



DEPARTMENT OF THE TREASURY
WASHINGTON

JUN 30 2016

INSPECTOR GENERAL

The Honorable Orrin Hatch
Chair
Committee on Finance
United States Senate
Washington, D.C. 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Re: Customs Revenue Function Report – Section 112 (OIG-CA-16-028)

Dear Messrs. Chairmen and Ranking Members:

Section 112 of Public Law 114-125, the Trade Facilitation and Trade Enforcement Act of 2015 (Trade Act), requires the Department of the Treasury (Treasury) Office of Inspector General (OIG) to report biennially on (1) the effectiveness of measures taken by U.S. Customs and Border Protection (CBP) with respect to protection of revenue, including (A) the collection of countervailing and antidumping duties; (B) the assessment, collection, and mitigation of commercial fines and penalties; (C) the use of bonds to secure that revenue; and (D) the adequacy of CBP policies with respect to the monitoring and tracking of merchandise transported in bond and collecting duties, as appropriate; (2) the effectiveness of actions taken by CBP to measure accountability and performance with respect to protection of revenue; (3) the number and outcome of investigations instituted by CBP with respect to the underpayment of duties; and (4) the effectiveness of training with respect to the collection of duties for personnel of the CBP. The statute requires provision of the first report no later than June 30, 2016.

Background

The Homeland Security Act of 2002 (HSA) established the Department of Homeland Security (DHS). HSA dissolved the legacy United States Customs Service in the Department of the Treasury and transferred all of its functions from Treasury to DHS, except Customs revenue functions, which were to be retained by Treasury. See Pub. L. 107-296, Sections 403, 412, codified at 6 U.S.C. Sections 203¹ and 212². HSA Section 412 stated that Treasury, at its discretion, could delegate – but not transfer - its Customs revenue functions to DHS and retain any duties that were not delegated. Additionally, Treasury was authorized to appoint up to 20 new personnel to work with DHS personnel in performing Customs revenue functions.

Through Treasury Order (TO) 100-16³, the Secretary of the Treasury delegated the authority over the Customs revenue functions to DHS, with certain exceptions.

¹ SEC. 403. [6 U.S.C. 203] FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

² SEC. 412 [6 U.S.C. 212]. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding section 403(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS (1) MAINTENANCE OF FUNCTIONS.—

Notwithstanding any other provision of this Act, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions. (2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

³ dated May 15, 2003, and effective May 23, 2003 (published at 68 FR 28322, May 23, 2003) and codified in 19 CFR Part 0, “Transferred or Delegated Authority.”

Specifically, Treasury would have sole authority to approve regulations concerning a wide range of functions involving revenue or regulating trade for economic purposes including import quotas, trade bans, user fees, origin, copyright and trademark enforcement, duty assessment, classification, valuation, preferential trade programs, and recordkeeping requirements. Per the TO, Treasury also would review proposed Customs revenue rulings and have the authority to review, modify, or revoke any determination or ruling involving these topics that constitute a change in practice. In addition, Treasury would share the chair of the Commercial Operations Advisory Committee (COAC)⁴ with DHS. All authorities, powers, duties, and responsibilities retained by Treasury relating to Customs revenue functions were delegated through Treasury Directive 18-03, dated March 30, 2015, to the Deputy Assistant Secretary for Tax, Trade and Tariff Policy.

Had HSA transferred Customs revenue functions along with the other functions, personnel, assets, and liabilities of the legacy U.S. Customs Service, authority and responsibility for those functions would have been fully conferred to DHS, like the non-revenue functions enumerated in Section 403(1). However, because the authority for Customs revenue was only delegated, responsibility for this function is still vested in the Secretary of the Treasury, who may rescind or modify the delegation at any time. The regulations at 19 C.F.R. Part 0 set out in Footnote 3 illuminate this distinction. The principle is broadly established in 3 U.S. Code § 301, the general authorization to delegate functions, which allows delegation of authority but requires retention of responsibility for acts taken pursuant to such delegations.

Treasury OIG first became aware of the Section 112 assignment in March 2016. After our review and assessment of the wide scope of the assignment, we contacted your offices by letter dated April 29, 2016 to explain that limits on jurisdiction and resources would preclude our accomplishment of the reporting requirements. In meetings between our staffs in late May and early June of this year, we discussed the barriers to accomplishment, suggested variations on issues to review, and undertook to carry out as much of the requirements as we could, given the time, resources, and jurisdictional constraints. This letter reports what we have been able to accomplish, given the limitations noted herein.

Treasury's Role Regarding Customs Revenue

Our review for our first reporting under the Act was focused on identifying Treasury's role in the Customs revenue function, and because this role is limited, we had limits in answering the questions posed in Section 112. Treasury's position is that it performs oversight through its policymaking role regarding the collection of revenue and not the operational side of the function in which analysis of the revenue collection process is required.

