



---

October 15, 2019

Trade and Commercial Regulations Branch,  
Regulations and Rulings,  
Office of Trade,  
U.S. Customs and Border Protection,  
90 K Street, N.E., 10th Floor,  
Washington, DC 20229-1177

**Re: Customs Broker Verification of an Importer's Identity; USCBP-2019-0024**

On behalf of the Committee to Support U.S. Trade Laws ("CSUSTL"), an organization of U.S. companies, trade associations, and workers, we provide comments on the proposed rulemaking issued by U.S. Customs and Boarder Protection ("CBP") to implement section 116 of the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA") (19 U.S.C. § 1641(i)) regarding broker verification of importers' identities.<sup>1</sup>

CSUSTL strongly supports CBP's proposed rules. The proposed rules are an effective way to implement Congress' express instructions and to take meaningful steps to address what is a widely recognized problem that impacts both the government revenue and fair trade competition in the United States.

As recognized in the proposed rulemaking notice,<sup>2</sup> the failure of some brokers to verify the identity of the importers they elect to act as agent for in import transactions with CBP contributes to the ability of unscrupulous importers to set up "shell or shelf companies" that lack any purpose but to avoid the payment of duties due on the merchandise they enter into the United

---

<sup>1</sup> *Customs Broker Verification of an Importer's Identity*, 84 Fed. Reg. 40,302 (U.S. Customs and Border Protection Aug. 14, 2019) ("*Proposed Rule*")

<sup>2</sup> *See, e.g., id.* at 40,304.



States. Often, these companies are used to avoid the additional duties owed to the U.S. Treasury under antidumping (“AD”) or countervailing duty (“CVD”) orders. Not only do these schemes deny revenues due the government, but because AD and CVD orders are put in place specifically to address the injury to U.S. producers and workers caused by imports that are entered into the U.S. market at unfairly dumped prices and/or are unfairly subsidized by foreign governments, these schemes also undermine effective relief from unfair trade and continue the injury to the U.S. companies that the AD/CVD orders are intended to protect.

The avoidance of AD/CVD duties through shell companies has been a widely recognized problem. In a 2016 report to Congress, the GAO reported that \$2.3 billion in AD/CVD duties due remained uncollected between 2001-2014.<sup>3</sup> CBP has reported that, through fiscal year 2017, the amount of uncollected duties increased substantially, with a total of roughly \$3.1 billion in AD/CVD duties uncollected.<sup>4</sup> In a 2008 report, the GAO had found that \$613 million in AD/CVD duties was uncollected in 2001 through 2007,<sup>5</sup> indicating that the rate of non-payment continues to accelerate. The 2016 GAO report also notes that “CBP does not expect to collect most of that amount.”<sup>6</sup>

---

<sup>3</sup> Government Accountability Office, GAO-16-542, *Antidumping and Countervailing Duties: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk* (July 2016) at 13-14.

<sup>4</sup> U.S. Customs and Border Protection, *Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2017* (Fiscal Year 2018 Report to Congress) (July 2018) at 14.

<sup>5</sup> Government Accountability Office, GAO-08-391, *Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection* (March 2008) at 3.

<sup>6</sup> GAO-16-542 at 13.



---

The GAO found that the unpaid duties were concentrated in a small proportion of importers, and that while CBP was able to collect duties “for about 90 percent of the total number of AD/CV duty bills,” but that 90 percent represented only about one-third of the dollar value due.<sup>7</sup> So the number of bad actors may be small, but they represent a largely disproportionate amount of the value in question. Like CBP has in its rulemaking proposal, the GAO recognized in its report that one of the reasons “prospects for collecting these duties are slim” is because many of the importers involved simply disappear when CBP attempts to collect from them. Requiring that importers have a genuine and verifiable identity so that they cannot so easily disappear is a positive step toward addressing the non-payment of duties.

The non-payment of duties has undoubtedly continued to accelerate even more recently. CBP reports that the total duties it collected in fiscal year 2018 rose to \$41.6 billion from \$34.6 billion in fiscal year 2017, or by an additional one-fifth.<sup>8</sup> A significant portion of that increase is due to the collection of duties imposed through Section 201 (washing machines and solar panels), 232 (aluminum and steel), and 301 (China) actions. CBP reports those orders have resulted in the assessment of \$41.9 billion in duties as of October 9, 2019.<sup>9</sup> The duties incurred under those actions are in addition to those duties due under the nearly 500 AC/CVD orders in place on imported goods. The addition of the 201, 232, and 301 duties now provides unscrupulous importers even greater incentive to create paper companies, misclassify goods, and disappear once their schemes have been discovered and before payment can be collected.

---

<sup>7</sup> *Id.* at 13-14.

<sup>8</sup> See CBP, *Trade Statistics*, <https://www.cbp.gov/newsroom/stats/trade>, last accessed Oct. 11, 2019.

