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CBP's Entry Reconciliation Program Puts Revenue at Risk (REDACTED)

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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

September 30, 2020

MEMORANDUM FOR: Mark A. Morgan
Senior Official Performing the
Duties of the Commissioner
U.S. Customs and Border Protection

FROM: Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *CBP's Entry Reconciliation Program*
Puts Revenue at Risk ~~Sensitive Security Information~~

Attached for your information is our final report, *CBP's Entry Reconciliation Program Puts Revenue at Risk* ~~Sensitive Security Information~~. We incorporated the formal comments provided by your office.

The report contains four recommendations aimed at improving the Entry Reconciliation Program. Your office concurred with three of the four recommendations. Based on information provided in your response to the draft report, we consider recommendation 1 open and unresolved. As prescribed by *Department of Homeland Security Directive 077-01, Follow-Up and Resolution for Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendation will be considered open and unresolved.

Based on information provided in your response to the draft report, we consider recommendations 2 through 4 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions.

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~~At CBP's request, the DHS OIG has redacted certain nonpublic information used for law enforcement purposes.~~



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Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov. Consistent with our responsibility under the Inspector General Act, we will provide copies of our report to congressional committees with oversight and appropriate responsibility over the Department of Homeland Security. We will post a redacted version of the report on our website.

Please call me with any questions or your staff may contact Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.

Attachment

cc: Brenda Smith, Executive Assistant Commissioner, Office of Trade, CBP

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DHS OIG HIGHLIGHTS

CBP's Entry Reconciliation Program Puts Revenue at Risk

September 30, 2020

Why We Did This Audit

In 2015, the U.S. Customs and Border Protection (CBP) identified revenue collection as a Priority Trade Issue. CBP scrutinizes revenue collections from importers because of illicit attempts to evade duties, taxes, and fees. Reconciliation is the means by which an importer is able to correct information initially provided to CBP at the time of import. Our audit objective was to determine to what extent CBP's reconciliation program and reporting is accurate and complies with requirements.

What We Recommend

We made four recommendations to improve the overall effectiveness of the program.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

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What We Found

CBP cannot ensure its Entry Reconciliation Program reporting is accurate or complies with requirements. Specifically, CBP did not always validate importers' self-reported final values of imports when it assessed duties and fees. The inaccuracies occurred because CBP Standard Operating Procedures (SOP) do not require importers to substantiate self-reported merchandise values with source documentation.

In addition, CBP did not always follow its policies when conducting reviews of reconciliation entries. These problems occurred because different ports of entry have implemented CBP's SOPs differently.

Finally, CBP missed opportunities to collect additional revenue when it did not assess monetary liquidated damages for importers that filed reconciliation entries late or did not file them at all. This occurred because CBP's controls were insufficient to ensure the ports properly assess liquidated damages for importers who file reconciliations late or not at all.

CBP's actions compromised the integrity of the Entry Reconciliation Program and, as such, may have put approximately \$751 million of revenue, in the form of reconciliation refunds, at risk.

CBP Response

CBP concurred with recommendations 2 through 4 but did not concur with recommendation 1. We included a copy of CBP's response in Appendix B.

OIG-20-79

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Abbreviations

ACE	Automated Commercial Environment
ACS	Automated Commercial System
CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
HMF	Harbor Maintenance Fee
NAFTA	North American Free Trade Agreement
OIG	Office of Inspector General
SOP	Standard Operating Procedures

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Background

Revenue collection is one of U.S. Customs and Border Protection's (CBP) most important and oldest functions. A part of CBP's mission is to protect revenue and facilitate movement of legitimate trade. Today, CBP is the second largest revenue collector for the U.S. Government. CBP scrutinizes revenue collection because of importers' illicit attempts to evade duties, taxes, and fees, thereby defrauding the U.S. Government and undermining lawful business. In fiscal year 2017, CBP collected \$40.1 billion in revenue. CBP collects the following types of revenue:

- duties — amounts collected on imported goods,
- user fees — amounts collected for certain services as provided by law,
- excise taxes – amounts collected on certain commodities, and
- fines and penalties — amounts collected for violations of laws and regulations.

