



U.S. Customs and Border Protection
Office of International Trade
90 K Street, NE – 10TH Floor
Washington D.C. 20229-1177

December 3, 2014

Attention: Tracey Denning
Regulations and Rulings

Re: Comments of BCB International, Inc.
Importer ID Input Record/EBP 5106

Dear Ms. Denning:

In accordance with the 60 – Day Notice and request for comments¹, BCB International, Inc. respectfully submits the following comments on U.S. Customs and Border Protection's ("CBP" or "Customs") proposed changes to Custom Form ("CF") 5106. Specifically, we wish to address the inappropriate use of the SS/ IR/EIN as positive identification of the parties purchasing and/or receiving goods from a non-resident Importer of Record. We feel that the collection of the SS/IR/EIN for this purpose is infeasible, provides little value, and is not aligned with CBP's intentions.

Per the IRS, social security numbers, IR numbers, and EINs are all unique, 9 digit numbers issued by the IRS to identify specific individuals and business entities (emphasis added) for the collection of Federal Internal Revenue tax collection. It's important to emphasize that the IRS issues these numbers to business *entities*, not particular business locations. Any of the branch offices, divisions, or facilities under the control of a corporation will share a single EIN with the corporation's headquarters.

For example, suppose that the EIN of ABC Company is associated with their Buffalo, NY headquarters. They have a branch office in Detroit, MI that is authorized to make purchases independent of corporate approval. When the Detroit office makes such a purchase, the EIN that is transmitted to CBP

¹ Agency Information Collection Activities: Importer ID Input Record, 79 Fed. Reg. 61091 (Oct 9, 2014).

Detroit. The EIN can **never** provide CBP with assurance of a positive identification of the purchaser unless the purchaser happens to also be the Importer of Record.

The Federal ID number transmitted electronically to CBP for security targeting will only reflect the name and address in the 5106 file for the ID number transmitted. In the past, CBP officers have tried to overcome this limitation by requiring the filer to append a 2-digit suffix to the EIN number. The thinking was that this suffix could be used to identify various branch offices or addresses that might be associated with a single business. These suffixes are completely unverifiable, having never been formally issued by the IRS or any other record-keeping government authority.

Although CBP has since stopped the practice of directing the addition of 2-digit to the EIN, the 11-digit numbers have not been removed from CBP records. The legacy "5106 file" utilized by CBP for positive identification of parties to the import transaction is overwrought with Federal ID numbers erroneously filed over time with a two digit suffix. Indeed, the 5106 file is full of inaccurate, unverified, records entered by unrestricted third parties who lack the resources or legal authority to verify even valid, 9-digit SS/IR/EIN numbers, let alone invented suffixes, and is still being utilized by CBP for security targeting.

We agree that the IRS issued SS/IR/EIN number should continue to be used to identify, specifically, the Importer of Record in an entry transaction and that the 5106 is the proper means of providing that information to CBP. However, we feel that the purchaser/ship-to party (which may or may not also be the Importer of Record) cannot adequately be identified by an SS/IR/EIN. Rather than using the EIN as a proxy for the purchaser's name and address, we feel that the purchaser's name and address should be transmitted directly. This would allow CBP to identify the purchaser accurately and directly, without the added complications that the use of the SS/IR/EIN currently present. This would also allow CBP to identify parties not associated with any SS/IR/EIN.

Current policy requires that a 5106 be filed – either by paper or electronically through ABI, without any restrictions as to who supplies the name and address associated with the SS/IR/EIN. The result is uncontrolled filings by multiple third parties who lack the resources to authenticate and verify the information being input. The result for CBP is a 5106 file that has become bastardized as it contains names and addresses that, despite the best efforts of the filers, are merely associated with a nine or eleven digit number that may or may not be the SS/IR/EIN number of the party named on the import documents. As such an SS/IR/EIN number is an inappropriate means of positive identification of parties to the transaction not acting in a role of Importer of Record on an entry filing.

BCB International, Inc. is a privately held U.S. Customs brokerage firm established in 1981 with operations on the Northern Border. BCB International Inc's. 24/7 operations process, on average, approximately 36,000 entries monthly covering Northern Border U.S. importations – over 90% of which are imported by non-resident (foreign) importers of record. In general, reflective of BCB business model, Northern Border Brokers are more often agents of the foreign Importer of record and have no direct business relationship with the nonresident Importer's U.S. Consignees nor a power of attorney on file to act on the U.S. resident consignee's behalf.