⁴ The Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, Title IX, Subtitle F, § 9503(c), (codified at 19 U.S.C. § 2071 note) established the COAC. Treasury Order 100-16, specifies that the COAC will be administered jointly by the Departments of the Treasury and Homeland Security.

Because we believe that Treasury's management of its retained responsibilities is a critical element in evaluating the overall quality of its execution of the Customs revenue function, we interviewed responsible Treasury officials to determine how Treasury has carried out its duties under TO 100-16. We interviewed the Treasury Assistant Secretary for Tax Policy and the Deputy Assistant Secretary for Tax, Trade, and Tariff Policy regarding the concerns set out in Section 112 and Treasury's review/oversight of delegated functions.

Through these interviews and our review of available records, we learned that Treasury is not involved in CBP revenue operations. TO 100-16 officially delegated all CBP operational functions to DHS. Treasury retained non-operational policy oversight of CBP revenue, and has sole authority to approve regulations concerning revenue or regulating trade for economic purposes. The Deputy Assistant Secretary for Tax, Trade, and Tariff Policy carries out Treasury's Customs revenue-related role. In executing policy oversight, Treasury does not perform data analytics or produce reports on CBP functions. Treasury does not have any role related to Customs revenue beyond the oversight of policy issues including the review of Customs revenue-related regulations prescribed by CBP.

We interviewed Office of General Counsel (OGC) attorneys responsible for providing legal advice in this area regarding the appropriateness of the delegation of Customs revenue functions. By this provision of legal advice, OGC assists the Deputy Assistant Secretary with Customs revenue policy matters. In discussing Treasury's role in Customs revenue, OGC concurred with our conclusion that the delegation of revenue functions does not relieve Treasury of the ultimate responsibility for those functions; the responsibility is retained with the delegator. The OGC officials believe that the current process is functioning well and that Treasury's high-level approach regarding Customs revenue policy oversight is sufficient. When we asked OGC officials if Treasury was fulfilling its statutory responsibilities regarding revenue functions, they did not specifically opine, and stated that the extent of Treasury's involvement with Customs revenue ultimately depends on resources and priorities and whoever manages the delegations makes the call. From our review thus far, it does appear that Treasury's current role may not be in alignment with statutory requirements, as operational functions were delegated and not transferred.

Section 112 Revenue Protection Measures

To address the seven areas of concern set out in Section 112, we acquired publically available audits and reports. Our review of these documents was limited in that we could not verify the information therein and were only able to identify potential problem areas as cited and suggestions for corrective actions based on observations made by the various sources of this information.

We acquired applicable information from Treasury and CBP. Because of time constraints mandated in the statute, we asked that CBP provide high-level readily available information pertaining to the areas of concern in Section 112 within a very short time period. Although CBP attempted to accommodate our request, the

documentation provided did not address the effectiveness of the measures taken to protect Customs revenue or provide a sufficient basis for formulating conclusions about the areas of concern. We did not conduct audits or other formalized studies in the areas included in Section 112 and therefore are unable to attest to the effectiveness of measures taken by CBP to protect Customs revenue, nor of the accuracy of the information and reports provided to us.

The collection of antidumping and countervailing (AD/CV) duties

The Government Accountability Office (GAO) reports we acquired describe systemic issues regarding CBP's collection of AD/CV duties. According to a 2008 GAO report, "New shippers" posed two types of risk for the collection of AD/CV duties.⁵ New shippers could be assigned an AD/CV duty rate based on as few as one shipment, which could 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.

The GAO reports describe issues including CBP's difficulty collecting AD/CV duties due to their retrospective nature and setting appropriate bond amounts to address risk of duty evasion.^{6,7} These reports also describe the lack of processes for information sharing between ports. Although the subject matter of the GAO reports relate to Section 112, the information contained therein did not help us reach a conclusion as to the effectiveness of the measure to protect Customs revenue. Also, the most recent GAO report pertaining to the issues set out in Section 112 is dated May 2012.

GAO is currently reviewing AD/CV duties. The research questions for its review are (1) what is the status, composition, and extent of uncollected duties; (2) what steps has CBP taken to improve billing and collection of duties; and (3) to what extent does CBP assess and mitigate risk to revenue from uncollected duties. See enclosure for a listing of the GAO reports we acquired.

