

**CBP Did Not Maximize Its  
Revenue Collection Efforts  
for Delinquent Debt Owed  
from Importers**





# DHS OIG HIGHLIGHTS

## ***CBP Did Not Maximize Its Revenue Collection Efforts for Delinquent Debt Owed from Importers***

December 4, 2018

### **Why We Did This Audit**

One goal of CBP's Revenue Program is to ensure that effective internal controls are in place to protect the duties and taxes it collects. We conducted this audit to determine to what extent CBP's revenue collection process enforces Customs laws.

### **What We Recommend**

We made four recommendations to CBP. When implemented, these recommendations should improve CBP's revenue collection process.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 981-6000, or email us at [DHSOIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHSOIG.OfficePublicAffairs@oig.dhs.gov)

### **What We Found**

U.S. Customs and Border Protection (CBP) does not fully enforce Customs laws over its revenue collection process. CBP failed to ensure the timely collection, write-off, and processing of delinquent debt from importers during fiscal years 2014–2016. Instead, CBP settled for collecting funds from importer surety bonds, which yielded less than 1 percent of the more than \$189 million owed from importers. *The Tariff Act of 1930* requires CBP to collect all duties owed including interest thereon. Additionally, *The Debt Collection and Improvement Act of 1996* requires CBP to maximize its collections of delinquent debts owed to the Government. These laws entail quick action to enforce recovery of debts and the use of all appropriate collection tools.

CBP did not exhaust all administrative efforts in its collection duties. This included completing required research — currently known as viability analysis worksheets — to determine the importer's ability to pay the debt, and the availability of assets to ensure the timely collection or termination of a debt. Additionally, CBP's inability to properly track debt prevented the processing of more than \$84 million of the delinquent debt during fiscal years 2014–2016.

As of FY 2017, CBP had more than \$4.3 billion of cumulative uncollectible duties, taxes, and fees — some dating back almost 40 years. This outstanding cumulative debt will continue to increase without CBP completing the viability analysis worksheets to enable the timely pursuit or termination of delinquent debt, and the ability to monitor and properly track debt collection and write-offs.

### **CBP's Response**

CBP concurred with the recommendations and described corrective actions it is taking and plans to take. We consider the recommendations open and resolved.



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Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

December 4, 2018

MEMORANDUM FOR: Samuel D. Grable  
Assistant Commissioner  
Enterprise Services Office  
U.S Customs and Border Protection

FROM: Sondra F. McCauley   
Assistant Inspector General for Audits

SUBJECT: *CBP Did Not Maximize Its Revenue Collection Efforts for  
Delinquent Debt Owed from Importers*

Attached for your action is our final report, *CBP Did Not Maximize Its Revenue Collection Efforts for Delinquent Debt Owed from Importers*. We incorporated the formal comments provided by your office.

The report contains four recommendations aimed at improving CBP's revenue collection process. Your office concurred with all four recommendations. Based on information provided in your response to the draft report, we consider all recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts. Please send your response or closure request to [OIGAuditsFollowup@oig.dhs.gov](mailto:OIGAuditsFollowup@oig.dhs.gov).

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Maureen Duddy, Deputy Assistant Inspector General for Audits, at (617) 565-8723.

Attachment



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**Abbreviations**

AD/CVD	Antidumping and Countervailing Duties
CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
DOJ	U.S. Department of Justice
ECD	Estimated Completion Date
GAO	Government Accountability Office
OCC	Office of Chief Counsel
U.S.C.	United States Code



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### Background

U.S. Customs and Border Protection (CBP) is a major revenue-collecting agency in the Federal Government, and its operations have a significant impact on the security and facilitation of legitimate international commerce and America's economic competitiveness.

CBP has a statutory responsibility to collect revenue owed to the U.S. Government that arises from the importation of goods into the United States. Although in fiscal year 2017 CBP collected \$40 billion in duties, taxes, and fees, more than \$4.3 billion in its allowance for doubtful account for cumulative duties, taxes, and fees remained delinquent and uncollectible — some dating back almost 40 years. Revenue collection is one of CBP's most important and oldest functions, and was recently re-designated a Priority Trade Issue per the *Trade Facilitation and Trade Enforcement Act of 2015*, effective February 2016.<sup>1</sup>

Priority Trade Issues are high-risk trade areas that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people. The Revenue Priority Trade Issue focuses on enforcing trade laws, facilitating legitimate trade, and collecting lawfully owed duties and fees. Revenue collection is considered high-risk because importers make illicit attempts to evade payment of duties and fees, and circumvent trade practices, which results in them defrauding the U.S. Government and undermining lawful business.

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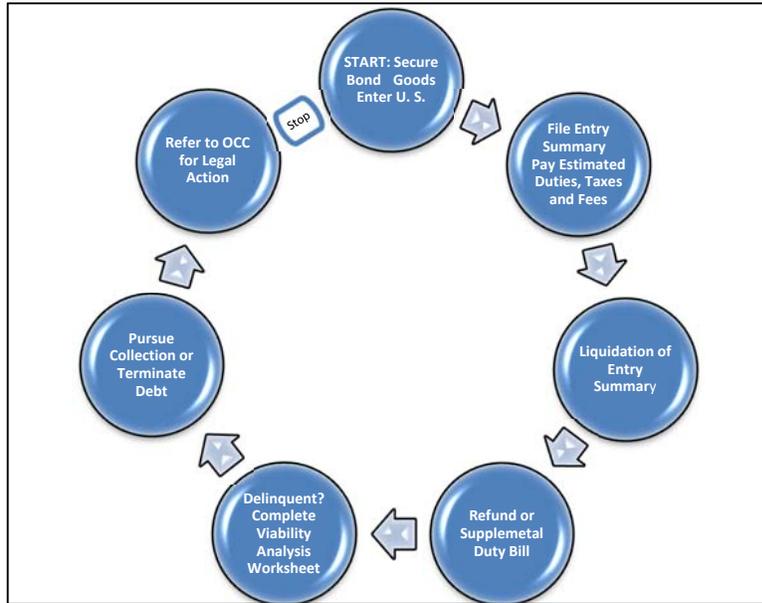
<sup>1</sup> *Trade Facilitation and Trade Enforcement Act of 2015*, 19 United States Code (U.S.C.) § 4322(a)(5) (2016).



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**Figure 1: CBP Trade Revenue Collection Process**



Source: DHS OIG based on CBP Trade Data and Interviews

The CBP trade revenue collection process starts with the importation of goods into the United States (see figure 1), which requires the importer to obtain a bond to import merchandise — exceeding \$2,500 in value — for commercial purposes, or for commodities subject to other Federal agencies requirements (*i.e.*, firearms or food). Bonds tend to serve as insurance policies that protect the Government from revenue loss when importers fail to fulfill their financial obligations.

Customs Regulation (19 Code of Federal Regulations (CFR) Part 113) authorizes CBP to require surety bonds, which may be single transaction bonds<sup>2</sup> or continuous bonds.<sup>3</sup> The type of bond elected depends on how the importer enters merchandise into the United States. If an importer only imports on occasion, then a single transaction bond is required; otherwise, CBP will require a continuous bond. Once a bond is secured, entry summary documents are filed that pertain to merchandise classification, duties, taxes, and fees.

When the goods enter the United States and estimated duties, taxes, and fees are paid, CBP import specialists at various ports of entry perform “liquidation” of the entry, generally within 314 days. This is the final calculation of the duties, taxes, and fees that the importer should have paid at the time of import. The import specialists complete the liquidation in CBP’s Automated Commercial System, and generate either a refund or a supplemental duty bill when the importer owes additional duties, taxes, and fees. The importer has 30 days to pay the supplemental duty amount, and when payment is not made by

<sup>2</sup> A single entry bond is generally in an amount not less than the total entered value, plus any duties, taxes and fees. The amount of any CBP bond must not be less than \$100, except when the law or regulation expressly provides that a lesser amount may be taken.

<sup>3</sup> The continuous bond amount is generally calculated based on the amount of customs duties, taxes and fees paid or to be paid, and not the value of the imported cargo. The minimum continuous bond amount is the greater of \$50,000 or 10 percent of the total taxes and fees paid in the previous 12-month period.



