

**FINANCIAL MANAGEMENT:
Bureau of Customs And Border Protection
Needs To Improve Compliance With
The Continued Dumping And Subsidy
Offset Act Of 2000 (CDSOA)**

OIG-03-085

June 17, 2003



Office of Inspector General

The Department of the Treasury

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Abbreviations

ACE	Automated Commercial Environment
ACS	Automated Commercial System
CDSOA	Continued Dumping and Subsidy Offset Act of 2000
CFR	Code of Federal Regulations
Commerce	Department of Commerce
Customs	Bureau of Customs and Border Protection (Formerly the United States Customs Service)
DHS	Department of Homeland Security
FY	Fiscal Year
OFO	Office of Field Operations
OIG	Office of Inspector General
OIT	Office of Information and Technology
USC	United States Code

*The Department of the Treasury
Office of Inspector General*

Results in Brief

The audit work we completed disclosed that the Bureau of Customs and Border Protection (Customs) was in noncompliance with the law and implementing regulations related to the disbursement of certain antidumping and countervailing duties. Customs was in noncompliance with the law because it did not (1) properly establish special accounts, and (2) pay claimants within 60 days after the end of the fiscal year. In addition, Customs had not instituted standard operating procedures and adequate internal controls for the management of the Continued Dumping and Subsidy Offset Act of 2000¹ (CDSOA) program.

As a result of the noncompliance with regulations and inadequate internal controls, the government has experienced at least a \$25 million shortfall in its accounts.

During the course of our audit, we identified four other issues that warrant management's attention. These issues relate to: (1) untimely publishing of a comprehensive annual report on the fiscal year 2001 CDSOA payments, (2) \$97 million in open (unpaid) antidumping and countervailing duty bills and interest, (3) one million unliquidated antidumping and countervailing duty entries totaling about \$2 billion, and (4) qualifying expenditures claimed by affected domestic producers not verified routinely. However, if Customs effectively implements its planned corrective actions, this should provide the public and the United States (U.S.) Congress timely, informative data about the program, and result in more timely distribution of a substantial amount of CDSOA duties and interest.

¹ The Continued Dumping and Subsidy Offset Act of 2000 was enacted October 28, 2000, under Title X of the appendix to Public Law 106-387, and amended Title VII of the Tariff Act of 1930 (19 USC 1671 et seq.) by insertion of section 754, Continued Dumping and Subsidy Offset (codified as 19 USC 1675c).

Background

In late 2000, the U.S. Congress enacted Public Law 106-387 (Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001), which included the CDSOA. The intent of the CDSOA was to protect domestic producers from unfair trade practices. The CDSOA (codified as 19 U.S. Code [USC] 1675c) amended the Tariff Act of 1930 and instructed Customs to put certain antidumping and countervailing duties into special accounts. Then, each year, the money collected would be disbursed by Customs directly to affected domestic producers. Previously, all antidumping and countervailing duties collected were transferred to the Treasury General Fund.

Antidumping duties are imposed on imported merchandise that the Department of Commerce (Commerce) finds is, or likely to be, sold in the U.S. at less than its fair market value. Countervailing duties are imposed upon imported merchandise that Commerce determines benefits from actionable subsidies bestowed by a foreign government. The CDSOA applied to all antidumping and countervailing duty assessments made on or after October 1, 2000, in connection with all antidumping or countervailing duty orders in effect as of January 1, 1999, or thereafter.

It is Customs' responsibility to determine that all payments received from antidumping and countervailing duties are disbursed to qualifying domestic producers in accordance with the regulations. In general, those regulations require each affected domestic producer to submit a certification, which enumerates the qualifying expenditures incurred since the issuance of an antidumping or countervailing duty order issued by Commerce, as well as evidence that the producer is eligible to receive a distribution. Customs published its final implementing CDSOA regulations (19 Code of Federal Regulations [CFR] Chapter 1, Parts 159 and 178) in the Federal Register on September 21, 2001.

