



OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 28, 2024

**MEMORANDUM FOR AVIVA ARON-DINE, ACTING ASSISTANT SECRETARY FOR
TAX POLICY, DEPARTMENT OF THE TREASURY**

FROM: Deborah L. Harker /s/
Assistant Inspector General for Audit

SUBJECT: U.S. Treasury's Role with the Customs Revenue Function –
Trade Facilitation and Trade Enforcement Act of 2015,
Section 112 (OIG-CA-24-025)

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 the Assistant Secretary for Tax Policy the letters in June 2016, March 2018, and March 2020 that satisfied the first three reporting mandates. These three letters are discussed in the Background section below. We also issued reports to CBP in 2022 and 2024 focused on the effectiveness of CBP's protection of revenue in accordance with Section 112 of TFTEA. In this memorandum, we address our review of Treasury's responsibilities and roles regarding Customs revenue as of this writing.

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 Treasury and transferred all its functions from Treasury to DHS, except authority related to specified Customs revenue functions.¹ HSA Section 412 stated that Treasury, at its discretion, could delegate—but not transfer—its authority related to Customs revenue functions to DHS and retain any authority that was 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" (issued 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 Commercial Operations Advisory Committee (COAC) with DHS.³

Treasury Order 111-02 delegated to the Assistant Secretary for Tax Policy all authorities, powers, duties, and responsibilities relating to the Customs revenue functions vested in the Secretary of the Treasury and set forth and defined in the HSA. Per the Order, the Assistant Secretary for Tax Policy shall consult with and be subject to the policy guidance of the Office of the Under Secretary (International Affairs) on matters of trade policy. Also, the Assistant Secretary for Tax Policy may redelegate any or all of these authorities, powers, duties, and responsibilities to the Deputy Assistant Secretary for Tax, Trade and Tariff Policy (issued April 3, 2003; reaffirmed February 8, 2022).

Through Treasury Directive 18-03, "Delegation to the Deputy Assistant Secretary (Tax, Trade and Tariff Policy)", all authorities, powers, duties, and responsibilities retained by Treasury relating to Customs revenue functions were delegated, to the Deputy Assistant Secretary for Tax, Trade and Tariff Policy (issued March 30, 2015).

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."

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.

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.⁴

Treasury OIG's Prior Reporting On Treasury's Customs Revenue Function

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. At the time of the 2016 report, Treasury's Office of General Counsel (OGC) attorneys concurred with our conclusion.

We reported in March 2018 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 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.

While our 2016 and 2018 reports were focused on Treasury processes and officials with respect to Customs Revenue oversight, our subsequent reports in March 2020, March 2022 and March 2024 focused on the effectiveness of CBP's protection of revenue in accordance with Section 112 of TFTEA. In March 2020, we issued the report "Customs Revenue Function Report – Trade Facilitation and

⁴ 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.

⁵ OIG, *Customs Revenue Function Report – Section 112* (OIG-CA-16-028; 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)

Trade Enforcement Act of 2015, Section 112.”⁷ In March 2022 and March 2024 we issued reports to CBP with several recommendations for corrective actions.⁸

The Deputy Assistant Secretary for Tax, Trade and Tariff Policy retired from Treasury on May 31, 2022. In May 2024, because we believe that Treasury’s management of its retained responsibilities is a critical element in evaluating the overall quality of its execution of the Customs revenue function, we questioned Treasury OGC officials to determine how Treasury has carried out its oversight of Customs revenue duties with respect to Treasury Order 100-16 and Treasury Directive 18-03 from the time when the Deputy Assistant Secretary for Tax, Trade and Tariff Policy retired in 2022. We questioned OGC officials because in February 2024 the Departmental Offices’ liaison to Treasury OIG referred us to the Assistant General Counsel for International Affairs as the contact person for Customs revenue. The Office of General Counsel and Office of International Affairs have, where relevant, provided input to the Office of Tax Policy in carrying out responsibilities related to Customs revenue functions.

Authorities, Powers, Duties, and Responsibilities Over Treasury’s Customs Revenue Function Have Not Been Delegated Since May 2022

All authorities, powers, duties, and responsibilities retained by Treasury relating to Customs revenue functions were delegated on March 30, 2015, through Treasury Directive 18-03 to the Deputy Assistant Secretary for Tax, Trade and Tariff Policy. The Deputy Assistant Secretary for Tax, Trade and Tariff Policy retained those authorities and responsibilities until his retirement from Treasury on May 31, 2022. However, from May 31, 2022, to present, Treasury’s Deputy Assistant Secretary for Tax, Trade and Tariff Policy position has been vacant and the authorities, powers, duties, and responsibilities over Treasury’s Customs revenue function have not been officially reassigned, nor has a revised Treasury Directive been issued.

