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The Honorable Ron Wyden
Chairman, Subcommittee on International Trade, Customs and Global Competitiveness
Committee on Finance
United States Senate

The Honorable Olympia Snowe
United States Senate

Subject: *Options for Collecting Revenues on Liquidated Entries of Merchandise Evading Antidumping and Countervailing Duties*

The United States imposes antidumping and countervailing (AD/CV) duties to remedy unfair foreign trade practices that cause injury to domestic industries. Evasion of AD/CV duties weakens protections for U.S. industry and reduces U.S. revenues.[1] U.S. Customs and Border Protection (CBP) sometimes detects such evasion after the merchandise has been "liquidated," i.e., the goods have entered commerce and the agency has completed processing the entry.[2] You requested that we examine CBP's options for attempting to collect revenues in such cases.[3] In this report, we examine (1) options available to CBP to assess revenues on entries of goods subject to AD/CV duties that entered the United States through evasion and have already been liquidated and (2) factors that affect the amount of revenues collected by CBP through the use of these options.[4]

To address these objectives, we interviewed knowledgeable officials from CBP and the Department of Commerce (Commerce). In addition, we collected and reviewed relevant agency data and documents, laws, and regulations. We conducted this performance audit from February 2011 to November 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient,

[1]In this report, we use the term "evasion" to refer to any activity whereby companies, through means such as misclassification, undervaluation, or falsification of country of origin, improperly declare goods that are subject to AD/CV duties to avoid payment of such duties.

[2]CBP regulations define liquidation as the final computation or ascertainment of duties on entries for consumption or drawback entries. 19 C.F.R. § 159.1.

[3]In this report, we use the term "revenues" to refer to funds due to the U.S. government, including but not limited to duties and penalties.

[4]GAO is currently conducting a separate, in-depth review of U.S. efforts to detect and deter evasion of AD/CV duties.

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 and that the data we collected were sufficiently reliable for our purposes.

Results in Brief

CBP has three options for assessing revenues on liquidated entries brought in through evasion of AD/CV duties: *reliquidation*, *duty demands*, and *penalties*. Two factors that can influence which of these options CBP will use in a given instance are (1) how much time has elapsed since the entry was liquidated and (2) whether Commerce has issued liquidation instructions conveying the applicable final duty rate.

Two key factors affect the amount of revenues CBP collects on liquidated entries brought in through evasion of AD/CV duties. First, the amount of duties or penalties CBP ultimately collects may be lower than the amount initially assessed, due to successful protest or petition by the importer. Second, CBP faces difficulty in collecting revenues from importers that may be unscrupulous, difficult to locate, or outside of U.S. jurisdiction.

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 facilitating the importation of the goods.[5] The importer of record is responsible for paying all estimated duties, taxes, and fees on those products when they are brought into the United States.[6] Importers of record are also required to secure the payment of their financial obligations (generally by obtaining a bond).[7]

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. laws authorize the imposition of AD duties on products that were “dumped” (i.e., sales at less than normal value) and CV duties on products exported to the United States that were subsidized by

[5]See 19 C.F.R. § 101.1 for the CBP regulatory definition of “importer.”

[6]19 U.S.C. § 1505.

[7]See 19 C.F.R. § 142.4 for CBP bonding requirements.

foreign governments.[8] The U.S. AD/CV duty system is retrospective, in that importers initially pay estimated AD/CV duties at the time of importation, but the final amount of duties, reflecting the actual amount of dumping or subsidization, is not determined until later.[9]

