INSPECTOR GENERAL

IG-BB-019

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

September 30, 2004

MEMORANDUM

TO: Chairman

FROM: Inspector General

SUBJECT: Inspection Report OIG-IR-01-04, U.S. International Trade Commission's Implementation of the Continued Dumping and Subsidy Offset Act of 2000

The Office of Inspector General has completed Inspection Report OIG-IR-01-04 of the Commission's Implementation of the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). The objective of this inspection was to determine if the Commission effectively: (1) identified and reported to the U.S. Customs and Border Protection (CBP) the names of affected domestic producers that supported action resulting in an antidumping/countervailing duty order, and (2) processed requests to be added to the names of affected domestic producers provided to CBP.

While the Commission effectively implemented the Act, we suggested additional actions to enhance its process and improve communication, such as:

- Developing written procedures to identify, process and report producers to CBP.
- Adding to its website guidance on the Act's requirements and answers to key stakeholders' problems.
- Revising the Producer's Questionnaire to alert eligible producers that requesting confidentiality might prevent inclusion in the Commission's list provided to CBP.
- Linking all electronic documents associated with an investigation in the Commission's Electronic Document Information System (EDIS).

Commission officials responded positively to our draft report. The Director of Operations indicated that he had revised the investigator's checklist and intended to implement the other suggestions addressed to him by October 29, 2004. Specifically, he will seek advice from the Office of General Counsel and CBP to: clarify and streamline reporting of associations and coalitions as well as the groups' members;

provide website information on the Commission's and CBP's roles; and clarify the Producer's Questionnaire regarding confidentiality.

The Chief Information Officer commented that EDIS possibly could link CDSOA electronic documents to applicable investigation electronic files maintained in EDIS. However, the Commission still may need to assign responsibility for filing and retrieving hard copies of CDSOA-related documents.

Attachment

cc: Commission
Senior Staff

OFFICE OF INSPECTOR GENERAL

INSPECTION OF THE U.S. INTERNATIONAL TRADE COMMISSION'S IMPLEMENTATION OF THE CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000

Inspection Report
OIG-IR-01-04

September 30, 2004

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I. SUMMARY OF RESULTS

The U.S. International Trade Commission (Commission or USITC) effectively has identified and reported domestic producers affected by unfair trade practices in accordance with the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA or the Act). The Act, also known as the "Byrd Amendment," [1] provided that affected producers may be eligible to receive an offset—funds disbursed annually by the U.S. Customs Service[2] from assessed anti-dumping and countervailing (AD/CV) duties—for certain qualifying expenditures incurred after the issuance of an order or finding. To claim the offset, affected domestic producers had to be included on a list the Commission provided to U.S. Customs and Border Protection (CBP), which assessed the duties and processed the claims.

The Commission may enhance its compliance with the Act by:

- Developing written procedures to identify, process and report producers to CBP.
- Adding to its website guidance on the Act's requirements and answers to key stakeholders' problems.
- Revising the Producer's Questionnaire to alert eligible producers that requesting confidentiality might prevent inclusion in the Commission's list provided to CBP.
- Linking all electronic documents associated with an investigation in the Commission's Electronic Document Information System (EDIS).

Commission officials responded positively to our draft report. The Director of Operations indicated that he had revised the investigator's checklist and intended to implement the other suggestions addressed to him by October 29, 2004. Specifically, he will seek advice from the Office of General Counsel and CBP to: clarify and streamline reporting of associations and coalitions as well as the groups' members; provide website information on the Commission's and CBP's roles; and clarify the Producer's Questionnaire regarding confidentiality.

The Chief Information Officer commented that EDIS possibly could link CDSOA electronic documents to applicable investigation electronic files maintained in EDIS. However, the Commission still may need to assign responsibility for filing and retrieving hard copies of CDSOA-related documents.