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the due date, the debt officially becomes delinquent. CBP's Debt Management Division (Revenue) attempts to collect these delinquent debts from the importer, as well as from the surety bond.

However, trade activities sanctioned as Antidumping and Countervailing Duties (AD/CVD)<sup>4</sup> may require additional time for collection and create unique challenges for CBP. When either of these occur, U.S. manufacturers or businesses file petitions with the International Trade Commission. If the International Trade Commission finds evidence of injury to the U.S. industry, the Department of Commerce (Commerce) does an investigation. If the results are positive, CBP withholds liquidation of entries and collects AD/CVD. The entries are not liquidated until Commerce instructs CBP headquarters to do so. The AD/CVD can result in additional collection delays, which in some cases can last years from entry date to the date when CBP can begin its collection efforts. Additionally, importer- or surety-initiated protests can further delay CBP's collection efforts for approximately 180 to 240 days after liquidation. During the prolonged collection cycle, debtors may go out of business, disappear, file for bankruptcy, or otherwise avoid AD/CVD collection efforts.

After liquidation occurs and the protest period has expired, Revenue issues dunning letters<sup>5</sup> to the importer in attempts to collect the debt owed. Additionally, during this time, Revenue is required to conduct all research utilizing a viability analysis worksheet. This worksheet assists Revenue in determining the importer's ability to pay the debt, and the availability of assets to pursue further collection or recommend termination of a collection action against the importer.

Revenue also attempts collection against the surety, for which there is a 6-year statute of limitation to collect. When Revenue cannot collect from the surety or from the importer through its own efforts and requires legal enforcement assistance to collect, it refers the debt with the appropriate supporting documentation to its Office of Chief Counsel (OCC) for further action.

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<sup>4</sup> Anti-dumping (AD) occurs when a foreign manufacturer sells goods in the United States at less than fair value, causing injury to the U.S. industry. AD cases are company specific; the duty is calculated to bridge the gap back to a fair market value. Countervailing duties (CVD) cases are established when a foreign government provides assistance and subsidies, such as tax breaks to manufacturers that export goods to the United States, enabling the manufacturers to sell the goods cheaper than domestic manufacturers. CVD cases are country specific, and the duties are calculated to duplicate the value of the subsidy.

<sup>5</sup> A dunning letter is a notification sent to an importer, stating that the importer is overdue in paying an account receivable to the sender. Dunning letters typically follow a progression from polite reminders to more strident demands for payment, if the customer continues to be non-responsive.



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Revenue may make different types of referrals to OCC:

- Importer-only — used to attempt collection from the importer;
- Surety-only — used to attempt collection off the surety bond;
- Importer and Surety — used to attempt importer and surety collection; and
- Write-off — used to obtain concurrence to terminate and write off a debt based on Revenue’s determination that it is no longer collectible.

CBP OCC reviews each claim for legal sufficiency and makes demands for payment or concurs with Revenue’s decision to terminate the debt. OCC also refers claims to the U.S. Department of Justice (DOJ) for litigation, when appropriate. Revenue is responsible for monitoring referrals sent to OCC and any collections made against those referrals. Revenue notifies the importer of record at the time of initial billing and every 30 days after the due date until the debt 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 debt is paid or otherwise closed.

We conducted this audit to determine to what extent CBP’s revenue collection process enforces Customs laws. This is one in a series of audits on CBP’s Revenue Program prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

### Results of Audit

CBP does not fully enforce Customs laws over its revenue collection process. CBP failed to ensure the timely collection, write-off, and processing of delinquent debt from importers during fiscal years 2014–2016. Instead, CBP settled for collecting funds from importer surety bonds, which yielded less than 1 percent of the more than \$189 million owed from importers. *The Tariff Act of 1930* requires CBP to collect all duties owed including interest thereon. Additionally, *The Debt Collection and Improvement Act of 1996* requires CBP to maximize its collections of delinquent debts owed to the Government. These laws entail quick action to enforce recovery of debts and the use of all appropriate collection tools.

CBP did not exhaust all administrative efforts in its collection duties. This included completing required research — currently known as viability analysis worksheets — to determine the importer’s ability to pay the debt, and the availability of assets to ensure the timely collection or termination of a debt. Additionally, CBP’s inability to properly track debt prevented the processing of more than \$84 million of the delinquent debt during FYs 2014–2016.



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As of FY 2017, CBP had more than \$4.3 billion of cumulative uncollectible duties, taxes, and fees — some dating back almost 40 years. This outstanding cumulative debt will continue to increase without completing the viability analysis worksheets to enable the timely pursuit or termination of delinquent debt, and the ability to monitor and properly track debt collection and write-offs.

### **CBP Does Not Maximize Its Revenue Collection or Write-off Efforts**

Revenue failed to exhaust all administrative efforts to further pursue the timely collection or write-off of delinquent debt. Therefore, Revenue only collected \$247,000 from surety bonds and did not pursue collection or write-off of approximately \$189 million of the remaining delinquent debt from 16 importers in FYs 2014–2016. Additionally, Revenue did not complete the required viability analysis worksheets to determine the importers' ability to pay and the availability of assets. As a result, it could not always make referrals to CBP OCC to attempt further collection action or to recommend termination of the debt. The \$189 million is now part of Revenue's debt portfolio, for which it has resorted to the use of private collection agencies to attempt collection or recommend termination of the more than \$4.3 billion cumulative outstanding debt.

#### Surety Referrals Used as a Primary Means of Collection

Revenue has a 6-year statute of limitation in which to collect from a surety; however, there is no time limitation on the collection of an importer's delinquent debt. Consequently, importer delinquent debts remained open and uncollected for years. After Revenue attempted collection of importer delinquent debt and surety bond amounts through its own efforts, it mainly used OCC's legal enforcement assistance to attempt collection against the surety.

Our review of 16 of these referrals, totaling more than \$189 million, showed that of the 16 referrals, 15 were surety-type referrals and one was a referral for termination of debt (write-off). For the 15 surety referrals, Revenue sought OCC's assistance to collect against the surety and not the importer. This resulted in collecting only \$247,000 from surety bonds, which yielded less than 1 percent of the more than \$189 million owed from importers.

The remainder that was not collected from the \$189 million lacked the necessary information needed from the completion of viability analysis worksheets. With this information, Revenue could have possibly pursued further collection through OCC from an importer referral or through a write-off referral if the debt had been deemed uncollectible. However, no further action



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was taken and the delinquent debt was left to be part of the more than \$4.3 billion cumulative uncollectible debt that CBP had as of FY 2017.

CBP's *Debt Collection Handbook*, currently in draft, notes that,

*in debt collection, it is a universal commercial business axiom that the sooner debt is pursued after it is incurred, the more likely it is the debt will be collected. The primary purpose of Customs debt resolution action shall be to collect, as soon and as efficiently as possible, all overdue delinquent debt rightfully owed Customs or to collect as much [of] the debt that is beneficially possible.*

The Handbook notes that experience has also shown that the longer a bill remains delinquent beyond 150 days, the more complex and burdensome Revenue's collection action becomes.

Additionally, the surety-type referrals did not maximize Revenue's collection efforts, because surety bonds are not always intended to cover the full amount of duties, taxes, and fees owed. The bond amounts were usually much lower than the total amounts owed. In most cases, the bonds were for the minimally required amount of \$50,000, which was significantly lower than the amounts the importers owed. As an example, one of the bonds in our sample was for \$50,000, but the importer owed \$31.6 million (see sample #10 in appendix C, "Analysis of 16 Referrals Selected during FYs 2014–2016").

According to a Revenue official, CBP calculates bond amounts based on a formula that has been in place since 1991 (see appendix D for the current Activity Code 1 Continuous Bond Formula). Additionally, the CBP regulation (19 C.F.R. § 113(c)) requires the periodic review of each bond on file to determine whether the bond is adequate to protect the revenue and ensure compliance with applicable law and regulations. Per the Revenue official, these reviews are conducted monthly. If CBP determines the bond to be inadequate, it will require additional security. However, the surety amounts we tested were insufficient to cover the total debts owed.

