



Distribution of Interest to Affected Domestic Producers under the CDSOA

Fiscal Year 2015 Report to Congress
July 2, 2015



Homeland
Security

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

July 2, 2015

I am pleased to submit the following report, "Distribution of Interest to Affected Domestic Producers under the CDSOA," prepared by U.S. Customs and Border Protection (CBP).



This document has been compiled pursuant to a requirement in the Explanatory Statement accompanying the *Fiscal Year 2015 Department of Homeland Security Appropriations Act* (P.L. 114-4). This report discusses the interest that is distributable to affected domestic producers under the *Continued Dumping and Subsidy Offset Act* (CDSOA), which, with limited exceptions supported by law, has been consistently distributed by CBP since 2001. It also addresses when affected domestic producers can expect to receive additional distributions, which depends upon when ongoing litigation and verifications are resolved.

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

The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

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

The Honorable John Hoeven
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jeanne Shaheen
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 or the Department's Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink, appearing to read "K. McAleenan". The signature is written in a cursive, professional style.

Kevin K. McAleenan
Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

Under the CDSOA, the only amounts that CBP is authorized to deposit into the Special Account and later distribute to affected domestic producers are duties and interest that are “assessed” and received “under [an] antidumping order or finding or [a] countervailing duty order.” Under the *Tariff Act of 1930*, the phrase “assessed... under [an] antidumping order or finding or [a] countervailing duty order” has a specific meaning and refers to amounts that are due when liquidation of the entry occurs. With respect to interest payments received by CBP, the only type of interest that is “assessed... under [an] antidumping order or finding or [a] countervailing duty order” and therefore becomes part of the duty assessment is the interest provided for in 19 U.S.C. § 1677g, which accrues between the date that the estimated duties are deposited and the date that the entry is liquidated. With limited exceptions supported by law, all interest distributable to affected domestic producers under the CDSOA has been consistently distributed by CBP since 2001.

The exceptions where CBP withholds certain distributions involve pending CDSOA litigation or verifications of producers’ claims for distributions. With respect to pending CDSOA litigation, CBP withholds the estimated share that the litigants would receive if they prevailed in litigation from the funds distributed for the antidumping or countervailing duty cases involved in the ongoing CDSOA litigation. This approach of withholding CDSOA funds pending the outcome of litigation has been upheld by the Court of International Trade. Once a final decision is reached in the pending litigation, the funds associated with the particular antidumping or countervailing duty case will be distributed. Additionally, in the event that CBP seeks verification of a producer’s certification of qualifying expenditures, the producer’s alleged pro rata share of CDSOA distributions may be withheld pending the producer’s submission of sufficient supporting documentation. Funds withheld from distribution pending the outcome of litigation or verifications will include antidumping or countervailing duties assessed and received by CBP, as well as the assessed and received 1677g interest.

Since 2001, CBP has distributed over \$3 billion to affected domestic producers under the CDSOA. As of March 17, 2015, the total amount of interest that CBP was withholding pending the outcome of litigation and verifications was \$2,433,593.17. Of this amount, \$702,329.00 was distributed by CBP in April 2015 due to the resolution of certain litigation. After these distributions were made, the total amount of interest withheld by CBP pending the outcome of litigation and verifications is \$1,731,264.17. This amount is subject to change based upon the filing of additional CDSOA litigation, the resolution of current litigation, the responses to current or future verification requests, the impact of sequestration, and the receipt of additional collections that are distributable under the CDSOA.



Distribution of Interest to Affected Domestic Producers under the CDSOA

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I. Legislative Language

This document was compiled pursuant to the legislative language set forth in the Explanatory Statement accompanying the *Fiscal Year 2015 Department of Homeland Security Appropriations Act* (P.L. 114-4).

The Explanatory Statement states:

The Commissioner is directed to pursue, through all possible means, the dispersal of interest payments owed to injured parties who have obtained funds under the Continued Dumping and Subsidy Offset Act. That law states that “the Commissioner shall distribute all funds from assessed duties received in the preceding fiscal year to affected domestic producers,” which has been understood to mean interest accrued from past duties identified and dispersed to injured parties. CBP shall provide a report on all interest payments owed to injured parties between the beginning of 2001 and the end of 2014, along with a path forward for dispersing such funds to the injured parties.

