



United States Government Accountability Office  
Washington, DC 20548

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July 24, 2008

The Honorable Robert C. Byrd  
Chairman  
The Honorable Thad Cochran  
Ranking Member  
Committee on Appropriations  
United States Senate

The Honorable David R. Obey  
Chairman  
The Honorable Jerry Lewis  
Ranking Member  
Committee on Appropriations  
House of Representatives

*Subject: Agencies Believe Strengthening International Agreements to Improve Collection of Antidumping and Countervailing Duties Would Be Difficult and Ineffective*

The United States and many of its trading partners have enacted laws to remedy the unfair trade practices of other countries and foreign companies that cause injury to domestic industries. U.S. law authorizes the imposition of additional duties on importers to remedy these unfair trade practices.<sup>1</sup> Specifically, antidumping (AD) duties are imposed on imports that are “dumped” in the United States (i.e., sales in the U.S. market at less than the market price in the item’s home market) and countervailing (CV) duties are imposed on imports that are subsidized by foreign governments. Importers are responsible for paying all duties, taxes, and fees on products when they are brought into the United States (including AD/CV duties). Importers can be located either domestically or overseas.

Since fiscal year 2001, U.S. Customs and Border Protection (CBP), which is responsible for collecting import duties, has been unable to collect hundreds of millions of dollars in AD/CV duties.<sup>2</sup> In March 2008, we reported that over

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<sup>1</sup>19 U.S.C. §§ 1671, 1673.

<sup>2</sup>This includes uncollected duties from fiscal years 2001 through 2007, as of September 2007.

\$600 million in AD/CV duties were uncollected.<sup>3</sup> Our analysis revealed four key factors contributing to uncollected AD/CV duties: (1) the retrospective component of the U.S. AD/CV duty system, (2) “new shipper” reviews, (3) insufficiency of CBP’s standard bond requirements for importers, and (4) minimal information required from importers. We identified two sets of options for Congress and agencies to consider in attempting to improve the collection of AD/CV duties. One option was to eliminate the retrospective component of the U.S. AD/CV duty system and make it prospective; the other was to adjust specific aspects of the current U.S. AD/CV duty system while retaining its retrospective nature.

Under the current U.S. AD/CV duty system, importers pay cash deposits equal to the estimated AD/CV duties at the time of importation, but the final duty amount is determined much later and may exceed the amount of cash deposited. On average, this process takes more than 3 years, during which importers could cease operations or become unable to pay additional duties. To address this situation and help improve the collection of AD/CV duties, we suggested several improvements to Congress and executive branch agencies.<sup>4</sup> For example, we suggested Congress consider requiring the relevant agencies to perform an analysis and report to Congress on the relative advantages and disadvantages of prospective and retrospective AD/CV duty systems.

The Committees on Appropriations directed us to conduct a comprehensive review, as described in Senate Report 110-84, of uncollected AD/CV duties and specified several issues on which we were to report.<sup>5</sup> Our March 2008 report addressed most of the issues, except how international agreements to which the United States is a party could be strengthened to improve the collection of AD/CV duties. As a result, this report describes agencies’ views on (1) obstacles (if any) to strengthening international agreements to help the United States collect AD/CV duties from importers without attachable assets in the United States and (2) whether strengthened international agreements would improve duty collection.

To address these objectives, we obtained and reviewed relevant documents and interviewed knowledgeable officials from the Departments of Commerce,

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<sup>3</sup>GAO, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, [GAO-08-391](#) (Washington, D.C.: Mar. 26, 2008). In that report, we used the phrase “uncollected AD/CV duties” to mean the sum of all open, unpaid bills for AD/CV duties issued by CBP, which included those under protest. We included the principal amount of the bill but not any accrued interest. This amount did not include revenue that is foregone when CBP is unable to issue duty bills within statutory deadlines.

<sup>4</sup>[GAO-08-391](#).

<sup>5</sup>Joint Explanatory Statement accompanying Consolidated Appropriations Act, 2008, Pub. L. No. 110-161 (directing GAO to undertake an investigation, as detailed in Senate Report 110-84).

Justice, State, and the Treasury, the Department of Homeland Security's U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, and the Office of the U.S. Trade Representative. Each has a role in the AD/CV duty process or in negotiating international agreements. To determine the obstacles to strengthening international agreements to improve duty collection, we obtained U.S. agencies' views on whether international agreements could be strengthened to help collect AD/CV duties. To determine agencies' views on whether strengthening international agreements would improve duty collection, we interviewed knowledgeable agency officials and reviewed prior GAO work regarding uncollected AD/CV duties. We conducted this performance audit from April 2008 to July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. (See enclosure I for additional detail regarding our scope and methodology.)