With the retirement of the Deputy Assistant Secretary for Tax, Trade and Tariff Policy on May 31, 2022, Treasury’s oversight of the Customs revenue function continued through several Treasury personnel. Planning for the transfer of responsibility for the Customs revenue oversight function began before the Deputy Assistant Secretary for Tax, Trade and Tariff’s departure. The Treasury Assistant General Counsel for International Affairs told us that he understood that in May 2022 the Treasury Assistant Secretary for Tax Policy met with the retiring Deputy Assistant Secretary for Tax, Trade and Tariff Policy and two senior attorneys for

⁷ OIG, *Customs Revenue Function Report – Trade Facilitation and Trade Enforcement Act of 2015, Section 112* (OIG-CA-20-014; issued March 30, 2020)

⁸ OIG, *REVENUE COLLECTION: The U.S. Customs and Border Protection’s Oversight of the Merchandise Transported In-Bond Program Needs Improvement to Better Ensure the Protection of Revenue* (OIG-22-033; issued March 31, 2022) and OIG, *REVENUE COLLECTION: CBP Needs to Enhance its Monitoring and Tracking of the Outcomes of Investigations into the Underpayment of Duties* (OIG-24-026; issued March 26, 2024).

Tax, Trade and Tariff Policy to discuss the scope of the Deputy Assistant Secretary for Tax, Trade and Tariff Policy's portfolio, including the Customs revenue functions, and a plan for continuity.

The Assistant General Counsel for International Affairs told us that he understood that the Assistant Secretary for Tax Policy decided that the Deputy Assistant Secretary for Tax Policy would take on the retiring Deputy Assistant Secretary for Tax, Trade and Tariff Policy's responsibilities, with the two senior attorneys continuing their work in support. One of the senior attorneys told us that a formal writing of this change had not been located. The Assistant General Counsel for International Affairs told us that Customs revenue oversight activities continued essentially unchanged, except that the Deputy Assistant Secretary for Tax Policy made important decisions and signed official documents. The Assistant General Counsel for International Affairs told us that the retiring Deputy Assistant Secretary for Tax, Trade and Tariff Policy supervised Customs revenue functions for more than two decades, and that the two senior attorneys worked with him on Customs revenue matters almost daily for more than five years immediately prior to his retirement; the Deputy Assistant Secretary for Tax, Trade and Tariff Policy had transferred substantial Customs revenue knowledge to the two senior attorneys during that time.

One of the two senior attorneys retired from Treasury on June 30, 2023, and both the Assistant Secretary for Tax Policy and Deputy Assistant Secretary for Tax Policy left Treasury at the end of February 2024. An Acting Assistant Secretary for Tax Policy was appointed to the position on February 20, 2024, and reviewed, approved, and signed all Customs revenue regulations since that time. An Acting Deputy Assistant Secretary for Tax Policy was appointed on February 16, 2024, but had not been involved in the Customs revenue functions per the senior attorney.

Although the 2003 Secretarial delegation via Treasury Order 111-02 requires a Deputy Assistant Secretary for Tax Policy to sign Customs revenue rulemakings, the Assistant General Counsel for International Affairs told us that pending ongoing discussions about a potential expanded delegation of authority related to Customs revenue functions to DHS, he had informally supervised the legal work of the senior attorney. The Assistant General Counsel told us that Treasury management is considering whether Treasury's legacy Customs revenue work should be further delegated to DHS, and if General Counsel for International Affairs should take over Customs revenue work that remains because of the departures of Treasury Office of Tax Policy officials.

The Assistant General Counsel for International Affairs told us that Treasury still co-chairs the COAC, a responsibility the Treasury Secretary delegated to the Deputy Assistant Secretary for Tax, Trade and Tariff Policy. After the Deputy Assistant Secretary for Tax, Trade, and Tariff's retirement, the Deputy Assistant

Secretary for Tax Policy generally carried out COAC functions with support from the two senior attorneys. As the Deputy Assistant Secretary for Tax Policy transitioned out of Treasury in February 2024, one of the senior attorneys provided interim COAC coverage.

