

September 2005

# INTERNATIONAL TRADE

## Issues and Effects of Implementing the Continued Dumping and Subsidy Offset Act



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# Highlights

Highlights of [GAO-05-979](#), a report to congressional requesters

## Why GAO Did This Study

Between fiscal years 2001 and 2004, the Continued Dumping and Subsidy Offset Act (CDSOA) provided over \$1 billion funded from import duties to U.S. companies deemed injured by unfair trade. Some supporters state CDSOA helps U.S. companies compete in the face of continuing unfair trade. Some opponents believe CDSOA recipients receive a large, unjustified windfall from the U.S. treasury. Also, 11 World Trade Organization (WTO) members lodged a complaint over the law at the WTO. This report assesses (1) key legal requirements guiding and affecting agency implementation of CDSOA; (2) problems, if any, U.S. agencies have faced in implementing CDSOA; and (3) which companies have received CDSOA payments and their effects for recipients and non-recipients; and describes (4) the status of WTO decisions on CDSOA.

## What GAO Recommends

In considering whether to keep, modify, or repeal CDSOA, Congress should consider whether the law is achieving its purposes of strengthening U.S. trade remedy laws, restoring conditions of fair trade, and assisting U.S. producers. If Congress decides to modify the law, Congress should also consider extending the time frame for disbursing payments. In addition, we recommend that CBP take several steps to improve processing of CDSOA claims and payments, verification of claims, and collection of import duties.

[www.gao.gov/cgi-bin/getrpt?GAO-05-979](http://www.gao.gov/cgi-bin/getrpt?GAO-05-979).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4347 or [yagerl@gao.gov](mailto:yagerl@gao.gov).

## INTERNATIONAL TRADE

# Issues and Effects of Implementing the Continued Dumping and Subsidy Offset Act

## What GAO Found

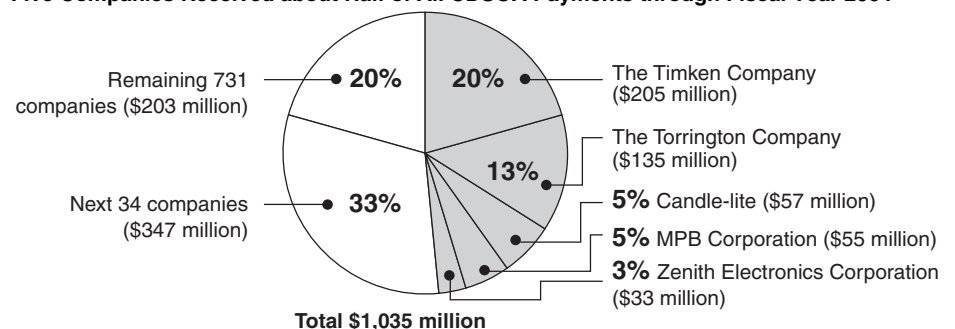
Congress enacted CDSOA to strengthen relief to injured U.S. producers. The law's key eligibility requirements limit benefits to producers that filed a petition for relief or that publicly supported the petition during a government investigation to determine whether injury had occurred. This law differs from trade remedy laws, which generally provide relief to all producers in an industry. Another key CDSOA feature requires that Customs and Border Protection (CBP) disburse payments within 60 days after the beginning of a fiscal year, giving CBP limited time to process payments and perform desired quality controls. This time frame, combined with a dramatic growth in the program workload, presents implementation risks for CBP.

CBP faces three key implementation problems. First, processing of company claims and CDSOA payments is problematic because CBP's procedures are labor intensive and do not include standardized forms or electronic filing. Second, most companies are not accountable for the claims they file because they do not have to support their claims and CBP does not systematically verify the claims. Third, CBP's problems in collecting duties that fund CDSOA have worsened. About half of the funds that should have been available for disbursement remained uncollected in fiscal year 2004.

Most of the CDSOA payments went to a few companies with mixed effects. About half of these payments went to five companies. Top recipients we surveyed said that CDSOA had beneficial effects, but the degree varied. In four of seven industries we examined, recipients reported benefits, but some non-recipients noted CDSOA payments gave their competitors an unfair advantage. These views are not necessarily representative of the views of all recipients and non-recipients.

