CBP U.S. Customs and Border Protection

Source: GAO analysis of information from Commerce and CBP.

Appendix IV: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION
Washington, D.C. 20230

MAR 10 2008

Dr. Loren Yager
Director
International Affairs and Trade
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Dr. Yager:

Thank you for providing us with the draft report on under-collection of antidumping (AD) and countervailing duties (CVD), and recommended steps to reduce shortfalls in duty collection. Commerce finds the report both timely and helpful. The ability of AD and CVD duties to remedy unfairly traded imports that injure American companies and workers is obviously diminished if the duties are not fully collected. Moreover, significant public and private resources are expended to ensure the accuracy of AD and CVD duty rates, but the value of this accuracy is reduced if there is under-collection.

Commerce carefully reviewed the report's analysis of the amount and causes of AD and CVD duty under-collection. Commerce agrees that the amount of AD and CVD duty under-collection is a problem that needs resolution. However, the cited amount of over \$600 million in uncollected duties since 2001 may be overstated to the extent that this amount reflects duties currently under proper review through litigation or the protest process. In addition, the report found that uncollected duties are highly concentrated in a few industries, products, countries of origin, and importers, representing well over 80 percent of uncollected duties in almost all of those categories. Thus, while there are some systemic causes for under-collection, the fact that under-collection is concentrated in a few circumstances indicates that factors unique to those cases are the cause of under-collection. Indeed, most likely only two of the four key factors identified in the report as contributing to under-collection, *i.e.*, the insufficient amount of continuous bonds and minimal information regarding importers, apply to the circumstances representing the vast majority of under-collected duties. The GAO may want to recommend that further analysis be conducted on these cases to determine why they represent such a large portion of uncollected AD and CVD duties.

Moreover, the report's limited analysis of why the vast majority of under-collection occurred in a few industries, products, countries of origin, and importers contrasts with the sections of the report devoted to other factors that are much smaller causes for under-collection. For example, the report analyzes in-depth how the issuance of untimely and unclear liquidation instructions can result in an import subject to AD or CVD duties being liquidated at a "deemed" rate less than the amount of the applicable AD or CVD duty rate. Commerce agrees that issuing timely and accurate liquidation instructions should be a priority, as demonstrated by Commerce's past and on-going efforts to improve its issuance of liquidation instructions to Customs and Border Protection. However, the report found that entries from September 2004 through July 2007 that were "deemed" liquidated at a rate different from the applicable AD or CVD rate resulted in the relatively minimal under-collection of \$106,000.

**Appendix IV: Comments from the Department
of Commerce**

Mr. Loren Yager,
Page 2

Commerce has no objections to the report's suggested three matters for Congressional consideration and three recommendations for executive action. Specifically, should the Congress so decide, Commerce is prepared to analyze and study the relative advantages and disadvantages of prospective and retrospective AD/CV duty systems. However, the GAO's recommendations on the scope of any Commerce study of prospective and retrospective systems appear to range far beyond an assessment of the problems and possible solutions specifically related to the under-collection of AD/CV duties. Therefore, Commerce would want to consult closely with its Congressional oversight committees to establish an appropriate scope and purpose for any study of prospective and retrospective duty collection systems that the Congress may decide to request. Commerce agrees that requiring the annual public reporting of uncollected AD and CVD duties would be a useful metric to measure progress in minimizing under-collection. Commerce would also welcome working with the Congress in considering whether the requirements for requesting a new shipper review should be revised in a manner consistent with the United States' international obligations.

Commerce would be willing to provide any relevant information or assistance to the Department of Homeland Security (DHS) and the Treasury Department if those Departments were to re-examine the current formula for setting bond requirements. Commerce would also continue to work with DHS to improve the liquidation process and the clarity of liquidation instructions. As the report points out, Commerce and DHS already work together closely to better the timeliness and accuracy of liquidation instructions, but both Departments need to take further action to improve the situation. Finally, Commerce notes that a strategic human capital plan for Import Administration's AD/CVD Operations offices is already in the planning stages and will be developed as part of an upcoming independent review of Import Administration programs. Given the potential role of limited human resources affecting other agencies' ability to implement the timely collection of AD and CVD duties, the GAO may want to consider recommending similar human capital plans for other agencies involved in the collection of AD and CVD duties.

Thank you again for the opportunity to comment on the draft report. Enclosed is an attachment with specific technical comments relating to the text of the report.

Sincerely,



David M. Spooner

Appendix V: Comments from the Department of Homeland Security

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



**Homeland
Security**

March 14, 2008

Mr. Loren Yager
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Yager:

RE: Draft Report GAO-08-391, Antidumping and Countervailing Duties:
Congress and Agencies Should Take Additional Steps to Reduce Substantial
Shortfalls in Duty Collection (GAO Job Code 320465)

The Department of Homeland Security (DHS) appreciates the opportunity to review and comment on the draft report referenced above. We generally agree with the two recommendations that involve DHS.