For fiscal year 2001, Customs made CDSOA payments of approximately \$231 million and for fiscal year 2002 approximately \$329 million was paid under this program.

Findings and Recommendations

Finding 1 **Special Accounts Should Be Used and Maintained**

Customs did not establish individual special accounts as required by law under 19 USC 1675c(e)(1), which states, in part, that:

...within 14 days after the date an antidumping order or finding or countervailing duty order issued after the effective date takes effect, the Commissioner *shall establish* in the Treasury of the United States *a special account with respect to each such order or finding.* [Italics applied]

One Special Account was established to receive assessed duties from all antidumping and countervailing duty cases liquidated, instead of one special account for each case. Additionally, due to the nuances of the Automated Commercial System (ACS), all open bills are included in the special account when the bills are generated (assessed) by the system, instead of when the open bills are actually collected. This results in the Special Account balance consisting of both paid and unpaid amounts.

Appropriate laws and regulations pertaining to the special account and what is to be deposited into them are as follows:

19 USC 1675c:

(e)(2) The Commissioner shall deposit into the special accounts, all antidumping and countervailing...duties that are assessed after the effective date of this section....

(e)(3) Consistent with the requirements of subsections (c) and (d) of this section, the Commissioner shall by regulation prescribe the

time and manner in which distribution of the funds in a special account shall be made.

(c) ...that the distribution will be made within 60 days after the first day of a fiscal year from duties assessed during the preceding fiscal year.

(d)(3) ...all funds shall be distributed from assessed duties *received* in the preceding fiscal year. [Italics applied]

19 CFR 159.64:

(b)(1)(i) No later than 60 days after the end of the fiscal year, Customs will distribute the assessed duties transferred from the Clearing Accounts and *received* into the Special Accounts. [Italics applied]

(b)(1)(iii) The amount transferred at liquidation to the Special Account will be dependent upon the amount actually *collected* on the entry and in the Clearing Account. Following liquidation, additional transfers will be made on the liquidated entry to the corresponding Special Account, as additional antidumping or countervailing duties are *collected*. [Italics applied]

It was intended when the law was written, that the balances in the special accounts at the end of a fiscal year would be available to disburse to affected domestic producers. Customs' personnel were aware of the legal requirements for establishing special accounts for each order. They believed that with more than 600 orders, a special account for each order was unmanageable; therefore, they established only one Special Account. However, Customs did not complete the programming of ACS necessary to make the Special Account operational until September 12, 2001, nearly a year after

the effective date of CDSOA. This resulted in an inaccurate balance in the Special Account at fiscal year-end. Since the Special Account balance was not reliable, it became necessary to compute the amount available to disburse to affected domestic producers in fiscal years 2001 and 2002 by completing a manual, detailed calculation. (See Finding 2 on computation of amount available to disburse to affected domestic producers).

To be consistent with the public law and the CFR, Customs should include only assessed duties received in the Special Account. By only including duties received, a manual, detailed calculation would not be necessary to determine the amount to be distributed to affected domestic producers.

Additionally, during fiscal year 2002, Customs' personnel noted numerous double counting errors resulting from a programming error within the Special Account, thereby rendering the Special Account balance at September 30, 2002, unreliable. It is also our understanding that no one is monitoring the account or reconciling the account balance at fiscal year-end to funds to be disbursed.

Having a correct and reliable balance within the one Special Account would eliminate the need for a manual, detailed calculation that may result in future errors similar to the overpayments noted in Finding 2, page 8, of this report.

We are also aware that the ACS, as presently designed, may not allow for the recommendation noted to be implemented without substantial computer programming changes being made. We also understand that the new operating system, the Automated Commercial Environment (ACE), is being designed. ACE should be reviewed to assure that this system would allow for the implementation of our recommendation.

Recommendation

The Commissioner of Customs and Border Protection should ensure that:

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1. Customs, as a minimum, obtains control over the one Special Account so that the balance in the Special Account on the payment determination date (September 30) is reliable.