Because the United States has not brought CDSOA into compliance with its WTO obligations, it faces additional tariffs on U.S. exports covering a trade value of up to \$134 million based on 2004 CDSOA disbursements. Recently, Canada, the European Union, Mexico, and Japan imposed additional duties on various U.S. exports. Four other WTO members may follow suit.

**Five Companies Received about Half of All CDSOA Payments through Fiscal Year 2004**



Source: GAO analysis of CBP data.

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# Contents

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## Letter

Results in Brief	1
Background	3
Key CDSOA Features Restrict Company Eligibility, Determine Share of Disbursements, and Set Tight Time Frame for Disbursing Payments	6
CBP Faces Three Key Problems Implementing CDSOA	9
CDSOA Payments Largely Concentrated on a Few Companies and Industries, with Mixed Effects Reported	18
Retaliation Against U.S. Producers Underway for U.S. Failure to Comply with WTO Ruling on CDSOA	28
Conclusions	40
Matters for Congressional Consideration	44
Recommendations for Executive Action	46
Agency Comments and Our Evaluation	46

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## Appendixes

<b>Appendix I: Objectives, Scope, and Methodology</b>	49
<b>Appendix II: Top CDSOA Recipient Companies</b>	55
CDSOA Payments to the Top Recipient Companies	55
CDSOA Effects on Top Recipient Companies	58
<b>Appendix III: CDSOA Recipient and Non-Recipient Companies in Seven Industries</b>	60
Views on CDSOA from Recipients and Non-Recipients in the Bearings Industry	61
CDSOA Effects on Bearings Companies	63
Scope and Methodology	67
Views on CDSOA from Recipients in the Steel Industry	68
CDSOA Effects on Steel Companies	70
Scope and Methodology	72
Views on CDSOA from Recipients and Non-Recipients in the Candle Industry	74
CDSOA Effects on Candle Companies	76
Scope and Methodology	79
Views on CDSOA from Pasta Company Recipients and Non-Recipients	80
CDSOA Effects on Pasta Companies	82
Scope and Methodology	86
Views on CDSOA from Recipients in the DRAM Industry	87

CDSOA Effects on DRAM Companies	89
Scope and Methodology	91
Views on CDSOA from Recipients and Non-Recipients in Crawfish Industry	92
CDSOA Effects on Crawfish Processing Companies	94
Scope and Methodology	98
Views on CDSOA from Recipients and Non-Recipients in Softwood Lumber Industry	99
CDSOA Effects on Softwood Lumber Companies	101
Scope and Methodology	104
<b>Appendix IV: Comments from Customs and Border Protection</b>	106
<b>Appendix V: GAO Contact and Staff Acknowledgments</b>	109

Tables

Table 1: CBP's CDSOA Program Staff, Responsibilities, and Workload	21
Table 2: Fiscal Years 2001-2004 CDSOA Distributions to Top Recipient Companies	55
Table 3: CDSOA Effects on Top Recipient Companies	59
Table 4: CDSOA Effect on Companies' Ability to Compete in U.S. Market	59
Table 5: Fiscal Years 2001-2004 Bearings CDSOA Recipients	63
Table 6: CDSOA Effects on Bearings Companies	65
Table 7: CDSOA Effect on Bearings Companies' Ability to Compete in U.S. Market	66
Table 8: Top 10 Fiscal Years 2001-2004 Steel CDSOA Recipients	69
Table 9: CDSOA Effects on Steel Companies	71
Table 10: CDSOA Effect on Steel Companies' Ability to Compete in U.S. Market	72
Table 11: Fiscal Years 2001-2004 Candle CDSOA Recipients	75
Table 12: CDSOA Effects on the Candle Companies	77
Table 13: CDSOA Effect on Candle Companies' Ability to Compete in U.S. Market	78
Table 14: Fiscal Years 2001-2004 CDSOA Pasta Recipients	82
Table 15: CDSOA Effects on Pasta Companies	84
Table 16: CDSOA Effect on Pasta Companies' Ability to Compete in U.S. Market	85
Table 17: Fiscal Years 2001-2004 DRAM CDSOA Recipients	89
Table 18: CDSOA Effects on DRAM Companies	90
Table 19: CDSOA Effect on DRAM Companies' Ability to Compete in U.S. Market	91

