

GAO Report Reveals Deficiencies in Process for Collecting Antidumping and Countervailing Duties

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On November 7, the United States Government Accountability Office (“GAO”) released a report assessing actions the U.S. Department of Commerce (“Commerce”) and U.S. Customs and Border Protection (“CBP”) have taken to address weaknesses in the process for collecting antidumping (“AD”) and countervailing (“CV”) duties.

The report noted the following facts:

- For bills issued in fiscal years 2001 – 2018, CBP collected over \$20 billion in uncollected AD/CV duties.
- For bills issued over the same period, \$4.5 billion in AD/CV duties remained uncollected as of May 2019.
- Only 20 importers accounted for \$1.93 billion (or 43.3 percent) of the \$4.5 billion in AD/CV duties with the remaining \$2.52 billion (or 56.7 percent) in uncollected duties accounted for by 1,118 importers.

The report also notes that one cause for concern at Commerce is the significantly increased workload, with a lack of corresponding increase in staff. The report explains that from fiscal years 2012 to 2018, the total number of AD/CV duty orders enforced by Commerce has increased from 280 to 457, with the number of case analysts increasing only from 118 to 127. Commerce has sought to address the increased workloads by implementing a variety of internal procedures and establishing a training unit.

CBP has also undertaken variety of measures to address uncollected duties. Perhaps most interesting is CBP’s use of new statistical models to identify key risk factors associated with nonpayment. As noted above, with only 20 importers accounting for more than 43 percent of the value of billed but uncollected duties, identifying high risk importers would appear to be a prudent step.

The report also identified the United States’ retrospective system of duty assessment as one factor contributing to complexities in duty collection faced by both agencies. The retrospective system is widely viewed as a net positive, however, which leads to more accurate duty assessment over time. The report concludes that while the two agencies have undertaken measures to address weaknesses in the process for collecting duties, more can be done.

One significant factor that the report failed to identify is that a significant portion of the uncollected duties are the result of prior loopholes in the so-called “new shipper” provisions of the AD/CVD law. Subsequent amendments to the law, including the bonding requirements, have since largely addressed this issue. Additionally, ongoing litigation between CBP and sureties accounts for much of those uncollected duties. Those sureties were left liable for the uncollected duties under bonds written for the importers who defaulted on their duty liability. The sureties have been largely unsuccessful in their attempts to avoid liability under the bonds they issued, and much of this duty liability will likely be collected once that litigation is completed.

A complete copy of the report may be accessed through the GAO’s website or using the following link: <https://www.gao.gov/assets/710/702570.pdf>.