II. Background

Antidumping duties are imposed upon imported merchandise that the U.S. Department of Commerce (Commerce) has found is, or is likely to be, sold in the United States at less than its fair value. Countervailing duties are imposed upon imported merchandise that Commerce determines benefit from subsidies bestowed by a foreign government. In all antidumping cases, and in most countervailing duty cases, these duties are only assessed if the U.S. International Trade Commission (ITC) determines that the imported goods cause material injury, or the threat of material injury, to a domestic industry. The rules and procedures concerning proceedings leading to orders or findings under which antidumping and countervailing duties are assessed are found in 19 U.S.C. § 1671 *et seq.*, in part 207 of the regulations of the ITC (19 C.F.R. chapter II, part 207), and in part 351 of the regulations of the International Trade Administration, Commerce (19 C.F.R. chapter III, part 351).

U.S. Customs and Border Protection (CBP) assesses antidumping and countervailing duties on imported merchandise at liquidation as instructed by Commerce. *See* 19 U.S.C. §§ 1671e(a)(1) and 1673e(a)(1). These assessments are to occur within 6 months after CBP receives notice from Commerce of the removal of a suspension of liquidation required by statute or court order under 19 U.S.C. § 1504(d). *See* 19 U.S.C. § 1500. The term “liquidation” is defined in this context as the final computation or ascertainment of the duties accruing on an entry. *See* 19 C.F.R. § 159.1.

A. The CDSOA

The *Continued Dumping and Subsidy Offset Act* (CDSOA) was enacted on October 28, 2000, as part of the *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001* (P.L. 106-387; 114 Stat. 1549). The provisions of the CDSOA are contained in Title X (sections 1001-1003) of the Appendix.

The CDSOA amended Title VII of the *Tariff Act of 1930* by adding a new section 754 (codified at 19 U.S.C. § 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the *Antidumping Act of 1921*, would be distributed by Customs to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an antidumping duty order or finding, or countervailing duty order. This distribution is called the continued dumping and subsidy offset.

The CDSOA was repealed through the *Deficit Reduction Act of 2005*, P.L. 109-171, § 7601(a) (2006). However, the language of the repeal provided that distributions of

antidumping and countervailing duties would continue to be made in future fiscal years for entries subject to an antidumping or countervailing duty order if the entry was made before October 1, 2007. *Id.* at § 7601(b). As a result, the distribution process would continue until all entries made before October 1, 2007, were liquidated and the duties were collected.

Congress further limited future distributions under the CDSOA in the *Claims Resolution Act of 2010*, P.L. 111-291, § 822 (2010), as amended by P.L. 111-312, § 504 (2010). Under the *Claims Resolution Act*, as amended, there will be no CDSOA distributions of duties collected from entries that, as of December 8, 2010, were unliquidated, not in litigation, and not under an order of liquidation from Commerce. The antidumping and countervailing duties that are collected for these entries, and for all other entries that are not distributable under the CDSOA, are ultimately deposited in the General Fund of the U.S. Treasury. Due to the statutory constraints in the assessment of antidumping and countervailing duties, the distribution process will continue for an undetermined period.

B. Special Account, Clearing Account, and Interest on Such Accounts

The CDSOA directed CBP to establish a Special Account for each antidumping duty order or finding or countervailing duty order. Antidumping or countervailing duties liquidated pursuant to the order or finding are deposited into the Special Account for distribution to affected domestic producers who have qualifying expenditures and file certifications for the particular fiscal year. To facilitate this process, CBP also established a Clearing Account into which all cash deposits of estimated antidumping or countervailing duties are initially deposited. After the entries are liquidated, these antidumping and countervailing duties are transferred from the Clearing Account to the Special Account for the appropriate order or finding. When transferred to the Special Account, the antidumping or countervailing duties are considered to be received by CBP and distributions are made from that Special Account. *See* 19 U.S.C. § 1675c(e); 19 C.F.R. § 159.64.

