



# **Antidumping and Countervailing Duty: Collection of Outstanding Claims**

*October 14, 2020*

Fiscal Year 2020 Report to Congress



**Homeland  
Security**

*U.S. Customs and Border Protection*

# Message from the Deputy Commissioner of CBP

October 14, 2020

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

This report was compiled pursuant to direction set forth in Senate Report 116-125, accompanying the Fiscal Year (FY) 2020 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-93). The Senate Report reaffirms Senate Report 115-283, which accompanies the FY 2019 DHS Appropriations Act (P.L. 116-6); Senate Report 114-264, which accompanies the FY 2017 DHS Appropriations Act (P.L. 115-31); and Senate Report 112-169, which accompanies the FY 2013 DHS Appropriations Act (P.L. 113-6). The report provides a detailed account of current outstanding claims for antidumping (AD) and countervailing duty (CVD), including the steps taken to recover funds and the challenges that prevent collection.



Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard  
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito  
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Perez", written over a circular stamp or seal.

Robert E. Perez  
Deputy Commissioner  
U.S. Customs and Border Protection

# Executive Summary

CBP has a statutory responsibility to collect all revenue arising from the importation of goods into the United States that is due to the U.S. Government. In FY 2019, CBP collected approximately \$2.2 billion of AD/CVDs.

CBP is committed to ensuring that AD/CVD laws are enforced vigorously. To this end, CBP's Office of Trade, Office of Field Operations, Office of Finance, and Office of Chief Counsel, along with the Homeland Security Investigations arm of U.S. Immigration and Customs Enforcement, are engaged in efforts to ensure that AD/CVDs are collected successfully. The vast majority of importers involved in shipments of goods subject to AD/CVD orders lawfully pay the duties and fees due.

The collection of AD/CVDs remains a complex challenge, as evidenced by the \$5 billion of open AD/CVD debt discussed in this report. Moreover, the volume of AD/CVD transactions continues to grow. CBP understands that the collection of these duties is necessary to protect national economic security and to ensure that U.S. manufacturers can compete fairly in the global marketplace.

CBP will use all available methods to protect and collect this revenue, including increased bonding, enhanced targeting and review of high-risk imports, and thorough review of allegations of evasion to promote a fair and competitive trade environment.



# Antidumping and Countervailing Duty: Collection of Outstanding Claims

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# I. Legislative History

This document was compiled pursuant to the congressional direction set forth in Senate Report 116-125, accompanying the Fiscal Year (FY) 2020 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-93). As set out below, Senate Report 116-125 reaffirms Senate Report 115-283, which accompanies the FY 2019 DHS Appropriations Act (P.L. 116-6); Senate Report 114-264, which accompanies the FY 2017 DHS Appropriations Act (P.L. 115-31), and Senate Report 112-169, which accompanies the FY 2013 DHS Appropriations Act (P.L. 113-6).

Senate Report 116-125 states:

*Antidumping and Countervailing Duties.*—The Committee directs CBP to continue reporting on AD/CVD, as required in Senate Report 114–264 and as expanded in Senate Report 115–283.

Senate Report 115-283 states:

*Antidumping and Countervailing Duties.*—The Committee directs CBP to continue reporting on antidumping and countervailing duties, as required in Senate Report 114–264.

Senate Report 114-264 states:

The Committee directs CBP to continue submitting the reports on AD/CVD required in Senate Report 112–169 and the explanatory statement accompanying Public Law 113–6, including the same level of detail prescribed in such report and during the timelines prescribed for each report: AD/CVD Actions and Compliance Initiatives, AD/CVD Liquidation Instructions, AD/CVD Collection of Outstanding Claims (consistent with Public Law 103–182), and AD/CVD Collection New Shipper Single Entry Bonds. A version of each report shall be posted on CBP's Web site.

Congress first provided instructions for this report in Senate Report 112-169, which states:

CBP is directed to report to the Committee on collection of the outstanding \$1,000,000,000 in antidumping/countervailing duties, including the number of claims, the value of each claim, the stage of collection for each claim and the date on which the claim was referred for further action to either the CBP Chief Counsel or Department of Justice. This report shall be submitted to the Committee not later than 180 days after the date of enactment of this act.

## II. Background

There are approximately 71,000 unpaid bills for antidumping and countervailing duty (AD/CVD), totaling \$5 billion (principal and interest) over a 26-year period (FYs 1993 to 2019), for which U.S. Customs and Border Protection (CBP) currently is pursuing collection or has determined to be uncollectible.