In September 2009, DHS OIG reported that CBP's implementation of internal controls related to cash collection could be improved with a more robust oversight mechanism.⁸ CBP designed several good internal control procedures to mitigate the risks of cash collection at the ports of entry. However, CBP headquarters did not sufficiently validate self-inspection results to ensure that data reported by the field offices was accurate. Due to insufficient guidance and oversight, CBP headquarters could not ensure that individual field office reviews were conducted consistently, timely, or thoroughly. DHS OIG stated that CBP could improve its level of assurance by taking a more proactive oversight approach concerning its cash collection and deposit processes. Though this

⁵ GAO, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Steps to Reduce Substantial Shortfalls in Duty Collection* (GAO-08-391; issued March 26, 2008).

⁶ GAO, *International Trade: Customs' Revised Bonding Policy Reduces Risk of Uncollected Duties, but Concerns about Uneven Implementation and Effects Remain* (GAO-07-50; issued Oct. 18, 2006).

⁷ GAO, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion* (GAO-12-551; issued May 17, 2012).

⁸ DHS, *CBP Needs to Improve the Monitoring of the Cash Collection Process* (DHS OIG-09-105; issued September 2009).

report reviewed collection controls, there was insufficient information to conclude on the overall performance in the collection of AD/CV duties.

In 2010, the Department of Commerce (Commerce) International Trade Administration issued a report with general background information on the retrospective and prospective AD/CV duties systems and discussed the advantages and disadvantages of both systems. The report also discussed alternative means of addressing the problem of uncollected duties and steps that Commerce and DHS were taking to increase duty collection, such as improving communications between the two agencies.

The Deputy Assistant Secretary for Tax, Trade, and Tariff Policy also described to us the issues with collecting AD/CV duties. He provided a report issued by Treasury covering duty collection problems for fiscal years 2003 through 2006.⁹ This report describes issues that remain unresolved. There are still systemic issues with the retroactive nature of AD/CV duties, including the fraud and evasion of AD/CV duties. Sometimes, importers are “unavailable” when it comes time to pay their duty obligations. In other cases, foreign parties are the importers of record and even if those firms are not closed, there are no domestic assets available for the government to pursue. If the duty was applied prospectively (final assessment determined at the time of import), the cash deposit would cover the final assessment.

In August 2015, CBP issued a report discussing the AD/CV duty enforcement actions and compliance initiatives it implemented to improve AD/CV duty collection efforts.¹⁰ In this report CBP stated that it planned to continue to require additional security in the form of single transaction bonds (STB) to protect revenue when CBP had reasonable evidence of a risk of revenue loss. STB bonds are generally used to secure a one-time importation and are typically a higher amount than continuous bonds, which cover multiple transactions and various ports of entry. CBP reported a 62 percent decline in uncollected AD/CV duties for fiscal year 2014 open bills compared to fiscal year 2013. CBP created the AD/CV Duty Collections Team, which became operational in March 2014, to improve collections on AD/CV duty debts within CBP’s Office of Administration.

COAC established the subcommittee on Trade Enforcement and Revenue Collection that includes an AD/CV duty working group focused on generating advice and developing recommendations pertaining to the collection of AD/CV duties. The working group monitored the progress CBP made on recommendations made by COAC. For example, COAC recommended that CBP work with specific industry sectors to develop additional industry outreach related to AD/CV duty issues with particular emphasis on reaching further down the supply chain beyond the traditional importer and domestic industry community. This outreach was to include additional coordination with other agencies involved in duty collection. The working group monitored the progress of COAC’s recommendations and confirmed that CBP continuously worked in partnership

⁹ Department of the Treasury, *Duty Collection Problems FY2003-2006*, issued February 2007.

¹⁰ CBP, *Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2014, Fiscal Year 2015 Report to Congress*, issued August 5, 2015.

with the partner government agencies and specific industry sectors to share enforcement efforts and gather trade intelligence.

CBP provided us the total number and dollar amount of AD/CV duties and importers deposits. In fiscal year 2014, companies imported approximately \$2.46 trillion in goods and deposited approximately \$43.3 billion in duties, taxes, and fees in the Treasury. Of the \$2.46 trillion in goods imported in fiscal year 2014, approximately \$8.3 billion, or 0.3 percent, were subject to an AD/CV duty order. Importers subject to AD/CV duties deposited approximately \$508.8 million in AD/CV duties, which represents 1.2 percent of the \$43.3 billion in total duties, taxes, and fees. In fiscal year 2015, companies imported approximately \$2.4 trillion in goods, and deposited approximately \$35 billion in duties in the Treasury. Of the \$2.4 trillion in goods imported in fiscal year 2015, approximately \$10.1 billion, or 0.4 percent, were subject to an AD/CV duty order. Importers deposited approximately \$1.17 billion in AD/CV duties, which represents approximately 2.6 percent of the total duties collected in fiscal year 2015. These numbers and amounts were provided by CBP; however, to determine the effectiveness of assessment and collection of these duties, an operational analysis is required. Without appropriate context it would be misleading to state any related conclusions.