---

Table 20: Top 10 Fiscal Years 2001-2004 Crawfish CDSOA Recipients	93
Table 21: CDSOA Effects on Crawfish Companies	96
Table 22: CDSOA Effect on Crawfish Companies' Ability to Compete in the U.S. Market	97
Table 23: Top 10 FY 2003-2004 Softwood Lumber CDSOA Recipients	101
Table 24: CDSOA Effects on Softwood Lumber Companies	102
Table 25: CDSOA Effect on Softwood Lumber Companies' Ability to Compete in U.S. Market	103

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## Figures

Figure 1: CBP's and Treasury's Units Involved in CDSOA Efforts	18
Figure 2: Potential Fiscal Year 2004 AD/CV Duties Available for Distribution under CDSOA and Actual CDSOA Disbursements	27
Figure 3: FY 2001-2004 CDSOA Payments to the Top Five Companies and to the Remaining Companies	29
Figure 4: Fiscal Year 2001-2004 Distribution of CDSOA Payments to the 39 Leading Recipient Companies	30
Figure 5: Top 24 Product Groups Receiving CDSOA Disbursements, FY 2001-2004	32
Figure 6: Number of AD/CV Petitions Filed 1980-2004	39
Figure 7: Timeline of WTO-Related Events on CDSOA	44
Figure 8: Fiscal Year 2001-2004 CDSOA Disbursements by Industries	61

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**Abbreviations**

AD	antidumping
CBO	Congressional Budget Office
CV	countervailing
CDSOA	Continued Dumping and Subsidy Offset Act
CBP	Customs and Border Protection
EU	European Union
IG	Inspector General
NCA	National Candle Association
ITC	International Trade Commission
USTR	Office of the U.S. Trade Representative
WTO	World Trade Organization

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United States Government Accountability Office  
Washington, D.C. 20548

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September 26, 2005

The Honorable E. Clay Shaw, Jr.  
Chairman  
Subcommittee on Trade  
Committee on Ways and Means  
House of Representatives

The Honorable Jim Ramstad  
Chairman  
Subcommittee on Oversight  
Committee on Ways and Means  
House of Representatives

The Honorable Judy Biggert  
House of Representatives

The Honorable John A Boehner  
House of Representatives

The Continued Dumping and Subsidy Offset Act (CDSOA)<sup>1</sup> of 2000 has provided over \$1 billion<sup>2</sup> to hundreds of U.S. companies in industries deemed to have been injured by unfair competition from dumped or subsidized imports. Before CDSOA's enactment, these funds, which come from duties (import taxes) imposed and collected on such imports, went to the Department of the Treasury's (Treasury) general revenue fund. Some of CDSOA's defenders argue that the law gives U.S. firms and their employees a reasonable chance to compete and invest, despite facing continued unfair trade from foreign competitors. However, since the act's enactment, various domestic and international interests have opposed its implementation. Some domestic opponents contend, among other things, that CDSOA recipients receive a large, unjustified windfall from the U.S. treasury. Also, several nations lodged a complaint over the law against the United States at the World Trade Organization (WTO) in 2001.

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<sup>1</sup>19 U.S.C § 1675c.

<sup>2</sup>All CDSOA disbursements are in nominal dollars. We also analyzed disbursement data in constant dollars, but the differences between disbursements in nominal and constant dollars are minimal given the short time span and fairly low inflation rate over the period covered by our analysis.

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Nevertheless, defenders of CDSOA say that U.S. trading partners have been unable to demonstrate they actually suffered adverse effects from the law.

The President has proposed repealing the CDSOA three times.<sup>3</sup> However, legislation recently introduced<sup>4</sup> to do so faces strong bipartisan opposition.