Management Comments

Customs agreed with the recommendation. As a result, Customs has established a Continued Dumping and Subsidy Offset Act (CDSOA) Working Group. This group will review the process relating to the Special Account and prepare recommendations to senior management.

OIG Comment

We consider this recommendation to have a management decision with a target completion date of December 2003.

Finding 2

\$25 Million In Overpayments Occurred

Customs had not established adequate internal controls to prevent erroneous payments of antidumping and countervailing duty claims. As a result of inadequate internal controls, affected domestic producers received, in aggregate, overpayments of at least \$25 million, and likely more. The overpayments were comprised of: (1) \$24 million resulting from an error in the computation of the amount available to disburse, and (2) \$1 million resulting from overpaying two domestic producers and excluding another.

As a direct result of not being able to rely on the balance in the Special Account, it became necessary for Customs' personnel to arrive at the amount available to disburse by performing a manual, detailed calculation. An explanation of this calculation formula is provided in Appendix 2.

Open bills for fiscal year 2001, that still remained unpaid at September 30, 2002, did not appear to be included in the calculation of the amount to be disbursed to affected domestic producers. Customs' personnel determined that open bills for fiscal year 2001 had not been considered in their calculation. This error

resulted in \$24 million in overpayments to some affected domestic producers in fiscal year 2002.

It is important to note that the error would have been even greater had the open bill report for fiscal year 2001 been generated on September 30, 2002, rather than the actual run date of January 16, 2003. Customs' personnel stated that the fiscal year 2001 open bill report could not be generated for a date other than the date they requested the report, January 16, 2003. The amount of payments on fiscal year 2001 open bills collected from October 1, 2002, until the report run date of January 16, 2003, would also need to be added to the previously noted \$24 million to arrive at the correct amount overpaid only as it relates to the fiscal year 2001 open bill issue.

It should also be noted that a review of 2002 open bills outstanding as of September 30, 2002, indicated a report generation date of November 20, 2002. Therefore, collections on 2002 open bills during the period October 1, 2002, through November 20, 2002, may also amount to an overpayment of fiscal year 2002 distributions.

In addition to collections on open bills noted above, other factors may have caused a change in the open bill balances, such as write-offs or cancellations. Due to divestiture of our staff to DHS, we were not able to perform testing to determine if such items actually affected the overpayment issue.

In addition to the \$24 million in overpayments noted above, a separate overpayment situation occurred involving three domestic producers. In this situation, one of these producers was overlooked on a particular case, which resulted in the two other affected domestic producers erroneously receiving the overlooked company's share of the distribution, approximately \$1 million. The affected domestic producer that was overlooked was later paid approximately \$1 million from the Treasury General Fund.

On April 23, 2003, the Commissioner determined that the overpaid companies would be billed immediately for the overpayments.

Recommendation

The Commissioner of Customs and Border Protection should ensure that:

1. All overpaid affected domestic producers are billed immediately for the overpayments.

Management Comments

Customs agreed with the recommendation. The Commissioner has directed the Offices of Regulations and Rulings, Finance, Field Operations, and Information and Technology to collect the overpayments immediately. Collection letters have been drafted and will be issued as soon as possible. However, a further reconciliation of the total open bills relating to the 2002 distributions is being conducted and may result in a change in the total overpayment amount.

OIG Comment

We consider this recommendation to have a management decision with a target completion date of June 2003.

Finding 3

Procedures Should Be Established to Manage the Program

Customs did not have (1) specific written standard policies and procedures for processing CDSOA claims or (2) adequate separation of duties. CDSOA is a new and unique program and should have clearly defined internal controls. Customs had no written standard operating procedures for: (1) processing CDSOA payments, (2) reconciling the Special Account, (3) reviewing certifications, and (4) determining the amount of monies available for distribution. Failure to establish written procedures and to ensure adequate separation of duties contributed to the \$25 million in overpayments, as discussed in Finding 2.