Two key U.S. agencies are involved in assessing and collecting AD/CV duties owed. Commerce is responsible for calculating the appropriate duty rate for the merchandise subject to AD/CV duties. CBP is responsible for, among other things, collecting duties, taxes, and fees on those products and setting the formula for establishing importers' bond amounts.[10] Commerce issues an AD/CV duty order after conducting an initial AD/CV duty investigation on a product. The AD/CV duty order instructs CBP to collect cash deposits at the time of entry on all merchandise subject to the order.[11] The merchandise also can be subject to an administrative review by Commerce 12 months after the issuance of the AD/CV duty order.[12] At the conclusion of the administrative review (typically about 18 months after the review's initiation), the final duty rate, also known as the liquidation rate, is established for all relevant merchandise. Once Commerce establishes a final duty rate, it communicates the rate to CBP through liquidation instructions, and CBP instructs staff at each port of entry to assess final AD/CV duties on all relevant products. The liquidation process is complete and the entries are liquidated when CBP issues a supplemental bill or a refund, depending on whether the final rate is higher or lower than the cash deposit rate.[13] As we reported in March 2008, the

[8]The legal 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.

[9]The United States is the only major user of AD/CV trade remedies that uses a retrospective system to assess AD/CV duties. Other countries use a prospective system and collect final AD/CV duties at the time of entry.

[10]19 U.S.C. § 1500. Legal 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).

[11]Among other things, the order specifies the products subject to the order and indicates the rates applicable to the individually investigated exporters and producers and a catchall rate for other exporters and producers that did not receive a specific rate. 19 C.F.R. § 351.211.

[12]An administrative review may be requested by an interested party, exporters of products subject to the AD/CV duty order, importers, the U.S. domestic industry, or the government of producing or exporting countries. 19 C.F.R. § 351.213(b); 19 U.S.C. § 1677(9). 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; 19 C.F.R. § 351.212(c).

[13]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." In addition, importers can protest the supplemental bill, which can add up to 24 months to the liquidation process. If an importer does not pay the bill, CBP requests payment from the surety (insurance) company that underwrote the bond the importer provided when the products entered the United States.

process of liquidating entries subject to AD/CV duties takes 3 years on average from the time the merchandise enters the country.[14]

According to CBP reporting, companies can use a variety of techniques to evade AD/CV duties. These include illegal transshipment to disguise a product's true country of origin, undervaluation to falsify the price of an import to reduce the amount of AD/CV duties owed, and misclassification of merchandise such that it falls outside the scope of an AD/CV duty order, among others. As CBP has reported, evasion of AD/CV duties undermines U.S. AD/CV duty laws—the intent of which is to level the economic playing field for U.S. industry—and deprives the U.S. government of revenues it is due. Because these methods of evading AD/CV duties are clandestine activities, the amount of revenue lost as a result is unknown.

CBP Has Three Options to Assess Revenues on Liquidated Entries Evading AD/CV Duties

CBP has three options at its disposal to assess revenues on liquidated entries brought in through evasion of AD/CV duties: *reliquidation, duty demands,* and *penalties*. Two factors that can influence which of these options CBP will use in a given instance are as follows:

- how much time has elapsed since the associated entry liquidated, and
- whether Commerce has issued liquidation instructions conveying the applicable final duty rate.

Reliquidation. In instances where CBP determines that a liquidated entry was subject to error in the amount of duties, taxes, or fees assessed, it has the authority to "reliquidate" the entry and assess the correct amount owed within 90 days of the date of liquidation.[15] Reliquidation can be used to correct a variety of revenue-related errors, including cases where CBP determines that merchandise subject to AD/CV duties was brought into the United States through evasion. If CBP discovers, after an entry is liquidated, that the merchandise was brought in through evasion, it can attempt to collect the duties by reliquidating that entry. However, in order to assess AD/CV duties in that instance, CBP must first receive liquidation instructions establishing the final duty rate from Commerce. Because the process of establishing a final rate under the U.S. retrospective system can be lengthy, CBP officials stated that they are unlikely to receive liquidation instructions for that merchandise within the 90-day reliquidation period. According to CBP officials, there would be little advantage to extending the 90-day time limit because an expanded window does not significantly increase the probability that

[14]GAO, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, GAO-08-391 (Washington, D.C.: Mar. 26, 2008).

[15]19 U.S.C. § 1501.

they would receive liquidation instructions in time from Commerce. In addition, an expanded window would affect all instances of reliquidation, most of which are not related to AD/CV duties. CBP also stated that some industry parties would likely oppose an expanded window for reliquidation given the possibility of a longer period of uncertainty about their financial liabilities.