In accordance with Federal appropriations law and Treasury guidelines on Special Accounts governed by this law, funds in such accounts are not interest-bearing unless specified by Congress. Likewise, funds being held in Clearing Accounts are not interest-bearing unless specified by Congress. Therefore, no interest accrues on funds in the CDSOA Special Account or Clearing Account. However, as explained further below, if there is interest collected by CBP on any antidumping or countervailing duties billed in the liquidation process pursuant to 19 U.S.C. § 1677g, that interest will be transferred to the Clearing Account or Special Account, as appropriate. *See* 19 U.S.C. § 159.64(e).

C. Distribution of Assessed Duties Received as Continued Dumping and Subsidy Offset

Distributions must be made from the Special Account not later than 60 days after the first day of a fiscal year from the antidumping or countervailing duties assessed and received during the preceding fiscal year. *See* 19 U.S.C. § 1675c. To obtain a distribution of the offset under a given order or finding, an affected domestic producer (and anyone alleging eligibility to receive a distribution) must submit a certification to CBP for each order or finding under which a distribution is sought to CBP indicating the producer's desire to receive a distribution. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer or allege another basis for eligibility. *See* 19 U.S.C. § 1675c(d)(2); 19 C.F.R. § 159.63.

If the net claims for a particular antidumping or countervailing duty case exceed the available offset for a fiscal year, such offset will be subject to a pro rata allocation to each of the affected domestic producers based upon the total of the net claims certified. *See* 19 U.S.C. § 1675c(d)(3); 19 C.F.R. § 159.64(c)(2). As provided in 19 C.F.R. § 159.64(f), except in the case of an overpayment made by CBP to an affected domestic producer or a clerical error by CBP, any distribution from the Special Account made by CBP to an affected domestic producer will be final and conclusive on the affected domestic producer.

D. Verifications

The certifications submitted by producers are subject to CBP's verification. Parties are required to maintain records supporting their claims for a period of 5 years after the filing of the certification. *See* 19 C.F.R. § 159.63(d). The records must support each qualifying expenditure enumerated in the certification, and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding. *Id.* In the event that a distribution is made to a producer from whom CBP later seeks verification of the certification and sufficient supporting documentation is not provided as determined by CBP, then the amounts paid to the producer are recoverable by CBP as an overpayment.

III. Distributable Interest under the CDSOA

As set out below, with limited exceptions supported by law, all interest distributable to affected domestic producers under the CDSOA has been consistently distributed by CBP since 2001.

A. Interest on Antidumping and Countervailing Duties

When importing merchandise into the United States for consumption, the importer may provide a cash deposit to cover the amount of duties and fees that he or she estimates will be due for the entered merchandise and secure a bond to cover any additional liability. *See* 19 U.S.C. §§ 66, 1623, 1624. Due to the retrospective nature of the United States' antidumping and countervailing duty laws, there is a delay in time between when an importer enters goods for consumption and when CBP liquidates the entry to calculate the final bill. If the final antidumping or countervailing duty rate at liquidation is higher than the cash deposit rate at the time of entry, meaning the importer did not deposit enough money to pay the antidumping and countervailing duties it owes, then interest will be assessed at liquidation on such unpaid duties pursuant to 19 U.S.C. § 1677g. This type of interest is commonly referred to as 1677g interest or pre-liquidation interest.

B. Interest Subject to Distribution under the CDSOA

The CDSOA provides that CBP shall deposit into the Special Account for distribution to affected domestic producers “all antidumping or countervailing duties (including interest earned on such duties) that are assessed . . . under the antidumping order or finding or the countervailing duty order.” *See* 19 U.S.C. § 1675c(e)(2); *see also* 19 U.S.C. § 1675c(d)(3). Thus, the only amounts that CBP is authorized and required to deposit into the Special Account and distribute to affected domestic producers under the CDSOA are duties and interest that are “assessed” and received “under [an] antidumping order or finding or [a] countervailing duty order.”