The General Accounting Office's (GAO) *Standards for Internal Control in the Federal Government*, states:

Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.²

In addition, the GAO's *Standards for Internal Control in the Federal Government*, Segregation of Duties, states, "No one individual should control all key aspects of a transaction or event."³

At present, the CDSOA Program Manager is responsible for: (1) reviewing certifications, (2) determining the amount available for distribution, and (3) verifying supporting documentation for qualifying expenditures. The functionality and institutional knowledge of the program rests primarily with this individual. In the event the person with the institutional knowledge is not available to carry out the program, written procedures governing the CDSOA program should be available. Additionally, other persons should be cross-trained to carry out the program.

The public accounting firm of KPMG reviewed Customs' fiscal year 2002 financial statements. After the review was completed, KPMG auditors apprised us that they issued a Notice of Findings and Recommendation that stated:

Customs has not implemented policies and procedures to establish internal controls over processing and recording affected Injured Domestic Industry [CDSOA] transaction claims. Policies regarding the retention of adequate supporting documentation as well as the process in place to maintain adequate internal controls are not codified.

² Standards for Internal Control in the Federal Government (GAO/AIMD-00-21.3.1), p.15, November 1999.

³ Ibid, p. 14

Recommendation

The Commissioner of Customs and Border Protection should ensure that:

1. KPMG's recommendation to codify the policy and procedures in effect for the CDSOA is implemented.

Management Comments

Customs agreed with the recommendation. Customs management has assigned the CDSOA Working Group the task of reviewing existing procedures and making recommendations for process improvements to senior management. Once an option has been selected, the CDSOA Working Group will oversee efforts to establish the appropriate documented internal controls and standard operating procedures.

OIG Comment

We consider this recommendation to have a management decision with a target completion date of December 2003.

Finding 4

Disbursements Should Be Made Timely

Customs did not disburse the fiscal year 2002 CDSOA payments within the 60-day time frame mandated by law. Those payments were disbursed approximately 85 days after fiscal year-end. Also, as late as May 2002, Customs processed additional fiscal year 2001 CDSOA payments for more than \$25 million.

Title 19 USC 1675c(c) states: "Such distribution shall be made not later than 60 days after the first day of a fiscal year from duties assessed during the preceding fiscal year." When disbursements are not made timely, the affected domestic producers are deprived of the use of those funds.

According to the CDSOA Program Manager, the late payments occurred because of automated programming errors and staffing

problems. The Program Manager provided the OIG with a copy of a memorandum from the Assistant Commissioner, Office of Regulations and Rulings, to the Deputy Commissioner that stated:

Due to some program errors, we did not receive the information from OIT [Office of Information and Technology] required for computing the dollar amounts available to disburse for FY [fiscal year] 2002 until Tuesday, November 12, 2002. Additionally, the OFO [Office of Field Operations] representative who manages the Byrd [CDSOA] database has upcoming critical field-work in connection with the Border Security Program. The combination of these events will likely result in Customs not meeting the statutory deadline for the disbursement of 60 days after the end of the fiscal year, or November 29th.

The CDSOA provides for annual payments to the affected domestic producers. Therefore, addressing programming and staffing issues prior to fiscal year-end should result in timely distribution in future years.

Recommendation

The Commissioner of Customs and Border Protection should ensure that:

1. CDSOA programming issues are addressed more timely.

Management Comments

Customs agreed with the recommendation. As a result, process improvements for the fiscal year 2003 payment cycle are being developed that will address the timeliness and accuracy observations in this report.

OIG Comment

We consider this recommendation to have a management decision with a target completion date of December 2003.

2. The CDSOA program is adequately staffed to meet the statutory deadline for distribution.

Management Comments

Customs agreed with the recommendation. The CDSOA Working Group will address this issue. The Group will prepare recommendations on organizational staffing to senior management.

OIG Comment

We consider this recommendation to have a management decision with a target completion date of December 2003.