The assessment, collection, and mitigation of commercial fines and penalties

CBP's 2014 report referenced earlier provided some statistical information on AD/CV enforcement actions and compliance initiatives. Based on CBP's report, CBP levied 29 monetary penalties in fiscal year 2014 totaling over \$61 million on importers for fraud, gross negligence, and negligence related to AD/CV duty violations.

According to a 2012 GAO report, from fiscal years 2007 to 2011, CBP assessed 252 civil penalties totaling about \$208 million against 237 importers that evaded AD/CV duties. Over the same period, CBP also made 33 seizures related to AD/CV duty evasion, with a total domestic value of nearly \$4 million. We note that this report found that CBP could not readily produce key data and did not consistently track or report on certain data.¹¹ Therefore, we would have to do additional work to conclude on the accuracy of these penalties CBP reported.

In 2012, DHS OIG reported that CBP does not have effective processes in place to ensure that penalty cases do not expire due to statute of limitations.¹² According to the report, CBP closed 1,567 penalty cases from October 1, 2008, through March 31, 2011, because statute of limitations had expired. DHS OIG found that field offices did not consistently follow statute of limitation waiver policies and request waivers timely.

We had requested, but did not receive, information from CBP related to the fines and penalties assessed and collected for underpayment of duties.

¹¹ GAO, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion* (GAO-12-551; issued May 17, 2012).

¹² DHS, *U.S. Customs and Border Protection's Penalty Process – Statute of Limitations* (DHS OIG-12-131; issued September 2012).

The use of bonds to secure revenue

In 2012, GAO reported CBP had duty collection issues including difficulty setting appropriate bond amounts to address the risk of duty evasion. CBP has encouraged the use of larger bond amounts to protect AD/CV duty revenue from the risk of evasion, but CBP has neither a policy nor a mechanism in place for a port requiring a larger bond to share this information with other ports in case an importer withdraws its shipment and attempts to make entry at another port to avoid the higher bond amount.¹³

DHS OIG reported on the effectiveness of CBP's bonding process and whether bond amounts were sufficient to protect Customs revenue in June 2011.¹⁴ This report was in response to Senator Charles Grassley's concerns about deficiencies in CBP's revenue collection program. DHS OIG found that CBP had strong controls over continuous bonds; however, CBP did not have adequate controls over the STBs. DHS OIG found that CBP's method for determining and applying STBs was ineffective. Additionally, CBP could not identify and track STBs due to system limitations in the Automated Commercial Environment (ACE), CBP's system of record. This limitation created a challenge when CBP attempted to collect past-due revenue. CBP's Debt Collection Division had to manually call each port to determine if STBs existed. The port would then conduct a manual search to identify STBs and forward the information to the Debt Collection Division. This labor-intensive practice hindered CBP's debt collection process and reporting.

The 2011 DHS OIG report noted that from fiscal year 2007 through 2010, CBP wrote off \$46.3 million in revenue because of inaccurate, incomplete, or missing bonds. Of the 71 ports responsible for processing STB entries, a structured interview questionnaire showed that 18 percent (13) of the ports did not maintain copies of all the bond files and/or allowed brokers to maintain the STBs. The report also noted that AD/CV activities of high-risk imports had resulted in significant revenue loss over the past several years, and AD/CV write-offs from fiscal years 2007 through 2010 totaled \$48 million, representing 51 percent of the total charge-offs for these years. As of June 2010, CBP had approximately \$1 billion in AD/CV past-due bills. This report focused on control weaknesses in the bond process and did not address other areas negatively impacting collection of Customs revenue.

COAC identified the following challenges as emerging themes from the discussions concerning bonds to secure duty revenue: potential delays in processing time, decentralized processes, errors due to manual bond completion, staff attrition, inadequate training, system interoperability issues, and lack of an STB indicator in CBP's ACE.¹⁵

¹³ GAO, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion*, (GAO-12-551; issued May 17, 2012).

¹⁴ DHS, *Efficacy of Customs and Border Protection's Bonding Process*, (DHS OIG-11-92; issued June 2011).

¹⁵ COAC Quarterly Meeting, *CBP Single Transaction Bonds Centralization Progress Update*, February 20, 2014.

The CBP report to Congress *Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2014* issued, August 5, 2015, discussed CBP's plans to continue to require additional security in the form of STB to protect revenue when CBP has reasonable evidence of a risk of revenue loss. CBP proposed establishing a centralized office within the Office of Administration with the responsibility for developing and implementing STB policy, reporting on STB activities, and monitoring STB effectiveness. Upon implementation of the proposed new structure, all STBs would be filed at the Revenue Division in the Office of Administration and co-located with continuous bond processing. The proposed operating model would also require the development of a web-based bond application known as eBond, which serves as the platform through which sureties are to provide STBs.