Under the *Tariff Act of 1930*, the phrase “assessed . . . under [an] antidumping order or finding or [a] countervailing duty order” has a specific meaning and refers to amounts that are due when liquidation of the entry occurs. *See* 19 U.S.C. §§ 1671e, 1673e, 1671f, 1673f (governing assessment of final antidumping and countervailing duties). The only interest that is “assessed . . . under [an] antidumping order or finding or [a] countervailing duty order” within the meaning of the *Tariff Act of 1930* and the CDSOA is 1677g interest, which is the only type of interest included in the antidumping and countervailing duty assessment statutes. *See* 19 U.S.C. §§ 1671f(b), 1673f(b). The 1677g interest becomes part of the duty assessment at liquidation, which is reflected in the text of the

CDSOA through use of the parenthetical explanation that “duties” includes the interest component of the assessed duties (i.e., 1677g interest).

By contrast, other types of interest, such as delinquency interest that accrues under 19 U.S.C. § 1505(d), are not “assessed . . . under the antidumping order or finding or the countervailing duty order” within the meaning of the *Tariff Act of 1930* and do not become part of the duty assessment at liquidation. As a result, other types of interest collected by CBP are not distributable under the CDSOA, as set out in CBP’s regulation and the accompanying Federal Register notice. *See* 19 C.F.R. § 159.64(e) (“statutory interest charged on antidumping and countervailing duties at liquidation will be transferred to the Special Account, when collected from the importer”); 66 Fed. Reg. 48546, 48550 (Sept. 21, 2001) (“only interest charged on antidumping and countervailing duty funds themselves, pursuant to the express authority in 19 U.S.C. 1677g, will be transferred to the special accounts and be made available for distribution under the CDSOA”).

With limited exceptions supported by law as explained below, all interest distributable to affected domestic producers under the CDSOA has been consistently distributed by CBP since 2001.

C. Possible Change to Allocation of Principal and Interest on Late Partial Payments

When importers do not pay their antidumping or countervailing duty bills on time, delinquency interest under 19 U.S.C. § 1505(d) accrues. Importers also sometimes fail to make full payment to CBP and their bonds do not cover the full amounts owed. Currently, if the bond amount collected is less than the full amount owed, CBP applies the partial payment it receives to the delinquency interest owed before applying it to the delinquent principal. As noted above, CBP does not distribute delinquency interest under the CDSOA, so the longer a bill has been outstanding, the more delinquency interest will accrue and the less principal will be available for CDSOA distribution. To address situations such as this one, CBP is exploring the possibility of changing the allocation of principal and interest on late partial payments received on CBP bills in certain circumstances to allow the Agency to provide greater priority for payments to affected domestic producers.

IV. Interest Awaiting Distribution under the CDSOA and When Distribution Can Be Expected

A. Funds Withheld From Distribution Pending the Outcome of Litigation

A significant amount of litigation has challenged various provisions of the CDSOA, including who qualifies as an “affected domestic producer” and is entitled to CDSOA distributions. For instance, in *PS Chez Sidney, L.L.C. v. United States ITC*, 684 F.3d 1374 (2012), the Court of Appeals for the Federal Circuit held that PS Chez Sidney, L.L.C. was an affected domestic producer entitled to CDSOA distributions. *Id.* at 1383. The court also suggested that PS Chez Sidney, L.L.C. may need to be treated in the same manner as any other affected domestic producer that was eligible to receive CDSOA distributions, even if sufficient funds no longer remained in the Special Account for the fiscal years at issue. *Id.* at 1383-84.

In light of these issues, CBP has withheld the estimated share that the litigants would receive if they prevailed in litigation from the funds distributed for the antidumping or countervailing duty cases involved in the ongoing CDSOA litigation. These funds are comprised of antidumping and countervailing duties assessed and received by CBP, as well as the assessed and received 1677g interest. Once a final decision is reached in the pending litigation, the withheld funds associated with the particular antidumping or countervailing duty case will be distributed. The Court of International Trade has upheld CBP’s practice of withholding CDSOA funds pending the outcome of litigation involving those funds. See *Southern Shrimp Alliance v. United States*, 617 F. Supp. 2d 1334, 1347-48 (Ct. Int’l Trade 2009).