The senior attorney provided us with a listing of eight COAC meetings that took place from June 2022 through March 2024 (three meetings in 2022, four in 2023, and one in 2024). The listing showed that the COAC meetings from June 2022 through September 2023 were attended by the Deputy Assistant Secretary for Tax Policy and a senior attorney. The meetings from December 2023 through March 2024 were attended by a senior attorney.

The Assistant General Counsel for International Affairs told us that the processes for regulations and rulings have remained the same through the personnel transitions. The senior attorneys continued their work on Customs revenue policy oversight after the Deputy Assistant Secretary for Tax, Trade and Tariff Policy's retirement, supporting the Deputy Assistant Secretary for Tax Policy who made policy decisions.

Since the Deputy Assistant Secretary for Tax Policy's departure from Treasury in February 2024 and pending a new delegation, the Acting Assistant Secretary for Tax Policy has been the decisionmaker in this area. The senior attorney provided us with a listing of 20 Customs Revenue Federal Register Notices for Customs regulations published from May 31, 2022, through May 30, 2024 (eight notices in 2022, five in 2023, and seven in 2024). The Federal Register notices from June 2022 through January 2024 were signed by the Deputy Assistant Secretary for Tax Policy, and those from February 2024 through May 2024 were signed by the Acting Assistant Secretary for Tax Policy.

The senior attorney told us that the Deputy Assistant Secretary for Tax Policy also signed over 15 regulations related to the Customs revenue functions in the past two years, and the Acting Assistant Secretary for Tax Policy has signed four since February 2024. In addition, the two senior attorneys reviewed all CBP rulings constituting a change in practice, ruling revocations or modifications, under 19 U.S.C. § 1625 since late 2017 and consulted with the Deputy Assistant Secretary for Tax Policy as warranted. The senior attorney provided us with a listing of 47 rulings reviewed from May 2022 to May 30, 2024 (16 rulings in 2022, 24 in 2023, and 7 in 2024).

The senior attorney told us that The Office of Tax Policy conducted other Customs revenue work from May 2022 to May 2024. This work included participation in working groups to discuss CBP shipments, work on international trade agreements, technical assistance for Congressional staff requests on several pieces of legislation related to Customs revenue, review of exclusion orders when the President had been asked to block United States International Trade Commission orders, and

guidance on Customs modernization efforts since 2019. In addition, this office participated on the Interagency Committee for Trade in Automotive Goods established in accordance with the United States-Mexico-Canada Agreement Implementation Act, Pub. L. No. 116-113 (19 U.S.C. 4532(b)), and worked on implementation of the Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78.

Conclusion and Recommendation

Treasury has continued to be engaged in its Customs revenue functions as outlined in Treasury Order 100-16. Treasury Directive 18-03 delegated all authorities, powers, duties, and responsibilities retained by Treasury relating to Customs revenue functions to the Deputy Assistant Secretary for Tax, Trade and Tariff Policy. However, this position remains vacant. We understand that Treasury is currently assessing its Customs revenue responsibilities and considering further delegation to DHS or reorganization within Treasury to handle its current responsibilities—superseding current Treasury orders and directives.

We recommend that within 60 days of this memorandum, Treasury's Acting Assistant Secretary for Tax Policy ensures that Treasury orders and directives are updated as necessary to accurately reflect the Treasury officials currently performing the Customs revenue functions. This may include appointing an official to serve as the Deputy Assistant Secretary for Tax, Trade and Tariff Policy or issuing a revised Treasury Directive.

Management Comment

As part of our reporting process, we provided a draft of this memorandum to Treasury to obtain management's views and comments. Management's written response in its entirety is provided in the appendix to this memorandum. In the response, Treasury's Acting Assistant Secretary for Tax Policy stated that Treasury officials acknowledge the recommendation to update orders and directives "as necessary to accurately reflect the Treasury officials currently performing Customs revenue functions" and have been considering how best to allocate responsibility for Customs revenue functions between Treasury and DHS in light of present circumstances (including, notably, the retirements of long-tenured senior Treasury officials starting in May 2022).

Treasury officials have been working with colleagues at DHS to finalize an order that would delegate to the Secretary of Homeland Security authority related to Customs revenue functions not already delegated by Treasury Order 100-16. Accordingly, in parallel with preparing for an expanded delegation to the Secretary of Homeland Security, Treasury officials are working on revising delegations within Treasury to ensure that responsibility for the Customs revenue functions that will remain with Treasury is clearly delineated. Before issuing the order superseding Treasury Order 100-16 and related internal superseding orders and directives,

Treasury officials intend to confer with the staff of relevant congressional committees as well as select representatives of the trade community. They anticipate that this process will likely be concluded within the 60-day time period noted in our recommendations.