The report highlights two options to address the four factors contributing to uncollected antidumping and countervailing duties (AD/CVD). The four factors are identified as (1) the retrospective component of the United States AD/CVD system, (2) new shippers who only need to bring in one shipment to receive a separate rate, which is usually zero percent, (3) inadequate bond coverage to address large rate increases, and (4) importers of record for which minimal information is required.

The first option, preferred by U.S. Customs and Border Protection (CBP) officials, would be for Congress to fundamentally alter the United States system by eliminating its retrospective component and making it prospective. This approach would:

- Benefit importers (and by proxy consumers) who would know with certainty the cost of the goods they are selling at the time they are sold rather than at some point in the future after an administrative review of an AD/CVD order is conducted.
- Alleviate the collection issues faced by CBP due to substantial rate increases since the amount of duty assessed at entry would be the final amount owed.
- Substantially reduce the administrative burden on CBP resources associated with a retrospective system such as the processing of AD/CVD entries; the issuance and sufficiency review of bonds; review, posting, and processing of liquidation instructions; the collection or refund of monies resulting from rate fluctuations; the processing of protests arising from these activities; and the need for management oversight of these processes.

www.dhs.gov

- Allow CBP resources to more fully focus on AD/CVD enforcement issues, such as circumvention of the AD/CVD law to avoid paying duties.

The second option is to adjust specific aspects of the current retrospective system such as adjusting requirements for new shippers, heightening the requirements for becoming an importer of record, revising bond requirements for importers of goods subject to an AD/CV duty order, and lengthening the statutory deadline for assessing final AD/CVD. The majority of these options would perpetuate and exacerbate the shortcomings of the U.S. retrospective system, which burdens CBP resources with conducting manual processes and administrative tasks to the detriment of identifying and addressing circumvention schemes. They also would place an additional burden and cost on all importers and new shippers, not just those who intend to evade AD/CVD.

A retrospective system is more accurate than a prospective system if all importers abide by the rules and pay bills issued to them resulting from rate increases. However, all importers do not abide by the rules as GAO's draft report highlights:

However, in practice, a substantial amount of retrospective AD/CV duty bills are not collected. This gap between the amount of duties assessed and the amount collected means that the government is not fully remedying the injury caused by dumping or subsidies. This suggests that assessing a more accurate duty rate does not necessarily result in receiving more accurate duty amounts from importers. It also raises concerns about the equity of the system, as those who evade AD/CV duties gain a competitive advantage at the expense of those companies that pay the full amount of duties owed.

As noted, moving to a prospective system would allow CBP to focus its resources more fully on identifying and addressing those seeking to circumvent the AD/CVD law, rather than the administrative tasks inherent in a retrospective system.

The report highlights that uncollected duties are concentrated by country of origin (China), industry (agriculture/aquaculture), product (crawfish, honey, mushrooms, and garlic), exporter's new shipper status and importer of record. While in absolute amounts, the majority of uncollected duties are concentrated in these areas, tens of millions of dollars go uncollected from other areas as well. For example, GAO reported that \$613 million in AD/CVD went uncollected as of September 2007. However, \$62 million did not pertain to imports from China; \$82 million were in industries other than agriculture/aquaculture; and \$100 million were in products other than the four mentioned above. In those instances where GAO could identify the exporter's new shipper status only 40% of uncollected duties (\$130 of \$328 million) were associated with new shippers.

In addition, the danger with painting too narrow a picture of the non-collection issue is that the countries, industries, products, and importers that pose a revenue risk currently may not be the same ones that will pose a revenue risk at some point in the future. CBP

continues to refine its risk management techniques to ensure it is identifying and addressing the greatest risk of revenue loss before it occurs.

The report contains three matters for Congressional consideration and two recommendations that are addressed to or otherwise involve the Department of Homeland Security.

Recommendation for Congressional Consideration 1: GAO recommends that Congress require Commerce in consultation with DHS and Treasury to conduct an analysis and report to Congress on the relative advantages and disadvantages of prospective and retrospective AD/CVD systems.

We agree with this recommendation. Specifically, CBP would welcome the opportunity to work with Commerce and Treasury to draft a report to Congress that highlights the relative advantages and disadvantages of prospective and retrospective AD/CVD systems.

Recommendation for Congressional Consideration 2: Require CBP to publicly report on an annual basis on all uncollected AD/CV duties.

CBP agrees with GAO's recommendation. Since 2003, CBP has made this information publicly available via its website even though it has not been required to do so. In addition, CBP provides this information to Congress to fulfill an annual Congressional reporting requirement. CBP will continue to publicly report on all uncollected AD/CVD on an annual basis by AD/CVD case number via its website.

Recommendation for Congressional Consideration 3: Congress should consider providing Commerce with the authority to establish, at its discretion, a minimum amount or value of exports from companies requesting a new shipper review.

Although the recommendation is not directed to the Department of Homeland Security, CBP supports increasing the requirements for new shippers to address the collection risk associated with exports from these companies.