## Results in Brief

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. These obstacles are:

- *Finding countries that are willing to enter into negotiations.* Unlike the United States, other major trading partners have AD/CV duty systems that establish the final amount of AD/CV duties when goods enter the country. As a result, the existence of significant uncollected AD/CV duties is unique to the United States, so other countries do not have a shared interest in improving collections after products have entered the country.
- *U.S. and foreign government practice.* According to CBP and Department of Justice (Justice) officials, under the practice of some countries, they will not enforce a claim based upon the revenue laws of another country.<sup>6</sup> According to agency officials, if the United States negotiated an international agreement to strengthen its ability to collect duties owed by importers whose assets are overseas, there may be unintended consequences. For example, since the agreement would likely be reciprocal, some agency officials expressed concern that this could require the United States to enforce decisions it found arbitrary. Our analysis of international agreements to which the United States is a party identified agreements that establish rules for calculating and assessing AD/CV duties and other agreements that outlined mutual assistance between countries' customs administrations, some of which explicitly exclude assistance regarding the recovery of duties. However, consistent with the challenges

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<sup>6</sup>See also Restatement (Third) of Foreign Relations Law of the United States § 483 (1987).

posed by negotiations and international practice, neither our analysis nor our discussions with agency officials identified any international agreements that facilitate collecting AD/CV duties from importers with no attachable assets in the United States.

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:

- *Retrospective nature of the U.S. AD/CV duty system.* Strengthened international agreements would not address a key factor we identified in our March 2008 report as contributing to uncollected AD/CV duties—the retrospective nature of the U.S. AD/CV duty system. Under this system, the final amount of duties owed may exceed the amount of cash deposits the importer paid at the time of entry, and CBP must attempt to collect from the importer long after the products enter the country. By the time CBP is able to take collection action, illegitimate importers (foreign or domestic) may have disappeared in order to evade the duties, and legitimate importers may be financially unable to pay the duties.<sup>7</sup> As a result, Justice has advised CBP that claims involving a foreign company with no discernable U.S. assets may be classified as uncollectible and do not need to be referred to Justice. CBP has not referred any cases to Justice involving the collection of AD/CV duties from importers with no attachable assets in the United States in the past 5 years.
- *High cost of litigation.* According to Justice officials, even if international agreements were strengthened, Justice would still likely have to litigate overseas in order to collect duties owed. Conducting litigation in a foreign country can be very expensive because of the need to hire foreign counsel. These high costs need to be weighed against the amount owed and the amount likely to be collected. However, agency officials noted that strong corporate secrecy laws and weak pretrial discovery rules in some countries may make it impossible to know whether the U.S. government would be able to recoup the costs of the litigation.

We provided a draft of this report to the Departments of Commerce, Homeland Security, Justice, State, and the Treasury, as well as the Office of the U.S. Trade Representative. The Department of Commerce provided written comments (reprinted in enclosure III) and agreed with our overall conclusion that strengthening international agreements would not substantially improve the collection of AD/CV duties. However, Commerce disagreed with our conclusion (based on our March 2008 report) that the retrospective nature of the U.S. AD/CV duty system is a key factor contributing to uncollected AD/CV duties. We continue to believe that the retrospective nature of the U.S. AD/CV

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<sup>7</sup>For additional detail regarding the challenges posed by the retrospective nature of the U.S. AD/CV duty system, see [GAO-08-391](#).

duty system is a key factor contributing to uncollected AD/CV duties as we reported earlier because it allows situations where CBP must attempt to collect large amounts of duties from importers years after they import products into the United States. However, we modified this report to provide broader context and additional detail about the key factors and options identified in our March 2008 report. In addition, we received technical comments from the Departments of Homeland Security, Justice, and State, as well as the Office of the U.S. Trade Representative. We have incorporated their comments as appropriate.

## **Background**

Under the U.S. AD/CV duty system, all importers (foreign and domestic) pay cash deposits equal to the estimated amount of AD/CV duties at the time of importation, but the final amount of duties is not determined until later, often after the Department of Commerce (Commerce) conducts an administrative review of the imports. As a result, the final amount of duties owed can exceed the cash deposit made at the time of importation. In these cases, CBP must attempt to collect the duties from importers who are, at times, unable or unwilling to pay. Some importers are unable to pay the additional amount because it exceeds their available assets. Other importers expect that their final assessment will exceed their cash deposit and plan to avoid their final duty obligation by disappearing or declaring bankruptcy, according to officials from the Department of the Treasury (Treasury).<sup>8</sup>

To help protect the U.S. government from revenue loss, all importers are required to post a security, usually a general obligation bond when they import products into the United States.<sup>9</sup> This bond, which an importer obtains from a surety company, is (in general) equal to 10 percent of the amount the importer was assessed in duties, taxes, and fees over the preceding year (or \$50,000, whichever is greater). Our March 2008 report found, however, that CBP's standard bond formula is insufficient to protect AD/CV duty revenue in some cases. For example, of the top 20 importers with uncollected AD/CV duties, 1 importer had outstanding AD/CV duty bills amounting to \$35 million, which was secured by a bond of \$500,000.<sup>10</sup>

If CBP does not receive payment within 1 year of issuing the first bill, CBP's Office of Finance (which is responsible for collecting payment) refers the case to CBP's Office of Chief Counsel, which determines the next course of action. According to CBP officials, this may include taking additional collection action, such as identifying importers' assets or demanding payment from the surety company that provided the bond. The Office of Chief Counsel could also refer

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<sup>8</sup>[GAO-08-391](#).

<sup>9</sup>19 C.F.R. § 142.4.

<sup>10</sup>[GAO-08-391](#).

a case to Justice for further legal action if attachable assets are identified. If the Office of Chief Counsel determines that the debt is uncollectible, it can recommend that it be written off. CBP's Office of Chief Counsel takes steps to collect all bills referred to it, regardless of the location of the importer's assets.