Per DHS's Budget-in-Brief Fiscal Year 2014, \$3.3 million was requested for the Single Transaction Bond Centralization Initiative.¹⁶ The Budget-in-Brief explained that funding would support improvements to increase the efficacy of CBP's bonding process. Per DHS, these resources would fund the automation of STB processing and record keeping and provide effective internal controls that protect the duties and taxes (more than \$38 billion in 2012) collected by CBP. Specifically, CBP would automate and centralize, into one location, processing of all STBs, resulting in enhanced program oversight, consistent processing, and reduced write-offs and delinquencies.

COAC's STB Working Group has identified components of the future vision of the centralization initiative, which will continue to evolve during the data gathering process and inform on the development of system and process requirements for the STB solution.¹⁷ Central elements of the future vision were to transition to eBond, centralized and standardized procedures, transfer of bond submission ownership to sureties and brokers, uniform procedures for bond monitoring, updated electronic entry, system accountability for the Trade, integrated information systems, improved training and staffing levels, and enhanced data analysis capabilities.

Per the Senate report on the DHS 2016 Appropriations Bill, the Committee on Appropriations encouraged CBP to continue working, in consultation with Commerce, Treasury, and members of the trade community, to better understand how requiring cash deposits of estimated AD/CV duties during new shipper reviews (in statute) would strengthen the administration of the Nation's AD/CV duty laws¹⁸. Under current law, Commerce is required to allow importers to bond for cash deposits of estimated AD/CV duties during new shipper reviews.

CBP provided us the number of continuous bonds with associated bond amount ranges and liability amounts. As of May 31, 2016, CBP had 221,240 continuous bonds in the amount of nearly \$18.5 billion. However, we cannot attest to the adequacy of bond policies.

¹⁶ DHS Budget-in-Brief Fiscal Year 2014.

¹⁷ COAC Quarterly Meeting, *CBP Single Transaction Bonds Centralization Progress Update*, February 20, 2014.

¹⁸ Senate Report 114-68, *Department of Homeland Security Appropriations Bill, 2016*, June 18, 2015

The adequacy of CBP policies with respect to the monitoring and tracking of merchandise transported in bond and collecting duties

A 2007 GAO report described how CBP does not monitor the use of its in-bond system and cannot assess the extent the program is used because it collects little information on in-bond shipments and performs limited analysis of data that it does collect.¹⁹ The major weakness is that CBP does not adequately monitor and track transports of in-bond goods. In particular, CBP does not consistently reconcile in-bond documents issued at the arrival port with documents at the destination port to ensure that the cargo is either officially entered with appropriate duties or quotas applied, or is in fact exported. Some CBP ports do not consistently perform in-bond compliance reviews that could identify weaknesses and possible solutions.

During our interviews, the Deputy Assistant Secretary for Tax, Trade, and Tariff Policy also told us that transportation in bond usually requires less documentation. Processing of these transactions is primarily paper-based, as the electronic feature was not yet available in CBP's ACE software. The implementation of all intended ACE functionalities has been slow, and it is difficult as different parties are involved in the implementation. According to the Deputy Assistant Secretary, transit (in bond) controls are a recognized weakness but will be improved when transit reporting is automated. He said it is impossible to measure the fraud with transports in bond because there is no way of knowing which goods are dumped in the U.S. He said that upgrades to the ACE system should be completed by the end of 2016, which would assist with tracking in-transit shipments.

CBP provided us documents regarding the new Automated Targeting System (ATS) In-Bond Compliance Module deployment. The ATS In-Bond Compliance Module allows ports to audit in-bond shipments to ensure that the merchandise is properly accounted for and to conduct examinations on in-bond shipments to ensure the accurate reporting of information is as filed on the in-bond entry. Because we did not perform an audit, we cannot assess the effectiveness of transportation in-bond controls and the adequacy of this system.

The effectiveness of actions taken by CBP to measure accountability and performance with respect to protection of revenue

In 2012, GAO reported that, while CBP has made some performance management improvements, CBP does not systematically track or report key outcome information that CBP leadership and Congress could use to assess and improve CBP's efforts to deter and detect AC/CV duty evasion.²⁰ CBP cannot readily produce key data needed for performance reporting.

¹⁹ GAO, *International Trade: Persistent Weaknesses in the In-Bond Cargo System Impede Customs and Border Protection's Ability to Address Revenue, Trade, and Security Concerns*, (GAO-07-561; issued April 17, 2007).

²⁰ GAO, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion*, (GAO-12-551; issued May 17, 2012).