B. Funds Withheld From Distribution Pending the Outcome of Verifications

A particular producer’s alleged pro rata share of CDSOA distributions may also be withheld pending the outcome of the producer’s verification of its certification. As mentioned above, producers are required to maintain records supporting their claims for a period of 5 years after the filing of the certification. See 19 C.F.R. § 159.63(d). The records must support each qualifying expenditure enumerated in the certification, and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding. In the event that CBP seeks verification of the certification, the producer’s alleged pro rata share of future CDSOA distributions may be withheld pending the producer’s submission of sufficient supporting documentation to CBP. This alleged pro rata share will include antidumping or

countervailing duties assessed and received by CBP, as well as the assessed and received 1677g interest. Once sufficient supporting documentation is received by CBP, then the withheld funds will be distributed to the affected domestic producer. If sufficient supporting documentation is not received, then the withheld funds will be distributed to affected domestic producers that are entitled to distributions based on their pro rata shares.

C. Interest Amount Currently Withheld and When Distribution of that Amount Can Be Expected

Since 2001, CBP has distributed over \$3 billion to affected domestic producers under the CDSOA. As of March 17, 2015, the total amount of 1677g interest that CBP was withholding pending the outcome of litigation and verifications was \$2,433,593.17. Of this amount, \$702,329.00 was attributable to CDSOA litigation involving funds associated with wooden bedroom furniture from China. Due to recent final decisions in the CDSOA litigation involving funds associated with wooden bedroom furniture from China, the \$702,329.00 of 1677g interest was distributed by CBP in April 2015 via separate checks for each fiscal year. After these distributions were made, the total amount of 1677g interest withheld by CBP pending the outcome of litigation and verifications is \$1,731,264.17.¹ This amount is subject to change based upon the filing of additional litigation, the resolution of current litigation, the responses to current or future verification requests, the impact of sequestration, and the receipt of additional funds that are distributable under the CDSOA. As pending litigation and verifications continue to be resolved, these withheld funds will be distributed to affected domestic producers.

The antidumping and countervailing duty cases impacted by CBP's withholding of funds for litigation are listed in the CDSOA section of CBP's website. The withheld funds reported on CBP's website include the duty and interest amounts that are withheld.

¹ Pursuant to section 251A of the *Balanced Budget and Emergency Deficit Control Act of 1985*, as amended, CDSOA funds are also being withheld for sequestration. See 79 Fed. Reg. 14365 (March 10, 2014). Because the Office of Management and Budget has determined that CDSOA funds sequestered in Fiscal Year 2015 will become available in the subsequent fiscal year, this temporary sequester will have no impact on the Fiscal Year 2015 CDSOA distribution, which affected domestic producers are scheduled to receive not later than 60 days after the first day of Fiscal Year 2016 in accordance with 19 U.S.C. § 1675c(c). See 2 U.S.C. § 906(k)(6). In other words, the CDSOA distribution that affected domestic producers receive for Fiscal Year 2015 in early Fiscal Year 2016 will include the funds that were temporarily sequestered during Fiscal Year 2015.

V. Conclusion

Under the CDSOA, the only interest that CBP is authorized to deposit into the Special Account and to distribute to affected domestic producers is the interest provided for in 19 U.S.C. § 1677g, which accrues between the date that estimated duties are deposited and the date that the entry is liquidated. Other types of interest, such as delinquency interest, are not distributable under the CDSOA, because they are not “assessed . . . under the antidumping order or finding or the countervailing duty order” within the meaning of the *Tariff Act of 1930* and the CDSOA and do not become part of the duty assessment.

Under current regulations, partial payments received from importers or sureties are applied first to delinquency interest before they are applied to the principal balance. As a result, the longer a bill has been outstanding, the less principal will be available for CDSOA distribution when only partial payments are received. To address situations such as this one, CBP is exploring the possibility of changing the allocation of principal and interest on late partial payments received on CBP bills in certain circumstances to allow the agency to provide greater priority for payments to affected domestic producers.

Since 2001, CBP has distributed over \$3 billion to affected domestic producers under the CDSOA. CBP withholds certain distributions involved in pending CDSOA litigation or verifications of producers’ claims for distributions. As pending litigation and verifications continue to be resolved, these withheld funds will be distributed to affected domestic producers.

VI. Appendix – List of Acronyms

Acronym	Definition
CBP	U.S. Customs and Border Protection
CDSOA	<i>Continued Dumping and Subsidy Offset Act</i>
Commerce	U.S. Department of Commerce
ITC	U.S. International Trade Commission