As shown in table 1, several U.S. government agencies have roles related to the AD/CV duty process or the negotiation of international agreements.

**Table 1: Relevant U.S. Government Agencies and Their Role in the AD/CV Duty Process or in Negotiating International Agreements**

<b>Agency</b>	<b>Role in duty collection</b>
International Trade Commission	Determines whether an industry in the United States is being injured by imports
Department of Commerce	Calculates estimated and final AD/CV duty rates
Department of Homeland Security's U.S. Customs and Border Protection	Assesses and collects estimated and final AD/CV duties from importers based on instructions from Commerce and identifies/addresses circumvention of the AD/CV duty law by companies attempting to evade the payment of lawfully owed AD/CV duties
Department of Homeland Security's U.S. Immigration and Customs Enforcement	Investigates alleged schemes by importers to avoid the payment of AD/CV duties
Department of Justice	Represents U.S. government in litigation
Office of the U.S. Trade Representative	Negotiates international trade agreements and represents the United States in the World Trade Organization
Department of State	Negotiates international agreements and maintains records of international agreements to which the United States is a party
Department of the Treasury	Has statutory authority regarding duty collections (delegated day-to-day operations to the Department of Homeland Security in 2003; Treasury retains control over regulations governing the process)

Source: GAO discussions with agency officials.

**Agencies Identified Two Obstacles to Strengthening International Agreements to Improve Collection of AD/CV Duties**

Agency officials identified two key obstacles that would make strengthening international agreements difficult. These obstacles relate to finding willing negotiating partners and U.S. and foreign government practice.

First, some agency officials indicated it may be difficult to find willing partners to enter into negotiations. Unlike the United States, other major trading partners have AD/CV duty systems that establish the final amount of AD/CV duties owed at the time goods enter their country. As a result, the existence of significant uncollected AD/CV duties is unique to the United States, so other countries do not have a shared interest in improving collections after the fact. Therefore, the United States may need to make concessions to trading partners in other areas in order for them to be willing to negotiate an agreement related to collecting AD/CV duties from companies without attachable assets in the United States.

Second, it would likely be difficult to reach such an agreement because the United States would be negotiating for provisions that are different from U.S. and foreign government practice, which could have unintended consequences. According to officials from CBP's Office of Chief Counsel and from Justice, under the practice of some countries, they will not enforce a claim based upon the revenue laws of another country.<sup>11</sup> In the United States, this principle has taken the form of the "revenue rule," which allows the nonrecognition "of tax liabilities of one sovereign in the courts of another sovereign, such as a suit to enforce a tax judgment."<sup>12</sup> Since any international agreement the United States negotiated would likely be reciprocal, the U.S. courts would likely be required to enforce the revenue laws and decisions of other countries. Some agency officials expressed concern that this could require the United States to enforce decisions it found arbitrary.

Our analysis of international agreements to which the United States is a party identified agreements that affirm the right of countries to collect AD/CV duties and establish frameworks for international cooperation on customs issues. For example, the World Trade Organization's Antidumping and Subsidies and Countervailing Measures agreements establish multilateral rules regarding the processes and standards for calculating AD/CV duties and expressly provide the 152 World Trade Organization members with the right to collect AD/CV duties. In addition, Chapter 19 of the North American Free Trade Agreement addresses the review of AD/CV duties and establishes a process for binational panels to review AD/CV duty determinations involving goods covered by the agreement. We also identified 37 bilateral agreements regarding mutual assistance between countries' customs administrations. These agreements typically include commitments for customs agencies to exchange information to assist in administering their own customs laws, but some of these agreements specifically exclude exchanging information for the purpose of duty collection.<sup>13</sup>

In addition, consistent with the challenges posed by international negotiations and international practice, neither our analysis nor our discussions with relevant agency officials identified any international agreements that facilitate the collection of AD/CV duties from importers with no attachable assets in the United States. Specifically, we did not identify any agreements that establish a process or a mechanism for assisting the United States in collecting AD/CV duties from companies without assets in the United States that are unable or unwilling to pay them.

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<sup>11</sup>See also Restatement (Third) of Foreign Relations Law of the United States § 483 (1987).

<sup>12</sup>*Pasquantino v. U.S.*, 544 U.S. 349 (2005).

<sup>13</sup>Customs mutual assistance agreements with Austria, China, Cyprus, Ireland, Norway, and Sweden exclude assistance related to collection of duties.

## **Strengthened International Agreements Would Not Substantially Improve Collection of AD/CV Duties**

Agency officials believe, and our analysis supports, that strengthening international agreements would not substantially improve the collection of AD/CV duties for two key reasons—the retrospective nature of the U.S. AD/CV duty system and the high cost of litigation.

First, strengthened international agreements would not address the challenges associated with the retrospective nature of the U.S. AD/CV duty system, in which the final amount of duties owed may exceed the amount of cash deposited at the time of entry. In those cases, CBP must often attempt to collect from importers long after they import products into the country.<sup>14</sup> Financially able and willing importers will pay duties owed regardless of their location. However, legitimate importers may be unable to pay duty bills, and illegitimate importers may disappear in order to evade the duties.