Given the pending legislation and disagreements over CDSOA's implementation and effects, you asked us to assess (1) what key legal requirements guide and have affected agency implementation of CDSOA; (2) what problems, if any, U.S. agencies have faced in implementing CDSOA; and (3) which U.S. companies and industries have received payments under CDSOA and what effects these payments have had for recipient and non-recipient companies; and to describe (4) the status of the WTO decisions on CDSOA.

To identify legal requirements guiding and problems facing U.S. agencies in implementing CDSOA, we examined CDSOA legislation and regulations, obtained and analyzed agency documents such as procedures and disbursement reports, conducted field work at Customs and Border Protection's (CBP) Revenue Division in Indianapolis, and met with officials of CBP and the U.S. International Trade Commission (ITC) in Washington, D.C. To identify company recipients, we obtained and analyzed CBP disbursement data for fiscal years 2001 through 2004. To assess the effect of disbursements on companies, we relied upon the views of the top recipients of all CDSOA funds, and of selected leading recipient and non-recipient companies in seven industries via standard data collection questionnaires. A total of 24 of the 32 top recipient companies we contacted responded to our questionnaires. In the seven industries, a total of 92 of the 151 leading companies responded to structured questions we sent them,<sup>5</sup> ranging from 2 to 25 respondents per industry. The views of these companies are not necessarily representative of all recipient and non-recipient companies. To describe the current status of the WTO decisions, we analyzed official U.S., foreign government, and WTO documents. We

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<sup>3</sup>The President proposed the repeal of the CDSOA in three budget submissions, for fiscal years 2004, 2005, and 2006.

<sup>4</sup>In March 2005, Congressman Ramstad introduced H.R. 1121, 109<sup>th</sup> Cong. (2005) to repeal CDSOA.

<sup>5</sup>In the seven industries we examined, 61 of 69 recipient companies and 31 of 82 non-recipient companies responded to our structured questions.



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also met with U.S. officials. We conducted our work from September 2004 through September 2005 in accordance with generally accepted government auditing standards. Appendix I contains a more detailed description of our scope and methodology.

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## Results in Brief

CDSOA has the following three key features that guide agency implementation:

- First, in passing CDSOA, Congress aimed to strengthen the remedial nature of U.S. trade laws, restore conditions of fair trade, and assist domestic producers. However, the law provides criteria restricting company eligibility for disbursements to a subset of domestic producers. Only those companies that filed or publicly supported petitions that resulted in an antidumping or a countervailing (AD/CV) duty order, while the government was conducting its investigation for injury, and remain in operation producing the product subject to the AD/CV order, are eligible for CDSOA disbursements. As a result, a number of U.S. companies, such as those that began production after orders covering their products came into effect, are ineligible. This means that CDSOA operates differently from trade remedies, such as AD/CV duties, which generally provide relief to all producers in an industry.
- Second, the law identifies AD/CV duties collected as the source of funds for the disbursements and provides a *pro rata* formula for allocating disbursements so that those making the largest claims generally receive the largest payments.
- Third, the law requires CBP to disburse all AD/CV duties collected in a given fiscal year within 60 days after the first day of the following fiscal year. CBP officials say this tight time frame means payments are sent to companies before the agency can complete all the desired quality controls.

CBP has faced three major problems in implementing CDSOA: (1) processing CDSOA claims and payments, (2) verifying claims, and (3) collecting AD/CV duties. First, processing of CDSOA claims and payments is labor intensive and its associated workload is increasing; however, the agency lacks plans for managing and improving its CDSOA program's processes, staffing, and technology. Because CBP does not require companies to file claims using a standardized method (e.g., an electronic

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form), CDSOA program staff must review each claim to ensure it contains the required information, enter the data into a “standalone” database, and check for data entry errors. CBP uses complex procedures to manually calculate the amounts available for distribution and allocate disbursements among companies because its computer systems do not have the capabilities to produce these figures. CBP’s CDSOA program is facing more than a 10-fold increase in its claim processing workload in fiscal year 2005. Second, although CBP has disbursed over \$1 billion under CDSOA, CBP generally does not require companies to provide any claims-related supporting documentation. It has comprehensively verified the claims of only 1 of the 770 companies receiving disbursements. Even though this verification revealed significant problems, CBP does not plan to systematically verify CDSOA claims. Finally, CBP only distributed about half of the CDSOA money that should have been available for distribution in 2004 because it failed to collect about \$260 million in applicable AD/CV duties. CBP has taken some steps to identify and address AD/CV duty collection problems, which undermine both the effectiveness of related trade remedies and the size of the amount available for disbursement under CDSOA. However, because its actions to date have not fixed these problems, CBP recently reported to Congress that it is working with other U.S. agencies to develop legislative proposals and other solutions by the end of 2005.