Duty demands. If CBP determines that a liquidated entry subject to AD/CV duties was brought in through evasion, and CBP no longer has the authority to reliquidate (i.e., more than 90 days have passed since liquidation), it can issue a duty demand for the amount of duties owed.[16] According to CBP, duty demands are ordinarily issued in connection with penalty assessments, which are discussed next. Depending on the nature of the violation, CBP can issue a duty demand up to 5 years after the date of alleged violation or after the discovery of fraud.[17]

Penalties. CBP can assess penalties against a person who evades AD/CV duties.[18] As with duty demands, the statute of limitations for CBP to commence the imposition of penalties is 5 years from the date of alleged violation or from the discovery of fraud. Penalties assessed in cases of evasion of AD/CV duties can lead to revenue assessments that are much higher than the amounts assessed through reliquidation or duty demands.[19]

Two Factors Affect the Amount of Revenues Collected on Liquidated Entries Evading AD/CV Duties

Two key factors affect the amount of revenues CBP collects through its three options for assessing revenues on liquidated entries brought in through evasion. First, the amount of duties or penalties CBP ultimately collects may be lower than the amount initially assessed, due to successful protest or petition by the importer. For example, CBP officials explained that an importer can protest a duty

[16] 19 U.S.C. § 1592(d).

[17] The statute of limitations for duty demands varies by the type of violation. For fraud, CBP has up to 5 years from the time it discovers the fraud. For negligence and gross negligence, CBP has up to 5 years from the date of alleged violation. 19 U.S.C. § 1621.

[18] Under 19 U.S.C. § 1592, irrespective of whether the United States is deprived of lawful duties, CBP can impose penalties against any person who, through fraud, gross negligence, or negligence, enters merchandise into the United States by a material and false act or a material omission. Alternatively, under 19 U.S.C. § 1595a, CBP can impose penalties against any person who directs, assists, or is in any way concerned in importation contrary to law.

[19] Under 19 U.S.C. §1592, CBP assesses penalty amounts based on the cause of action. Civil penalties for fraud cannot exceed the domestic value of the merchandise. Civil penalties for gross negligence are not to exceed (1) the lesser of (a) the domestic value of the merchandise or (b) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or (2) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise. Civil penalties for negligence are not to exceed (1) the lesser of (a) the domestic value of the merchandise or (b) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or (2) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise. The penalty under 19 U.S.C. § 1595a is equal to the domestic value of the merchandise.

assessment. If the importer's protest succeeds, the duty assessment is cancelled. Similarly, CBP officials noted that assessed penalties can be mitigated for reasons such as an importer's successful petition against a penalty or demonstration of inability to pay the full amount assessed.[20]

Second, CBP faces difficulty in attempting to collect money from parties that never intended to pay the duties, may be difficult to locate, and have few, if any, assets in the United States. As we reported in 2008, importers can disappear, cease business operations, or declare bankruptcy—all of which, according to CBP, are tactics that "bad actors" may use to avoid paying duties and penalties owed, but which may be legitimate actions under other circumstances.[21] In addition, CBP collects a minimal amount of information from companies applying to be importers of record, thereby creating challenges to locating debtors and collecting revenues. Furthermore, foreign companies and individuals are allowed to be importers. CBP has indicated that its ability to collect from such importers—especially illegitimate ones—is limited, particularly in cases where the importers have no attachable assets in the United States. As we reported in 2008, many unpaid AD/CV duty bills involving a foreign company with no discernable U.S. assets may be classified as uncollectible.[22]

CBP's information systems do not enable it to generate data on revenues assessed and collected through the use of reliquidation, duty demands, and penalties on liquidated entries brought in through evasion. However, CBP provided some information on the use of these three options related to AD/CV duties. Specifically, CBP provided the following information for fiscal years 2009 and 2010:

- *Reliquidation*. CBP reliquidated 111 entries for reasons related to AD/CV duties; however, CBP stated that its information systems do not enable it to identify which, if any, of these reliquidated entries involved evasion of AD/CV duties. Of the approximately $3.7 million assessed during this period, CBP collected approximately $572,000. According to CBP, the difference between the amounts assessed and collected is due in part to successful protests of the duty assessments by importers; the remainder of the difference is due to protest decisions that are pending.