In our March 2008 report, we found that about \$350 million in AD/CV duty bills owed by all importers were in various stages of the collection process as of the end of fiscal year 2007. Approximately \$290 million of the unpaid AD/CV duty bills had been sent to CBP's Office of Chief Council to determine further collection options, such as identifying attachable assets (domestic or overseas); however, CBP officials expected that most of these unpaid bills would be written off after legal review.

CBP's recent efforts to collect payments from importers located outside the United States illustrate the difficulty in collecting from those unwilling to pay their AD/CV duty bills. Since fiscal year 2003, CBP's Office of Finance referred 570 unpaid AD/CV duty bills (totaling approximately \$20 million, including accumulated interest) involving importers located outside the United States to the Office of Chief Counsel for additional collection action.<sup>15</sup> As a result, the Office of Chief Counsel opened 31 cases involving 28 importers—with many cases involving multiple bills for the same importer. The Office of Chief Counsel closed 21 of these cases, which involved approximately \$14 million in unpaid bills.<sup>16</sup> However, CBP was only able to collect approximately \$600,000, or 4 percent of the amount owed. (See enclosure II for additional information on the results of these 21 closed cases.)

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<sup>14</sup>In March 2008, we reported that final AD duty rates increased 16 percent of the time, with an average increase of 62 percentage points. Our analysis showed that, on average, more than 3 years passed between the time when imports entered the country and when the final AD/CV duties were assessed. See [GAO-08-391](#).

<sup>15</sup>CBP identified importers located outside the United States by using their unique importer number and address of record.

<sup>16</sup>The other 10 cases (representing approximately \$6 million in unpaid bills) are currently open, and CBP is continuing to pursue collection action. As of June 2008, CBP had collected approximately \$121,000 as a result of those cases.



None of the closed cases was referred to Justice because, according to CBP's Office of Chief Counsel, Justice has advised CBP that many claims involving a foreign company with no discernable U.S. assets may be classified as uncollectible. CBP has not determined whether it will refer any of the 10 open cases to Justice. According to CBP, it has not referred any cases to Justice involving the collection of AD/CV duties from importers with no attachable assets in the United States in the past 5 years. According to Justice officials, CBP has not referred to them any cases involving the collection of AD/CV duties in foreign courts.

A second reason agency officials cited is the high cost of litigation. According to Justice officials, even if the United States successfully negotiated an agreement with another country to assist in the collection of AD/CV duties, they may still have to litigate overseas in order to collect duties owed. Conducting litigation in a foreign country can be very expensive because of the need to hire foreign counsel. These high costs need to be weighed against the amount owed and the amount likely to be collected. Because of this, Justice would likely want to ensure that the importer owing the duties can be found and has sufficient assets to pay the duties if the U.S. government prevails. However, according to Justice officials, some countries have strong corporate secrecy laws or otherwise make it very difficult to obtain the information necessary to make this determination, and significant costs can be incurred by the government to investigate the collectibility of the debt from the foreign debtor. Also according to Justice, even if litigation was initiated, many foreign courts have very limited ability to discover evidence during the litigation process. As a result, it may be extremely difficult to determine the likelihood of recouping the costs of the foreign litigation, even if the United States prevails.

While agency officials believe strengthening international agreements would not substantially improve the collection of AD/CV duties, our March 2008 report included several recommendations to the executive branch to improve collections under the current U.S. AD/CV duty system: (1) re-evaluate CBP's bonding requirements, (2) improve communication from Commerce to CBP, and (3) develop a strategic human capital plan to ensure that Commerce has sufficient human capital to perform its roles in the AD/CV duty process. The Departments of Homeland Security and Commerce generally agreed with our recommendations and indicated a willingness to take steps to address them. In addition, we suggested that Congress consider (1) requiring the relevant agencies to conduct an analysis of the relative advantages and disadvantages of different AD/CV duty systems, (2) requiring CBP to publicly report annually on uncollected AD/CV duties, and (3) providing Commerce with discretion to establish minimum thresholds for the amount or value of exports when conducting certain AD/CV duty reviews of "new shippers."—

## **Concluding Observations**

Strengthening international agreements does not appear to be a viable option for substantially reducing the amount of uncollected AD/CV duties. There are important trade-offs to consider before the U.S. government undertakes an effort to improve AD/CV duty collection from importers with no attachable assets in the United States, especially since it does not appear that such an effort will substantially improve the U.S. government's ability to collect on unpaid bills. Our previous work identified four key factors contributing to uncollected AD/CV duties, including the retrospective nature of the duty collection process, which makes it difficult for CBP to collect outstanding duties, regardless of where an importer's assets are located. As long as the United States maintains a system that involves attempting to collect duties from importers years after they import products into the United States, it will have difficulties collecting the full amount of duties owed. Because of this, agency and congressional efforts to improve the collection of AD/CV duties should focus on the recommendations laid out in our March 2008 report.