Most of the \$1 billion in CDSOA disbursements in fiscal years 2001-2004 were concentrated in only a few companies and industries, with mixed effects reported. About half of all CDSOA disbursements in terms of value went to only 5 of the 770 recipient companies, and 80 percent of all disbursements went to 39 companies. Similarly, two-thirds of the payments went to three industries: bearings, candles, and steel. Top recipient companies that responded to our questions generally indicated that the CDSOA disbursements had beneficial effects on their companies and industries, but the degree varied from slight to substantial. Leading recipient and non-recipient companies we contacted in the seven industries also reported mixed effects. In two industries—steel and semiconductors—leading recipients we contacted reported positive effects. In four other industries—crawfish, candles, bearings, and pasta—recipients generally reported benefits, but some non-recipients said that disbursements to competitors were having negative effects on them. Several non-recipients complained that, although they would like to receive disbursements, they were ineligible to receive them. In the final industry, softwood lumber, both recipient and non-recipient respondents indicated that disbursements to date have been too small to have a discernable

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effect, but non-recipient respondents expressed concern about potential future adverse effects because disbursements might grow dramatically. Critics have expressed concerns that CDSOA may increase the number of AD/CV petition filings and the scope and duration of AD/CV duty orders. However, the available evidence is inconclusive.

Some U.S. industries are facing the imposition of additional tariffs by key U.S. trading partners as authorized by the WTO because CDSOA does not comply with WTO agreements.<sup>6</sup> In response to separate complaints about CDSOA by 11 WTO members, the WTO ruled in January 2003 that CDSOA violated U.S. WTO obligations. The rationale for the WTO's ruling was that CDSOA was not among the allowed trade remedy responses to injurious dumping and subsidies specifically listed in the applicable WTO agreements. The United States pledged to comply with the adverse ruling, but it did not do so by the December 2003 deadline. Although the President proposed CDSOA's repeal, no change has been enacted by Congress. Three countries agreed to give the United States more time to come into compliance; the other eight members requested and received WTO authorization to retaliate by imposing additional tariffs on imports from the U.S. WTO arbitrators found that each of the eight members would be entitled to suspend concessions against U.S. exports in an amount equal to 72 percent of the CDSOA disbursements associated with AD/CV duties on that member's products each year. The total suspension authorized for 2005 could be up to \$134 million based on the fiscal year 2004 CDSOA disbursements. Specifically, for the fiscal year 2004 disbursements, the WTO arbitrators authorized the imposition of additional duties covering a total value of trade not exceeding \$0.3 million for Brazil, \$11.2 million for Canada, \$0.6 million for Chile, \$27.8 million for the European Union (EU), \$1.4 million for India, \$52.1 million for Japan, \$20.0 million for Korea, and \$20.9 million for Mexico. On May 1, 2005, Canada and the EU began the imposition of additional duties on various U.S. exports. On August 18, 2005, Mexico began imposing additional duties on U.S. exports. On September 1, 2005, Japan began imposing additional duties on U.S. exports as well. The remaining four members say they might suspend concessions.

This report contains matters for congressional consideration and recommendations to CBP. Specifically, given the results of our review, as Congress carries out its CDSOA oversight functions and considers related

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<sup>6</sup>These members were Australia, Brazil, Canada, Chile, the European Union, India, Indonesia, Japan, Korea, Mexico, and Thailand.