Despite this process, the Revenue official said that generally they are tasked with collecting the revenue due while not placing an unnecessary burden on international trade and commerce. The official also said that there is a balance to ensure the trade process is competitive and fair to both the consumer and domestic industries. Additionally, the official said that the formula is designed to manage risk, not provide dollar-for-dollar coverage.

In our previous report, *The Efficacy of Customs and Border Protections' Bonding Process* (OIG-11-92), we made recommendations to CBP that addressed the



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surety bond methodology. Specifically, recommendation 4 of the report required improvement of revenue risk management by developing a risk-based bonding methodology for use on high-risk revenue imports that incorporates continuous bonds and single transaction bonds. However, as of September 2018, this recommendation had not been closed. Therefore, this issue of possible bond insufficiency as noted in our sample testing remained for CBP to address. Once addressed, it should assist CBP in bond sufficiency issues.

In addition, although Revenue attempted to collect only the surety, it was not always able to collect the full surety amount. Of the possible \$1,450,000 surety bond amount available for collection, only \$247,000 was collected during our audit period. Consequently, the remaining surety amounts were still pending CBP collection efforts, the surety bond was exhausted,<sup>6</sup> the importer was bankrupt, or the statute of limitation for collection from the surety had expired. Approximately \$189 million in delinquent debt remained uncollected or written-off (see table 1).

**Table 1: Analysis of Referrals and Collections during FYs 2014-2016 (In Thousands)**

Total Importer Debt Amount Owed	Total Surety Bond Amount	Total Actually Collected from Surety Bonds	Total Surety Bond Amount Not Collected	Percent of Surety Collection to Debt Owed	Total Importer Debt Remaining After Bond Collection
<b>\$189,173</b>	<b>\$1,450</b>	<b>\$247</b>	<b>\$1,203</b>	<b>.01</b>	<b>\$188,926</b>

Source: DHS OIG Analysis based on CBP data

Incomplete Viability Analyses to Collect or Terminate Debt

*The Tariff Act of 1930* requires CBP to collect all duties owed, including interest thereon. Additionally, *The Debt Collection and Improvement Act of 1996* requires CBP to maximize its collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools. However, as previously stated, Revenue settled for collecting only against the surety, and did not always complete research needed to timely pursue collection against importers or terminate debts. Due to the lack of completed viability analysis worksheets, Revenue forewent OCC’s assistance to further pursue collection against importers. As a result, Revenue also relinquished the possible use of DOJ’s litigation assistance to further pursue the debts.

<sup>6</sup> Bonds may become exhausted from collection by other CBP offices, such as CBP’s Fines, Penalties and Forfeiture Office, that may have already collected the bond for violations issued and collection of liquidated damages against an importer. Violations include nonpayment of actual duties owed, misclassification or undervaluation of goods, missing entry documents, etc.



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According to CBP’s *Delinquent Tariff Debt Procedure*, when Revenue is unable to collect on a debt through its own efforts, it may refer the debt to CBP OCC for legal action. Revenue must provide OCC with essential information about the debt and its prior debt collection efforts so that OCC can take effective collection action. Additionally, this information is needed to further refer the debt to DOJ for its acceptance and the ability to proceed to litigate the matter.

Revenue currently uses an importer viability worksheet to document its research regarding an importer. That worksheet includes, among other elements, Revenue’s search for other viable addresses, phone numbers, and identifiable assets — the presence of which informs its decision to pursue further collection action or to recommend termination of collection action (see appendix E for an example of a viability analysis worksheet).

Additionally, OCC’s memorandum to Revenue in October 2017, *Requests for Office of Chief Counsel to Take Collection Action*, outlined the minimum information required when making a referral to OCC. Further, it noted that the completed importer viability worksheet and its supporting documentation was one of the essential elements of a collection referral.

Our review of the 16 referrals, totaling more than \$189 million, showed that Revenue usually did not complete viability analysis worksheets and lacked adequate supporting documentation required to pursue or terminate debt collection actions against importers. Specifically:

- 15 of 16 referrals did not contain completed viability analysis worksheets necessary to attempt collection or write-off of approximately \$105 million in delinquent debt; and,
- 11 of 16 referrals did not have documentation to support each importer’s collectibility determination.

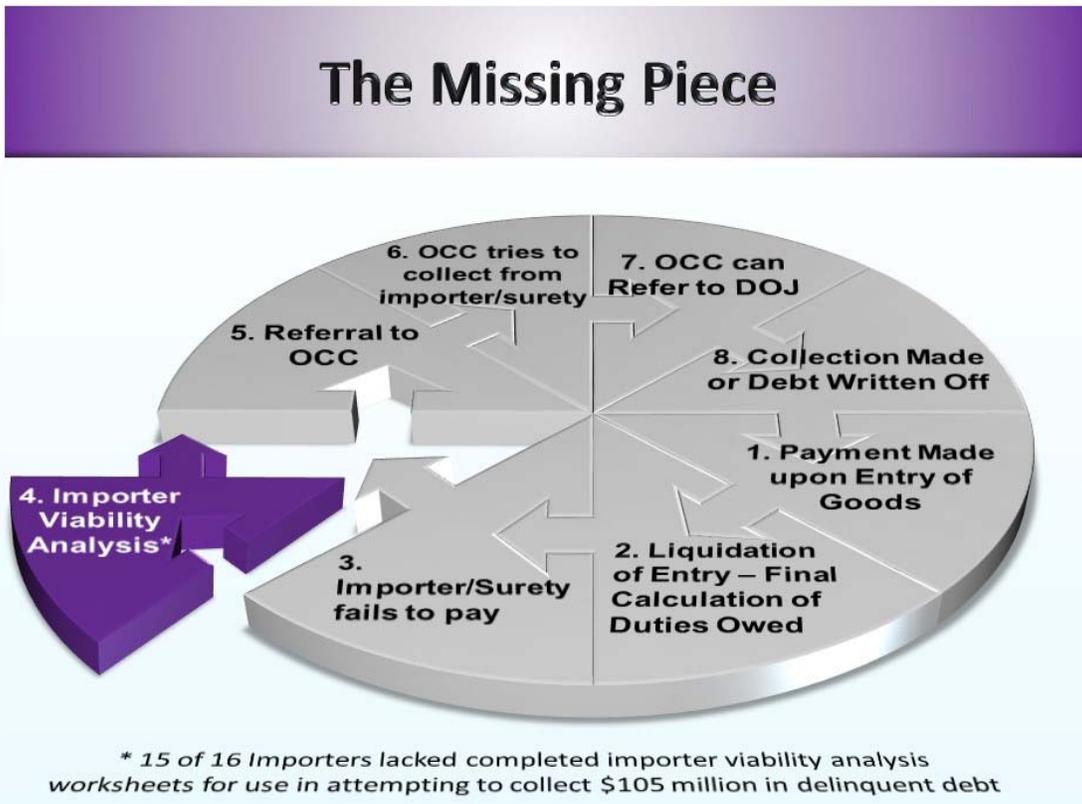
One referral included a completed viability analysis worksheet along with support for debt termination or write-off totaling more than \$84 million. Although this referral was made in July 2014, it was never processed; and as of September 2018, the referral remained unprocessed. We informed Revenue and OCC of this unprocessed referral; see report section “CBP Does Not Fully Ensure the Processing of Referrals” for further details.

Revenue officials believed their cursory reviews — that is, accessing CBP’s Automated Commercial System to determine whether an importer has an active bond and is still actively importing merchandise into the United States — were sufficient to determine the importers’ collectibility. Therefore, they skipped the process of completing the research needed for the viability analysis worksheets and compiling supporting documentation (see figure 2).



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**Figure 2: CBP Viability Analysis Completion**



Source: DHS OIG from CBP Data and Process Interviews

Revenue did not exhaust all administrative efforts by skipping the viability analyses. OCC still requires a completed viability analysis worksheet with all supporting documentation to take further collection action, or to concur with the termination of a debt through a write-off. Had Revenue completed the required viability analyses when it sought collections on the surety bonds, OCC may have been able to also pursue collection from the importers or terminate their debts in a timely matter.