## **Agency Comments and Our Evaluation**

We provided a draft of this report to the Departments of Commerce, Homeland Security, Justice, State, and the Treasury, as well as the Office of the U.S. Trade Representative. The Department of Commerce was the only agency to provide written comments, which are contained in enclosure III. The Department of Commerce agreed with our overall conclusion that strengthening international agreements would not substantially improve the collection of AD/CV duties. However, Commerce disagreed with our conclusion (based on our March 2008 report) that the retrospective nature of the U.S. AD/CV duty system is a key factor contributing to uncollected AD/CV duties. Commerce suggests that the issues faced by CBP in collecting AD/CV duties have unique factors that contributed to the problem, which could exist under either a prospective or retrospective AD/CV duty system. We continue to believe that the retrospective nature of the U.S. AD/CV duty system is a key factor contributing to uncollected AD/CV duties as we reported earlier because it allows situations where CBP must attempt to collect large amounts of duties from importers years after they import products into the United States. However, we have revised this report to provide additional context based on our March 2008 report. Specifically, we added material discussing each of the four key factors we identified as contributing to uncollected AD/CV duties and the two sets of options for addressing those key factors. In addition, we received technical comments from the Departments of Homeland Security, Justice, and State, as well as the Office of the U.S. Trade Representative. We have incorporated their comments as appropriate.

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We are sending copies of this report to interested congressional committees; the Secretaries of Commerce, Homeland Security, State, and the Treasury; the Attorney General; and the U.S. Trade Representative. We will provide copies to others on request. This report will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-4347 or [yagerl@gao.gov](mailto:yagerl@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other GAO staff who made key contributions to this report are Christine Broderick (Assistant Director), Jason Bair, Laura Erion, Ernie Jackson, Grace Lui, Karen Deans, Martin de Alteriis, Mitchell Karpman, and Marissa Jones.

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive style with a large initial "L" and "Y".

Loren Yager  
Director, International Affairs and Trade

Enclosures (3)

## Scope and Methodology

To determine agencies' views on strengthening international agreements related to collecting antidumping (AD) and countervailing (CV) duties, we interviewed officials from the departments with a role in the antidumping and countervailing duty process or in negotiating international agreements: Departments of Commerce, Justice, State, and the Treasury, the Department of Homeland Security's U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement, and the Office of the U.S. Trade Representative. To identify international agreements that relate to the collection of AD/CV duties, we reviewed the agreements in the Department of State's *Treaties in Force* (2007), which lists international agreements to which the United States is a party.<sup>17</sup> We then sent the list of agreements we believed were potentially relevant to agency officials to verify. Finally, we reviewed the full text of the 54 agreements deemed to be potentially relevant to determine the extent to which each agreement related to the collection of AD/CV duties from importers without assets in the United States.

To determine agencies' views on the extent to which strengthening international agreements would improve duty collection, we interviewed relevant agency officials and reviewed prior GAO work analyzing uncollected AD/CV duties.<sup>18</sup> To describe CBP's recent experiences attempting to collect AD/CV duties from importers located outside the United States, we reviewed CBP data on the cases referred to the Office of Chief Counsel since fiscal year 2003. CBP identified importers located outside the United States by using their unique importer number and address of record. We determined that these data are sufficiently reliable for the purposes of this report.

We conducted this performance audit from April 2008 to July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>17</sup>*Treaties in Force* uses the term "treaty" as defined in the Vienna Convention on the Law of Treaties—that is, an international agreement "governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."

<sup>18</sup>GAO, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, [GAO-08-391](#) (Washington, D.C.: Mar. 26, 2008).

## Results of Cases Closed by CBP's Office of Chief Counsel

**Table 2: Outcomes of the 21 Closed Cases Involving Importers Located Outside the United States Owing AD/CV Duties (since fiscal year 2003)**

Dollars in thousands					
	Number of cases	Number of bills	Amount of bills	Amount paid	Loss
Full amount of duty collected following demand on surety/importer <sup>a</sup>	10	43	\$120	\$120	*
Full amount of bond collected from surety <sup>b</sup>	5	139	10,472	450	10,022
Bill determined to be legally unenforceable <sup>c</sup>	4	66	3,366	27	3,339
Bill referred back to Office of Finance <sup>d</sup>	2	3	*	*	*
<b>Total</b>	<b>21</b>	<b>251</b>	<b>\$13,958</b>	<b>\$597</b>	<b>\$13,361</b>

Source: GAO analysis of CBP data.

Note: \* denotes amount less than \$1,000.

<sup>a</sup> In eight of these cases, the full amount of the duty was collected by the Office of Chief Counsel following demands upon the surety and/or importer, excluding interest accrual. In 2 of the 10 cases, the amount remaining after the importer made a majority payment was uneconomical to pursue (less than \$100).

<sup>b</sup> According to CBP, the amount owed under the surety bond was collected, but this amount was significantly lower than the total duties owed by each importer.

<sup>c</sup> In these cases, the bills were determined to be legally unenforceable as a result of the Court of Appeals for the Federal Circuit's decisions in *Int'l Trading Co. v. United States*, 281 F.3d 1268 (2002) and *Int'l Trading Co. v. United States*, 412 F.3d 1303 (2005) because the entries were not liquidated within 6 months of the Department of Commerce's relevant *Federal Register* notice. According to CBP, in two of the four cases (totaling \$5.2 million), CBP promptly liquidated the entries, but they were not legally enforceable because Commerce did not issue liquidation instructions in a timely manner.

<sup>d</sup> These two cases were referred back to the Office of Finance because they were for an amount less than \$100, which the Office of Chief Counsel generally does not handle because the cost of collection is significantly greater than any possible recovery.