Performance measures listed in the CBP performance and accountability reports included the percent of import revenue successfully collected.²¹ CBP's target for fiscal year 2015 was 100 percent but CBP achieved a result of 98.61 percent. CBP explained that the very small percentage of under collections is due to some importers unintentionally or intentionally failing to pay the correct amount of duties, taxes and fees. The report states that CBP plans to continue to apply various enforcement methods such as audits, targeting, and statistical sampling to bridge the gap and identify non-compliance with U.S. trade laws, regulations and agreements.

Another performance measure used by CBP is the percent of imports complaint with applicable U.S. trade laws. This measure also includes compliance with Customs revenue laws. CBP's target for fiscal year 2015 was 97.50 percent and it achieved 98.89 percent. CBP attributed this result to the Customs - Trade Partnership against Terrorism, Importer Self-Assessment programs, and Centers for Excellence and Expertise that closely monitor importers to reduce non-compliance rates. Based on the information reviewed, we cannot conclude if CBP has appropriate performance measures and if these appropriately establish accountability and performance with respect to revenue.

The number and outcome of investigations instituted by CBP with respect to the underpayment of duties

In 2012, GAO reported that CBP did not systematically track or report key outcome information that CBP leadership and Congress could use to assess and improve CBP's efforts to deter and detect AC/CV duty evasion.²² CBP could not readily produce key data, such as the number of confirmed cases of evasion, which it could use to better inform and manage its efforts. Also, CBP did not consistently track or report on the outcomes of allegations of evasion it received from third parties. The report stated that without improved tracking and reporting, agency leadership, Congress, and industry stakeholders would continue to have little information to evaluate CBP's efforts to detect and deter evasion of AD/CV duties.

According to a 2015 CBP report, CBP employs many tools to target AD/CV duty evasion including import trade trend and valuation analysis, targeted reviews and audits to address high-risk cases, lab testing, and special operations. CBP reported that in 2014, it conducted 35,148 reviews of potential AD/CV duty evasion and conducted 78 audits of importers of AD/CV duty commodities. Through the audits, CBP identified discrepancies with a value of \$24.6 million. CBP also handled 1,746 samples relating to 529 cases of importations of suspect AD/CV duty violations.²³

²¹ *U.S. Customs and Border Protection: Performance and Accountability Report, Fiscal Year 2015.*

²²GAO, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion* (GAO-12-551; issued May 17, 2012).

²³ CBP, *Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2014, Fiscal Year 2015 Report to Congress*, issued August 5, 2015.

We requested information from CBP related to the number and outcomes of investigations undertaken with respect to the underpayment of duties. CBP referred us to Immigration and Customs Enforcement regarding investigations, but there was not sufficient time to pursue this area.

The effectiveness of training with respect to the collection of duties for personnel of the CBP

We obtained training curricula for CBP staff who worked in the revenue collection functions. DHS has several curricula for CBP training. There is basic import specialist training and CBP officer basic training. The training includes several different subjects such as merchandise classification and rates of duty, personal and commercial duty, and bonds. It appears that these curricula cover several subjects, which include the collection of duties. To determine how effective this training is, we would need review the performance of the CBP staff who have taken these courses and determine if the knowledge acquired was appropriately applied in their positions, and evaluate the legal and technical accuracy and completeness of the training materials.

We understand the concerns you have raised regarding Customs revenue collection. That said, Customs revenue collection including bonds and the AD/CV duty programs is a complex area that will require extensive resources to review fully. Revenue collection is an operational function housed entirely within DHS, and it is our understanding that DHS OIG may be considering future work in this area. While continuing to meet our other obligations to provide oversight over Treasury's programs and operations, we will work to avoid duplication of effort by my staff and those of GAO and the IG community. If you wish to discuss further, please contact me at 202-622-1090, or your staffs can contact my Counsel, Rich Delmar, at 202-927-3973 or delmarr@oig.treas.gov.

Sincerely,

/s/

Eric M. Thorson
Inspector General

Enclosure

cc: Acting General Counsel
Deputy Under Secretary for Legislative Affairs
Assistant Secretary for Tax Policy

Government Accountability Office Reports Related to Customs Revenue***Transfer of Budgetary Resources to the Department of Homeland Security (DHS)
(GAO-04-329R; issued April 30, 2004)***

Government Accountability Office (GAO) identified the budgetary resources and number of full-time equivalent (FTE) positions transferred from the legacy agencies to DHS, (2) compared the number of FTEs at DHS with the number of FTEs transferred from functions at legacy agencies, (3) identified differences between legacy agency fiscal year 2003 FTE balances after the transition and their fiscal year 2004 FTE requests, and (4) discussed any DHS efforts to identify opportunities to achieve personnel cost savings related to the reorganization. It was estimated that 21,570 FTEs transferred from Department of the Treasury's legacy U.S. Customs agency to DHS.