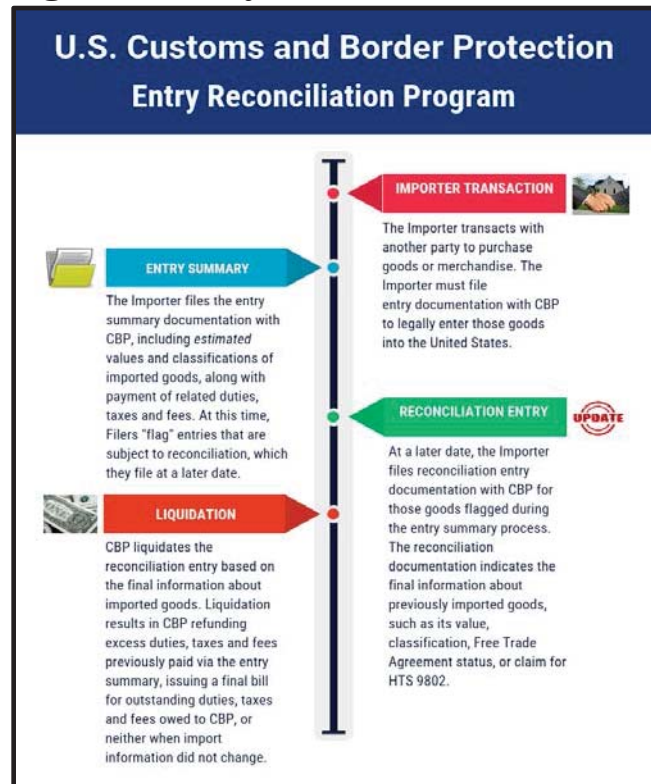
Entry Reconciliation Program

Reconciliation is the means by which importers are able to correct information initially provided to CBP at the time of import. Figure 1 provides an overview of the various steps in the reconciliation program. Each step is detailed below.

Importer Transaction and Entry Summary

When importing goods into the United States, importers must pay duties, taxes, and fees. To do so, importers file entry documentation with CBP. The entry summary consists of the documentation necessary for CBP to assess duties, collect statistics, and determine whether importers have met other

Figure 1: Entry Reconciliation Process



Source: DHS Office of Inspector General (OIG)

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requirements of law. In FY 2017, CBP processed about 33 million import entries at 328 ports. Per the *Customs Modernization Act*,¹ importers provide information such as the classification and value of imported merchandise in the entry. The law also requires importers use “reasonable care” when providing this information to maximize adherence to customs laws and regulations. CBP then assesses duties based on reported classifications and values of the merchandise.

Reconciliation Entry

Reconciliation is the means by which importers are able to correct information in the entry summary initially provided to CBP. Importers file a reconciliation entry, which provides the final and correct information in the following types of reconciliation categories:

- Value,
- Classification (limited),
- Harmonized Tariff Schedule 9802,² and
- Certain Free Trade Agreements.

Importers have 21 months from the date of filing the underlying entry summary to file reconciliations for issues with value, classification, and the Harmonized Tariff Schedule 9802. Importers have 12 months from the date of filing the underlying entry summary to file reconciliations for issues with Free Trade Agreements. CBP assesses liquidated damages³ on filers and brokers who do not file or do not do so timely.⁴

Liquidation

Once importers file reconciliation entries indicating the final and correct information about imported merchandise, such as its value, CBP liquidates the reconciliation entry. Reconciliation entry liquidation is the point at which CBP settles with importers by either providing a final bill for outstanding duties or fees, or issuing a refund based on the final value of the merchandise.

¹ Title VI of the *North American Free Trade Agreement Authorization Act*, Pub. L. 103-182 (1993).

² Provision 9802 of the Harmonized Tariff Schedule permits reduced duty treatment for the value of components manufactured in the United States and assembled abroad.

³ CBP assesses liquidated damages for violation of law, regulations, or breach of bond.

⁴ North American Free Trade Agreement (NAFTA) reconciliations are not assessed liquidated damages.

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Additionally, reconciliation entries may result in neither a bill nor a refund if no update to the original entry information is necessary. From January 1, 2014, through July 31, 2017, CBP liquidated 43,842 reconciliation entries totaling about \$18 billion.

Previously, CBP managed the reconciliation process using the Automated Commercial System (ACS), which it implemented in 1998. In February 2018, CBP implemented the Automated Commercial Environment (ACE), which contains a reconciliation module.⁵

Results of Audit

CBP cannot ensure its Entry Reconciliation Program reporting is accurate or complies with requirements. Specifically, CBP did not always validate importers' self-reported final values of imports when it assessed duties and fees. The inaccuracies occurred because CBP Standard Operating Procedures (SOP) do not require importers to substantiate self-reported merchandise values with source documentation.

In addition, CBP did not always follow its policies when conducting reviews of reconciliation entries. These problems occurred because different ports of entry have implemented CBP's SOPs differently. [REDACTED]

Finally, CBP also missed opportunities to collect additional revenue when it did not assess monetary liquidated damages for importers that filed reconciliation entries late or did not file them at all. This occurred because CBP lacks controls to ensure the ports properly assess liquidated damages for importers who file reconciliations late or not at all.

