

# COMMITTEE TO SUPPORT U.S. TRADE LAWS

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December 4, 2014

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U.S. Customs and Border Protection

Attn: Tracey Denning

Regulations and Rulings

Office of International Trade

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## Re: Agency Information Collection Activities; Importer ID Input Record

On behalf of the Committee to Support U.S. Trade Laws ("CSUSTL"), an organization of U.S. companies, trade associations, and workers, we are providing comments on U.S. Customs and Border Protection's ("CBP") proposed revision to CBP Form 5106: Importer ID Input Record ("Form 5106").<sup>1</sup>

As described below, CSUSTL supports CBP's proposal to require importers to provide additional information regarding their ownership, officers, and the nature of their importing business. CSUSTL believes that the collection of the additional information identified in the Proposed Revision will allow CBP to better track and target importers seeking to evade the payment of duties, particularly antidumping and countervailing duties. The Proposed Revision will also enable CBP to better ensure that bonds sufficient to protect the Treasury are required of new importers. CSUSTL herein also proposes that the agency

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<sup>1</sup> See *Agency Information Collection Activities: Importer ID Input Record*, 79 Fed. Reg. 61,091 (Dep't Homeland Security Oct. 9, 2014) ("Proposed Revision").

collect certain additional information in Form 5106 that would further facilitate CBP's enforcement efforts.

## **I. BRIEF BACKGROUND**

Form 5106 plays an important role in facilitating CBP's effective enforcement of U.S. trade laws. As CBP acknowledges, Form 5106 "is the basis for establishing bond coverage, release and entry of merchandise, liquidation, and the issuance of bills and refunds."<sup>2</sup> As such, Form 5106 is integral to CBP's ability to track importers of merchandise that is subject to U.S. antidumping and countervailing duties, and to collect duties from these entities as appropriate. As the U.S. Government Accountability Office ("GAO") has noted, however, the limited nature of the information required by the current version of the form, and the corresponding ease with which applicants are able to obtain importer identification numbers, has hampered CBP's efforts to enforce the trade laws.

CBP has long experienced difficulties in collecting antidumping duties, as well as in collecting civil penalties for duty evasion generally. In a 2012 report, the GAO noted that CBP had collected only two percent (or roughly \$5 million) of the approximately \$208 million it assessed in civil penalties between fiscal years 2007 and 2011.<sup>3</sup> In 2008, the GAO found that uncollected antidumping and countervailing duties between 2001 and 2008 totaled over \$600 million.<sup>4</sup> CBP itself has stated that, as of August 2014, "{t}here are approximately 36,000 unpaid AD/CVD bills from FY 2001 through FY 2013 totaling \$1.83 billion, for which CBP is

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<sup>2</sup> *Proposed Revision*, 79 Fed. Reg. at 61,091.

<sup>3</sup> U.S. Government Accountability Office, *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion* (May 2012) at 17 ("2012 GAO Report").

<sup>4</sup> U.S. Government Accountability Office, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection* (March 2008) ("2008 GAO Report").

pursuing collection. . . . Further amounts are owed by importers that have disappeared or dissolved without going through the bankruptcy process.”<sup>5</sup>

One of the key factors that has contributed to this problem is that the CBP currently collects only minimal information on new importers, and does not conduct background or financial checks on such businesses. According to GAO, these factors “create{} challenges to locating and collecting AD/CV duties.”<sup>6</sup> Dishonest companies “take advantage of” the relatively simple processes currently in place for becoming an importer of record “to elude CBP efforts to locate and collect revenues from them.”<sup>7</sup> The ease with which companies can adopt new importer names and identification numbers facilitates duty avoidance, making it difficult for CBP “to track {companies’} importing activity and gather evidence needed to prove that they are engaging in evasion.”<sup>8</sup> In fact, it appears that, in anticipation of CBP targeting/collection efforts, some importers simply obtain new identification numbers and then proceed with their business under a new name.<sup>9</sup>

CBP itself has stated that collection of antidumping and countervailing duties is made particularly difficult by the fact that entries of these goods are often made by companies with insufficient assets or business to cover likely duty payments, as well as by rising numbers of simply fraudulent entries:

Undercapitalized importers with few assets, if still in business by the time bills for final AD/CVD are issued, often have difficulties in paying these bills. Other importers, often in the form of shell companies and foreign non-resident importers, have no intention of paying any final duties, and disappear as soon as there is any indication that final duties may increase. This is particularly true for AD/CVD orders covering imports from China, and Chinese agriculture/aquaculture imports in particular. . . . In addition, some importers

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<sup>5</sup> Department of Homeland Security, *Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2013* (Aug. 19, 2014) at 14 (“2014 DHS Report”).