International Trade: Issues and Effects of Implementing the Continued Dumping and Subsidy Offset Act (GAO-05-979; issued September 26, 2005)

GAO found U.S. Customs and Border Protection (CBP) faced three key implementation problems. First, processing of company claims and Continued Dumping and Subsidy Offset Act (CDSOA) payments is problematic because CBP's procedures are labor intensive and do not include standardized forms or electronic filing. Second, most companies are not accountable for the claims they file because they do not have to support their claims and CBP does not systematically verify the claims. Third, CBP's problems in collecting duties that fund CDSOA have worsened. About half of the funds that should have been available for disbursement remained uncollected in fiscal year 2004.

Recommendations:

1. To improve the processing of CDSOA claims, CBP should implement labor savings steps such as working with the U.S. International Trade Commission to formalize and standardize exchanges of electronic updates of the list of eligible producers, and requiring that company claims follow a standard form and be submitted electronically.
2. To further improve the processing of claims, CBP should provide additional guidance for preparing CDSOA certifications or claims.
3. To enhance the processing of claims and payments in the face of a growing workload, CBP should develop and implement plans for managing and improving its CDSOA program processes, staff, and technology.
4. To enhance accountability for claims, CBP should implement a plan for systematically verifying CDSOA claims.
5. To better address antidumping and countervailing (AD/CV) duty collection problems, CBP should report to Congress on what factors have contributed to the collection problems, the status and impact of efforts to date to address these

problems, and how CBP, in conjunction with other agencies, proposes to improve the collection of AD/CV duties.

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

GAO found the following:

- CBP revised its Continuous Bond policy to reduce the risk of uncollected AD/CV duties. CBP determined that the traditional bond formula provides little protection of duty revenue. In addition, time lags and duty increases associated with the U.S. AD/CV duty system heighten the risk of importers' bonds being insufficient, which led to large amounts of uncollected duties.
- CBP reported that the revised policy protects revenue but the implementation of the policy lacked transparency and consistency.
- GAO's review of CBP and importer records showed that CBP set bond requirements on the basis of different data time periods for different importers and used inconsistent criteria when considering bond requests.

Recommendations:

1. Conduct a formal review of the lessons CBP has learned from implementing the revised CB policy on shrimp imports.
2. Develop clear and consistent guidance for implementing the policy and take steps to inform covered importers of the basis upon which CBP will reduce importers' bond requirement.

Customs Revenue: Customs and Border Protection Needs to Improve Workforce Planning and Accountability (GAO-07-529; issued April 12, 2007)

GAO found that staffing resources contributing to the Customs revenue functions declined since the creation of DHS due to department priorities and recruiting and retention problems. The number of staff for the nine designated Customs revenue positions was below mandated levels for much of the time since DHS was formed, but recent efforts increased the number of staff to the mandated levels for most of these positions.

GAO found that the number of DHS Office of Inspector General auditors reviewing Customs issues declined and a Customs revenue related audit had not been performed since 2003. GAO also found that CBP lacks a strategic workforce plan to guide its performance of Customs revenue functions and does not publicly report on its performance of Customs revenue functions, thus failing to help ensure accountability.

Recommendations:

1. Develop a strategic workforce plan and report on revenue performance measures in agency performance reports.
2. DHS Office of Inspector General determine whether areas of high risk related to Customs revenue functions exist.

International Trade: Persistent Weaknesses in the In-Bond Cargo System Impede Customs and Border Protection's Ability to Address Revenue, Trade, and Security Concerns (GAO-07-561; issued April 17, 2007)

GAO found CBP does not know the extent of the in-bond system's use as a result of lax oversight and cannot assess the extent of program use because it collects little information on in-bond shipments and performs limited analysis of data that it does collect.

The major weakness is that CBP does not adequately monitor and track in-bond goods. In particular, it does not consistently reconcile in-bond documents issued at the arrival port with documents at the destination port to ensure that the cargo is either officially entered with appropriate duties or quotas applied, or is in fact exported. Some CBP ports do not consistently perform in-bond compliance reviews that could identify weaknesses and possible solutions.

Recommendations:

1. Collect and use improved information on in-bond shipments to enable better-informed decisions.
2. Assess the systemic problems associated with identifying open in-bonds and take steps to resolve these problems.
3. Ensure that the compliance measurement system is performed to improve CBP's in-bond management.

Antidumping and Countervailing Duties: Congress and Agencies Should Take Steps to Reduce Substantial Shortfalls in Duty Collection (GAO-08-391; issued March 26, 2008)

GAO found over \$600 million in AD/CV duties dating back to 2001 remained uncollected, but they are highly concentrated among a few products, countries of origin, and importers.