CBP's actions compromised the integrity of the Entry Reconciliation Program and, as such, may have put approximately \$751 million of revenue, in the form of reconciliation refunds, at risk.

⁵ We limited our review to the reconciliation aspect of ACS. The *Trade Facilitation and Trade Enforcement Act of 2015* includes funding to complete the development and implementation of ACE, but the *Customs Modernization Act* directly addresses reconciliation requirements through ACS, and the *Trade Facilitation and Trade Enforcement Act of 2015* did not alter those requirements.

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CBP Did Not Always Require Source Documentation from Importers to Substantiate Their Self-Reported Import Values

CBP did not always properly validate importers' self-reported final values of imports when assessing duties and fees. When importers filed reconciliation entries, CBP relied on them to declare the final value of the merchandise so CBP could assess accurate duties and fees. According to the United States Code, CBP shall ascertain or estimate the final value of the imports using all reasonable means, including source documentation such as statements of cost or invoices.⁶ However, CBP did not require importers to provide source documentation with their initial reconciliation submissions. Rather, to help determine the final value, CBP may request additional documentation. In practice, CBP only requested additional documentation from importers for reconciliation entries containing large variations in the value of merchandise.

For 14 import entries we reviewed, we requested from CBP source documentation for each and determined CBP lacked sufficient documentation to verify the accuracy of importer-reported amounts for 10 entries totaling \$32.3 million in refunds. [REDACTED]

[REDACTED] This might involve list price less markup, discounts, or rebates. Justifying this type of value adjustment requires verification of specific importer documentation. However, CBP did not review the required documentation before liquidating the related reconciliation entries — that is, settling with the importer by either providing a final bill for outstanding duties or fees or issuing a refund based on the final value of the merchandise. Table 1 shows the results of our testing and the refunds at risk of being inappropriate.

⁶ 19 United States Code § 1500, *Appraisalment, Classification and Liquidation Procedure*.

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Table 1. Refunds at Risk

Port	No. of Entries Tested	Total Refund	No. of Entries with Exceptions	Potential Revenue at Risk
New York	2	\$ 31,631,181	2	\$31,631,181
Otay Mesa	2	409,139	-	-
Nogales	2	286,036	1	282,536
Champlain	6	254,522	6	254,522
Laredo	1	96,864	1	96,864
Hidalgo	1	44,796	-	-
Grand Total	14	32,722,538	10	32,265,103

Source: DHS OIG analysis of CBP's reconciliation entry data January 1, 2014, through July 31, 2017

We reviewed an additional 113 reconciliation entries to determine the accuracy of reported duties and fees. Of these entries, 12 (11 percent) contained inaccurate amounts of duties and fees totaling \$8,159 (Appendix C contains our variable testing methodology). We identified these inaccuracies by comparing reported duty and fee amounts against calculated duties and fees based on importers' source documentation. Had CBP sufficiently reviewed the importer documentation, it may have identified the inaccuracies and recovered the additional duties and fees.

The inaccuracies occurred because CBP's SOP does not require importers to provide source documentation substantiating self-reported merchandise values when reporting reconciliation entries.⁷ According to CBP officials, CBP only requests additional documentation from importers for reconciliation entries containing large variations in the value of merchandise. Because CBP did not sufficiently review importer documentation and only obtained additional documentation upon request, it compromised the integrity of the entry reconciliation program and missed the opportunity to collect accurately duties and fees due the U.S. Government.

CBP Inconsistently Reviewed Reconciliation Entries

According to policy, CBP must document its reviews of reconciliation entries.

[REDACTED] These spreadsheets reflect the most recent duties assessed. [REDACTED]

⁷ ACS Reconciliation Prototype Standard Operating Procedure, September 2004. www.oig.dhs.gov

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[REDACTED]⁹ However, CBP did not appropriately document its review of 69 (61 percent) of the 113 reconciliation entries we examined, as required by CBP's policy. Specifically, for:

- 44 (39 percent) of the 113 entries, CBP did not sufficiently annotate the extent of its review [REDACTED]; and
- 25 (22 percent) of the 113 entries lacked hardcopy documentation required by CBP policy. CBP policy requires the importer provide header records, association files, cover sheets, and line item spreadsheets (if applicable) at the time of filing the reconciliation entry.¹⁰

These problems occurred because CBP's SOP has been implemented differently across all ports of entry. [REDACTED]

[REDACTED] As a result, CBP may not be identifying inaccuracies in reported data and ensuring collection of all revenue possible through the Entry Reconciliation Program.