Management Considerations

During the course of our audit, we identified four other issues that we believe warrant management's attention. These issues relate to:

- Untimely publishing of a comprehensive annual report on the fiscal year 2001 CDSOA payments;
- \$97 million (comprised of \$24 million for fiscal year 2001, at January 16, 2003, and \$73 million for fiscal year 2002, at November 20, 2002) in open (unpaid) antidumping and countervailing duty bills and interest.
- One million unliquidated antidumping and countervailing duty entries totaling about \$2 billion, as of March 13, 2003; and
- Qualifying expenditures claimed by affected domestic producers not verified on a routine basis.

1. Comprehensive Annual Report Not Published Timely

Customs did not timely publish on its website a comprehensive annual report for the fiscal year 2001 CDSOA payments. After its fiscal year 2001 CDSOA disbursements, Customs published a limited information report that consisted of a claimant's case number and associated dollar amount remaining in the clearing account balance as of October 1, 2001. A final report for the fiscal year 2001 CDSOA payments was not published until February 2003.

Title 19 CFR 159.64(g) states, in part:

Although not mandated by law, an annual report on disbursements will be made available to the public on Customs' website. This annual report will include...company specific information, such as, the name of the claimant, the total dollar amount claimed on the certifications, and the total dollar amount disbursed to that claimant by Customs. The annual report will also contain general information...[such as] the: (1) number of entries and dollar amounts in the clearing account at the beginning of each fiscal year; (2) number and amount of re-liquidations during the fiscal year; (3) dollar amounts remaining uncollected from Customs' bills issued during the fiscal year.

To comply with its regulations, Customs should have published company specific and general information for each antidumping or countervailing duty order by case number in its annual report on the fiscal year 2001 CDSOA payments. A variety of factors may have contributed to the noncompliance, such as the newness of the program, lack of written standard operating procedures, lack of sufficient resources to process the claims, and overall management inattention.

In January 2003, the CDSOA Program Manager told us that Customs does not intend to expand on the limited information (balance in clearing account at October 1, 2001, and preliminary disbursement listing) in the fiscal year 2001 CDSOA report

currently on Customs' website. However, the Program Manager intends to publish a comprehensive report on the fiscal year 2002 CDSOA payments.

The CDSOA Program Manager said that a comprehensive report on CDSOA payments that is available to the public is a good peer check. Customs hopes that affected domestic producers will report any suspicious or misleading claims by competitors. Additionally, information on unliquidated entries and outstanding bills allows affected domestic producers and the U.S. Congress to be aware of the volume of unliquidated entries or uncollected bills. Not providing a comprehensive final report for fiscal year 2001 CDSOA disbursements deprived the public and the U.S. Congress of timely, informative data about the program.

Management Comments

Customs management plans to take steps to insure that a timely and more comprehensive report is provided in fiscal year 2003.

2. Large Number of Open Bills

Importers or sureties are protesting a large number of the open (unpaid) bills. As of January 16, 2003, approximately \$24 million of fiscal year 2001 open bills and interest remained outstanding. Approximately \$73 million of fiscal year 2002 open bills and interest were outstanding as of November 20, 2002. Of the fiscal year 2002 total, approximately \$48 million related to one specific case involving imported crayfish, of which about \$35 million was under protest.

The collection efforts on open bills do not commence until all protests have been cleared. The CDSOA Program Manager told us that the majority of protests could be resolved quickly, as there are only several valid reasons to file protests: (1) the wrong rate was applied, (2) the goods imported were not covered by the dumping order, or (3) Customs did not act promptly on liquidation.

The clearing of protests should be given a high priority so that collection procedures can be implemented. Customs' personnel have indicated they will attempt to stratify the open bills by port of entry. Listings of the open bills would then be sent to each port for follow-up and resolution. Customs would continue to run these reports on a periodic basis to assure that progress was being made. We strongly encourage Customs to implement this procedure, as a minimum.

Additionally, during the review of open bills, the CDSOA Program Manager stated that a problem with bond sufficiency exists. This problem primarily results from port personnel accepting bonds that are not sufficient to cover the duties owed plus interest when the entry is eventually liquidated, that can be several years later.