Comments from the Department of Commerce and GAO Evaluation

JUL 11 2008



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary for International Trade  
Washington, D.C. 20230

Dr. Loren Yager  
Director, International Affairs and Trade  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Dr. Yager:

Thank you for providing us with the draft report on whether international agreements to which the United States is a party might be strengthened to improve the collection of antidumping (AD) and countervailing (CV) duties. We carefully reviewed the draft report, and agree with the overall conclusion that strengthening international agreements would not substantially improve the under-collection problem the United States has encountered with these particular types of duties. However, we disagree with the report's assertion that the challenges the United States faces in collecting unpaid AD/CV duties is largely due to the retrospective nature of the duty collection process. We strongly take issue with the implication that, unless we change to a prospective system of AD/CV duty assessment, the agencies responsible for duty collection would be unable to address this problem.

See comment 1.

Despite indications in the report to the contrary, under both prospective and retrospective systems, the final determination of duty liability is made not at the border, but rather at a later date based on the results of any review or lack thereof. The infrequency of reviews under prospective systems is the primary reason why duties tend to be assessed more quickly in such systems than in the United States' retrospective system. The main difference between the two systems is that prospective systems will never collect additional duties when dumping, pursuant to a review, is found to increase. Further, we believe strongly that the under-collections at issue have unique factors that contributed to the problem, and that such factors could exist under either a prospective or retrospective system. Indeed, based on our analysis of the information presented in the GAO's March 2008 report on AD and CV duties, the key factors contributing to under-collection are most likely to be: 1) the insufficient amount of continuous bonds and 2) minimal information regarding importers.

See comment 2.

See comment 3.

See comment 4.

Thank you again for the opportunity to comment on the draft report. Enclosed is an attachment with specific technical comments relating to the text of the report.

Sincerely,

Christopher A. Padilla

Enclosure



**Comments on GAO Draft Report 08-876R: Agencies Believe Strengthening International Agreements to Improve Collection of Antidumping and Countervailing Duties Would Be Difficult and Ineffective**

**Page 1, Second Paragraph, Sentence 3:** “A key factor we identified as contributing to these uncollected AD/CV duties is the retrospective nature of the U.S. AD/CV duty system.”

See comment 5.

**Comment:** In several places the report states that the retrospective nature of our AD/CVD system is a key factor in the under collection of duties. This is not true. The fact that our system is retrospective allows us to ascertain the specific extent of dumping on a sale-by-sale basis rather than merely accepting, as final, the estimated amount of duties determined based on past trading behavior and collected on the entries of the merchandise. A key difference between the prospective and retrospective systems is that under the retrospective system authorities are able to quantify the amount by which the estimated AD and CV duties (i.e., cash deposits) are too low or too high. Therefore, a retrospective system does not, per se, cause under collection; it merely allows us to quantify the difference between estimated duties and the actual duties owed, where prospective systems do not. Despite indications in the report to the contrary, under both prospective and retrospective systems, the final determination of duty liability is made not at the border, but rather at a later date based on the results of any review or lack thereof. The infrequency of reviews under prospective systems is the primary reason why duties tend to be assessed more quickly in such systems than in the United States’ retrospective system. The main difference between the two systems is that prospective systems will never collect additional duties when dumping, pursuant to a review, is found to increase.

**Page 2, First Partial Paragraph, Last Sentence:** “For example, we suggested Congress consider requiring the relevant agencies to perform an analysis and report to Congress on the relative advantages and disadvantages of the U.S. retrospective AD/CV duty system compared to other systems where the final amount of duties is known and paid when the goods enter the country.”

See comment 2.

**Comment:** The underlying observation for this suggestion (“where the final amount of duties is known and paid when the goods enter the country”) is factually inaccurate. In all systems (prospective or retrospective), parties have a right to request a review. The final determination of duty liability is made, not at the border, but rather at a later date based on the results of any review or lack thereof. Until that right under the WTO

Agreement has been requested or waived, the final determination of duty liability cannot be made in a manner consistent with the WTO.

**Page 3, First Bullet of Section Entitled "Results in Brief":** "... other major trading partners have AD/CV duty systems that establish the final amount of AD/CV duties when goods enter the country."

See comment 2.

Comment: As mentioned above, this is factually inaccurate.

**Page 4, Bullet Entitled "Retrospective nature of the U.S. AD/CV duty system.":** "... the final amount of duties owed may exceed the amount of cash deposits the importer paid at the time of entry, and CBP must attempt to collect from the importer long after the products enter the country. By the time CBP is able to take collection action, illegitimate importers (foreign or domestic) may have disappeared in order to evade the duties and legitimate importers may be financially unable to pay the duties."

See comment 6.

Comment: This problem would not appear to be tied to the retrospective nature of the U.S. system, but rather stems from the fact that certain parties have been successful at finding ways to abuse elements of our system (e.g., the insufficient bonding problem identified on page 5 of the draft report). Also, illegitimate activities (e.g., the use of "fly by night" or "shell" companies) could occur in a situation where there was a short period between the time the products entered the country and efforts at final collection took place.

**Page 7, Second Paragraph, Second Sentence:** "Unlike the United States, other major trading partners have AD/CV duty systems that establish the final amount of AD/CV duties owed at the time goods enter their country."