CBP has a statutory responsibility to collect all revenue under the tariff laws of the United States. CBP plays a ministerial role in the U.S. Government's efforts to level the playing field for U.S. companies injured by unfair trade practices and merchandise that is sold at less than fair value in the United States or where a foreign government subsidizes its exports.

The laws governing AD/CVD proceedings before the U.S. Department of Commerce (Commerce) are provided for in Title VII, Sections 701–783 of the Tariff Act of 1930, as amended, and are updated in 1994 by the Uruguay Round Agreements Act (P.L. 103-465). These provisions are codified as Chapter IV of Title 19 of the United States Code (U.S.C.), consisting of Sections 1671–1677n (19 U.S.C. §§ 1671–1677n). The AD/CVD provisions also are governed by the North American Free Trade Agreement Implementation Act (P.L. 103-182), which amended Title 19 concerning trade between Mexico, Canada, and the United States.

Commerce's regulations governing how to implement the AD/CVD provisions of the U.S.C. are laid out in Title 19, Part 351 of the Code of Federal Regulations (C.F.R.) (19 C.F.R. Part 351). CBP's regulations, found at 19 C.F.R. §§ 159.41 and 159.47, state that AD/CVDs shall be assessed according to Commerce's regulations. CBP's general bonding authority is set forth at 19 U.S.C. § 1623 and Part 113 of CBP's regulations.

Commerce is responsible for conducting AD/CVD investigations and reviews to determine whether, and to what degree, merchandise is being sold at dumped prices or benefits from countervailable subsidies. Commerce is also responsible for providing instructions to CBP related to AD/CVD orders. CBP's role in enforcing the AD/CVD laws is to collect the duty deposited at the time of entry, to attempt to secure the revenue of the United States by the use of customs bonds, to assess the final duty amount at liquidation in accordance with instructions received from Commerce, and to collect outstanding AD/CVD bills.

### III. Results

#### A. Overview

Appendix B contains detailed information for the 70,847 open AD/CVD bills for which CBP currently is pursuing collection or has determined to be uncollectible. The cumulative amount of open AD/CVD debt continues to grow:

<b>Open AD/CVD Debt</b>					
	FY 2017	FY 2018	FY 2019	FY 2020	Percentage Growth (FY 2017 to FY 2020)
Number of Open Bills	54,413	57,870	64,761	70,847	30%
Total Principal Amount Due (billions of dollars)	\$2.830	\$3.092	\$3.492	\$3.851	36%
Total Amount Due (billions of dollars)	\$3.505	\$3.909	\$4.472	\$5.013	43%

#### B. Referrals to the CBP Office of Chief Counsel and U.S. Department of Justice

<b>Legal Status of AD/CVD Debt</b>	
Total Number of Open AD/CVD bills (Appendix B)	70,847
Number of AD/CVD Bills Not Under CBP Office of Chief Counsel (OCC) Review	63,453
Total Principal Amount Due of AD/CVD Bills Not Under OCC Review	\$3.262 billion
Number of AD/CVD Bills Currently Under OCC Review for Collection Action	2,114
Total Principal Amount Due of AD/CVD Bills Currently Under OCC Review for Collection Action	\$67.695 million
Number of AD/CVD Bills Referred to OCC for Termination of Collection Concurrence	4,066
Total Principal Amount of AD/CVD Bills Referred to OCC for Termination of Collection Concurrence	\$331.295 million
Number of AD/CVD Bills Referred to the Department of Justice (DOJ)	1,214
Total Principal Amount Due of AD/CVD Bills Referred to DOJ	\$190.088 million

The CBP OCC has assisted in identifying the cases pending in its office and with DOJ. OCC provided the data in Table 2. The data in Appendix B were extracted from CBP's Automated Commercial System (ACS). A "Y" in the "Referred to CBP Chief Counsel" column of

Appendix B indicates that ACS records show that the debt has been referred to OCC for legal action at least once during the collection process. There may be inconsistencies between the data summarized in Table 2 and the data shown in Appendix B. These inconsistencies generally are attributable to the inability of ACS to track workflow updates as well as to resource constraints; ACS records have to be updated manually and, at times, individually.

Please see Appendix B for additional details on the value and stage of collection for each AD/CVD claim. AD/CVD bills and debts were identified to the greatest extent possible by the CBP accounting class codes associated specifically with these types of duties.