- *Duty demands*. CBP was unable to provide data on the total number of duty demands it issued in cases of evasion of AD/CV duties. CBP officials explained that their information systems enable them to only identify those

[20]According to CBP, penalty mitigation is conducted in accordance with published mitigation guidelines.

[21]GAO-08-391.

[22]GAO-08-391 and GAO, *Agencies Believe Strengthening International Agreements to Improve Collection of Antidumping and Countervailing Duties Would be Difficult and Ineffective*, GAO-08-876R (Washington, D.C.: July 24, 2008).

duty demands that are issued without any accompanying penalties. As noted earlier, most duty demands are accompanied by penalties; consequently, according to these officials, the lack of data on the number of duty demands accompanied by penalties leads to significant undercounting of the total number of duty demands. The limited data provided by CBP show that, during fiscal years 2009 and 2010, CBP issued six duty demands related to evasion of AD/CV duties (with no penalties attached). These six duty demands totaled approximately $77,000, of which CBP collected about $49,000.[23]

- *Penalties*. CBP assessed 119 penalties related to evasion of AD/CV duties; however, CBP data do not indicate which penalties resulted from instances where evasion was detected after liquidation.[24] During fiscal years 2009 and 2010, CBP assessed approximately $63 million in penalties, of which it collected about $3 million. According to CBP officials, it is important to note that it can take years to collect penalties. Furthermore, the amount that CBP ultimately collects may be lower than the amount it originally assessed, due, in part, to mitigation decisions that lower the amount of penalties owed.

Concluding Observations

Evasion of AD/CV duties negatively impacts U.S. domestic industries and deprives the U.S. government of revenues. CBP has three options—reliquidation, duty demands, and penalties—for assessing revenues in cases where it detects evasion of AD/CV duties after the merchandise has already been liquidated. While CBP's ability to use these options is subject to statutory deadline or dependent on input from Commerce, the three options collectively provide CBP an array of tools for attempting revenue collection if it determines that a liquidated entry was brought into the United States through evasion. Regardless of which option CBP uses, the amount of duties or penalties it ultimately collects may be lower than the amount initially assessed, due to successful protest or petition by the importer. Furthermore, CBP may face significant obstacles in collecting assessed revenues due to the difficulty of collecting from importers that may be potentially unscrupulous, difficult to locate, or outside of U.S. jurisdiction.

[23]According to CBP officials, the agency collects at least some portion of the duties demanded in every instance. CBP attributes this in part to its bonding requirement. Specifically, to protect the U.S. government against revenue loss if an importer defaults on its financial obligations, the importer is required to post a security, usually a general obligation bond. 19 C.F.R. § 142.4. CBP has set the bond requirement 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). However, this bond requirement may be insufficient to cover the importer's full obligation.

[24]In addition, the data do not include penalties CBP imposed under 19 U.S.C. § 1595a (importation contrary to law).

Agency Comments

We provided a draft of this report to the Departments of Homeland Security, Commerce, and the Treasury. All three agencies provided technical comments, which we have incorporated throughout the draft as appropriate.

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We are sending copies of this report to interested congressional committees as well as the Departments of Homeland Security, Commerce, and the Treasury. In addition, the report is available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff members have any questions about this report, please contact me at (202) 512-4347 or yagerl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Individuals making key contributions to this report include Christine Broderick (Assistant Director), Ken Bombara, Debbie Chung, Aniruddha Dasgupta, Martin De Alteriis, Julia Jebo, and Grace Lui. Marc Castellano, Joyce Evans, and Cynthia Taylor provided technical assistance.

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