OIG Comment

Treasury's Acting Assistant Secretary for Tax Policy's response and planned corrective action meet the intent of our recommendation.

Treasury OIG continues to address the effectiveness of CBP's protection of revenue in accordance with Section 112 of TFTEA. In January 2023, we initiated an audit of CBP's oversight of commercial fines and penalties. The objective of the audit is to determine the effectiveness of CBP's protection of revenue in accordance with our Section 112 mandate. As part of the audit, we are focusing on assessing the effectiveness of CBP measures to protect revenue through the use of commercial fines and penalties, including the assessment, collection, and mitigation of such fines and penalties. In addition, we are assessing the effectiveness of training and actions taken by CBP to measure accountability and performance with respect to commercial fines and penalties.

Further, in March 2022, we initiated an audit continuing our assessment of CBP's merchandise transported in-bond program because of unresolved differences we had with CBP concerning the total number of in-bonds identified as unaccounted in our 2022 report. The objective of the audit is to determine (1) how CBP identified the number of late and overdue in-bonds and the related estimated loss of revenue in fiscal year 2020; (2) why CBP's numbers did not agree with the number of in-bonds and dollar amount of lost revenue identified in a March 2022 audit; and (3) the number and dollar amount of late and overdue in-bonds and the related lost revenue in FY 2020.

We performed our review of Treasury's responsibilities and roles regarding Customs revenue outlined in this memorandum from February through July 2024 in accordance with the Council of the Inspectors General on Integrity and Efficiency Quality Standards for Federal Offices of Inspector General standards of independence, due professional care, and quality assurance.

We appreciate the courtesies and cooperation provided to our staff during our review. If you have any questions or require further information, please contact me at (202) 486-1420, or a member of your staff may contact Sharon Torosian, Audit Director, at (857) 221-0581.

cc: General Counsel, Department of the Treasury
Deputy Assistant Secretary for Legislative Affairs, Department of the Treasury
Assistant General Counsel for International Affairs, Department of the Treasury
Senior Counsel for Tax, Trade, and Tariff Policy, Department of the Treasury
Dr. Joseph V. Cuffari, Inspector General, United States Department of
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Appendix

Treasury's Assistant Secretary for Tax Policy's Management Response



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

August 16, 2024

Office of Inspector General:

We thank the Office of Inspector General (OIG) for the draft memorandum of August 14, 2024 concerning the Department of the Treasury's (Treasury) involvement with Customs revenue functions, and for their engagement with Treasury personnel in preparing the memorandum. We acknowledge the recommendation to update orders and directives "as necessary to accurately reflect the Treasury officials currently performing Customs revenue functions." In that regard, as discussed with your office over the course of your review, Treasury has been considering how best to allocate responsibility for Customs revenue functions as between Treasury and the Department of Homeland Security in light of present circumstances (including, notably, the retirements of long-tenured senior Treasury officials starting in May 2022, as discussed in OIG's memorandum). Given institutional experience over the past 21 years, and after extensive consultation with colleagues in the Department of Homeland Security, we have determined that effective and efficient handling of Customs revenue functions warrants an expansion of the delegation of authority related to those functions to the Secretary of Homeland Security pursuant to section 412 of the Homeland Security Act of 2002 (Pub. L. No. 107-296, § 412).

Accordingly, we have been working with colleagues at the Department of Homeland Security to finalize an order that would delegate to the Secretary of Homeland Security authority related to Customs revenue functions not already delegated by Treasury Order 100-16. The new order would supersede Treasury Order 100-16. Even after issuance of that new order, there will be certain matters related to Customs revenue functions that will remain with Treasury (e.g., matters related to the Commercial Operations Advisory Committee and the Foreign Trade Zones Board). Accordingly, in parallel with preparing for an expanded delegation to the Secretary of Homeland Security, we are working on revising delegations within Treasury to ensure that responsibility for those remaining matters is clearly delineated. Before issuing the order superseding Treasury Order 100-16 and related internal superseding orders and directives, we intend to confer with the staff of relevant congressional committees as well as select representatives of the trade community. We anticipate that this process will likely be concluded within the 60-day time period noted in your recommendations.

Aviva R.
Aron-Dine

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Acting Assistant Secretary for Tax Policy

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