[1]Named for CDSOA sponsor Senator Robert C. Byrd of West Virginia.
[2]Under the National Strategy for Homeland Security and the Homeland Security Act of 2002, part of the U.S. Customs Service became U.S. Customs and Border Protection within the U.S. Department of Homeland Security.

II. BACKGROUND

CDSOA (Public Law 106-387, enacted October 28, 2000) amended title VII of the Tariff Act of 1930 to distribute assessed AD/CV duties received—under an antidumping duty order, countervailing duty order, or finding under the Antidumping Act of 1921—on or after October 1, 2000. Accordingly, CBP annually must distribute duties to affected domestic producers for certain qualifying expenditures that they incurred after such an order or finding.

The term "affected domestic producer" means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that:

(a) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or countervailing duty order has been entered, and

(b) Remains in operation.

Generally, *dumping* occurs when a foreign firm sells merchandise in the U.S. market at a price lower than the price it charges for a comparable product sold in its domestic market. If the U.S. Department of Commerce (Commerce) finds such merchandise, antidumping duties are imposed. If Commerce finds that imported merchandise benefits from subsidies bestowed by a foreign government, countervailing duties are imposed. In all antidumping cases, and in most countervailing duty cases, these duties are imposed only if the Commission determines that the imported goods caused material injury or the threat of material injury to a U.S. domestic industry.

CDSOA assigned the Commission responsibility to ascertain and forward to CBP a list of producers potentially eligible to receive an offset in connection with an AD/CV duty order[3]. For orders in which the Commission conducted an investigation, a U.S. domestic producer who was a petitioner or an interested party in support of a petition to which an order had been entered were identified when the producer either: (a) completed the Producer Questionnaire, indicated support for the petition, and waived confidentiality or (b) supported the action during the investigation by submitting a letter to the Commission. For orders not requiring an investigation, Commerce supplied the information to the Commission for inclusion in the list forwarded to CBP. The Commission's Office of Investigations, under the Director of Operations, prepares the list.

CBP prescribes procedures to distribute the offset funds to affected domestic producers, to whom CBP distributes funds annually from duties assessed during the preceding fiscal year. Before distribution, CBP publishes a *Notice of Intent to Distribute* in the *Federal Register* listing all active orders and the affected domestic producers potentially associated with each.

[3] In this report, we will refer to an AD/CV duty order or finding as an "order".

III. OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this inspection was to determine if the Commission effectively: (1) identified and reported to CBP the names of affected domestic producers that supported action resulting in an AD/CV duty order, and (2) processed requests to be added to the names of affected domestic producers provided to CBP.

From June through July 2004, we:

- Reviewed applicable federal regulations;
- Evaluated applicable controls in the Commission's Office of the Secretary and Office of Investigations;
- Interviewed Commission officials including the Director, Office of Operations; Director, Office of Investigations; investigator responsible for administering the Act; Acting General Counsel; Assistant General Counsel responsible for providing advice on the Act's requirements; an Attorney-Advisor involved in Act claims; Secretary to the Commission; and Deputy Secretary to the Commission; and
- Interviewed the CBP National Finance Center's Billing Chief, U.S. Department of Homeland Security's Office of Inspector General (DHS OIG) [4] officials, and Commerce's Communication Officer.

We sampled active orders as of June 3, 2004; CDSOA petitions submitted as of June 11, 2004; and petitions the Commission received 30 days after CBP's June 2, 2004 *Federal Register* posting of the *Notice of Intent to Distribute.*

The inspection was conducted in accordance with the *Quality Standards for Inspections*, promulgated by the President's Council on Integrity and Efficiency, and adapted by the Executive Council on Integrity and Efficiency.

[4] The Homeland Security OIG conducted an audit titled *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.