The Program Manager stated further that some open bills are not collected due to the length of time between entry and liquidation. As such, some of the importers have gone out of business, and there is no one to go back to for collection of additional duties owed.

Management Comments

Customs Office of Field Operations personnel plan to closely monitor the field to insure that all protests are finalized in an expeditious manner. Once protests associated with an open bill are finalized, the Office of Finance plans to proceed with the collection process.

3. Large Number of Unliquidated Entries

Unliquidated entries also present an area for improvement. At March 13, 2003, there were approximately one million unliquidated antidumping and countervailing duty entries totaling \$2 billion. Customs' personnel plan to develop reports to age these unliquidated entries based upon the month that Commerce issued antidumping orders. This aging would then be used by Commerce and port personnel to focus increased attention on the older entries that had not been liquidated.

It should be noted that there are valid reasons for entries to remain unliquidated, such as Commerce's administrative review has not been completed or the final administrative results have been challenged legally and one or more court injunctions issued suspending liquidation. However, reviews performed to date have indicated that in some cases the ports had overlooked Commerce liquidation instructions, or Commerce had failed to issue proper liquidation instructions. Clearing up the liquidation backlog should be a high priority given the substantial dollars involved.

Management Comments

A reconciliation with Commerce is currently underway that will help determine the inventory of unliquidated entries appropriately as it applies to open cases. The Office of Field Operations personnel are developing "aging" reports of unliquidated entries based upon the month that Commerce issued antidumping orders. These aging reports will be used by Commerce and Customs port personnel to focus increased attention on the older entries that have not been liquidated.

4. Limited Verification of Qualifying Expenditures

Customs did not verify qualifying expenditures specified on certifications on a routine basis. The CDSOA Program Manager stated that Customs investigates and verifies qualifying expenditures only if a complaint is filed. In fiscal year 2001, there were two such complaints filed. As of December 4, 2002, the CDSOA Program Manager, had reviewed only one of those complaints.

We questioned why there was not an annual review of qualifying expenditures by Customs' Office of Regulatory Audit. The CDSOA Program Manager believed Regulatory Audit would not want to test qualifying expenditures due to the lack of formal audit guidelines. The Program Manager also believed without formal audit guidelines, findings would result in no change, and a lot of time spent in court arguing over the findings.

Title 19 CFR 159.63 (d) states, in part:

Certifications are subject to verification. Parties, therefore, are required to maintain the accounting records used in developing their claims, for a period of years after the filing of the certification.... Parties must be able to demonstrate that their records specifically support qualifying expenditures enumerated in a certification.

This regulation allows for the verification of the qualifying expenditures on certifications submitted. Verifications would serve as a deterrent against submission of deceptive certifications. Untimely verifications could lead to a loss of revenue to other deserving affected domestic producers if, in fact, deception is discovered.

Management Comments

The CDSOA Working Group plans to develop a methodology to address verifying qualifying expenditures specified on certifications on a routine basis.

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We appreciate the cooperation we received from Customs' officials and personnel during the audit. If you wish to discuss this report, you may contact me at (312) 886-0118.


Roberta N. Rickey
Regional Inspector General for Audit

The overall objective of the audit was to determine if Customs had established appropriate procedures to comply with selected requirements of the CDSOA. Our specific objectives were to determine if Customs had: (1) established adequate accounting procedures to ensure all applicable duties were included in the special accounts prior to disbursement; and (2) established adequate controls to ensure offset distributions were made timely to the correct parties and for the correct amounts. We did not, as part of our audit, test the eligibility of offset distribution.

We performed fieldwork at Customs' Headquarters and its National Finance Center, Indianapolis, Indiana. We interviewed Customs' officials and personnel, as appropriate, and performed various analyses relating to Customs' payments of antidumping and countervailing duty claims. These analyses included a review of Customs' existing policies and procedures, controls over special accounts, and timetables for payment. The audit scope covered fiscal year 2002 CDSOA payments.