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legislative proposals, it should consider whether CDSOA is achieving the goals of strengthening the remedial nature of U.S. trade laws, restoring conditions of fair trade, and assisting domestic producers. If Congress decides to retain and modify CDSOA, it should also consider extending CBP's 60-day deadline for completing the disbursement of CDSOA funds. If Congress retains the law, we also recommend that CBP take several steps to improve the processing of claims and payments, the verification of claims, and the collection of AD/CV duties.

We received written comments on a draft of this report from CBP (see app. IV) indicating that it concurred with our recommendations. We also received technical comments on this draft from CBP, the ITC, and the Office of the U.S. Trade Representative (USTR), which we have incorporated where appropriate.

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## Background

The United States and many of its trading partners have long used laws known as “trade remedies” to mitigate the adverse impact of certain trade practices on domestic industries and workers, notably dumping (i.e. sales at below fair market value), and foreign government subsidies that lower producers' costs or increase their revenues. In both situations, U.S. law provides that a duty intended to counter these advantages be imposed on imports. Such duties are known as AD/CV duties. The process involves the filing of a petition for relief by domestic producer interests, or self-initiation by the U.S. Department of Commerce (Commerce), followed by two separate investigations: one by Commerce, which determines if dumping or subsidies are occurring, and the other by the ITC, which determines whether a domestic U.S. industry is materially injured by such unfairly traded imports. If both agencies make affirmative determinations, Commerce issues an order to CBP directing it to collect the additional duties on imports. These are known as AD/CV duty orders.<sup>7</sup> No later than 5 years after publication of these orders, Commerce and the ITC conduct a “sunset review” to determine whether revoking the order would likely lead to the continuation or recurrence of dumping and/or subsidization and material injury.

Congress enacted CDSOA on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies

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<sup>7</sup>For further background see Vivian Jones, *Trade Remedies: A Primer*, a publication of the Congressional Research Service, Order Code RL 32371.

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Appropriations Act to strengthen the remedial nature of U.S. trade laws, restore conditions of fair trade, and assist domestic producers. Congress noted in its accompanying findings that “continued dumping and subsidization . . . after the issuance of antidumping orders or findings or countervailing duty orders can frustrate the remedial purpose”<sup>8</sup> of U.S. trade laws, potentially causing domestic producers to be reluctant to reinvest or rehire and damaging their ability to maintain pension and health care benefits. Consequently, Congress enacted the CDSOA, reasoning that “U.S. trade laws should be strengthened to see that the remedial purpose of those laws is achieved.”<sup>9</sup> CDSOA instructs Customs to distribute AD/CV duties directly to affected domestic producers. Previously, CBP transferred such duties to the Treasury for general government use.

Two agencies are involved in CDSOA implementation. The law gives each agency—ITC and CBP—specific responsibilities for implementing CDSOA. The ITC is charged with developing a list of producers who are potentially eligible to receive CDSOA distributions and providing the names of these producers to CBP.<sup>10</sup> CBP has overall responsibility for annually distributing duties collected to eligible affected domestic producers. CDSOA also makes CBP responsible for several related actions. Specifically, it charges CBP with establishing procedures for the distribution of payments and requires that CBP publish in the *Federal Register* a notice of intent to distribute payments and, based on information provided by the ITC, a list of affected domestic producers potentially eligible for the distribution.

Both agencies had some start-up challenges and have made improvements in response to reports by their Inspectors General (IG). In September 2004, ITC’s IG found that the ITC had effectively implemented its part of the act but made several suggestions for enhancing the agency’s CDSOA efforts.<sup>11</sup> For example, it suggested that the ITC better document its policies and procedures for identifying and reporting eligible producers to CBP and improve its communication with companies regarding eligibility. In response, the ITC implemented these suggestions to, among other things,

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<sup>8</sup>Pub. L. No. 106-387, Title X, sec. 1002, 114 Stat. 1549, 1549A-72 (2000).

<sup>9</sup>§ 1002, 114 Stat. 1549A-72.

<sup>10</sup>The names are to be transmitted to Customs within 60 days of the issuance of an AD/CV duty order. *See* 19 U.S.C. § 1675c.

<sup>11</sup>U.S. ITC, *Implementation of the Continued Dumping and Subsidy Offset Act of 2000*, OIG-IR-01-04, Washington, D.C.: September 30, 2004.