IV. DETAILS OF RESULTS

A. Effective Implementation of the Act

The Commission effectively identified and reported to CBP those affected domestic producers who supported an order. We randomly selected 46 percent (28 of 60) of the Commission's AD/CV duty orders since 2002 and verified that for each order affected domestic producers were listed in the June 2, 2004 *Federal Register*[5]. From the date CBP published its intent to distribute duties in the June 2, 2004 *Federal Register* to the end of our fieldwork, no one filed a request to be added to the list due to an omission by the Commission. Additionally, after sampling 28 percent (45[6] of 158) of requests submitted to the Commission from January 2003 through June 2, 2004, we found no significant deficiency in the program's implementation.

Generally within the required 60 days, the Commission provided CBP with a list of affected domestic producers for whom Commerce had issued an order. Of 28 sampled orders, only 1 was late, and by less than 5 days. The official who administered the Act for the Commission (Act administrator) responded by establishing a control to monitor the status of all pending orders to ensure future reports are timely.

For 25 requests, randomly selected from the Commission's Electronic Document Information System (EDIS), we reviewed the applicable investigation file and found that the Commission had properly researched, documented, authorized for acceptance or denial, and communicated to CBP when applicable.

Commerce, CBP, and DHS OIG officials advised they had no problems or concerns regarding the Commission's implementation of CDSOA. Commerce's Communication Officer and CBP's National Finance Center Billing Section Chief stated they had a positive relationship with the Commission, and the DHS OIG's audit had no findings or issues concerning the Commission.

B. Need for Written Procedures

As discussed above, the Commission improved its CDSOA implementation by creating a control to ensure timely reporting to CBP. However, the Commission can further enhance its implementation of the Act by documenting procedures to identify, process, and report affected domestic producers who support the petition to CBP as discussed below.

[5]Annually, CBP publishes in the *Federal Register* a *Notice of Intent to Distribute* the offset and the list of affected domestic producers potentially eligible for the distribution based on the list provided by the Commission.
[6] We sorted the 45 requests into 9 categories and provided comments in Appendix A.

Identification. The Commission primarily relied on the Office of Investigations'[7] title VII[8] checklist to identify and report potential affected domestic producers to CBP. When an investigator closed a case, the investigator went through steps listed on the title VII checklist to ensure all documents were properly processed. This checklist instructed the investigator to forward certain documents submitted by those who completed the Producer's Questionnaire during the course of the investigation to the Act administrator for further processing. However, the checklist did not include instructions to identify and forward for further processing those domestic producers who supported the Commission's actions by way of a letter.

For only 1 of 25 requests reviewed, the domestic producer stated that support for the investigation associated with an order (issued in 2000) had been provided through a letter. The Commission affirmed this claim and forwarded the producer's name to CBP. By revising the title VII checklist to instruct that such letters be forwarded to the Act administrator, the Commission can ensure that investigators consider letters of support for further processing.

For cases in which Commerce made a determination and did not require an investigation by the Commission, the Act administrator informally relied on Commerce to provide the affected domestic producers' names for reporting to CBP. Of the 25 requests reviewed, 1 domestic producer supported a non-investigation case, but the name was not submitted to CBP. On receiving the request and confirming the producer's claim with Commerce, the Act administrator reported the name to CBP. The Office of Investigations Director stated that even though a determination without an investigation would be extremely rare, the Director daily reviewed the *Federal Register* to identify new orders.

Processing. The Office of Investigations did not have written policies and procedures for implementing the CDSOA program. When the former Act administrator retired, his successor had to ascertain what to do to meet the Act's requirements. Should the current Act administrator leave, the Office of Investigations would again have to reconstruct the process to meet the Act's requirements. By documenting it, the Commission could ensure uninterrupted CDSOA compliance.

Reporting. Absent a clear policy for handling a group of petitioners, the Commission could risk error or inefficiency in identifying and reporting some affected domestic producers. Sometimes the Commission reported a group's name to CBP, while at other times it reported each member of the group. According to the Act administrator, members of an *association* were reported as a group, but members of a temporary *coalition* were reported individually. However, according to

[7] Except for certain countervailing duty case in which Commerce makes a determination, the Commission conducts an investigation to make a determination that the imported goods caused material injury or the threat of material injury to a domestic industry.

