



OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 30, 2020

The Honorable Chuck Grassley
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

The Honorable Richard Neal
Chairman
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Re: Customs Revenue Function Report – Trade Facilitation and Trade Enforcement Act of 2015, Section 112 (OIG-CA-20-014)

Dear Messrs. Chairmen and Ranking Members:

Section 112 of Public Law 114-125, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), requires the Department of the Treasury (Treasury) Office of Inspector General (OIG) to report on (1) the effectiveness of measures taken by U.S. Customs and Border Protection (CBP) with respect to protection of revenue, including (A) the collection of countervailing and antidumping duties; (B) the assessment, collection, and mitigation of commercial fines and penalties; (C) the use of bonds to secure that revenue; and (D) the adequacy of CBP policies with respect to the monitoring and tracking of merchandise transported in bond and collecting duties, as appropriate; (2) the effectiveness of actions taken by CBP to measure accountability and performance with respect to protection of revenue; (3) the number and outcome of investigations instituted by CBP with respect to the underpayment of duties; and (4) the effectiveness of training with respect to the collection of duties for personnel of the CBP. The statute required Treasury OIG to

produce the first report no later than June 30, 2016 and to produce reports biennially, starting in March 2018. We provided you letters in June 2016 and March 2018 to satisfy the first two reporting mandates. These two letters are discussed in the Background section below.

In September 2019, we initiated an audit of CBP's oversight of revenue protection. Our objective was to determine the effectiveness of CBP's protection of revenue in accordance with Section 112 of TFTEA. This is an interim report on our audit work to address our March 2020 reporting mandate. As detailed further below, our audit work was performed to gain an understanding of CBP's processes to protect revenue and to plan for future audit work as we will continue our fieldwork to meet subsequent reporting dates.

Background

Treasury Delegation of Customs Revenue Functions

The Homeland Security Act of 2002 (HSA) established the Department of Homeland Security (DHS). HSA dissolved the legacy United States Customs Service in the Department of the Treasury and transferred all of its functions from Treasury to DHS, except Customs revenue functions, which were to be retained by Treasury.¹ HSA Section 412 stated that Treasury, at its discretion, could delegate—but not transfer—its Customs revenue functions to DHS and retain any duties that were not delegated. Additionally, Treasury was authorized to appoint up to 20 new personnel to work with DHS personnel in performing Customs revenue functions.

Through Treasury Order 100-16, "Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over Customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002" (May 15, 2003), the Secretary of the Treasury delegated the authority over the Customs revenue functions to DHS, with certain exceptions.² Specifically, Treasury would have sole authority to approve regulations concerning a wide range of functions involving revenue or regulating trade for economic purposes including import quotas, trade bans, user fees, origin, copyright and trademark enforcement, duty assessment, classification, valuation, preferential trade programs, and recordkeeping requirements. Per the Treasury Order, Treasury also retained the authority to review proposed Customs revenue rulings and modify or revoke any determination or ruling involving the previously mentioned Customs revenue-related topics. In addition, Treasury would share the chair of the

¹ Pub. L. 107-296, Sections 403, 412, codified at 6 U.S.C. Sections 203 and 212.

² Codified in 19 CFR Part 0, "Transferred or Delegated Authority."

Commercial Operations Advisory Committee (COAC) with DHS.³ All authorities, powers, duties, and responsibilities retained by Treasury relating to Customs revenue functions were delegated through Treasury Directive 18-03, "Delegation to the Deputy Assistant Secretary (Tax, Trade, and Tariff Policy)" (March 30, 2015), to the Deputy Assistant Secretary for Tax, Trade and Tariff Policy.

Had the HSA transferred Customs revenue functions along with the other functions, personnel, assets, and liabilities of the legacy United States Customs Service, authority and responsibility for those functions would have been fully conferred to DHS, like the non-revenue functions enumerated in Section 403(1). However, because the authority for Customs revenue was only delegated, responsibility for this function is still vested in the Secretary of the Treasury, who may rescind or modify the delegation at any time. The regulations at 19 C.F.R. Part 0 illuminate this distinction. The principle is broadly established in 3 U.S.C. 301, the general authorization to delegate functions, which allows delegation of authority but requires retention of responsibility for acts taken pursuant to such delegations.