Four key factors contributed to uncollected AD/CV duties:

- 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.

Two sets of options exist for improving AD/CV duty collection:

- 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).
- The second set of options involves making adjustments within the existing system.

Recommendations:

1. 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.
2. The Secretary of the Department of Commerce (Commerce) should work with the Secretary of Homeland Security to identify opportunities to improve the clarity of liquidation instructions.
3. 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.

Agencies Believe Strengthening International Agreements to Improve Collection of Antidumping and Countervailing Duties Would Be Difficult and Ineffective, (GAO-08-876R; issued July 24, 2008)

GAO found agency officials identified two key obstacles to strengthening international agreements to improve collection of AD/CV duties from importers with no attachable assets in the United States, which included finding countries that are willing to enter into negotiations, and U.S. and foreign government practice.

Agency officials believe that strengthening international agreements would not substantially improve the collection of AD/CV duties. They cited two key reasons why it is likely that this would be ineffective: which included the retrospective nature of the U.S. AD/CV duty system and the high cost of litigation.

GAO recommended agency and congressional efforts to improve the collection of AD/CV duties should focus on the recommendations in its March 2008 report (GAO-08-391).

Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue (GAO-11-318SP; issued March 1, 2011)

GAO reported that Congress could pursue several options to improve collection of AD/CV duties including eliminating the retrospective component of the AV/CV duty system and adjust requirements for new shipper reviews.

Antidumping and Countervailing Duties: Options for Improving Collection (GAO-11-693T; issued May 25, 2011)

CBP, Congress, and Commerce have undertaken several initiatives to address the problem of uncollected AD/CV duties, but these initiatives have not resolved the problems associated with collections. Some of these initiatives include the following:

- *Temporary adjustment of standard bond-setting formula.*
- *Temporary suspension of new shipper bonding privilege.*

Additional options exist for improving the collection of AD/CV duties. First, the retrospective nature of the U.S. system could be revised. Second, Congress could revise the level of exports required for exporters applying for new shipper status.

Options for Collecting Revenues on Liquidated Entries of Merchandise Evading Antidumping and Countervailing Duties (GAO-12-131R; issued Nov. 2, 2011)

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.

Nevertheless, 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.

Follow-up on 2011 Report: Status of Actions Taken to Reduce Duplication, Overlap, and Fragmentation, Save Tax Dollars, and Enhance Revenue (GAO-12-453SP; issued Feb. 28, 2012)

In March 2011, GAO issued its first annual report to Congress on potential duplication, overlap, and fragmentation in the federal government. The report also identified opportunities to enhance revenues. One of the recommendations in that report was for Congress to pursue several options to improve collection of AD/CV duties. This report was a status report on the progress made. As of February 10, 2012, no legislative action had been identified regarding the options to improve collection of AD/CV duties.

Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion (GAO-12-551; issued May 17, 2012)

Two types of factors affect CBP's efforts to detect and deter AD/CV duty evasion. First, CBP faces several external challenges in attempting to gather conclusive evidence of evasion and take enforcement action against parties evading duties. Second, gaps in information sharing also affect CBP efforts. Additionally, CBP has encouraged the use of larger bond amounts to protect AD/CV duty revenue from the risk of evasion, but CBP has neither a policy nor a mechanism in place for a port requiring a larger bond to share this information with other ports in case an importer withdraws its shipment and attempts to make entry at another port to avoid the higher bond amount.

While CBP has made some performance management improvements, it does not systematically track or report key outcome information that CBP leadership and Congress could use to assess and improve CBP's efforts to deter and detect AC/CV duty evasion.

Recommendations:

1. Ensure that CBP receives the information it needs from Commerce to plan its workload and mitigate the impact of the liquidation process on its efforts to address evasion, the Secretary of Commerce should work with the Secretary of Homeland Security to identify opportunities for Commerce to
 - regularly provide CBP advance notice on liquidation instructions, and
 - notify CBP when courts reach decisions on AD/CV duty cases in litigation.
2. Help minimize the risk of port-shopping by importers seeking to avoid higher bond requirements, the Secretary of Homeland Security should direct CBP to create a policy and a mechanism for information sharing among ports regarding the use of higher bond requirements
3. Inform CBP management and to enable congressional oversight, the Secretary of Homeland Security should ensure that CBP develop and implement a plan to systematically track and report on:

- instances of AD/CV duty evasion and associated data—such as the duties assessed and collected, penalties assessed and collected, and the country of origin, product type, and method of evasion for each instance of evasion—and
- the results, such as enforcement outcomes, of allegations of evasion received from third parties.