CBP Did Not Always Properly Assess Liquidated Damages

CBP also missed opportunities to collect additional revenue by not always properly assessing liquidated damages where appropriate. CBP requires ports seek liquidated damages if importers do not file reconciliation documentation timely.¹¹ Importers must file reconciliations within 21 months of the date of filing the underlying entry summary. CBP policy calls for the issuance of "late file" or "no file" liquidated damage claims against importers who file late or do not file their reconciliations within the required 21-month timeframe, based on three of the four reconciliation categories. However, according to CBP officials at three ports we reviewed, they do not assess liquidated damages as required. Specifically, the Port of New York did not assess "late file" liquidated damages, while the ports of Hidalgo and Laredo, Texas did not assess "no file" liquidated damages.

⁸ Lines on the line item spreadsheet reflect the most recent duties assessed.

⁹ Appendix D contains additional support [REDACTED]

¹⁰ Appendix D contains additional documentation importers must submit to CBP for its reconciliation entry review.

¹¹ 19 CFR 142.15, *Failure to File Entry Summary Timely*.

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This occurred because CBP's controls were insufficient to ensure the ports properly assess liquidated damages for importers who file reconciliations late or not at all. Prior to December 2015, CBP Headquarters provided monthly "no file" reports to all 13 ports that processed reconciliation entries, which the ports could use to assess liquidated damages. According to a port official, they stopped receiving these reports from CBP Headquarters in December 2015. CBP Headquarters officials said they stopped providing the reports because they no longer had the capability to run them. Instead, CBP Headquarters relied on the ports to seek alternative methods for obtaining the necessary information.

Without a consistent means to obtain the "no file" and "late file" information, CBP cannot assure individual ports are assessing liquidated damages in compliance with policy. It is imperative to assess required liquidated damages to prevent a loss of revenue for CBP and the U.S. Government. Based on limitations with the data received, we are unable to quantify the effect of this deficiency on revenue collection.

Revenue Remains at Risk

CBP's inconsistent reviews of reconciliation entries, coupled with its reliance on importers' self-reported data, put potential revenue at risk. CBP also missed opportunities to maximize revenue because of inadequate reporting on importers who filed reconciliation entries late or did not file at all. Between January 1, 2014 and July 31, 2017, importers filed 43,842 reconciliation entries with refunds in duties, taxes, and fees amounting to approximately \$751 million. We consider the accuracy of these refunds to be at risk due to the deficiencies we identified.¹² Further, importers self-reported additional payments to CBP totaling approximately \$257 million associated with these reconciliation entries. However, we could not substantiate the accuracy of these additional payments because of a lack of documentation. The amounts shown in Table 2 represent the revenue as reported by CBP in ACS.

¹² The \$751 million revenue risk arises because importers' self-reported information is not supported by source documentation at the time of reconciliation entry.

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Table 2. Reconciliation Program Revenue Reported by CBP

Entry Result	Elements of Revenue	Sampling Universe
Refund to Importer	Duty	\$ (677,038,571)
	Fees	(73,825,213)
	Taxes	-
	Total Refunds	\$ (750,863,784)
Payment to CBP	Duty	204,311,984
	Fees	52,991,597
	Taxes	70,047
	Total Payments	\$ 257,373,628

Source: DHS OIG analysis of Entry Reconciliation Program data obtained from ACS

To modernize trade processes, CBP implemented a new reconciliation module within ACE on February 24, 2018. Based on our limited review, the improvements will not likely resolve the issues we identified related to importers self-reporting values of imported goods or CBP’s inconsistent review of importers’ self-reporting. For example:

- ACE will not require the importer community to provide source documentation; and
- ACE will not affect CBP’s judgment regarding the extent of and documentation for the review performed.

CBP’s transition to electronic data submission in ACE may mitigate missing documentation issues, but given its implementation in February 2018, we did not have enough historical documentation to determine the effectiveness of the controls in ACE during our audit fieldwork.

Recommendations

Recommendation 1: We recommend the Executive Assistant Commissioner of the Office of Trade update and implement policies and procedures including:

- requiring importers provide source documents to CBP when filing reconciliations; and

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- a process to ensure reconciliation submissions include accurate information and appropriate agency reviews to address complex underlying causes for value changes.

Recommendation 2: We recommend the Executive Assistant Commissioner of the Office of Trade update and implement procedures to ensure personnel review reconciliations consistently and document the results of the reviews performed.

Recommendation 3: We recommend the Executive Assistant Commissioner of the Office of Trade establish procedures with appropriate internal controls ensuring the assessment and collection of “no file” and “late file” liquidated damages. These procedures should be implemented uniformly across all ports.

Recommendation 4: We recommend the Executive Assistant Commissioner of the Office of Trade update and implement policies and procedures including a process to ensure the data maintained in the newly implemented ACE system is accurate and reliable.