CBP's Use of Private Collection Agencies to Attempt Collection of Debt

As of FY 2017, CBP had cumulative uncollectible duties, taxes, and fees of more than \$4.3 billion — some of them dating back almost 40 years. According to *The Tariff Act of 1930*, CBP is required to collect any additional duties and fees with interest thereon. Additionally, *The Debt Collection and Improvement Act of 1996* notes that Revenue should ensure quick action to enforce recovery of debts and use of all appropriate collection tools. Instead, Revenue has resorted to using private collection agencies in attempt to collect or terminate these debts. In July 2016, Revenue awarded contracts to improve its debt collection effectiveness and use the services of the private collection agencies.



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According to a Revenue official, they are now conducting the research to determine whether an importer is viable and has sufficient assets to cover the delinquent duties, taxes, and fees before transferring the referrals to the private collection agencies. Revenue now wants to ensure that it has exhausted all administrative efforts of collectibility before it goes to the collection agencies, including submitting it to the OCC to confirm that the debt is legitimate. Furthermore, the official said that the collection agencies are merely performing secondary verification that a debt is uncollectible.

However, the scope of private collection agencies' responsibilities includes issuing demand letters; locating and contacting debtors; collecting referred debt (payments made directly to CBP); handling debtor disputes; and developing and maintaining collection case files. The work that private collection agencies perform is similar to the research required to produce viability analysis worksheets — essential information that OCC needs to further pursue or concur with termination of a debt.

In January 2018, CBP began transferring referrals to private collection agencies and assigned \$266 million in delinquent debts for collection action. This debt includes \$12.9 million of the \$189 million from our 16 samples that CBP transferred to the private collection agencies.

As of April 2018, private collection agencies determined \$43,000 of the \$266 million to be uncollectible and were still researching the collectibility of the remaining debt. Revenue has placed the \$43,000 debt on a write-off schedule awaiting official sign-off. In addition, a Revenue official said that if any debt remains uncollectible after the private collection agencies have made their collection efforts, CBP would begin the write-off process for that remaining debt.

If Revenue had completed viability analysis worksheets for the more than \$189 million when the delinquent debt was recognized, CBP may have been able to timely collect the debt directly from the importer.

### **CBP Does Not Fully Ensure the Processing of Referrals**

Revenue lacks a process to document the receipt, and processing and collection of referrals. Instead, Revenue relies on the use of email to communicate referrals, and does not sufficiently monitor and track debt collection or write off referrals. As an example, because CBP did not adequately monitor and track referrals, 2 of 16 referrals from our sample were never processed; one totaled \$304,000 for debt collection, and the other totaled approximately \$84 million for write-off during FYs 2014–2016.



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Revenue makes referrals to OCC on whether to further pursue an importer's debt, surety amount, or both; as well as on whether it concurs with the recommendation to terminate collection action against an importer. Revenue staff forward these referrals to OCC via email with supporting documentation. OCC administrative staff then logs these referrals into OCC's Case Tracking System for subsequent assignment to an attorney for review and legal action.

The use of email has proven to be ineffective in communicating these referrals. Revenue officials said they rarely received acknowledgment that OCC received these referrals. Additionally, Revenue could not monitor the status of the referrals to determine whether they were processed and collected or written off. Our review of the 16 referrals showed that OCC did not acknowledge receipt, or process and collect, or concur with the write-off referral. Specifically:

- Of 16 referrals, 12 (75 percent) lacked supporting documentation to show OCC's receipt of the referrals.
- Of 16 referrals, 8 (50 percent) sent to OCC for processing lacked supporting documentation to demonstrate that Revenue actually sent the referrals to OCC.

Additionally, we found OCC did not process 2 of these 16, totaling more than \$84 million.

- One unprocessed collection referral, dated December 2014 for more than \$304,000, was sent to OCC for collection from a surety bond. OCC had no record of receiving this claim from Revenue and became aware of the referral only after we requested supporting documentation to determine the status of this claim. An OCC official said that the statute of limitations had expired to collect on the surety bond for this claim and, as a result, Revenue was unable to collect \$50,000 from the surety bond. OCC planned to pursue collection of the \$304,000 from the importer, who it believed was still an active corporation with the assets needed to pay the delinquent debt.
- The second unprocessed referral, dated July 2014, was for approval of a write-off of more than \$84 million. Revenue staff coded the referral in its Automated Commercial System as being sent to OCC; however, we found no evidence that it was ever submitted. An OCC official verified that there was no record of receiving this referral and the supporting documentation. Furthermore, Revenue officials were unable to provide support that they actually submitted the referral package. Revenue and OCC officials became aware of this referral only after we requested supporting documentation during our audit.



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OMB Circular A-123 requires Federal agencies to develop and maintain effective internal controls consistent with its established risks in order to provide reasonable assurance that the internal controls over operations, reporting, and compliance are operating effectively. Our test results indicate that Revenue did not have a process to ensure it could track and monitor its referrals for receipt, processing and collection, or write-off.

As a result of our audit, OCC incorporated a new procedure as of October 26, 2017, to send acknowledgments to Revenue, detailing its acceptance or rejection of collection referrals. Although we consider this a start, we believe the corrective action needs to be further strengthened by a tracking process or procedure to accurately capture and document all facets of the collection process — from receipt through processing and collection, or write-off.

Without strengthening CBP's revenue collection process to track and monitor referrals, CBP may continually fail to collect or properly write off delinquent debt.

### **Conclusion**

CBP failed to exhaust all administrative efforts in its collection duties. Without complete viability analyses that enable the pursuit or termination of delinquent debt, CBP could not further pursue to collect or write off more than \$189 million due from importers during FYs 2014–2016. Additionally, CBP's inability to properly track debt referrals prevented the processing of more than \$84 million in delinquent debt. The current outstanding cumulative debt will continue to accumulate without complete viability analysis worksheets to enable the timely pursuit or termination of delinquent debt, and the ability to monitor and properly track debt collection and write-offs. Therefore, without strengthening its revenue collections process, CBP cannot fully protect revenues and ensure the enforcement of U.S. Customs trade laws.

### **Recommendations**

**Recommendation #1:** We recommend the U.S. Customs and Border Protection, Executive Assistant Commissioner, Enterprise Services, continue to develop and implement the risk-based bonding methodology for use on high-risk revenue imports that we recommended in our report, *The Efficacy of Customs and Border Protections' Bonding Process* (OIG-11-92), which incorporates continuous bonds and single transaction bonds to ensure the sufficiency of the bonds to maximize revenue collection on delinquent importer debt.



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**Recommendation #2:** We recommend the U.S. Customs and Border Protection, Executive Assistant Commissioner, Enterprise Services, develop and implement a policy to ensure viability analysis worksheets are completed as required by CBP OCC's Memorandum, *Requests for Office of Chief Counsel to Take Collection Action*, dated October 26, 2017; and viability analyses are completed within a reasonable timeframe to ensure the timely collection or termination of importer debt, such as during the same timeframe as when surety collections are made.

**Recommendation #3:** We recommend the U.S. Customs and Border Protection, Executive Assistant Commissioner, Enterprise Services, develop and implement a plan to ensure that Revenue continues to contract with private collection agencies only after ensuring that required viability analyses have been completed, to assess the viability of collection or write-off of the remaining cumulative uncollectible duties, taxes, and fees of \$4.3 billion; and to either collect or write-off any remaining debt after private collection agencies have completed their collection efforts and determined that the debt is uncollectible.

**Recommendation #4:** We recommend the U.S. Customs and Border Protection, Executive Assistant Commissioner, Enterprise Services, develop and implement a process or procedure — accessible to all CBP offices — to track and monitor referrals or write-offs, including OCC's receipt, processing, and collection of referrals.

### CBP Comments and OIG Analysis

CBP concurred with all four of our recommendations. We have included a copy of the management comments in their entirety in appendix B. CBP acknowledged there was a lack of documentation supporting its collection efforts, and that increased communication between Revenue and OCC would aid in improved tracking of collection referrals.

Although CBP concurred with our recommendations, it raised issues about our report's broader conclusions regarding its administrative efforts in revenue collection. CBP stated that we did not consider matters such as its successes in revenue collections, bonding requirement limitations, AD/CVD challenges, and the limited potential for additional collection actions to increase collections substantially.