[8] Under title VII of the Tariff Act of 1930, U.S. industries may petition the government for relief from imports that are sold in the United States at less than fair value ("dumped") or that benefit from countervailable subsidies provided through foreign government programs ("subsidized"). Dumping and subsidizing are considered unfair trade practices.

the Commission's Assistant General Counsel with responsibilities related to the Act, both the group and the individual members were to be reported.

While the Act did not define an association, CBP addressed this issue in 19 *Code of Federal Regulation* (CFR), Section 159.61 and in its annual *Notice of Intent to Distribute* published in the *Federal Register*. CBP provided the following guidance for filing a claim:

> "... even though the member company does not itself appear on the USITC list, provided that the company also meets the other requirements of the statute. In its certification, the company must name the association of which it is a member and the company must specifically establish that it was a member of the association at the time the association filed the petition with the USITC".

Furthermore, the *Federal Register* alerts potential claimants that:

(a) "It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested." and

(b) "Certifications are subject to CBP's verification".

Given CBP's guidance—and that the producer must certify to CBP the accuracy of information provided—the Commission could help by determining how groups will be reported and thereby informing the public and CBP. Of 25 requests for inclusion on the list the Commission provided to CBP, 3 (12 percent) said they should be added because they were members of a group supporting a case. The Commission had no need to research their assertion because the claimants' burden of proof was to certify their claim to CBP.

Suggestion 1

The Director, Office of Operations, should document policies and procedures and assign responsibilities to identify potential affected domestic producers: (a) both through letter and questionnaire from initial point of an investigation to the final point of reporting to CBP, and (b) in cases which a determination of injury was not required through an investigation.

Suggestion 2

The Director, Office of Operations, should revise the investigator's checklist for title VII investigations to include instructions to forward letters supporting the investigation to the Act administrator.

Suggestion 3

The Director, Office of Operations, should consult with the Office of the General Counsel and CBP on how to report an association, coalition, and any other group to CBP. Upon that determination, the Commission should incorporate it into written procedures and communicate it to CBP. In the event the Commission has determined to report only the group name, and a domestic producer subsequently requests to be reported as a member of that group, the Director should direct the Act administrator to advise the requestor of the Commission's policy.

C. Need for Improved Communication

By adding CDSOA guidance to its website, the Commission could streamline processing and improve service to its stakeholders. As discussed above, the Commission could clarify how it will report members of groups to CBP. Additionally, the Commission could further clarify what information will be released when a domestic producer responds to the confidentiality question on the Producer's Questionnaire. By improving communication, the Commission likely will save time identifying potential affected domestic producers to be reported on the list to CBP as well as processing subsequent requests to be added to the list.

Confidentiality Question. Despite the Commission's advice that producers waive confidentiality in order to be added to the affected producer's list, 42 percent (19 of 45) of producers were not eligible to be on the list until they subsequently signed waivers amending the Producer's Questionnaire. Although the Commission explained the ramifications for answering "yes" or "no" to the confidentiality question, some producers were confused. Only after the Commission provided further explanation following submission of the Producer's Questionnaire did most change their response and thereby qualify for the CDSOA offset. In other instances, producers may desire confidentiality until after it is determined whether an order will be issued.

The explanation provided on the *Business Proprietary* Producer's Questionnaire is as follows:

> As indicated on the top of the page [*Business Proprietary*], your response to this question will be treated as business proprietary. However, if the Commission's final determinations in the investigations are affirmative and antidumping and/or countervailing duty orders are issued, the Commission, pursuant to section 754 of the Tariff Act of 1930, will provide a list of firms supporting the petition to the Customs Service [*CBP*] for possible distribution of any antidumping and/or countervailing duties that may be collected. If you wish to waive business proprietary treatment of your response to this question in order to make your position with respect to the petition public and allow inclusion of your firm on that list, indicate "yes" below.
>
> ☐ Yes ☐ No (that is, I do not wish my position on the petition to be made public)