See comment 2.

Comment: As mentioned above, this mischaracterizes prospective systems and implies that other major trading partners have AD/CV duty systems that establish the final amount of AD/CV duties owed at the time goods enter their country.

**Page 11, Last Sentence of First Paragraph:** "In addition, we suggested that Congress consider (1) requiring the relevant agencies to conduct an analysis of the relative advantages and disadvantages of different AD/CV duty systems, (2) requiring CBP to publicly report annually on uncollected AD/CV duties, and (3) providing Commerce with discretion to establish minimum thresholds for the amount or value of exports when conducting certain AD/CV duty investigations. (emphasis added)"

See comment 7.

Comment: With regard to item "(3)", the actual suggestion was to provide Commerce with such discretion for new shipper reviews.

**Page 11, Section Entitled "Concluding Observations":** "As long as the United States maintains a system that involves attempting to collect duties from importers years after they



import products into the United States, it will have difficulties collecting the full amount of duties owed."

See comment 1.

**Comment:** As indicated above, we disagree with the report's assertion that the challenges the United States faces in collecting unpaid AD/CV duties is largely due to the retrospective nature of the duty collection process. Further, we strongly take issue with the implication that, unless we change to a prospective system, the agencies responsible for duty collection would be unable to address this problem. Rather than concluding at this time that we "will have difficulties collecting" as long as we maintain a retrospective system, it would seem appropriate to first evaluate the effectiveness of implementing GAO's various recommendations in the March 2008 report.

## GAO Evaluation

1. The Department of Commerce (Commerce) commented that they disagree with our report's assertion that the challenges the United States faces in collecting unpaid AD/CV duties are largely due to the retrospective nature of the duty collection process and that, unless changed to a prospective system, the agencies responsible for duty collection would not be able to address this problem. We did not draw this conclusion in this report or our March 2008 report (GAO-08-391). Rather, in our March 2008 report we included a comprehensive review of the key factors contributing to uncollected AD/CV duties and concluded that the retrospective component of the U.S. AD/CV duty system was one of four key factors contributing to uncollected AD/CV duties. We also analyzed two sets of options for Congress and relevant agencies to consider: one that would eliminate the current system's retrospective nature and make it prospective, based on an analysis of the relative advantages and disadvantages; and a second that would involve adjusting aspects of the current U.S. AD/CV duty system while retaining its retrospective nature. In response to Commerce's comments, we revised the report to add this broader context from our earlier report.

However, our analysis and other agencies' views indicate that the retrospective nature of the U.S. AD/CV duty system is a key factor contributing to uncollected AD/CV duties.

- In our March 2008 report, we discussed the fact that uncollected AD/CV duties arise when the final amount of duties owed (as determined by an administrative review by Commerce) exceeds the amount of estimated duties paid by the importer when the goods entered the country. When this occurs, CBP must attempt to collect the additional amount from the importer. Our analysis showed that, on average, more than 3 years elapsed from the time goods entered the country to the time when the final AD/CV duty rate is determined. In addition, we found that when AD duty rates increase (16 percent of the time), the average increase was 62 percentage points. According to the Department of the Treasury (Treasury) and U.S. Customs and Border Protection (CBP), this creates significant collection problems. Illegitimate importers expect that their final assessment will exceed their cash deposit and plan to avoid their final duty obligation, according to Treasury and CBP officials, while other importers are unable to pay the additional amount because it exceeds their available assets.
- In addition, in commenting on our March 2008 report, the Departments of the Treasury and Homeland Security provided

additional insights regarding the challenges created by the retrospective component of the U.S. AD/CV duty system. In responding to that report, Treasury stated that, “If there were no retrospective component to the U.S. AD/CV duty law, we would expect the duty collection rate to be similar to that for other duties, over 99 percent.” In addition, the Department of Homeland Security (which is responsible for collecting AD/CV duties) responded that eliminating the retrospective component of the U.S. AD/CV duty system would, among other things, “Alleviate the collection issues faced by CBP due to substantial rate increases since the amount of duty assessed at entry would be the final amount owed.”

2. We disagree with Commerce’s characterization of how prospective AD/CV duty systems operate. In our March 2008 report, we examined the prospective AD/CV duty systems of major U.S. trading partners (European Union, Canada, and Australia) and noted that, while each country’s AD/CV duty system operates differently, their reviews have a prospective effect (i.e., the new duty rate/normal value that results from the review is applied to future imports). We also noted in our March 2008 report that WTO members are required to allow importers to request reviews of the amount of AD duties they have paid if they believe they are owed a refund.
3. We disagree with Commerce’s assertion that the main difference between prospective and retrospective AD/CV duty systems is that “prospective systems will never collect additional duties when dumping, pursuant to a review, is found to increase.” Our March 2008 report included analysis of other countries’ prospective AD/CV duty systems, and explored the trade-offs in prospective and retrospective system, as well as a matter for congressional consideration to require additional analysis of the relative advantages and disadvantages of prospective and retrospective AD/CV duty systems.