Management Comments and OIG Analysis

CBP concurred with recommendations 2 through 4 but did not concur with recommendation 1. A copy of CBP’s response to a draft of this report is included in its entirety in Appendix B. CBP also provided technical comments on the draft report in a separate document. We reviewed the technical comments and made revisions to the report where appropriate.

As CBP management indicates in its comments, ensuring importers provide accurate reconciliation information is vitally important. We also recognize the importance of allocating finite resources to areas presenting highest risk.

[REDACTED] to dictate the extent to which substantiation is necessary to review reconciliation entries. Without verifying importer’s self-reported reconciliation data with source documentation, CBP cannot appropriately safeguard revenue, in the form of reconciliation refunds.

A summary of CBP’s responses and our analysis follows. We consider recommendation 1 open and unresolved, while recommendations 2 through 4 are open and resolved.

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CBP Comments to Recommendation 1: Non-concur. CBP does not agree with implementing a requirement that importers provide source documents when filing all reconciliations. CBP recognizes the importance of ensuring reconciliation entries include accurate information. However, it follows risk management principles for reviewing entries to focus resources on transactions presenting highest risk. CBP reviews reconciliation entries based on established risk factors, subject matter knowledge of the importer, and the issues being reconciled.

OIG Analysis of CBP Comments: We reviewed CBP's response and recognize the significance of requiring importers to provide source documentation along with all reconciliation entries. However, CBP is unable to ensure appropriate duties, taxes, and fees are collected for imports without verifying importer self-reported reconciliation information against source documentation. As evidenced by our audit work, these reconciliation entries oftentimes result in significant refunds to importers, and when aggregated, represent a significant amount of potential lost revenue. As such, this recommendation will remain unresolved and open until CBP implements procedures requiring importers to provide source documentation supporting their reconciliation entries.

CBP Comments to Recommendation 2: Concur. Since the OIG completed its audit fieldwork in April 2018, CBP's Office of Trade has issued additional guidance to ensure consistent review and documentation of reconciliation entries, begun reconciliation processing in the Automated Commercial Environment (ACE), and conducted additional training for representatives of CBP's Centers of Excellence and Expertise.

OIG Analysis of CBP Comments: CBP has taken steps to satisfy the intent of this recommendation. We consider this recommendation resolved, but it will remain open until CBP provides documentation to substantiate that all planned corrective actions have been completed.

CBP Comments to Recommendation 3: Concur. Since the OIG completed its audit fieldwork in April 2018, CBP's Office of Trade has issued additional guidance addressing assessment and collection of liquidated damages. Additionally, CBP has conducted training with representatives of CBP's Centers of Excellence and Expertise regarding issuance of liquidated damages.

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OIG Analysis of CBP Comments: CBP has taken steps to satisfy the intent of this recommendation. We consider this recommendation resolved, but it will remain open until CBP provides documentation to substantiate that all planned corrective actions have been completed.

CBP Comments to Recommendation 4: Concur. CBP began reconciliation processing in the Automated Commercial Environment (ACE) in February 2018. ACE conducts far more system checks to validate reconciliation data than the prior Automated Commercial System (ACS) did. Additionally, ACE checks the filer's reconciliation transmission for format, syntax, and business rule validations to ensure that valid data is captured in the system.

OIG Analysis of CBP Comments: CBP has taken steps to satisfy the intent of this recommendation. We consider this recommendation resolved, but it will remain open until CBP provides documentation to substantiate that all planned corrective actions have been completed.

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Appendix A

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We conducted this audit to determine to what extent CBP's Entry Reconciliation Program and reporting is accurate and in compliance with requirements. To assist in answering the audit objective, we interviewed CBP headquarters personnel. We interviewed personnel from CBP's Office of Field Operations, Office of Trade, Office of Finance, Office of Information Technology, and the Office of Regulatory Audit. We interviewed personnel at the ports to gain an understanding of controls at each site. We conducted one site visit to the New York Port of Entry located in Newark, New Jersey, to observe CBP personnel conducting demonstrations of the entry reconciliation process.

We also completed a review of DHS and CBP policies, procedures, and internal directives to ensure they meet specified requirements. Our assessment may not have disclosed all material weaknesses in this control structure; however, it disclosed weaknesses in CBP's internal policies and procedures governing the Entry Reconciliation Program as discussed in this report. In addition, we considered the reliability of the ACS electronic data to be sufficiently reliable for the purpose of this report's findings, conclusions, and recommendations.