## IV. Steps to Recover Funds

An AD/CVD bill is created when an entry of imported merchandise, subject to ADs under 19 U.S.C. § 1673 or CVDs under 19 U.S.C. § 1671, liquidates with an increase in duties. This increase results mostly from Commerce instructing CBP to collect additional AD/CVDs. An AD/CVD bill also is created when an importer, at the time of importation, fails to indicate that the merchandise is subject to AD/CVDs and either makes no cash deposit or makes an inadequate cash deposit based on an incorrect rate.

CBP notifies the importer at the time of initial billing and every 30 days after the due date until the bill is paid or closed. Approximately 60 days after the initial bill date, CBP will report outstanding bills on a Formal Demand on Surety for Payment of Delinquent Amounts Due (informally known as the “612 Report”) and every month thereafter until the bill is paid or closed. CBP also provides an additional demand informing the surety of the consequences of failing to cooperate with the agency to resolve the debt. Debts where this additional demand has been sent are identified by a “Y” in the “Surety Demand” column in Appendix B. If a surety bond already has been exhausted, CBP cannot make a demand on the surety for other open bills covered by that surety bond because the surety is no longer liable.

As part of the administrative collection process, if the debt is not secured fully by a surety bond, CBP will conduct a comprehensive viability analysis of the importer account. This analysis will determine if CBP believes that the debtor is viable to pursue collection action and could result in an importer collection referral to OCC if the administrative collection processes are unsuccessful. Referrals to OCC will specify whether collection action is requested against the surety, importer, or both, depending upon availability of bond coverage and assets, as well as other considerations. OCC reviews each referred claim for legal sufficiency and, when appropriate, makes demands on delinquent entities and/or refers matters to DOJ for litigation.

From January 2018 to September 2019, after exhausting the above collection attempts, CBP referred delinquent AD/CVD debt to contracted private collection agencies (PCA) pursuant to 19 U.S.C. § 1631. The PCAs returned all 60 referred claims totaling \$1.3 billion to CBP with no collection, typically because no entity existed against which to collect the duties. The PCAs’ experience affirmed CBP’s inability to collect those duties. CBP is in various stages of preparing these debts for write-off, including obtaining OCC’s concurrence to terminate collection action for those accounts that are greater than \$10,000.

CBP pursues administrative or judicial processes to maximize the collection of AD/CVDs through the court system. CBP has been successful in recent years in litigation actions seeking to collect delinquent AD/CVD debts when sureties do not fulfill their legal obligation to pay amounts owed, limited to the value of the bond. CBP has had great success in aggressively pursuing sureties in these cases, thereby establishing a clear monetary incentive for sureties to make prompt payment upon demand. Most recently, in *United States v. American Home Assurance Co.*, No. 18-1487/18-1960 (Fed. Cir., decisions issued Sept. 6, 2019), the Court of Appeals for the Federal Circuit affirmed two decisions of the Court of International Trade awarding the U.S. Government more than \$46.4 million in unpaid AD/CVDs and interest from a

surety. These cases helped to establish and confirm important legal principles that will assist in CBP's efforts to collect payment of AD/CVD debts in a timely manner from sureties, such as CBP's entitlement to interest in excess of bond coverage under 19 U.S.C. § 580 when the U.S. Government is forced to file a collection action against a Customs surety.

As part of its implementation of Section 115 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (P.L. 114-125; codified as 19 U.S.C. § 4321), CBP, in collaboration with internal and external stakeholders, is exploring ways to adjust bonding requirements to mitigate the risk of nonpayment that certain importers present.

CBP intends to implement a two-phased, risk-based bonding framework that will: (1) evaluate both entry- and entity-specific risk factors to predict the probability of nonpayment of duties, taxes, and fees (including AD/CVD), as well as the amount of any delinquency; and (2) adjust bond amounts to protect government revenue, thereby enforcing AD/CVD orders more effectively. In phase one of the risk-based bonding initiative, CBP intends to implement the use of an additional single transaction bond further to secure the revenue related to certain AD/CVD entries. In phase two of the initiative, CBP intends to implement the use of a new risk-based, continuous bond formula. CBP plans to issue an advanced notice of proposed rulemaking (ANPRM) before the end of calendar year 2020 to allow for formal comments on the risk-based bonding framework. The ANPRM will be followed by the publication of a notice of proposed rulemaking and final rule.