We disagree with CBP's assertion that our audit report does not provide full context into the challenges of collecting certain tariff debts even when CBP takes the most aggressive actions, particularly those relating to AD/CVD, which comprised all but one of our sample. We acknowledged that our report



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needed to better depict AD/CVD challenges, and as such, we inserted additional language in the background section of our report. However, our report's message specifically deals with CBP not maximizing collection efforts on delinquent importer debt. Even though there can be delays with AD/CVD-related collections due to protests and Commerce administrative reviews, the referral process — regardless of type of collection claim (AD/CVD vs. non-anti-dumping and countervailing) — remains the same. CBP's own standard operating procedures do not distinguish between types of claims, but rather covers a general referral process.

We also disagree with CBP's statement, "*... even when CBP takes the most aggressive action.*" The context of our report in fact highlights that CBP did not maximize collection efforts because supporting documentation did not include evidence of completed viability analyses (the missing piece) and concise determinations on the collectibility of delinquent importer debt. Had CBP taken these "aggressive" steps for 15 of 16 of our samples to collect not only from sureties but also directly from importers, we believe the breakdown in this key administrative internal control could have been avoided and may have resulted in maximized debt collection. Our position is that CBP was not able to demonstrate, through supporting documentation, that a determination was made on the collectibility of the debt for our sample. Therefore, our conclusion is that not all efforts were taken to maximize collection efforts.

CBP claimed that our report does not take into context CBP's successful collections of nearly \$1 trillion of import-based revenue over the last 40 years. As highlighted in our report, our audit focused on our sample totaling about \$189 million, which is part of the cumulative \$4.3 billion (as reported in CBP's audited FY17 financials) uncollectible delinquent importer debt lawfully owed to the United States. From our review, we concluded that, instead of utilizing the OCC to go after importers, CBP only settled to collect from the surety companies which, in most cases, yielded significantly lower (less than 1 percent) amounts of revenue from the uncollectible debt. Although not detailed in the body of our report, documentation also showed this debt generally just sat in an "idle or neutral" unprocessed status with no actions, including referrals to OCC for an average of 2 years or longer in many cases. This was even after Commerce determinations were made, without either taking place — a collection attempt or a write-off. This information is provided as additional context for what we found during our testing.

CBP stated that our report did not detail its successful collaboration with DOJ. Our report acknowledges DOJ's involvement in the process to collect unpaid import debts through court litigation. From documentation reviewed during our audit, we agree that CBP's use of DOJ resulted in some revenue collection victories through court settlements. However, we found deficient internal



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controls in the referral process because much of our sample never made it to DOJ by way of OCC. This occurred because of a lack of importer referrals and documented evidence of a viable party with sufficient assets to justify CBP filing suit as DOJ requires for litigation. Additionally, before referrals are sent to OCC and ultimately DOJ, research to determine collectibility or a decision on concurrence to write off a debt must be completed. This aligns with the context of our report that assessment of the viability and financial status of an importer is critical before deciding whether to pursue collection or termination of the importer's debt.

CBP commented that additional bonding alone cannot eliminate uncollected debt. Our audit focus was not on CBP's bonding process for importers; we included this discussion because, for our samples, CBP only attempted collection from surety bonds. Our report referred to the bond situations noting examples of why such bonds are inadequate to cover the entire outstanding importers' debt. We also referenced an outstanding audit recommendation from our report, *The Efficacy of Customs and Border Protections' Bonding Process* (OIG-11-92), dealing with shortages in surety bond amounts, improved risk assessment practices CBP should continue to implement.

Finally, as we noted previously, CBP agrees with all of our recommendations. Our report conclusion that CBP did not maximize revenue collection is accurate and is fully supported by the evidence we obtained and reviewed. Because CBP claims that most of the AD/CVD importers are now non-existent, we believe CBP did not maximize collection of additional revenue resulting from the liquidation of those entries. For our 15 samples, if CBP had conducted its research immediately after liquidation of the entries, it may have been able to collect the debt directly from importers.

The following provides CBP's response to each recommendation and our analysis.

**Response to Recommendation #1:** Concur. CBP Office of Trade's development of an initial risk-based bonding methodology is in the final stages. Tabletop exercises were conducted with members of the surety industry in April 2018. Improvements and adjustments identified during the tabletop exercises have been incorporated into the risk-based bonding model and data updates and analyses are being completed. Once updates are completed, documentation of the model and methodology will be finalized. The model is focused on risk for non-payment or default on AD/CVD owed. A formula for potential additional bonding for AD/CVD has been developed that identifies:

- The potential CBP exposure an individual importer represents for AD/CVD;



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- A base rate that would be applied to all AD/CVD importers; and
- Importer specific risk factors based on an importer's actual or potential activities.

After the initial AD/CVD risk-based bonding is finalized, additional planned work includes expanding to other priority trade risk areas and identifying relevant risk factors to integrate into this risk-based bonding model. The full implementation of the risk-based bonding model will require additional automation work and possible regulatory changes. Estimated Completion Date (ECD): October 31, 2018.

**OIG Analysis:** CBP's described corrective action is responsive to our recommendation. However, this recommendation will remain open and resolved until CBP provides documentation that the risk-based bonding process has been implemented. The original recommendation from our report, *The Efficacy of Customs and Border Protections' Bonding Process* (OIG-11-92), will also remain open and resolved until we have reviewed documentation supporting full implementation of CBP's risk-based bonding model.

**Response to Recommendation #2:** Concur. CBP's Office of Finance finalized data elements on the viability analysis worksheets to ensure standardized documentation of its collection efforts. Additionally, its policy and procedures document will address the entire debt collection process managed within the Office of Finance's Revenue Division, including timeframes associated with the viability analysis to ensure timely collection or termination of importer debt. The policy and procedures document will be completed by September 30, 2018. ECD: February 28, 2019.

**OIG Analysis:** CBP's corrective action is responsive to the recommendation. The recommendation will remain open and resolved until we have received and evaluated the finalized viability analysis worksheet standards and the policy and procedure document.

**Response to Recommendation #3:** Concur. CBP's Office of Finance renewed its contract with one of its private collection agencies while the other private collection agency chose not to exercise the option. As outlined in the response to recommendation 2, the viability analysis worksheet standards have been finalized. The private collection agency will attempt to collect only after viability analyses have been completed. CBP stated that supporting documentation was previously provided under separate cover and requested that the OIG consider this recommendation resolved and closed as implemented.

**OIG Analysis:** CBP's corrective action is responsive to the recommendation. Although CBP has requested closure of this recommendation, we have not received the updated contract nor the finalized version of the viability analysis



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worksheet. This recommendation will remain open and resolved until we have received and evaluated the renewed contract with the private collection agency and the approved finalized viability analysis worksheet with updated data elements and procedures as outlined in CBP's responses.

**Recommendation #4:** Concur. The Office of Finance's Revenue Division and OCC created an internal site utilizing a SharePoint/Knowledge Management System to monitor and track collection and write-off referrals, both from the Revenue Division to OCC, and from OCC back to the Revenue Division. This system is accessible to all CBP offices requiring access. CBP stated that implementation was completed on April 17, 2018, and that supporting documentation was previously provided under a separate cover. CBP requested that the OIG consider this recommendation resolved and closed as implemented.

**OIG Analysis:** CBP's corrective action is responsive to the recommendation. Although in May 2018, CBP said that the management system was operational, it has not provided us supporting documentation to demonstrate the system's operation and usage. Therefore, the recommendation will remain open and resolved until we have reviewed documentation supporting the implementation and usage of the SharePoint/Knowledge Management System.



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### **Appendix A**

#### **Objective, Scope, and Methodology**

The Department of Homeland Security Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public L. 107-296, 116 Stat. 2135) and by amendment to the *Inspector General Act of 1978*.

