Antidumping and Countervailing Duty Collection of Outstanding Claims

October 22, 2019

Fiscal Year 2019 Report to Congress

Homeland Security

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

October 22, 2019

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 language set forth in Senate Report 115-283, which accompanies the Fiscal Year (FY) 2019 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-6). Senate Report 115-283 reaffirms a requirement in Senate Report 114-264, which accompanied the FY 2017 DHS Appropriations Act (P.L. 115-31), and Senate Report 112-169, which accompanied the FY 2013 DHS Appropriations Act (P.L. 113-6). The report provides a detailed account of the current outstanding antidumping and countervailing duty (AD/CVD) claims, 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 that you may have. Please do not hesitate to contact my office at (202) 344-2001.

Sincerely,

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

Executive Summary

CBP has a statutory responsibility to collect all revenue due to the U.S. Government that arises from the importation of goods into the United States. In FY 2018, CBP collected approximately $2.3 billion of AD/CVDs. This amount represents a significant increase of more than 60 percent relative to the average annual AD/CVD collections for FYs 2015–2017.

CBP is committed to ensuring that AD/CVD laws are enforced. To this end, CBP's Office of Trade, Office of Field Operations, Office of Finance, and Office of Chief Counsel, working closely with U.S. Immigration and Customs Enforcement's Homeland Security Investigations, are engaged in efforts to ensure that AD/CVDs are collected.

The collection of AD/CVDs remains a complex challenge, as evidenced by the nearly $4.5 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.

CBP will use all methods at its disposal—including increased bonding, enhanced targeting and review of high-risk imports, and swift and thorough review of allegations of evasion to ensure a fair and competitive trade environment.

Antidumping & Countervailing Duty Collection of Outstanding Claims

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I. Legislative Language

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

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 65,000 unpaid antidumping and countervailing duty (AD/CVD) bills totaling $4.5 billion (principal and interest) over a 25-year period (FY 1993 to FY 2018) for which U.S. Customs and Border Protection (CBP) currently is pursuing collection or has determined the bills to be uncollectible.

CBP has a statutory responsibility to collect all revenue due 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, including practices involving the trade of merchandise that is sold at less than fair value in the United States or in which 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 listed in 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 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, secure the revenue of the United States by the use of customs bonds, assess the final duty amount at liquidation in accordance with instructions received from Commerce, and collect outstanding AD/CVD bills.

III. Results

A. Overview

Appendix B contains detailed information for the 64,761 open AD/CVD bills for which CBP currently is pursuing collection. The cumulative amount of open AD/CVD debt continues to grow:

Table 1

Open AD/CVD Debt

	FY 2017	FY 2018	FY 2019	Percentage Growth (FY 2017 to FY 2019)
Number of Open Bills	54,413	57,870	64,761	19%
Total Principal Amount Due (billions of dollars)	$2.830	$3.092	$3.492	23%
Total Amount Due (billions of dollars)	$3.505	$3.909	$4.472	28%

The open AD/CVD debt reflected in Appendix B is the cumulative result of more than 25 years of CBP billing activity for AD/CVD.

B. Referrals to the CBP Office of Chief Counsel (OCC) and U.S. Department of Justice (DOJ)

Table 2

Legal Status of AD/CVD Debt

Total Number of Open AD/CVD bills (Appendix B)	64,761
Number of AD/CVD Bills Not Under OCC Review	58,769 (91%)
Total Principal Amount Due of AD/CVD Bills Not Under OCC Review	$3.01 billion (86%)
Number of AD/CVD Bills Currently Under OCC Review for Collection Action	834 (1%)
Total Principal Amount Due of AD/CVD Bills Currently Under OCC Review for Collection Action	$49 million (1%)
Number of AD/CVD Bills Referred to OCC for Termination of Collection Concurrence	3,982 (6%)
Total Principal Amount of AD/CVD Bills Referred to OCC for Termination of Collection Concurrence	$224 million (6%)
Number of AD/CVD Bills Referred to DOJ	1,176 (2%)
Total Principal Amount Due of AD/CVD Bills Referred to DOJ	$202.6 million (6%)

The CBP OCC has provided assistance in identifying the cases pending in its office and with DOJ. The data in Table 2 have been provided by OCC. The data provided 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 are attributable to the inability of ACS to track workflow updates as well as 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 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 CVDs under 19 U.S.C. § 1671 or to ADs under 19 U.S.C. § 1673, liquidates with an increase in duties. AD/CVD bills are the direct result of instructions from Commerce to liquidate the entry with additional AD/CVDs due. Bills may result where an importer fails to indicate that, at the time of importation, merchandise is subject to AD/CVDs and the importer makes no cash deposit, or makes an inadequate cash deposit based on an incorrect rate. CBP notifies the importer of record at the time of initial billing and every 30 days after the due date until the bill is paid or otherwise 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 otherwise 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 will not make a demand on the surety for other open bills covered by that surety bond because the surety is no longer liable.

If CBP is unable to collect the applicable duties from either the principal or surety via administrative collection processes, the debt, if more than $1,500, will be referred to OCC for legal collection action against the surety. 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. OCC reviews each referred claim for legal sufficiency and makes demands on delinquent entities or refers matters to DOJ for litigation, when appropriate. In limited circumstances, DOJ may accept referrals for legal action even if the principal amount owed is less than $2,500 (see 31 C.F.R. § 904.4).

Beginning in January 2018, CBP also has referred delinquent AD/CVD debt to contracted private collection agencies (PCA) pursuant to 19 U.S.C. § 1631 after exhausting the above collection attempts and researching importer viability. If the claims are returned to CBP by the PCAs as uncollectible, CBP will terminate collection action. OCC's concurrence if the principal amount of debt is more than $1,500 must be obtained to complete the termination of collection process.