## V. Challenges to Collection

CBP has detailed the persistent, systemic challenges to the efficient and effective collection of AD/CVD debts in various congressional reports over the past several years. Those challenges are summarized here:

- Because Commerce’s assessment methodology for calculating AD/CVDs is retrospective, it is impossible to know the final duty amount at the time of import, which is the time when CBP has the best opportunity to enforce collection of the duties properly owed to the U.S. Government. The final AD/CVD amount that an importer is obligated to pay often is unknown until after the conclusion of an administrative proceeding, that is, after Commerce conducts an annual review of the AD/CVD order or after a court decision has been issued. Any duty assessment process that regularly results in bills being issued, in many cases, will be accompanied by chronic challenges to efficient and effective collections. CBP currently is monitoring more than 1 million entry summaries, which are suspended while awaiting conclusion of the AD/CVD process. Notably, the use of certain trade remedies over the past 2 years, which require the payment of additional duties at time of import (e.g., Sections 201, 232, and 301 trade remedies), offers a distinct contrast to the inherent collection risk associated with the retrospective AD/CVD process.
- Increased dumping and countervailable subsidization, combined with the ever-growing sophistication of fraud and evasion schemes, have resulted in ever larger AD/CVD bills. (Nearly 90 percent of the AD/CVD bills listed in Appendix B are greater than \$2,000, and nearly 20 percent have a current amount due greater than \$100,000). CBP analysis has shown that larger AD/CVD bills are less likely to be collected successfully. Historically, AD/CVD bills of \$2,000 or less are 95 percent likely to be paid within 16 months of issuance. However, AD/CVD bills greater than \$100,000 have only a 9-percent chance of being paid within 16 months of issuance. CBP’s view that these larger AD/CVD bills less likely are to be paid is supported by independent analysis of the U.S. Government Accountability Office.<sup>1</sup>
- Importers and sureties may protest a bill lawfully. A protest can lengthen the period of time between liquidation and CBP’s successful collection on that bill. Per 19 U.S.C. § 1514, a protest of a decision, order, or finding shall be filed with CBP within 180 days after, but not before, the date of liquidation or reliquidation or the date of mailing of the notice of demand for payment against a bond. The collection process generally is suspended during an open/suspended protest. Nearly two-thirds of the AD/CVD bills listed in Appendix B, which are associated with an open or suspended protest, are more than 1 year old.

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<sup>1</sup> U.S. Government Accountability Office, “Antidumping and Countervailing Duties: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk,” GAO-16-542, July 2016, p. 14 (<https://www.gao.gov/assets/680/678419.pdf>).

- Legal authority governing the assessment and collection of AD/CVD amounts receivable limits CBP’s options for collecting revenue from foreign debtors. When these importers fail to pay AD/CVD debts, the United States is restricted in the legal options available to pursue collection. This creates scenarios where manufacturers of “dumped” and “unfairly subsidized” goods easily can circumvent the process, acting as the importer for their own shipments (or easily creating another entity to do so), and then effortlessly avoiding payment of the additional AD/CVDs found to be due. CBP is looking into ways to use its current authorities to overcome these issues.
- As noted above, the use of PCAs to collect AD/CVD debts was completely ineffective in addressing the challenge of AD/CVD debts. CBP referred 60 AD/CVD debtor accounts to PCAs with a total debt of greater than \$1.3 billion. All of that debt was returned to CBP by the PCAs and was determined to be “uncollectible.”
- Current use of surety bonds has not resolved the AD/CVD collection challenge fully, a point with which some sureties agree.<sup>2</sup> Sureties associated with thousands of CBP bonds and millions of dollars of secured debt have entered receivership or liquidation or have become insolvent. CBP has been forced to litigate multiple issues during these proceedings, including the priority status that its bond claims should receive. These complex proceedings require an extensive commitment of resources by both OCC and DOJ. Even under the best of circumstances, CBP will not receive a full recovery of the debt secured by bonds from these sureties.
- Profitable sureties do not always fulfill their legal obligation to pay amounts owed upon demand. There have been instances where a surety has failed to pay its outstanding bond obligations and has forced the U.S. Government to file collection actions even after the surety admitted that it had no legal basis for nonpayment. In appropriate cases under litigation, CBP works with DOJ to pursue interest in excess of the bonded amount aggressively in order to establish a clear monetary incentive for sureties to make prompt payment upon demand, as well as a disincentive for future litigation based on spurious defenses.
- The financial incentives to evade AD/CVD orders intentionally can be enormous. Often when CBP has required an AD/CVD importer to provide additional security for future importations, the importer has avoided that requirement by simply shifting its importing activity to another importer number and another entity name, which is unencumbered by known CBP debt history.
- Similarly, “shell companies” routinely are established to act as importers of merchandise subject to AD/CVD for short periods of time, and then easily disappear in order to avoid payment of downstream duties. CBP’s experience suggests that these “shell companies” increasingly are created and directly controlled by overseas suppliers of the goods subject to AD/CVD.