We requested reconciliation entries from CBP covering the period from January 1, 2014 through July 31, 2017. Out of 43,842 liquidated reconciliation entries valued at \$18 billion, we judgmentally selected 127 reconciliation entries for testing. Of the 127 entries, we selected 113 entries to determine the accuracy of reported amounts and compliance with program requirements. Our judgmental sample of 113 entries originated as a statistical sample of 271 entries. During fieldwork, we identified trends warranting a reduction in testing. Subsequently, we reduced our fieldwork and adjusted the scope of our audit from 271 entries to 113 entries. Therefore, our sample is judgmental in nature and the results cannot be projected across the universe.

We obtained, reviewed, and tested documentation for our sample of 127 reconciliation entries from the following ports:

- Champlain-Rouses, New York
- Nogales, Arizona

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- New York, New York
- Otay Mesa, California
- Hidalgo, Texas
- Laredo, Texas¹³

We separated our transaction testing into two main sections based on attribute and variable characteristics. We based the attribute characteristics on standard operating procedure requirements and additional CBP guidance. We identified 69 instances of noncompliance in the review process for reconciliations.

For variable testing, we manually recalculated duties and fees to ensure accuracy of the reconciliation entry. Because we judgmentally selected our sample, we were unable to project the results from this analysis to the population. As a result, we relied upon the transaction testing results of the 113 entries in our sample.

We performed transaction testing on the remaining 14 reconciliation entries to determine the extent to which source documentation existed to support the amounts reported. We used a risk-based analysis to target high-risk entries. The risk analysis identified entries with large percentages of refunded duties, as well as entries submitted by importers with a historic tendency to file entries resulting in a refund.

At our request, CBP obtained source documentation from the importers via CBP Form 28, *US Customs Request for Information*, to support the amounts claimed in the reconciliation entries. Upon receiving documentation from the importers, we evaluated the completeness of the documents received and the accuracy of the reconciliation entry.

While conducting our audit testing, we identified concerns with the reliability of CBP's import data. Specifically, CBP did not identify discrepancies between importer-reported merchandise final values in its electronic system, ACS, and the importer-provided supporting documentation. According to CBP's SOP, importers must electronically submit reconciliation duties, taxes, and fees through the Automated Broker Interface and report the duties using paper-based documentation. However, CBP's reviews of entries did not identify discrepancies and those entries were not returned to the importer for correction. For example, of the 113 entries we reviewed, 6 contained

¹³ Our judgmental sample covered reconciliation entry processes of large, intermediate, and small ports. Our sample included the CBP Port of New York, which is the largest port for processing reconciliation entries.

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discrepancies between the amounts reported in ACS and the amounts supported in the source documentation resulting in duties and fees discrepancies amounting to \$378,038.

Although we identified issues with the reliability of the ACS data we used for testing, we determined the data to be sufficiently reliable for our audit findings, conclusions, and recommendations. We reached this conclusion because CBP does not verify reported amounts against source documentation; thus, it is unclear which amounts were accurate. Table 3 summarizes the discrepancies between amounts electronically reported in ACS and amounts identified in paper-based documentation.

Table 3. Summary of Discrepancies between ACS Data and Paper-Based Documentation for Six Reconciliation Entries

Refundable Element	ACS	Paper-Based Documentation	Difference
Duty	\$16,787	\$ 369,986	\$ (353,199)
Fees	\$11,621	\$ 36,460	(24,839)
Total			\$(378,038)

Source: DHS OIG analysis of data from CBP's Entry Reconciliation Program January 1, 2014 through July 31, 2017

We conducted this performance audit between May 2017 and April 2018 and pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
CBP Comments to the Draft Report

1300 Pennsylvania Avenue NW
 Washington, DC 20229



**U.S. Customs and
 Border Protection**

April 2, 2020

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
 Inspector General
 U.S. Department of Homeland Security

FROM: Henry A. Moak, Jr.
 Senior Component Accountable Official
 U.S. Customs and Border Protection

4/2/2020
 X
 Signed by: HENRY A. MOAK, JR.

SUBJECT: Management Response to Draft Report: “CBP’s Entry
 Reconciliation Program Puts Revenue at Risk”
 (Project No. 17-085-AUD-CBP)

Thank you for the opportunity to comment on this draft report. U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

We are pleased that the OIG’s report recognizes the importance of CBP’s revenue mission, which resulted in the collection of \$71.9 billion in duties during fiscal year (FY) 2019. The CBP Offices of Trade, Field Operations, and Finance collaborate to fulfill this critically important and complicated function. During FY 2019, CBP processed 35.5 million entries valued at more than \$2.7 trillion. Based on this volume, and as provided for in the Modernization Act (Mod Act), CBP utilizes a risk-based approach to ensure that limited resources are focused on transactions that are at highest risk of non-compliance.