Our audit objective was to determine to what extent CBP's revenue collection processes enforce Customs laws. To accomplish our objective, we conducted interviews with officials from CBP Headquarters' Office of Field Operations, Centers for Excellence and Expertise, and Office of Chief Counsel. We also conducted interviews with CBP program officials from the Assistant Chief Counsel, the National Finance Center; the Revenue Division Debt Management Branch in Indianapolis; Office of Field Operations at Miami and Chicago Ports of Entry; CBP's National Targeting Center; and the U.S. Department of Justice.

We identified and reviewed prior DHS OIG, Government Accountability Office, and KPMG reports for previously identified findings related to our audit. We obtained demonstrations and walkthroughs of CBP's Automated Commercial Environment system, used for commercial trade processing; the Automated Commercial System, used to track importer transactions; and the Office of Chief Counsel's Case Tracking System to understand system referral tracking and reporting capabilities.

We researched and analyzed Federal criteria related to collection and protection of revenue, and reviewed standard operating procedures and directives related to collection procedures. We assessed CBP's control structure, policies, procedures, and practices applicable to revenue collection from delinquent importers.

Our audit objective as originally worded included CBP's revenue collection process over high-risk trade activities. We considered high-risk trade activities as CBP's efforts to collect on outstanding delinquent debt. We therefore limited our audit scope to focus on instances in which CBP was unable to collect revenues from delinquent importer debt consisting of unpaid duties, taxes, and fees. Our sample consisted of delinquent debt referrals made to CBP's Office of Chief Counsel for possible collection or litigation assistance.

To determine whether Revenue effectively uses its referral process to attempt collection of delinquent debt owed, we judgmentally selected 16 of 280 Revenue referrals sent to CBP's Office of Chief Counsel for legal action during FYs 2014-2016. The total assessed value of the population was more than \$270 million. We stratified the population by fiscal year and by importer. We selected



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referrals made by different importers for each fiscal year to account for 10 percent or more of the assessed total value as follows:

- 6 referrals during FY 2014, totaling approximately \$9.5 million;
- 4 referrals during FY 2015, totaling approximately \$2.8 million; and
- 6 referrals during FY 2016, totaling approximately \$26 million.

The total assessed value of these 16 referrals equals 14 percent of the more than \$270 million of the total population.

Each of these Revenue referrals relates to an importer and associated delinquent bills at the time of the referral. Because some collection referrals for an importer may have had greater than 100 associated duty bills, we elected to select no more than 20 duty bills per importer.

We relied on CBP's Automated Commercial System for the universe of total referrals. We deemed the data sufficiently reliable for conclusions made regarding the referrals tested. We analyzed the referral documentation that Revenue provided and subsequent collection efforts that the Office of Chief Counsel and Assistant Chief Counsel completed.

We conducted this performance audit between February 2017 and May 2018 pursuant to the *Inspector General Act of 1978*, as amended, and according to the Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence, to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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**Appendix B**  
**CBP Comments to the Draft Report**

1300 Pennsylvania Avenue NW  
Washington, DC 20229



**U.S. Customs and  
Border Protection**

September 25, 2018

MEMORANDUM FOR: Sondra F. McCauley  
Acting Assistant Inspector General for Audits  
Office of Inspector General

FROM: Henry A. Moak, Jr.   
Senior Component Accountable Official  
U.S. Customs and Border Protection

SUBJECT: Management Response to Draft Report: "CBP Did  
Not Maximize its Revenue Collection Efforts for  
Delinquent Debt Owed from Importers"  
(Project No. 17-022-AUD-CBP)

Thank you for the opportunity to review and comment on this draft report. U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

CBP is already well on its way to implementing the recommendations in the OIG's draft report. However, we disagree with many of the OIG's broader conclusions, which do not take into account the practical realities that make collection of certain tariff debts more difficult, even when CBP takes the most aggressive collection actions. Due to this lack of important context and information, the draft report leads one to believe that the majority of customs revenue goes uncollected and that additional collection actions by CBP would substantially increase collection rates – both of which are incorrect. As demonstrated below, a more comprehensive understanding of the larger picture and some of the nuances, challenges, and legal context is needed to fully understand CBP's revenue collection efforts.

The OIG's report does not place uncollected importer debts in the accurate context of CBP's substantial success in collecting nearly all of the United States' import-based revenue over the last 40 years. CBP has collected more than \$900 billion in import revenue since 1986, and data published by the U.S. International Trade Commission indicates that about another \$93 billion in duties was collected from 1978-1985, for total collections of about \$1 trillion during the last 40 years. While the \$4.3 billion that the OIG identified as uncollected debt during the last 40 years represents only 0.4% of that



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\$1 trillion total, it should be noted that CBP has successfully collected about 99.6% of customs revenue during the last 40 years.

The draft report also does not mention CBP's successful collaboration with the Department of Justice (DOJ) to collect unpaid import debts in court. In fact, CBP has had multiple revenue collection victories in court throughout the year.<sup>1</sup> In addition, CBP has successfully imposed additional bonding requirements on high-risk importations, after labor-intensive assessments of the specific imports and related entities, and defended such requirements from legal challenge.<sup>2</sup>

We are also concerned that without acknowledging the many reasons for importer nonpayment, the draft report inaccurately concludes that changes to CBP procedures or increased CBP actions would have resulted in significant additional collections. We dispute that conclusion for several reasons. For example, additional bonding alone cannot eliminate uncollected importer debts, a point with which multiple sureties have expressed agreement.<sup>3</sup> CBP is legally constrained in how it requires additional bonds. For instance, wholesale, general bond increases across the importing public have been held unlawful.<sup>4</sup> Moreover, sureties associated with thousands of CBP bonds and millions of dollars of unpaid debts have entered receivership, liquidation, or become insolvent. As is true in the federal bankruptcy process, even under the best circumstances, CBP will not receive a full recovery of the debt secured by bonds from these sureties. Even solvent sureties do not always fulfill their legal obligation to pay amounts owed upon demand, as evidenced by the collection cases cited wherein CBP was forced to ask the DOJ to file suit against the surety in court.

Although the draft report discusses customs revenue collection generally, the audit team only sampled and examined uncollected debts resulting from the assessment of antidumping or countervailing duties (AD/CVD), a type of customs revenue subject to complex legal and procedural requirements. CBP's ability to collect AD/CVD is significantly impacted by the United States' retrospective AD/CVD system and the willingness and ability (or lack thereof) of importers to pay AD/CVD. In some cases, it is further hampered by exploitation of the legal review and due process requirements that are inherent in the United States (U.S.) AD/CVD system. The challenges posed by the AD/CVD assessment system have been well documented by CBP, as well as several external audit reports dating back to 2008.<sup>5</sup>

<sup>1</sup> *United States v. American Home Assurance Co.*, 857 F.3d 1329 (Fed. Cir. 2017); *United States v. American Home Assurance Co.*, 789 F.3d 1313 (Fed. Cir. 2015); *United States v. C.H. Robinson Co.*, 760 F.3d 1376 (Fed. Cir. 2014); *United States v. Great American Ins. Co. of New York*, 229 F. Supp. 3d 1306 (Ct. Int'l Trade 2017); *United States v. American Home Assurance Co.*, 151 F. Supp. 3d 1328 (Ct. Int'l Trade 2016); *United States v. American Home Assurance Co.*, 113 F. Supp. 3d 1297 (Ct. Int'l Trade 2015).

<sup>2</sup> *Harmoni Int'l Spice Inc. v. United States*, 211 F. Supp. 3d 1298 (Ct. Int'l Trade 2017); *Kwo Lee v. United States*, 70 F. Supp. 3d 1369 (Ct. Int'l Trade 2015); *Int'l Fresh Trade Corp. v. United States*, 26 F. Supp. 3d 1363 (Ct. Int'l Trade 2014); *Yin Xin Int'l Trading Co., Ltd. v. United States*, No. 13-00392, Memorandum and Order (Ct. Int'l Trade Dec. 23, 2013).

<sup>3</sup> *JTSA / CSEC ADD/CVD Recommendations to CBP* (Jan. 17, 2013), available at <http://itsabond.org/white-papers/>.

<sup>4</sup> *National Fisheries Institute, Inc. v. United States Bureau of Customs and Border Protection*, 637 F. Supp. 2d 1270 (Ct. Int'l Trade 2009).