Northern Border releases comprise a notable percentage of all U.S. importations. In establishing regulation the unique importation environment specific to the Northern Border is often overlooked or misunderstood resulting in impractical policies and CBP officer "workarounds". When considering regulatory changes to importer, purchaser, and ship-to identification policy we wish to emphasize the importance of addressing the unique complexities of Northern Border importations and ensure they are accommodated during the policy making process. As previously stated our intent is to ensure that the information required to be collected is not only feasible and of value, but also *commensurate with CBP's intent for the collection.*

U.S. Customs and Border Protection's Directive 3550-079A defines the "ultimate consignee" for release/entry purposes and the appropriate means of identification to be provided by the filer at time of entry or release. The directive specifically states:

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6.4 " For formal entries, the appropriate identification number for the Ultimate Consignee is defined as an Internal Revenue Service employer identification number, or a Social Security number. Filing for the appropriate identification number for the Ultimate Consignee is provided for in 19 CFR § 24.5. Customs assigned numbers are for non-U.S. entities, and as such, are not acceptable to identify the Ultimate Consignee on formal entries, except for the following classes of merchandise..."

6.5 "For informal entries, the appropriate identification number for the Ultimate Consignee is defined as an Internal Revenue Service employer identification number, or a Social Security number. In instances when neither an Internal Revenue Service employer identification number, nor a Social Security number is available at the time of entry or release, the appropriate identification number for the Ultimate Consignee on informal entries may also be defined as any of the following:

6.5.1 The ABI transmission of the name and U.S. address of the party to whom the overseas shipper either sold or consigned the imported merchandise, or if unknown, the ABI transmission of the name and U.S. address of the proprietor of the U.S. premises to which the imported merchandise is to be delivered

Northern border release is a 24/7 operation with the heaviest demand for pre arrival release processing occurring after 5pm where advance notice of a pending importation may be a matter of hours rather than days or weeks as in the air and sea environment. Most electronic 5106 additions for non-importer purchaser/ship-to parties are done at time of release from the EIN and name and address information provided to the broker/filer by the foreign Importer of Record on their import documents. As previously stated, we emphasize that the information the CBP officer receives from the electronic cargo transmission is the *specific name and address in CBP's 5106 file associated with the ID number transmitted* and will often **not** match the name and address of the purchaser/ship-to party named on the invoice. It is understood that due to the proprietary nature of personal identification information the IRS cannot validate or share Internal Revenue Service identification numbers with U.S. Customs and Border Protection. As a result CBP has no verifiable means of validating the 5106 information other than the physical address transmitted via the 5106 against the U.S. Postal Services address records. Transmission of the name and address as allowed on an informal entry would provide CBP with a more accurate

identification of the parties to the transaction where the accuracy of electronically transmitted information is crucial for meaningful security targeting.

The Office of Justice Programs, Bureau of Justice Statistics (BJS) states household identity theft rose 33% between 2005 and 2010 which coincides with CBP enforcement beginning in 2004 of the mandatory requirement to report the SS/IR/EIN identification number of the purchaser/ship-to as a condition of import. The result of CBP Directive 3550-079A is the U.S. government requiring a U.S. party to disclose their SS, IR, and/or EIN information to a foreign national (the foreign Importer, trucking company, etc) whom the U.S. government has no true legal authority over to ensure that the information is protected and remains proprietary. Forcing the disclosure of this type of proprietary information to a foreign national as a condition of foreign purchase is a restrictive trade practice which, due to the impending paperless environment and rising prevalence of identity theft, is a very real security risk.

We contend that the transmission of name and address for a consignee not acting as Importer of Record on a entry/release or entry summary would be a more accurate representation of the parties related to the import transaction and provide CBP the means for a more meaningful security targeting. Use of name and address for identification of the non Importer of Record purchaser/ship-to party would eliminate the U.S. resident party's exposure to the risks associated with providing proprietary information to a foreign national where the U.S. Government demanding that disclosure as a condition of purchase and subsequent import cannot provide any protection against the misuse of that information by a foreign national (emphasis added).

If the 5106 is to continue to be used for submission of consignee information the Trade community needs to have clarified, absent a Power of Attorney for the company in question, by whom and under

what authority can an electronic 5106 be added to ABI. CBP also needs to clarify WHAT name & address is to be added - the corporate name & address associated with the IR/EIN or the branch office added for CBP release purposes. IF SS, IR, or EINs are to be used as a means of identification of the U.S. consignee, then CBP officers should be able to accept the corporate name and address without a name and address match to the consignee as noted on the commercial invoices / shipping documents.

Respectfully Submitted,
BCB INTERNATIONAL, INC.



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