CBP pursues administrative or judicial processes, through the court system, to maximize the collection of AD/CVDs. CBP has been successful in taking sureties to court to collect delinquent AD/CVDs when sureties do not fulfill their legal obligation to pay amounts owed. CBP has success in aggressively pursuing sureties in these cases to establish a clear monetary incentive for sureties to make prompt payment upon demand.

CBP is exploring creative ways to adjust bonding requirements to mitigate the risk of nonpayment that certain importers present and is collaborating with its surety trade chain partners. CBP has identified options for risk-based bonding 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's intent is to use this new bonding approach to predict statistically the risk of future nonpayment of duties, taxes, and fees, including AD/CVD; adjust bond amounts to protect government revenue; and thereby enforce AD/CVD orders more effectively.

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:

- The United States operates what commonly is referred to as a retrospective AD/CVD system, as directed by the governing statute, the Tariff Act of 1930, as amended. Under this system, the level of dumping and/or countervailable subsidization is estimated first, and then ultimately determined, in most cases, in the context of annual administrative reviews conducted by Commerce. The U.S. system provides for the calculation of more accurate duties owed because they are based on the dumping or subsidization levels associated with the specific entries to which the duties are attached. One challenge that comes with these more accurate calculations is that the final duty amount that an importer is obligated to pay is not known 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. Instead, final AD/CVD liability typically is known after Commerce conducts an annual review of the AD/CVD order, if requested, or, should a party seek judicial review of Commerce's final results of a review, after a final and conclusive court decision has been issued in connection with the review. CBP currently is monitoring more than 110,000 AD/CVD importations that are already more than 3 years old and yet are still in a suspended status while awaiting conclusion of the AD/CVD process.

- Increased numbers of AD/CVD orders, combined with the ever-growing sophistication of fraud and evasion schemes, have resulted in increasingly larger AD/CVD bills. Nearly 90 percent of the AD/CVD bills listed in Appendix B are greater than $2,000, and 17 percent had an initial amount due greater than $100,000. AD/CVD bills with an amount due of $2,000 or less are 95 percent likely to be paid within 16 months of issuance. However, AD/CVD bills with a total amount due greater than $100,000 have only a 9-percent chance of being paid within 16 months of issuance. An independent U.S. Government Accountability Office analysis supports CBP's view that these larger AD/CVD bills are less likely to be paid.[1]

- Importers and sureties legally may protest a bill. A protest can lengthen the time between liquidation and CBP's successful collection on that bill. Per 19 U.S.C. § 1514, a protest of a CBP decision, order, or finding must be filed with CBP within 180 days after the date of liquidation or reliquidation or the date of mailing of the notice of demand for payment against a bond. The collection process may be suspended temporarily during an open/suspended protest. Nearly two-thirds of the AD/CVD bills

[1] 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).

listed in Appendix B are associated with an open or suspended protest and are more than 1 year old.

- Overseas debtors benefit from the lack of reciprocal revenue agreements between the United States and their host foreign countries. When these importers fail to pay AD/CVD debts, the United States is restricted severely in the legal options available to pursue collection. This creates scenarios where manufacturers of "dumped" and "unfairly subsidized" goods can circumvent the process, acting as the importer for their own shipments (or creating another entity to do so) and then avoiding payment of the additional AD/CVD found to be due.

- The use of PCAs has not been effective in addressing the challenge of AD/CVD debts. CBP has referred 54 AD/CVD debtor accounts to PCAs with a total debt of more than $1.2 billion. All of that debt has been returned to CBP by the PCAs and has been determined to be "uncollectible." The PCAs have not recovered any debt referred by CBP over the past 18 months.

- Current use of security in the form of surety bonds has proven unsuccessful in resolving the AD/CVD collection challenge, a point with which some sureties agree.[2] 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 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 in which 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. CBP works with DOJ to pursue aggressively interest in excess of the bond in appropriate litigation cases to establish a clear monetary incentive for sureties to make prompt payment upon demand, as well as to establish 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, which is unencumbered by known CBP debt history.

- "Shell companies" routinely are established to act as importers of merchandise subject to AD/CVD for short periods, and then easily disappear to avoid paying duties. Because

[2] International Trade Surety Association, "ITSA/CSEC ADD/CVD Recommendations to CBP," January 17, 2013, p. 2 (http://www.itsabond.org/white_papers/ITSACSECADDCVDRecommendationstoCBP.pdf).

these “shell companies” have disappeared, before the first bill is issued, improvements in CBP’s debt collection processes have been unable to address this problem. CBP’s experience suggests that these “shell companies” increasingly are created and are controlled directly by the overseas supplier of the goods subject to AD/CVD.

- The AD/CVD process is complex. This complexity 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 border security 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. The new law required reorganization by establishing new programs, offices, regulations, trainings, and engagements. TFTEA provided CBP with new authority to investigate allegations of AD/CVD evasion administratively through enactment of the Enforce and Protect Act. Companies now can file allegations of AD/CVD evasion with CBP pursuant to this act.

CBP continues to partner with the trade community and with Commerce to address the AD/CVD issues. CBP's robust involvement with the AD/CVD 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 continues to leverage its bonding authority to secure importations of AD/CVD goods. 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/Acronyms

Acronym	Definition
ACS	Automated Commercial System
AD/CVD	Antidumping and Countervailing Duty
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
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

Appendix B Term	Definition
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 that 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 III.B. 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.