<sup>5</sup> GAO-08-391; GAO-08-876R; GAO-11-693T; GAO-12-131R; GAO-16-542; GAO-17-618; and, OIG-11-92.



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More specifically, under the U.S. AD/CVD system, CBP collects the estimated AD/CVD at the time of entry, either in the form of cash or a bond as security. The final AD/CVD amount an importer is obligated to pay is not known at the time of entry and will not be known until after the U. S. Department of Commerce (Commerce) conducts an annual review of the AD/CVD order, or after a final court decision has been issued when there is litigation over Commerce's determinations. Commerce usually completes an administrative review one to two years after the entry of merchandise occurred.<sup>6</sup> Commerce's findings may then be subject to judicial review by the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit or, with respect to imports from Canada or Mexico, review by a bi-national panel. Therefore, final determination of the AD/CVD amount to be collected on an entry may not be settled until the conclusion of litigation, during which time CBP is often enjoined from liquidating (or taking final action to issue a bill) subject entries. Due to this process, CBP is often legally unable to issue bills for AD/CVD until years after the importation of merchandise has occurred. In that time, the importer (who has usually sold the goods long before CBP can issue a bill for additional duties) often becomes unwilling or unable to pay an increase in duties owed.

In addition to the significant delay in issuing AD/CVD bills inherent in the U.S. AD/CVD retrospective system, other legal factors inherent in the duty collection process often further lengthen the period of time between importation and the moment when CBP is able to use all of its collection tools on an unpaid debt. For example, 19 U.S.C. § 1514 permits an importer to file a protest to challenge certain decisions related to liquidation of an entry. A surety may also file a protest if it wishes to challenge CBP's demand against its bond. Since 2004, the statute and CBP regulations have allowed for the filing of a protest up to 180 days after the date of notice of liquidation (which is also usually the initial bill date) or demand on the surety. Moreover, the protesting party may seek further administrative review of CBP's initial decision to deny a protest. During a protest, the unpaid amounts remain due and accrue interest. Generally, CBP will not sanction an importer during such a protest, and CBP will evaluate whether to require an increased bond from an importer based on a debt that is under protest since the protest may be decided in an importer's favor, negating the liquidation and cancelling the bill.

Furthermore, importers of AD/CVD merchandise who incur the largest unpaid debts share certain characteristics that strongly suggest that they never intended to pay, or lacked the financial ability to ever pay any significant increases in duties that result from Commerce's review of their entries. Often referred to as "shell companies," these importers are characterized by having few assets and being lightly capitalized or undercapitalized. From the outset, they lack the financial resources to pay large AD/CVD bills issued years after the goods have been imported and sold. Too frequently,

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<sup>6</sup> If no review is requested, Commerce will issue automatic instructions requesting CBP to liquidate at the amount of the cash deposit or bonding rate.



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by the time CBP is able to take action to collect the debts resulting from their entries, these importers have gone out of business, entered bankruptcy, or simply disappeared, leaving few or no locatable assets that could satisfy a bill or a judgment. CBP is employing efforts to identify these companies earlier, and to require additional bonding where possible. CBP's efforts include but are not limited to Enforce and Protect Act investigations, risk-based bonding, suspension and debarment, and earlier debt collection actions on both the importer and the surety.

Many importers with substantial unpaid debts are domiciled in other countries or have most of their assets and operations in other countries, which is lawful. However, the lack of reciprocal revenue agreements between the U.S. and the countries in which these foreign importers reside severely restricts the legal options available to CBP, or the DOJ, to collect on these debts. There are virtually no legal enforcement tools that CBP can use, financial or otherwise, to collect from a foreign importer who refuses to pay a CBP bill.

The OIG's conclusion on CBP's administrative efforts in revenue collection are unsupported by the evidence in the OIG's limited sample. As Appendix A, of the draft report acknowledges, the OIG's findings are based on 16 out of 280 revenue referrals sent to CBP's Office of Chief Counsel. In addition, in only one of the 16 cases does the OIG state that CBP missed an opportunity to collect revenue – \$50,000 under a surety bond – but the OIG acknowledges that CBP may still collect from the importer regardless. In none of the cases reviewed by the OIG did the OIG identify facts supporting that the importer would have, or could have, made payment if only CBP had taken additional collection steps against the importer. Moreover, the OIG does not provide any evidence that CBP could have legally required additional bonding at the time of entry on any of the entries comprising the sixteen samples.

The draft report does not convey that CBP has been overwhelmingly successful at collecting the customs revenue of the U.S. The OIG's conclusion that CBP did not maximize its revenue collection efforts is misleading and does not fairly balance with the facts of CBP's success.

The draft report contained four recommendations, with which CBP concurs. Attached find our detailed response to the recommendations. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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### Attachment: Management Response to Recommendations Contained in Project No. 17-022-AUD-CBP

The Office of Inspector General (OIG) recommended that the U.S. Customs and Border Protection (CBP), Executive Assistant Commissioner, Enterprise Services:

**Recommendation 1:** Develop and implement the risk-based bonding methodology for use on high-risk revenue imports that we made in our report, “The Efficacy of Customs and Border Protections’ Bonding Process,” OIG-11-92, which incorporates continuous bonds and single transaction bonds to ensure the sufficiency of the bonds to maximize revenue collection on delinquent importer debt.

**Response:** Concur. The CBP Office of Trade’s development of an initial risk-based bonding methodology is in the final stages. Tabletop exercises were conducted with members of the surety industry in April 2018. Improvements and adjustments identified during the tabletop exercises have been incorporated into the risk-based bonding model and data updates and analysis are being completed. Once updates are completed, documentation of the model and methodology will be finalized. The model is focused on risk for non-payment or default on Antidumping / Countervailing Duty (AD/CVD) owed. A formula for potential additional bonding for AD/CVD has been developed that identifies:

- The potential CBP exposure an individual importer represents for AD/CVD;
- A base rate that would be applied to all AD/CVD importers; and
- Importer specific risk factors based on an importer’s actual or potential import activities.

After the initial AD/CVD risk-based bonding is finalized, the next planned work will be to expand to additional priority trade risk areas and identify relevant risk factors to integrate into this risk-based bonding model. The full implementation of the risk-based bonding model will require additional automation work and possible regulatory changes. Estimated Completion Date (ECD): October 31, 2018

**Recommendation 2:** Develop and implement a policy to ensure: (1) viability analysis worksheets are completed as required by CBP OCC’s Memorandum, Requests for Office of Chief Counsel to Take Collection Action, dated October 26, 2017; and (2) viability analysis are completed within a reasonable timeframe to ensure the timely collection or termination of importer debt, such as during the same timeframe as when surety collections are made.

**Response:** Concur. The CBP Office of Finance (OF) has finalized the data elements on the viability analysis worksheets to ensure standardized documentation of its collection efforts. The policy and procedure document will address the entire debt collection process managed within the OF Revenue Division to include timeframes associated with



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the viability analysis to ensure timely collections or termination of importer debt. The policy and procedures document will be completed by September 30, 2018. ECD: February 28, 2019

**Recommendation 3:** Develop and implement a plan: (1) to ensure that Revenue continues to contract with the private collection agencies only after ensuring that the required viability analysis has been completed, to assess the viability of collection or write-off of the remaining cumulative uncollectible duties, taxes, and fees of \$4.3 billion; and (2) to either collect or write-off any remaining debt after the private collection agencies have completed their collection efforts and have determined that the debt is uncollectible.

**Response:** Concur. CBP OF renewed its contract with one of the private collection agencies while the other private collection agency chose not to exercise the option. As outlined in the response to Recommendation 2, the viability analysis worksheets have been finalized. The private collection agency will attempt to collect only after the viability analysis has been completed.

Supporting documentation was previously provided under separate cover. We request that the OIG consider this recommendation resolved and closed as implemented.

**Recommendation 4:** Develop and implement a process or procedure — accessible to all CBP offices — to track and monitor referrals or write-offs, including OCC's receipt, processing, and collection of referrals.