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<sup>2</sup> International Trade Surety Association, “ITSA/CSEC ADD/CVD Recommendations to CBP,” January 17, 2013, p. 2 ([http://www.itsabond.org/white\\_papers/ITSACSECADDCVDRecommendationstoCBP.pdf](http://www.itsabond.org/white_papers/ITSACSECADDCVDRecommendationstoCBP.pdf))

- Although the U.S. AD/CVD process is one of the most transparent in the world, it is complex. This can pose obstacles for smaller businesses that may lack in-house expertise or that have limited financial means to procure that expertise. The failure of some importers to grasp the future financial risks associated with importations of AD/CVD goods may result in an inability to pay AD/CVD bills, even for otherwise highly compliant companies that are willing to pay.

## VI. Conclusion

CBP's complex and multifaceted mission includes protecting our Nation's economic vitality through both trade enforcement and facilitation. Enhanced enforcement of AD/CVD laws in order to ensure a level playing field for U.S. companies is foundational to this mission.

TFTEA resulted in the mobilization of CBP resources to focus specifically on AD/CVD challenges. For CBP, the law required a thorough reorganization: new programs, new offices, new regulations, new training, and new engagements. The Enforce and Protect Act of 2015 (EAPA), which is part of TFTEA, provided CBP with new authority and mandates to investigate allegations of AD/CVD evasion. Pursuant to EAPA, companies now can file allegations of AD/CVD evasion with CBP.

CBP continues to partner with the trade community and with Commerce to address the AD/CVD issues, as evidenced by CBP's robust involvement with the AD/CVD Working Group. This working group, established under the auspices of the Commercial Customs Operations Advisory Committee, has facilitated productive discussions on risk-based bonding of AD/CVD importations.

CBP will continue to leverage its bonding authority fully to secure debts owed to the U.S. Government in connection with importations of goods subject to AD/CVD orders. Although bonding alone is unlikely to ensure the collection of all AD/CVDs owed, it is an important and effective tool.

## VII. Appendices

### Appendix A: List of Terms/Abbreviations

<b>Abbreviation</b>	<b>Definition</b>
ACS	Automated Commercial System
AD/CVD	Antidumping and Countervailing Duty
ANPRM	Advanced Notice of Proposed Rulemaking
CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations
Commerce	U.S. Department of Commerce
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
EAPA	Enforce and Protect Act of 2015
FOUO	For Official Use Only
FY	Fiscal Year
OCC	Office of Chief Counsel (within CBP)
PCA	Private Collection Agency
TFTEA	Trade Facilitation and Trade Enforcement Act of 2015
U.S.C.	United States Code

<b>Appendix B Term</b>	<b>Definition</b>
Bill Number	A unique identifier number assigned by CBP.
Bill Date	Date that the bill is issued, generally corresponding with the date that CBP liquidated the entry for an increase in duties.
Total Amount Due	Total amount due on this bill.
Principal Amount Due	Amount of additional AD/CVDs due; this amount may include some preliquidation interest, but not accrued interest, resulting from nonpayment of the bill.
Surety Demand	“Y” – ACS records indicate a written demand on surety has been issued in addition to the surety’s 612 report.
Referred to CBP Chief Counsel	“Y” – ACS records indicate that the debt has been referred to OCC for legal action at least once during the collection process. See Section IIIB of this report for additional information concerning the number of bills pending with OCC.
Date Referred to CBP Chief Counsel	The date that the debt initially was referred to OCC according to ACS records.

## Appendix B: List of Open Bills

This information is For Official Use Only (FOUO)/Law Enforcement Sensitive (LES) and will be transmitted to the Committees in a manner pursuant to limitations placed upon the sharing of FOUO/LES information.