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formalize and strengthen its procedures for identifying eligible producers, developing a list of potentially eligible producers, and transmitting the list to CBP. For example, the ITC updated its desk procedures, clarified certain responsibilities to support the staff responsible for maintaining the ITC list, and added additional guidance on CDSOA requirements to its website.

In June 2003, the Treasury's IG issued a report finding several major deficiencies in CBP's implementation of CDSOA and made several recommendations.<sup>12</sup> The Treasury's IG found that CBP was not in compliance with the law because it did not properly establish special accounts for depositing and disbursing CDSOA payments, did not pay claimants within the required time frame, and did not institute standard operating procedures or adequate controls for managing the program. Specifically, Treasury's IG noted that the absence of proper accounts, accurate financial data, and adequate internal controls had resulted in "overpayments of at least \$25 million, and likely more." Treasury's IG also emphasized that several other issues warranted attention, including no routine verification of claims and significant amounts of uncollected AD/CV duties. In response, CBP consolidated the processing of claims and payments by establishing a CDSOA team in Indianapolis, Indiana; instituted procedures for processing claims and disbursements, and for conducting claim verification audits; and started proceedings to secure reimbursements from the companies that had received overpayments. Despite these efforts, CBP still faces issues raised by the Treasury IG, such as the issue of uncollected duties.

The United States has an obligation that its trade remedy actions conform to its legal commitments as part of the WTO, an international body based in Geneva, Switzerland. The WTO agreements set forth the agreed-upon rules for international trade. The WTO provides a mechanism for settling disputes between countries, and serves as a forum for conducting trade negotiations among its 148 member nations and separate customs territories. WTO trade remedy rules involve both procedural and substantive requirements, and a number of U.S. trade remedies have been

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<sup>12</sup>Department of the Treasury, *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, Washington, D.C.: June 17, 2003.

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challenged at the WTO.<sup>13</sup> WTO members that believe other members are not complying with their WTO obligations can file a dispute settlement case. The resulting decisions by a dispute settlement panel, once adopted, are binding on members who are parties to the dispute, and WTO rules create an expectation of compliance. Under WTO rules and U.S. law, however, compliance is not automatic. WTO dispute settlement panels cannot order the United States to change its law. Alternatively, the United States may choose not to comply with WTO agreements and instead may choose to offer injured members mutually-agreed upon trade compensation or face retaliatory suspension of trade concessions by the complainant members. A new round of global trade talks aimed at liberalizing trade barriers is now underway and includes discussions of possible clarifications and improvements to the WTO rules on antidumping and on subsidies and countervailing measures. U.S. trade with members of the WTO totaled \$2.1 trillion in 2004, giving the United States a considerable stake in these WTO negotiations, which aim to liberalize trade in agriculture, industrial goods, and services.<sup>14</sup>

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## Key CDSOA Features Restrict Company Eligibility, Determine Share of Disbursements, and Set Tight Time Frame for Disbursing Payments

Three key features of CDSOA guide and affect agency implementation. These features (1) determine company eligibility to receive CDSOA disbursements, (2) shape the allocation of CDSOA disbursements among companies based on their claimed expenditures, and (3) specify milestones that agencies must achieve when implementing the act, including a tight time frame for disbursing funds.

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<sup>13</sup>For background see GAO, *World Trade Organization: Standard of Review and Impact of Trade Remedy Rulings*, [GAO-03-824](#) (Washington, D.C.: July 30, 2003), and *World Trade Organization: Issues in Dispute Settlement*, [GAO/NSIAD-00-210](#) (Washington, D.C.: Aug. 9, 2000). The relevant WTO agreements for trade remedies are the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and parts of the General Agreement on Tariffs and Trade 1994.

<sup>14</sup>For background see GAO, *World Trade Organization: Global Trade Talks Back on Track, but Considerable Work Needed to Fulfill Ambitious Objectives*, [GAO-05-538](#) (Washington, D.C.: May 31, 2005). This is the latest in a series of GAO reports on these negotiations.