In our March 2008 report we indicated that prospective and retrospective AD/CV duty systems differ in a variety of ways, and the specific design features of each system influence their relative advantages and disadvantages. We discussed three characteristics which illustrate the trade-offs associated with prospective and retrospective systems: (1) timing for determining and collecting final AD/CV duties, (2) “accuracy” of AD/CV duties paid, and (3) administrative simplicity for customs officials. In addition, our prior report specifically addressed different systems’ ability to address increased dumping. For example, we noted that under the Canadian system (which bases AD duties on the “normal value” of the product), “. . . the amount of duties owed, if any, varies based on the export price. The lower the export price, the greater the duties owed, and vice versa.” We further added that, “Because the amount of the duty increases with

the degree of dumping, the Canadian system provides a direct financial incentive for firms to reduce or eliminate dumping.”

4. In its comments to our March 2008 report and this report, Commerce suggests that two other factors identified in our March 2008 report—insufficient bond amounts and minimal information regarding importers—are the “most likely” factors contributing to uncollected AD/CV duties. To address this comment, we revised this report’s introduction to include a discussion of each of the four key factors contributing to uncollected AD/CV duties identified in our March 2008 report and outlined two sets of options for addressing those factors.

We agree that CBP’ insufficient continuous bond formula and minimal information regarding importers are key factors and recommended that the Secretary of Homeland Security, in consultation with other relevant agencies, should determine whether CBP can adjust its bonding requirements to further protect revenue. As we discussed in our March 2008 report, however, addressing these factors is not without costs and other challenges. For example, we noted that increasing bond requirements increases costs for importers and has been challenged in U.S. courts and in the WTO. Further, increasing information requirements for importers would create a significant administrative burden on CBP and may not improve CBP’s ability to collect AD/CV duties. We also observe that if the U.S. AD/CV duty system did not have a retrospective component (and therefore did not require attempting to collect additional amounts from importers years after products enter the country), uncollected U.S. AD/CV duties would be effectively eliminated.

5. In commenting on whether the retrospective nature of the U.S. AD/CV duty system is a key contributing factor to uncollected AD/CV duties, Commerce states that: “The fact that the U.S. AD/CV duty system is retrospective allows us to ascertain the specific extent of dumping on a sale-by-sale basis rather than merely accepting, as final, the estimated amount of duties determined based on past trading behavior. . . .” First, this statement (which implies that prospective AD/CV duty systems treat the duties paid when products enter the country as final) contradicts Commerce’s earlier statement that, “. . . under both prospective and retrospective systems the final determination of duty liability is made not at the border, but rather at a later date based on the results of any review or lack thereof.” Second, our March 2008 report acknowledged that there are trade-offs involved in considering prospective and retrospective AD/CV duty systems. As a result, we suggested that Congress consider requiring the Secretaries of Commerce, Homeland Security, and the Treasury work together to conduct an analysis of the relative advantages and disadvantages of prospective and retrospective AD/CV duty systems. Among the trade-offs we identified in our March 2008 report are:

- *Timing for determining and collecting final AD/CV duties.* In prospective AD/CV duty systems, the amount of AD/CV duties paid by the importer at the time of importation is essentially treated as final, which creates certainty for importers, enabling legitimate importers to plan their business operations. In a retrospective system, the amount of AD/CV duties owed is not determined until well after the time of importation, which generates the collection risks for the U.S. government created by the time lag.
  - *“Accuracy” of AD/CV duties paid.* Under a prospective AD/CV duty system, the amount of duties assessed may not match the amount of actual dumping or subsidization, but the government is able to collect the full amount of duties owed because they are paid at the time of importation. Under a retrospective AD/CV duty system, the amount of duties assessed exactly reflects the amount of dumping or subsidization, but, in practice, a substantial amount of retrospective AD/CV duty bills are not collected.
  - *Administrative simplicity for customs officials.* Retrospective AD/CV duty systems can create a substantial burden for customs officials; prospective systems create a smaller burden.
6. Commerce commented that the problem of illegitimate importers disappearing in order to evade the duties and legitimate importers being unable to pay the duties “would not appear to be tied to the retrospective nature of the U.S. system, but rather stems from the fact that certain parties have been successful at finding ways to abuse elements of our system (e.g., the insufficient bonding problem. . .)” As we recommended in our March 2008 report, we believe that the Secretary of Homeland Security, in consultation with other relevant agencies, should 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. However, the fact remains that, if the U.S. AD/CV duty system did not have a retrospective component (and therefore did not require attempting to collect additional amounts from importers years after products enter the country), uncollected U.S. AD/CV duties would be effectively eliminated.

Commerce also commented that “. . . illegitimate activities (e.g., the use of “fly by night” or “shell” companies) could occur in a situation where there was a short period between the time the products entered the country and efforts at final collection took place.” We believe that a time lag between when products enter the country and when final duty collection takes place creates a risk of uncollected AD/CV duties and is an important trade-off to consider in evaluating the relative advantages and disadvantages of prospective and retrospective AD/CV duty systems. In our March 2008 report, we indicated that under the U.S. retrospective system, this time lag, on average, exceeds 3 years. We also

## Enclosure III

reported that under other countries' prospective AD/CV duty systems that we reviewed, the duties assessed at the time a product enters the country are essentially treated as final (allowing for importers to request a review if they believe they are owed a refund).

7. We have revised the text to clarify that our recommendation related to "new shipper reviews."

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