We conducted the audit between October 2002 and February 2003 in accordance with generally accepted government auditing standards.

The law originally intended that the balance in the special accounts is the amount that would be available to disburse. However, as noted elsewhere in this report, the special accounts were not established timely. The calculation cited below attempts to capture all activity that would flow through the special accounts during a fiscal year to arrive at an amount available for disbursement to affected domestic producers.

The fiscal year 2002 calculation was performed as follows:

Liquidated Duties During 2002
+ Interest on 2002 Liquidations
+ 2001 Open (unpaid) Bills at October 1, 2001
+ Interest on 2001 Open Bills at October 1, 2001
Assessments for 2002 and Prior Year Unpaid Assessments
- 2002 Open Bills at September 30, 2002
- Interest on 2002 Open Bills
- 2001 Open Bills at September 30, 2002
- Interest on 2001 Open Bills at September 30, 2002
Unpaid Assessments as of September 30, 2002
+/- Prior Year Reliquidations
Total Amount Available to Disburse (Collections)

The rationale for this calculation formula is as follows:

- The starting point for the calculation is to determine the total dollar amount, by antidumping and countervailing duty case, for all entries liquidated during the current fiscal year plus related accrued interest.
- The next step is to determine the amount of open bills (open bills represent uncollected receivables from liquidated entries) and interest that existed at the beginning of the fiscal year resulting from prior year liquidations.
- From this total, the dollar amount of open bills and interest for the current and prior fiscal years, outstanding as of September 30 of the current fiscal year, are subtracted. The reason open bills are added in and then subtracted is, to

determine the net change (collections) from one period to the next.

- Then entries reliquidated for a decrease are subtracted. These are entries that had previously been liquidated for a greater amount. It should be noted that if the reliquidations had been for an increase, the additional amount would be included in the liquidations balance available to disburse.



U.S. Customs Service

Memorandum

MEMORANDUM FOR ROBERTA N. RICKEY
OFFICE OF INSPECTOR GENERAL

FROM: Deputy Commissioner

SUBJECT: Comments on Draft Report on CDSOA

Thank you for providing us with a copy of your draft report entitled "Financial Management: Bureau of Customs and Border Protection Needs to Improve Compliance with the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA)" and the opportunity to discuss the issues in this report. I have read the report and believe that there are several issues that need to be addressed immediately. We will be taking short term remedial action at once.

We have established a team to address the systemic issues identified in the report and to strengthen the long-term health of the Byrd Amendment payment program. I will be meeting personally with the appropriate Assistant Commissioners to ensure appropriate resolution.

Our plan is to:

- (1) address the overpayments as identified by your audit team and to recoup them at once;
- (2) address the anticipated FY 2003 distribution with the interim strategy discussed in the attached document; and
- (3) resolve the structural issues with respect to the management of the program.

We would very much like to draw on the expertise of the Office of the Inspector General (OIG) with internal controls and audit practices during the resolution process by including an OIG representative in our discussions. I would ask that you designate a point of contact to work directly with us on our short and long-term strategies.

The actions Customs and Border Protection (CBP) will take in response to the recommendations will not only address short-term overpayments but should provide a strong foundation for future management and collection processes. Comments specific to the recommendations and

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management considerations are attached, as are technical comments that relate to statements that need to be clarified prior to finalization of this report.

We have determined that the information in the audit does not warrant protection under the Freedom of Information Act.

If you have any questions regarding the comments, please have a member of your staff contact Michele Donahue at (202) 927-0957.


Douglas M. Browning

Attachments

Attachment

**Response to Audit Recommendations
OIG Draft Report on
Continued Dumping and Subsidy Offset Act of 2000**

Finding 1:

Recommendation 1 – The Commissioner of Customs and Border Protection should ensure that Customs, at a minimum, obtains control over the one Special Account so that the balance in the Special Account on the payment determination date (September 30) is reliable.