Recommendation for Executive Action 1: DHS in consultation with Treasury should determine whether CBP can adjust its bonding requirements to further protect revenue without violating U.S. law or international obligations and without imposing unreasonable costs upon importers.

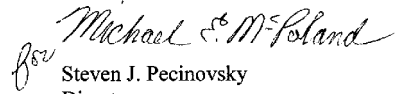
CBP remains committed to utilizing its bonding authority to address revenue risk. However, a re-examination of the current formulas for setting bond amounts to address the risks associated with the United States' retrospective AD/CVD system will need to take into consideration the outcome of legal challenges before the Court of International Trade and the World Trade Organization.

Recommendation for Executive Action 2: Commerce should work with DHS to identify opportunities to improve the clarity of Commerce's liquidation instructions.

DHS agrees with this recommendation. The focus should be on improving both the clarity and timeliness of liquidation instructions. As the report highlights, CBP and Commerce have taken steps to improve the clarity and timeliness. CBP will continue to do so.

Technical comments have previously been provided. These comments correct specific inaccuracies in the draft. We trust that they will be considered in finalizing the report.

Sincerely,


Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

Appendix VI: Comments from the Department of the Treasury



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 13, 2008

Mr. Loren Yager
Director
International Affairs and Trade
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Yager:

Thank you for the opportunity to comment on the Government Accountability Office (GAO) Report on Antidumping and Countervailing Duties. The report is a thoughtful treatment of an important topic, with implications beyond tariff administration.

Should Congress decide to follow your recommendation and ask for a report on the relative advantages and disadvantages of prospective and retrospective antidumping and countervailing (AD/CV) duty systems, the Department of the Treasury will be happy to participate. We also are planning to work with the Department of Homeland Security on reviewing bonding requirements for AD/CV duties.

We would offer the following comments on the four key factors that GAO identified as contributing to uncollected AD/CV duties.

First, we agree with the GAO conclusion that "the retrospective component of the U.S. AD/CV duty system creates the risk of uncollected duties." If there were no retrospective component to the U.S. AD/CV duty law, we would expect the duty collection rate to be similar to that for other duties, over 99 percent.

Second, while we agree that "new shipper" reviews have posed two types of risks for the collection of AD/CV duties, we believe that the first type the GAO identified, the risk related to the former ability of new shippers to post bonds instead of having to pay cash deposits,¹ is minimal. The added risk is equal to the probability of default by a surety, which is low.

We believe the second type of risk that you identified, that new shippers can take advantage of the current system, is more significant. As the report describes, new shippers "can purposely make one commercial shipment to the United States at a relatively high price," which can lead to a low or zero percent AD/CV duty rate being

¹ As the report notes, the option of providing a bond has been temporarily suspended. P.L. No. 109-280, §1632(a).

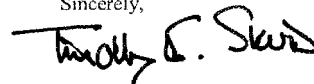
**Appendix VI: Comments from the
Department of the Treasury**

applied to subsequent shipments by that new shipper. If it is subsequently determined through administrative review that additional duties are to be retrospectively assessed on those shipments, a collection risk is created because the retrospectively assessed duties will not be secured (by bond, cash deposit, or other means). In sum, an unscrupulous new shipper can by design obtain a low AD/CV rate and then ship at that rate until additional duties are retroactively assessed through administrative review and then abscond when billed for retrospectively assessed duties.

Third, with regard to the bond policies administered by Customs and Border Protection (CBP), we agree that “when AD/CV duties are retrospectively increased, the standard bond formula can be insufficient to cover the importer’s new obligation.” We note, however, that CBP’s current enhanced bond policy, which was intended to address particular AD/CV duty collection problems, has been found by a World Trade Organization (WTO) dispute settlement panel to be inconsistent with our WTO obligations. Moreover, because there is no limit on the possible retrospective increase of AD/CV duties, no finite bond amount can be guaranteed to cover a final AD/CV assessment.

Fourth, and finally, the report notes that CBP collects little credit or financial information about importers. Such information may well be useful in identifying those importers subject to AD/CV duties who are most likely to meet retroactively assessed obligations, and therefore may not need to post additional security in order to satisfactorily guarantee payment. However, requests for credit checks have not been needed to secure duties that are not retroactively assessed, and should not be required from the general importer population.

Sincerely,



Timothy Skud
Deputy Assistant Secretary
Tax, Trade, and Tariff Policy

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

Loren Yager (202) 512-4347 or yagerl@gao.gov

Staff Acknowledgments

In addition to the contact named above, Christine Broderick (Assistant Director), Jason Bair, Joseph Brown, Deborah Owolabi, Lisa Mirel, Karen Deans, Etana Finkler, Grace Lui, Michael Hoffman, and Ken Bombara made key contributions to this report. Stephen Caldwell, Thomas Costa, Lucia DeMaio, Ian Ferguson, Laurie Hamilton, Elisabeth Helmer, Evelyn Logue, Jackie Nowicki, Michael Rohrback, Ellery Scott, and Jena Sinkfield also contributed to the report.

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