CBP Customs Revenue Responsibilities

CBP's mission is to safeguard America's borders, thereby protecting the public from dangerous people and materials while enhancing the Nation's global economic competitiveness by enabling legitimate trade and travel. CBP's Office of Trade (OT) implements measures at CBP to align to the Administration's vision of protecting American industry. OT develops policies that guide CBP's trade enforcement efforts and strategic goals relating to the collection of revenue.

CBP's Office of Field Operations (OFO) implements the policies set by OT. OFO operates through a field office structure in which 20 field offices provide managerial oversight and operational assistance to 328 air, land, and sea ports of entry (POEs). The POEs process the legitimate trade of goods coming into the United States while identifying any harmful and noncompliant cargo, such as counterfeit goods, goods misclassified to evade duties, and goods made using forced labor. In fiscal year 2019, the POEs processed goods valued at \$2.67 trillion, and CBP collected \$71.9 billion in duties, making CBP the second largest revenue collection agency in the United States.

The TFTEA officially established the Centers for Excellence and Expertise (Center), which are located at 10 field offices across the country. The Centers were

³ The Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, Title IX, Subtitle F, 9503(c), (codified at 19 U.S.C. 2071 note) established the COAC. Treasury Order 100-16, specifies that the COAC will be administered jointly by the Departments of the Treasury and Homeland Security.

established to increase uniformity of practices across POEs, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen critical agency knowledge on key industry practices. Each Center specializes in a specific industry and processes entries of that industry on a national scale.⁴ The Centers have authority for classification of goods and post-release processing. The Centers work collaboratively with the POEs on the admissibility of cargo, to include classification, and guide the POEs on making release decisions. By redirecting work to the Centers, POEs can focus their resources on high-risk shipments and noncompliant importers.

The Office of Finance, within CBP's National Finance Center, provides CBP-wide financial management including revenue, payroll, and vendor disbursements; financial statements, audit, and internal control support; and financial system of record operations. The Revenue Division within the Office of Finance is responsible for revenue collection and bond management. When the Revenue Division has difficulty collecting delinquent debt, it refers the debt to CBP's Assistant Chief Counsel's Office at the National Finance Center, which may then pursue legal action.

Treasury OIG's Prior Reporting Regarding Customs Revenue

Our prior reporting focused on Treasury's Customs revenue oversight role. We reported in June 2016 that Treasury only performs policy oversight and does not oversee the operational side of the Customs revenue function. In that report, we took the position that the delegation of revenue functions to CBP does not relieve Treasury of the ultimate responsibility for those functions, and that the responsibility is retained with the delegator.⁵ As the statute is written, Treasury is accountable for ensuring the collection of Customs revenue. Treasury's Office of General Counsel attorneys concurred with our conclusion.

Our March 2018 review focused on Treasury's Customs revenue policy oversight and confirmed that Treasury complies with the requirements of Treasury Order 100-16.⁶ However, we noted that compliance with the Treasury Order does not negate Treasury's responsibility or accountability over Customs revenue collection. We found evidence of Treasury's review and approval of Customs revenue-related regulations. We reviewed Customs revenue rulings on tariff classifications

⁴ The 10 Centers specialize in the following areas: (1) agriculture and prepared products; (2) apparel, footwear and textiles; (3) automotive and aerospace; (4) base metals; (5) consumer products and mass merchandising; (6) electronics; (7) industrial and manufacturing materials; (8) machinery; (9) petroleum, natural gas and minerals; and (10) pharmaceuticals, health and chemicals.

⁵ OIG, Customs Revenue Function Report – Section 112 (OIG-CA-12-028; issued June 30, 2016).

⁶ OIG, Customs Revenue Function under the Trade Facilitation and Trade Enforcement Act of 2015 – Section 112 and Section 115 (OIG-CA-18-015; issued March 5, 2018).

transmitted to Treasury by CBP and found evidence of Treasury's opportunity to review those rulings before publishing but did not find evidence of Treasury's actual review of those rulings. We also verified the Deputy Assistant Secretary for Tax, Trade and Tariff Policy's contribution to the COAC as co-chair and the coordination with his counterparts on matters of trade policy and Customs revenue-related matters.