Response: Concur. Management has established a Continued Dumping and Subsidy Offset Act (CDSOA) Working Group. This group will review the process relating to the Special Account and prepare recommendations to senior management.

Target completion date:

December 2003

Recommendation 2 – The Commissioner of Customs and Border Protection should ensure that all overpaid affected domestic producers are billed immediately for the overpayments.

Response: Concur. The Commissioner has directed the Offices of Regulations and Rulings, Finance, Field Operations, and Information and Technology to collect the overpayments immediately. Collection letters have been drafted and will be issued as soon as possible. However, a further reconciliation of the total open bills relating to the 2002 distributions is being conducted and may result in a change in the total overpayment amount.

Target completion date:

June 2003

Recommendation 3 – The Commissioner of Customs and Border Protection should ensure that KPMG's recommendation to codify the policy and procedures in effect for the CDSOA is implemented.

Response: Concur. Management has assigned the CDSOA Working Group the task of reviewing existing procedures and making recommendations for process improvements to senior management. Once an option has been selected, the CDSOA Working Group will oversee efforts to establish the appropriate documented internal controls and standard operating procedures.

Target completion date:

December 2003

Recommendation 4 – The Commissioner of Customs and Border Protection should ensure that CDSOA programming issues are addressed more timely.

Response: Concur. Process improvements for the fiscal year 2003 payment cycle are being developed that will address the timeliness and accuracy observations made in this report. Some of the actions that will be taken for the upcoming payment cycle include:

- Reconciliation with the Department of Commerce to ensure that only active cases are reflected in our inventory of unliquidated entries;
- Development of an integrated program that combines and simplifies the multiple queries that are needed to extract the data to ensure proper payments;
- Assistance, by the CDSOA Working Group, in the coordination of the many steps in the payment process among the various offices involved.

Target completion date:

December 2003

Recommendation 5 – The Commissioner of Customs and Border Protection should ensure that the CDSOA program is adequately staffed to meet the statutory deadline for distribution.

Response: Concur. This is an issue that will be addressed by the CDSOA Working Group. They will prepare recommendations on organizational staffing to senior management.

Target completion date:

December 2003

**Response to Management Considerations
OIG Draft Report on
Continued Dumping and Subsidy Offset Act of 2000**

Management Consideration 1: Untimely publishing of a comprehensive annual report on the fiscal year 2001 CDSOA payments.

Response: We will take steps to insure that a timely and more comprehensive report is provided in fiscal year 2003.

Management Consideration 2: There are \$97 million in open (unpaid) antidumping and countervailing duty bills and interest (comprised of \$24 million for fiscal year 2001, at January 16, 2003, and \$73 million for fiscal year 2002, at November 20, 2002).

Response: The Office of Field Operations (OFO) personnel are closely monitoring the field to insure that all protests are finalized in an expeditious manner. Once protests associated with an open bill are finalized, the Office of Finance can proceed with the collection process.

Management Consideration 3: There are one million unliquidated antidumping and countervailing duty entries totaling about \$2 billion, as of March 13, 2003.

Response: Reconciliation with the Department of Commerce is currently underway that will help determine the inventory of unliquidated entries appropriately as it applies to open cases. OFO personnel are developing "aging" reports of unliquidated entries, based upon the month that Commerce issued antidumping orders. These aging reports will be used by Commerce and port personnel to focus increased attention on the older entries that have not been liquidated.

Management Consideration 4: Qualifying expenditures claimed by affected domestic producers not verified on a routine basis.

Response: CDSOA Working Group will develop a methodology to address verifying qualifying expenditures specified on certifications on a routine basis.

Technical Corrections

OIG Draft Report on Continued Dumping and Subsidy Offset Act of 2000

Page 16, 2nd paragraph in section 3, first sentence seems to contain a typo. The sentence says that Commerce final administrative results are challenged by a court injunction. This is somewhat inaccurate. We suggest the following change: "...or the final administrative results **are have been legally** challenged ~~legally by~~ **and** one or more court injunctions **issued suspending liquidation.**"

Central Region

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