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



---

Other steps have also been taken to try to address non-payment of duties, such as the March 2017 executive order requiring enhanced bonding for imports subject to AD/CVD orders.<sup>10</sup> That order likewise recognized that “[i]mporters that unlawfully evade antidumping and countervailing duties expose United States employers to unfair competition and deprive the Federal Government of lawful revenue.”<sup>11</sup> The 2016 GAO report reviewed a number of actions that were being considered to take steps to address non-payment of duties, including increased information gathering by CBP from importers at the time of import. However, the report cautioned, the results of CBP’s steps to collect importer identity information would likely have a limited impact, as the provision of the additional information would be voluntary and “deceptive importers may provide false information.”<sup>12</sup>

Requiring that the customs brokers that importers choose to employ for their import transactions collect and, importantly, verify identifying information is a practical and efficient step in addressing non-payment of duties and the disappearance of shell-company importers when bills come due. The customs brokers, licensed by CBP to perform brokerage services, are directly involved with the importer and will have a much more direct line of contact with that importer than the agency will. CBP’s proposed rule requires that the broker collect minimum information and verify that information so that the broker can knowledgeably identify the importer that it has elected to act as agent for. As CBP points out in the notice, these steps will

---

<sup>10</sup> *Presidential Executive Order on Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws* (March 31, 2017), <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-enhanced-collection-enforcement-antidumping-countervailing-duties-violations-trade-customs-laws/>.

<sup>11</sup> *Id.*

<sup>12</sup> GAO-16-542 at 34.



---

also help protect the broker from disappearing clients. The practicality and direct benefit to the broker of verification practices are why, as reported by the CBP's Broker Management Branch, nearly all brokers already meet or exceed the minimum steps that the new rule will require for all brokers.

As brokers are best situated to collect and identify this information before imports ever enter the United States, and as nearly all brokers already follow these best practices in verifying the identity of the importers they will represent, the proposed rule is able to target specifically a central aspect of the problem: the few brokers who do not verify the identity they are given and so allow importers who wish to avoid valid identification to "broker shop" until they find a broker amenable to their actions. As noted in the GAO reports, most unpaid bills are due to a comparatively small number of importers; but those importers represent not only a disproportionately large share of the dollar value of duties due, they can in fact represent more of the duties incurred than paying importers do. In such cases, even with AD/CVD orders in place, most of the merchandise covered by the order entering the U.S. market may yet remain outside the discipline of the order, making the order considerably less effective and allowing the injury to U.S. industries and the workers they employ to continue.

Because the requirement that all brokers verify the identity of the importers they choose to represent is an efficient, practical and positive step in addressing a widely recognized problem in international trade, a problem that impacts especially industries already injured by unfair trade, CSUSTL strongly supports the action and encourages CBP to apply the necessary resources to implement and enforce the rule, and to penalize any that continue to assist importers



---

in hiding their true identities. While this rule is not likely to fully address non-payment of duties or the circumvention of AD/CVD orders and other trade actions, it does help to plug one significant hole that has long been abused.

We note that while some commentators on the proposed rule have argued that the collection of identifying information will impinge on the rights of U.S. and nonresident importers to import merchandise. That argument can be wholly rejected: it is well settled that “no one can be said to have a vested right” to import.<sup>13</sup> Importing is a privilege that is subject to the direction of Congress. Here Congress has explicitly directed that the identifying information of an importer be collected and verified by the broker, and the proposed rule promulgates that directive.

Finally, while the proposed rule will be helpful in preventing fraudulent importers from finding assistance in defrauding the government from brokers apathetic to their client’s true identity, importers may still enter the merchandise as a self-filer and have no verification of their identity undertaken at any level. With their loss of access to enabling brokers cut off or at least limited by this proposed rule, there may be a significant shift in the number of non-paying importers who choose to self-file. We encourage CBP to also examine what steps can be taken to place similar requirements on self-filers so that their identities are also factual and verifiable.

---

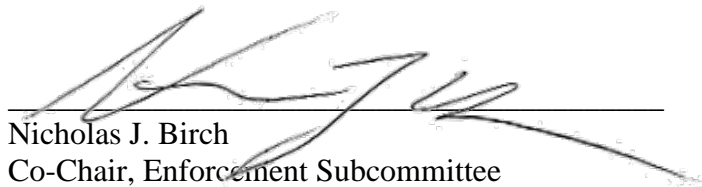
<sup>13</sup> *The Abby Dodge*, 223 U.S. 166, 176-177, 32 S. Ct. 310, 313 (1912); *see also Buttfield v. Stranahan*, 192 U.S. 470, 493, 24 S. Ct. 349, 354-355 (1904) (“As a result of the complete power of Congress over foreign commerce, it necessarily follows that no individual has a vested right to trade with foreign nations....”); *Nec Corp. v. United States*, 151 F.3d 1361, 1369-1370 (CAFC 1998) (“Indisputably, engaging in foreign commerce is not a fundamental right protected by notions of substantive due process.”); *Ganadera Industrial, S.A. v. Block*, 727 F.2d 1156, 1160 (CADC 1984) (there is “no constitutionally-protected right to import into the United States.”).



---

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

Respectfully submitted,



Nicholas J. Birch  
Co-Chair, Enforcement Subcommittee  
*Committee to Support U.S. Trade Laws*