**Response:** Concur. The OF Revenue Division and the Office of Chief Counsel (OCC) created an internal site utilizing a SharePoint/Knowledge Management System to monitor and track collection and write-off referrals, both going to the OCC from the OF Revenue Division and returning to the OF Revenue Division from OCC. This system is accessible to all CBP offices requiring access. Implementation was completed on April 17, 2018.

Supporting documentation was previously provided under separate cover. We request that the OIG consider this recommendation resolved and closed as implemented.



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**Appendix C**  
**Analysis of 16 Referrals Selected During FYs 2014-2016**  
**(In Thousands)**

Sample No.	A Type of Referral to OCC	B Importer Viability Analysis Completed	C Other Support Provided As Evidence of Importer's Ability to Pay	D Importer Debt Sampled	E Total Importer Debt	F Total Bond Amount	G Total Amount Collected on Bond	H Total Debt Remaining After Bond Collection or Bill Payment
1	Surety only	No	None	\$1,676	\$2,457	\$50	\$0	\$2,457
2	Surety only	No	<ul style="list-style-type: none"> <li>• Emails discussing Dunn &amp; Bradstreet Report</li> <li>• California Secretary of State Business Search</li> </ul>	\$542	\$542	\$50	\$0	\$542
3	Surety only	No	None	\$1,545	\$1,545	\$50	\$50	\$1,495
4	Surety only	No	None	\$1,541	\$1,541	\$50	\$50	\$1,491
5	Surety only	No	None	\$304	\$304	\$50	\$0	\$304
6	Surety only	No	None	\$593	\$9,340	\$50	\$0	\$9,340
7	Surety only	No	National Targeting Center doc provided	\$1,166	\$4,681	\$50	\$0	\$4,681
8	Surety only	No	None	\$4,913	\$11,381	\$50	\$0	\$11,381
9	Surety only	No	None	\$5,246	\$11,074	\$100	*\$97	\$10,977
10	Surety only	No	None	\$12,152	\$31,600	\$50	\$0	\$31,600
11	Surety only	No	None	\$2,675	\$17,856	\$100	\$0	\$17,856
12	Write-Off	Yes	Viability / Research Analysis Template	\$2,237	\$84,131	\$50	\$50	**\$84,081
13	Surety only	No	None	\$814	\$1,577	\$50	\$0	\$1,577
14	Surety only	No	None	\$1,010	\$1,091	\$600	\$0	\$1,091
15	Surety only	No	Limited Support – Word Doc	\$2,463	\$8,238	\$50	\$0	\$8,238
16	Surety only	No	Lexis Nexis research printout	\$1,815	\$1,815	\$50	\$0	\$1,815
			<b>TOTALS</b>	<b>\$40,692</b>	<b>\$189,173</b>	<b>\$1,450</b>	<b>\$247</b>	<b>\$188,926</b>

Source: DHS OIG Analysis based on CBP data

\*\$100,000 collected by DOJ in the 2010 Settlement Agreement, under which 3 percent was retained, and the remaining \$97,000 was provided to Revenue. OCC officials instructed Revenue to write off the amount in 2012.

\*\* Sample 12 represents a write-off request of more than \$84 million in delinquent debt not collected by CBP.

Column E: Surety-type referrals include total importer debt to ensure enough debt is available to cover the amount of the surety bond.



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**Appendix D**  
**Activity Code 1 Continuous Bond Formula**

**Current Bond Formulas**  
(Updated: 10/24/2013)

Listed below are the past and current bond formulas for Activity Code 1 (Importer/Broker) continuous bonds. The current bond formulas are now being administered by the Office of Administration, Revenue Division for all bonds that are reviewed or processed by the Bond Team. This document amends CBP Directives 099 3510-004 and 099 3510-005. A new comprehensive CBP Directive will be issued at a later date.

Reviewers (1) ..... 1  
Analytical (2)..... 2

**Field**

$\underbrace{\text{Duties, Taxes \& Fees} \times 10\%}_{\text{previous calendar year}} =$

minimum bond amount or \$50,000  
(rounded up or down by increments of \$10,000 up to \$100,000 and then by increments of \$100,000)

Based on past CBP Directive

**Reviewers (1)**

**Revenue Division**

$\underbrace{\text{Duties, Taxes \& Fees} \times 10\%}_{\text{previous 12 months}} =$

= minimum bond amount or \$50,000  
(rounded up by increments of \$10,000 up to \$100,000 and then by increments of \$100,000)

Based on current CBP Directive (amended)



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**Analytical (2)**

<p>(Duties, Taxes &amp; Fees) x 10%</p> <p style="margin-left: 40px;">previous 12 months</p> <p align="center">+</p> <p>10% - unpaid bills not protested and less than 210 days or protsted</p> <p align="center">+</p> <p>\$ for \$ - delinquent bills not protested and over 210 days or denied protest</p> <p align="center">+</p> <p>\$ for \$ debit vouchers unpaid</p> <p align="center">+</p> <p>\$ for \$ bills paid by surety</p>	<p>=</p> <p align="center">→</p> <p align="center">→</p> <p align="center">→</p> <p align="center">→</p> <p align="center">→</p> <p align="center">→</p>	<p>minimum bond amount <span style="border: 1px solid black; padding: 2px;">A</span></p> <p>or \$50,000 (rounded up by increments of \$10,000 up to \$100,000 and then by increments of \$100,000)</p> <p>exact amount <span style="border: 1px solid black; padding: 2px;">B</span></p> <p>exact amount <span style="border: 1px solid black; padding: 2px;">C</span></p> <p>exact amount <span style="border: 1px solid black; padding: 2px;">D</span></p> <p><u>exact amount</u> <span style="border: 1px solid black; padding: 2px;">E</span></p>
<p>total amount <span style="border: 1px solid black; padding: 2px;">A</span> + <span style="border: 1px solid black; padding: 2px;">B</span> + <span style="border: 1px solid black; padding: 2px;">C</span> + <span style="border: 1px solid black; padding: 2px;">D</span> + <span style="border: 1px solid black; padding: 2px;">E</span></p> <p>(rounded up by increments of \$10,000 up to \$100,000 and then by increments of \$100,000)</p>		

Based on current CBP Directive (amended)



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## Appendix E Viability Analysis Worksheet

Validity / Collectibility Research	Prepared			
	Recommendation			
<b>Importer Name:</b>				
<b>Importer Number:</b>				
<b>Total Debt Amount:</b>				
	Y/N	N/A	Date	Comments/ Findings
<b>Is the importer number in ACS / ACE "active" or "inactive"?</b>				
<b>Does the importer have a valid continuous bond?</b>				
<b>Does the importer have a valid single transaction bond?</b>				
<b>Is there full bond coverage?</b>				
<b>Are all bonds saturated?</b>				
<b>Bond statute of limitation: Are we within 6 years of the oldest bill? date:</b>				
<b>What is the last date of continuous bond coverage?</b>				
<b>Any "potential duplicate" importer numbers?</b>				
<b>Any recent entry activity?</b>				
<b>If importer number is "active", when was it last used in connection with an entry?</b>				
<b>If importer number is "Voided"; when did that happen and why?</b>				
<b>Is the importer bankrupt?</b>				
<b>Internet Research</b>				
<b>Search the appropriate Secretary of State site if available (bond may give state of incorporation; try "home" state first).</b>				
<b>Secretary of State's site</b>				
<b>Yahoo, google, Bing, dogpile,</b>				
<b>Does the entity have its own website?</b>				
<b>When was that website last updated?</b>				
<b>Is there a new phone number/addresses that CBP hasn't tried yet?</b>				
<b>Is there evidence of any assets or activity? (Plant warehouses, property locations, online marketing)</b>				
<b>Can you identify company officers or specific individuals linked to this company? Are they affiliated with other businesses?</b>				
<b>If so, search for those individuals to see what they are doing now</b>				
<b>Did you find a phone number(s) for the importer? Results?</b>				
<b>Other website:</b>				
<b>Look up known addresses using Google maps. What can we learn about the location of this business?</b>				
<b>Same Entity; New Name?</b>				
<b>What suppliers / consignees did / do this entity do business with?</b>				

Source: DHS OIG, derived from CBP Debt Management Division Viability Analysis Worksheet



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**Appendix F**  
**Report Distribution**

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