The Producer's Questionnaire would be more effective regarding the request for confidentiality if it were revised as follows:

> Do you consent to your company's name being added to the list of potential affected domestic producers for distribution of assessed duties/findings under the Continued Dumping and Subsidy Offset Act of 2000?
>
> ☐ Yes* – Only the company's name may be provided to U.S. Customs and Boarder Protection in order to receive a portion of duties.
>
> ☐ No – My company's name is to remain confidential. I acknowledge that a "No" answer may affect my ability to collect under this Act.
>
> *No other information you provide to the Commission will be released by the Commission. U.S. Customs and Boarder Protection will publish in its annual Notice to Distribute in the Federal Register the names of the domestic producers associated with each order that supported the investigation. For additional information on the Continued Dumping and Subsidy Offset Act of 2000, you may go to [INSERT WEB ADDRESS ONCE IT IS CREATED].

Suggestion 4

The Director, Office of Operations, advised by the General Counsel, should create an information page on the Commission's website that provides guidance both on the Act's requirements and on key stakeholders' problems.

Suggestion 5

The Director, Office of Operations, advised by the General Counsel, should revise the Producer's Questionnaire to alert petitioners that requesting confidentiality might prevent inclusion in the Commission's list provided to CBP.

D. Need for Improved Maintenance of all Related Documents

The Office of the Secretary—responsible for maintaining the Commission's records—could improve the Commission's research ability by linking all related electronic documents in EDIS and by filing subsequently received hard copy documents by the related investigation. The inability to link related electronic documents caused difficulty in researching a case file and could lead to future errors. Furthermore, hard copies of subsequent external and internal documents were not readily retrievable.

The Office of the Secretary entered into EDIS—in the submenu *Byrd Amendment*—subsequently received CDSOA correspondence and associated internal documents. However, users wishing to retrieve a document had to know certain details, such as the sender or the date received. Without a relational database, officials in the Offices of General Counsel and Investigation could not be certain they had found all pertinent information stored in EDIS.

The Office of the Secretary filed in three boxes all subsequently received hard copy documents. Of 20 randomly selected letters, we found that the Office had recorded them each in EDIS. However, it was impossible to verify that a selected sample of letters posted in *Byrd Amendment* were retained in hard copy because the Office of the Secretary had neither indexed the contents of each box nor labeled the folders with the investigation number provided by the document's originator. Because the Office of Investigation until now has maintained duplicate records, these retrieval challenges have not impeded their work.

Suggestion 6

The Chief Information Officer should enhance EDIS to provide a search capability that links an investigation record to all related documents. Also, controls should be put in place to readily identify and retrieve the hard copy of documents received or internally generated subsequent to an investigation.

Requests for Inclusion (by Justification/Reason) Given in 45 Letters for Being Added to the Commission's List of Affected Domestic Producers

#	Justification/Reason	OIG Comments
19	Subsequently waived confidentiality.	The Commission could not release to CBP the names of producers that had not waived confidentiality on the Producer's Questionnaire. (Further discussion is provided on page 7)
7	Did not request to be added (not applicable—e.g. provided additional documents to support the request).	N/A
4	Asked the Commission to reconsider its determination.	N/A
4	Withdrew the request.	N/A
3	Changed producer name.	N/A
3	Claimed they completed the Producer's Questionnaire but were omitted from the original list.	The Commission determined that 2 of the 3 were omitted erroneously. The Commission had to research the original investigation file for each active order, some dating back to1985. Considering the large volume of work within a short time, 3 errors were not significant.
1	Company expressed support through a letter.	The Commission determined that the company was erroneously omitted. (Further discussion is provided on page 5)
1	Claimed it supported an order which did not require an investigation.	The Commission informally relied on Commerce to supply the Commission with a list of affected domestic producers. (Further discussion is provided on page 5)
3	Claimed to be a member of an association which supported the investigation.	The Commission should determine how groups will be reported. (Further discussion is provided on page 5)