Treasury OIG's March 2020 Reporting Mandate

In September 2019, we initiated audit work at CBP to determine the effectiveness of CBP's protection of revenue in accordance with Section 112 of TFTEA for our mandated reporting deadline of March 31, 2020. In the previous two reports, we limited our work to Treasury processes and officials. In the current reporting cycle we contacted DHS OIG to obtain contact information for CBP representatives for the purpose of initiating our audit. In addition, we discussed work previously performed by DHS OIG that is relevant to our audit objectives. We also contacted the Government Accountability Office for this purpose. To meet the March 2020 deadline, our work was performed to gain an understanding of CBP's processes to protect revenue and to plan for future audit work. To accomplish this, we conducted meetings with CBP personnel to acquire an overview of Section 112 elements and reviewed respective CBP policies, procedures, and practices. We also reviewed applicable documentation for context in these revenue-related areas and conducted high-level walkthroughs of CBP's electronic systems, including the Automated Commercial Environment (ACE).⁷

Our work did not include analytical work necessary to opine on the effectiveness of CBP's processes related to the protection of revenue. We intend to assess CBP's measures to protect revenue in our future reporting in March 2022.

We visited the following CBP locations to meet our objective: CBP Headquarters in Washington, DC; El Paso, Texas Field Office and POE; Chicago, Illinois Field Office and Base Metals Center; and the National Finance Center in Indianapolis, Indiana.

CBP Headquarters in Washington, DC

We met with various personnel within OT and OFO to obtain an overview of how CBP determines whether cargo is admissible for entry into U.S. commerce and ensures collection of associated duties, taxes, and fees. CBP personnel provided us an overview of how incoming cargo is targeted for further inspection upon arrival at the POEs and the process for determining whether cargo should enter the United States. CBP personnel gave us a demonstration of the ACE system, highlighting the

⁷ ACE is the primary system used by CBP to process imports into the United States.

system's functions for the submission and review of importing transaction data. OFO's Fines, Penalties, and Forfeitures Branch provided us an overview of how CBP processes commercial fines and penalty cases.

El Paso, Texas Field Office and POEs

We visited the El Paso Field Office and area POEs to gain an understanding of cargo admissibility processes. CBP management recommended that we visit El Paso because of its extensive operations involving truck and train cargo. We observed truck cargo operations at the Bridge of the Americas and Ysleta Commercial Operations Facilities, as well as the rail border crossings in El Paso. CBP Officers discussed procedures for admitting cargo into the United States and oversight of merchandise transported in-bond. All cargo entering the United States must be secured by a surety bond, which guarantees payment to CBP if the principal defaults on the conditions of the bond.

At the El Paso Field Office, we also discussed the collection of revenue, including duties and commercial fines and penalties. We met with Center personnel to learn about duty collection oversight, and Fines, Penalties, and Forfeitures Office personnel to discuss their process for commercial fines and penalties.

Chicago, Illinois Field Office and Base Metals Center

We met with Chicago Field Office and Base Metals Center personnel to obtain an overview of Center processes and responsibilities, specifically relating to the collection of antidumping and countervailing duties. We chose the Base Metals Center because of its extensive work with antidumping and countervailing duty cases. Chicago Field Office personnel provided an overview of their Center oversight operations. We also met with CBP Officers who discussed air cargo admissibility, merchandise transported in-bond, and penalty case processing.

National Finance Center in Indianapolis, Indiana

We met with personnel from Office of Finance's Revenue Division to gain an understanding of the processing and accounting of duty collections. We also met with attorneys from the Assistant Chief Counsel's Office to learn about processes available to them when pursuing delinquent debt.

Treasury OIG's Future Work

We plan to address the effectiveness of CBP's protection of revenue in accordance with Section 112 of TFTEA as our work in this area continues. Our future work will expand upon the review conducted in support of this March 2020 reporting mandate. It will include additional meetings with CBP personnel at various locations to assess CBP's revenue collection processes and analytical work necessary to opine on the effectiveness of measures taken by CBP to protect revenue.

If you wish to discuss this report further, please contact me at (202) 927-3973.

Sincerely,

/s/

Richard K. Delmar
Deputy Inspector General

cc: General Counsel, Department of the Treasury
Deputy Assistant Secretary for Legislative Affairs, Department of the Treasury
Assistant Secretary for Tax Policy, Department of the Treasury
Deputy Assistant Secretary for Tax, Trade and Tariff Policy, Department of the Treasury
Dr. Joseph V. Cuffari, Inspector General, United States Department of Homeland Security
Maureen Duddy, Deputy Assistant Inspector General for Audits, United States Department of Homeland Security
Jim H. Crumpacker, Director, Departmental GAO-OIG Liaison Office, United States Department of Homeland Security
Robin White, Senior Audit Liaison, United States Customs and Border Protection