<sup>6</sup> 2008 GAO Report at 20; 2012 GAO Report at 17.

<sup>7</sup> 2012 GAO Report at 17.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

participate in schemes to intentionally evade AD/CVD by filing incorrect entries, leading to additional uncollected AD/CVD.<sup>10</sup>

The collection of additional data on new importers through Form 5106 should assist CBP in identifying “undercapitalized” businesses before they bring in significant quantities of goods subject to trade orders. Moreover, it should assist the agency in identifying individuals and/or entities who have previously failed to pay trade duties, and are attempting to continue their business without making good on their outstanding obligations.

## **II. PROPOSED REVISION AND ADDITIONAL CHANGES**

Clearly, CBP requires additional means by which to identify undercapitalized importers, those who have outstanding bills under other business names, or who have previously been found to engage in fraudulent practices with respect to trade duties. CSUSTL supports CBP’s Proposed Revision to Form 5106 because it will provide CBP with more robust information regarding a company’s ownership, officers, and the proposed nature of its importing business.

Obtaining information on the applicant’s history and related businesses will facilitate the identification of entities simply seeking to adopt new names and importer identification numbers. The collection of information regarding the principal officers of the applicant, in conjunction with the information on related business entities, stands to facilitate the identification of the specific individuals involved in duty evasion. Moreover, obtaining information regarding importers’ banking institutions could also enable CBP to assess the creditworthiness of such entities, and distinguish between legitimate claims of bankruptcy and those intended solely to evade the payment of duties and civil penalties. Additionally, we note that CBP’s proposed revisions appear consistent with the provisions of H.R. 6642 (the Customs Trade Facilitation and Enforcement Act of 2012). In particular, the proposed revisions are consistent with the goals of Section 221 of that bill, which would require the agency to develop a program to ensure that the

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<sup>10</sup> Department of Homeland Security, *Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2013* (Aug. 19, 2014) at 9.

agency has sufficient information to identify changes in importers' addresses and corporate structure, and to prevent duplication of importer of record numbers.

While CSUSTL supports the proposed additional data requirements, CSUSTL also believes that CBP should collect still further information in order to facilitate CBP's enforcement efforts and collection of unpaid duties and civil penalties. In this regard, CSUSTL respectfully requests that CBP consider adopting the following changes:

- Require applicants to identify both movable and nonmovable assets located in the United States. Such information could allow CBP to seize the assets of any importers attempting to evade the payment of antidumping and/or countervailing duties;
- In Block 3A, CBP should specify that the brief business description must state whether the importer intends to import goods subject to AD/CVD orders. The agency may also wish to obtain information specifying whether an importer intends to bring in goods subject to quota, or to regulation by agencies such as the U.S. Food & Drug Administration, U.S. Environmental Protection Agency, or U.S. Department of Agriculture.
- In Block 3J, CBP should require the applicant to identify, for each company officer listed, the names of all other companies in which the individual has served or currently serves as an officer. This information would further enable the agency to meet the goals of Section 221 of H.R. 6642, as well as facilitating proper bonding and collection on outstanding bills. For each such company listed, the individual should provide:
  - The importer identification number, if any;
  - The current status of the company, *i.e.*, whether the company is currently operational, filed for bankruptcy, or has otherwise ceased operations; and
  - The nature of the company's operations, and, if engaged in importing product into the United States, the type(s) of product(s) imported.
- Finally, given that 19 C.F.R. 141.18 requires non-resident importers to have resident agents authorized to accept service of process, CBP should collect information on the identity and addresses of such resident agents pursuant to Form 5106.

This information will allow CBP to identify applicants who may have obtained previous importer identification numbers under different/related company names, as well as to identify, prior to significant entries being made, importers that face the increased financial and compliance burdens presented by trade orders, quotas, etc. This information will also allow CBP

to identify individual company officers involved in multiple importing operations, and could enhance CBP's ability to identify companies/individual officers involved in questionable importing activities.

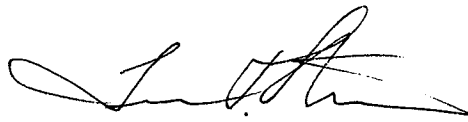
### III. CONCLUSION

In sum, CSUSTL supports CBP's proposed revision to Form 5106, which will allow the agency to better target and collect duties and civil penalties from importers seeking to evade such assessments. CSUSTL also respectfully submits that the collection of the additional information described above will further facilitate the effective enforcement of U.S. trade laws and will ensure that all entities engaged in trade in the United States do so fairly and in accordance with U.S. law.

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We appreciate CBP's consideration of these comments. Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,



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Co-Chairs, Enforcement Subcommittee

*Committee to Support U.S. Trade Laws*