CBP is concerned that OIG’s draft report indicates continuing misunderstandings of the Mod Act and how CBP has implemented it. These misunderstandings persist despite (1) numerous fieldwork meetings held with the team and program officials, subject matter experts, and others, and (2) the sharing of extensive supporting documentation since this audit was announced on May 19, 2017, nearly three years ago. CBP strongly disagrees with OIG’s overall conclusions that “CBP cannot ensure its Entry Reconciliation Program [ECP] reporting is accurate or complies with requirements,” and that “CBP’s actions compromised the integrity of the ECP and, as such may have put approximately \$751 million of revenue, in the form of reconciliation refunds, at risk.”

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The Mod Act was enacted in 1993. It provides legal authority for reconciliation and addressing record keeping requirements and concepts such as “reasonable care” and “shared responsibility.” The Act enhanced the entry summary process by allowing indeterminable information to be identified and provided to CBP at a future time. This reconciliation process, implemented as the Automated Commercial System (ACS) Reconciliation Prototype, now known as the Automated Commercial Environment (ACE) Reconciliation Prototype, was published on February 6, 1998. The Reconciliation Prototype allows importers to file entry summaries using the best available information on file and electronically “flag” issues, with the mutual understanding that CBP will receive the actual information at the Reconciliation entry within the prescribed timeframe.

CBP’s Reconciliation Prototype was a step toward enhancing processing capabilities and providing a mechanism for importers to provide information not available at time of entry summary. CBP collaborated with the trade community to design a prototype that benefits both government and industry and alleviates the burden of entry-by-entry processing. The Reconciliation Prototype is national in scope, and its success was demonstrated through its ability to deliver a legal, financially reliable, and efficient process. With this prototype, CBP made significant progress under the reconciliation component of the Mod Act, established uniformity in an area that previously operated under a variety of procedures, provided financial safeguards, and instituted a legal mechanism for reconciling entries and streamlined CBP and trade community entry summary processes.

The draft report contained four recommendations, including three with which CBP concurs (Recommendations 2, 3 and 4) and one with which CBP non-concurs (Recommendation 1). Attached find our detailed response to each recommendation. CBP previously submitted technical comments addressing accuracy, context, and sensitivity concerns under a separate cover for OIG’s consideration.

Again, thank you for the opportunity to comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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Attachment: Management Response to Recommendations
Contained in Project No. 17-085-AUD-CBP

OIG recommended that the Executive Assistant Commissioner of the Office of Trade:

Recommendation 1: Update and implement policies and procedures including:

- requiring importers provide source documents to CBP when filing reconciliations; and
- a process to ensure reconciliation submissions include accurate information and appropriate agency reviews to address complex underlying causes for value changes.

Response: Non-concur. CBP does not agree with implementing a requirement that importers provide source documents with the filing of all Reconciliations. The Mod Act provides the legal authority for reconciliation and addresses record keeping requirements and concepts such as “reasonable care” and “shared responsibility.” CBP follows risk management principles for the review of all entries, including Reconciliations, to ensure resources can focus on transactions at highest risk of non-compliance. Reconciliation reviews are based on established risk factors, the subject matter expertise of the importers, and the issues being reconciled. In addition, CBP’s “Reconciliation Interim Guidance,” dated August 2019, addresses the use of risk management when reviewing reconciliation entries.

CBP recognizes the importance of ensuring that reconciliation submissions include accurate information, and appropriate agency reviews to address complex causes for value changes. The filing of entries, including Reconciliations, is governed by 19 U.S.C. § 1484, which requires the importer of record to exercise reasonable care in filing the underlying entry summary, flagging issues for later reconciliation, and filing the Reconciliation entry.

Copies of relevant supporting documentation have been provided to OIG under separate cover. CBP requests that OIG consider this recommendation resolved and closed, as implemented.

Recommendation 2: Update and implement procedures to ensure personnel review reconciliations consistently and document the results of the reviews performed.

Response: Concur. CBP’s Office of Trade implemented policy and procedures through its “Reconciliation Interim Guidance,” dated August 2019, to ensure the consistent review of Reconciliations, as well as the documentation of those reviews. Since the period covered by the OIG’s draft report, 2014 – 2017, CBP deployed Reconciliation in

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ACE, including an inbox that generates Reconciliation entries for review based on criteria. Additionally, CBP conducted training for representatives of all ten Centers of Excellence and Expertise that included the required review of Reconciliations during September 2019.

CBP requests that the OIG consider this recommendation resolved and closed, as implemented.

Recommendation 3: Establish procedures and appropriate internal controls ensuring the assessment and collection of “no file” and “late file” liquidated damages. These procedures should be uniformly implemented across all ports.

Response: Concur. CBP’s Office of Trade has implemented this recommendation through its “Reconciliation Interim Guidance,” dated August 2019, which addresses the assessment and collection of liquidated damages. Also, in September 2019, CBP conducted training for representatives of all ten Centers of Excellence and Expertise, which included the policy and process regarding issuance of liquidated damages on Reconciliation entries.

The August 2019, guidance and September 2019, training provide direction on the ES-501 Recon No Files report, a standard report in ACE to determine cases in which an Entry Summary was flagged for reconciliation but was not reconciled timely. CBP personnel can now create a standard “late file” report in ACE Reports, which is available to any user requiring this information for the processing of reconciliation entries.

CBP requests that the OIG consider this recommendation resolved and closed, as implemented.

Recommendation 4: Update and implement policies and procedures including a process to ensure the data maintained in the newly implemented ACE system is accurate and reliable.

Response: Concur. As CBP processed Reconciliations in the ACS during the timeframe covered by the OIG’s draft report, 2014 – 2017, the February 2018 deployment of Reconciliation addresses this recommendation. ACE is validating far more Reconciliation data than was done in the ACS. ACE validates an active Reconciliation bond rider on file for the importer to flag underlying summaries for Reconciliation; Calculates and validates timeframes for when a Reconciliation filing is due; and, Provides the original amounts of the underlying flagged summaries to prevent mismatches. Furthermore, ACE checks the filer’s reconciliation transmission for format, syntax and business rules validations before storing and maintaining in ACE to ensure that valid data is captured in the System of Record.



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Appendix C

Variable Testing Methodology

We performed variable-based testing of 113 entries to determine whether reported amounts were accurate. To accomplish this, we manually recalculated duties and fees the importer owed to CBP. Specifically, we verified whether CBP calculated reported amounts using appropriate duty rates according to the Harmonized Tariff Schedule, Merchandise Processing Fee, and Harbor Maintenance Fee (HMF) rates per regulation; and interest rates published in the Federal Register. As part of our review, we considered Special Program Indicators, such as claims for North American Free Trade Agreement (NAFTA) merchandise, to determine the applicability of duty and Merchandise Processing Fee payments. In addition, we also reviewed CBP port codes to determine the applicability of HMF payments.

Term	Definition
Harbor Maintenance Fee	Upon importation, commercial cargo loaded onto or unloaded from a commercial vessel is subject to a port use tax of 0.125 percent of its value if the loading or unloading occurs at a port within the definition of 19 CFR 24.24.
Harmonized Tariff Schedule	Specification of the duty requirements and exemptions pertaining to goods imported into Customs territory and all vessel equipment, parts, materials, and repairs.
Merchandise Processing Fee	A fee applicable to certain countries assessed for the processing of merchandise at a rate of 0.3464 percent. There is a minimum fee of \$25.00 and a maximum fee of \$485.00.
Special Program Indicator	Designation of an entry summary line item as subject to a specific trade program (e.g., MX indicates NAFTA treatment for goods originating in Mexico).
Port	Identifies the ports subject to the HMF.

Source: ACS Reconciliation Prototype Standard Operating Procedure, September 2004, 19 CFR 24.24

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Appendix D

Attribute Testing Methodology

We performed attribute-based testing of 113 entries to determine the extent to which CBP complied with its entry reconciliation program policy. Of the attributes tested, we identified two material noncompliance issues.

Required Documentation

CBP policy requires the importer provide the following at the time of filing reconciliation entries:

- Header Record: Printout of the Header Record from the reconciliation entry specifically identifying entry type 09 and the reconciliation entry number;
- Association File: Document showing all entries, their adjustments, and dates;
- Cover Sheet: Name, telephone, and fax number of a filer's point of contact;
- Line Item Spreadsheet (if applicable): One copy of the Line Item Data Spreadsheet on compact disk and one paper copy.

Based on these requirements, we defined attribute failures as missing one or more of the required listed documents.

Complete Review

According to its policy, CBP must document its review of reconciliation entries. These notations should include the reconciliation entry number, the completed and documented review, and the results of the review. Specifically, the policy states:

These records will be reviewed during internal audits by the Office of Finance and the Office of Inspector General personnel. If you didn't record it, you didn't review it. If you didn't review it, you have a problem.

Furthermore, CBP policy states





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[REDACTED]

Additionally, CBP uses risk management to allow Import Specialists' the flexibility [REDACTED]

[REDACTED]

Based on these requirements we further defined attribute failures as follows:

- Omission of the reconciliation entry number, the type of review, or the results of the review to enable a third party to understand how import specialists came to their conclusion, and
- Inappropriate selection of lines for review.

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Appendix E
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