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## CDSOA's Criteria for Company Eligibility Restricts Benefits

CDSOA establishes criteria that restrict eligibility for CDSOA disbursements. As guidance for agency implementation, these criteria raise issues because (1) two-thirds of the orders in effect predate CDSOA, (2) ITC investigative procedures were not designed to, and do not result in, collecting information on support of petitions from all industry participants, and (3) other factors further limit company eligibility. Some companies deemed ineligible regard these criteria as unfair, and several have initiated legal action to secure eligibility.

## CDSOA Restricts Eligibility

The law restricts eligibility to “affected domestic producers”—namely, any “manufacturer, producer, farmer, rancher, or worker representative (including associations of these persons)” that (1) petitioned<sup>15</sup> the ITC or supported a petition for relief to the ITC that resulted in an AD/CV duty order and (2) remains in operation. The law also requires the ITC to prepare a list of potentially eligible producers for CBP, which publishes it in advance of each annual distribution. The law only applies to orders in effect on or after January 1, 1999. CDSOA further specifies that support must be communicated to the ITC through a letter from the company or a response to an ITC questionnaire. Successor companies or members of an association may also be eligible for CDSOA distributions.<sup>16</sup> Conversely, CDSOA deems as ineligible those companies that (1) opposed a petition, (2) ceased production of a product covered by an order, or (3) were acquired by companies that opposed a petition.

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<sup>15</sup>A petitioner is a manufacturer, producer, or wholesaler in the United States of a domestic like product; a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product; a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States; an association, a majority of whose members is composed of the aforementioned parties with respect to a domestic like product; and in any investigation involving an industry engaged in producing a processed agricultural product, a coalition or trade association which is representative of either: (i) processors, or (ii) processors and producers, or (iii) processors and growers. *See* 19 U.S.C. §§ 1671a, 1673a.

<sup>16</sup>A successor company may be eligible if it has succeeded to the operations of a predecessor company that appeared on the ITC list of potentially eligible companies and files a certification to claim a distribution behalf of the predecessor company. If a member company of an association appearing on the ITC list does not itself appear on the ITC list, the member company may file a claim, as long as the member was a member at the time of the petition and also meets the other requirements of the statute. However, according to the law, companies that had supported petitions but were acquired by a company that did not support a petition are not eligible to receive distributions. *See* 19 U.S.C. § 1675c and 19 C.F.R. § 159.61.



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## Most Orders Predate CDSOA

These eligibility criteria create special problems when older AD/CV orders are involved. Our analysis of ITC data reveals that roughly two-thirds of (234 out of 351) AD/CV duty orders in effect as of April 15, 2005, precede CDSOA. The application of CDSOA to orders that predate the law's enactment raises concern. This is because, for AD/CV relief petitions that were investigated before CDSOA was enacted, producers had no way of knowing that their lack of expression of support for the petition would later adversely affect their ability to receive CDSOA disbursements. Moreover, firms that began operations or entered the U.S. market after the ITC's original investigation are not eligible to receive CDSOA distributions. For petitions that have been investigated since CDSOA was enacted, producers would likely be aware of this linkage. The ITC and CBP told us that in a recent case involving shrimp, industry associations reached out broadly to ensure producers were aware of the need to communicate support to the ITC. Similarly, officials from a law firm that works with importers told us they were aware of such industry association efforts in cases involving live swine. However, in examining seven industries, we spoke to several ineligible companies that were frustrated because they had not expressed support during, or in some cases had not even known about, AD/CV investigations conducted before CDSOA's adoption.

## ITC Sometimes Does Not Collect Data from All Industry Participants

The ITC relies on company data that is sometimes incomplete, and this further limits eligibility. CDSOA's criteria link companies' eligibility to a process the ITC has long followed in investigating AD/CV petitions by U.S. domestic industry interests for relief from unfair imports. However, the ITC's investigative process does not result in collecting information from all industry participants, because it is intended for purposes other than CDSOA. The ITC's primary role in AD/CV investigations is to define the scope of the industry that is affected by competition from imported goods and to determine whether the industry has suffered or been threatened with material injury as a result of dumped or subsidized imports. The ITC collects information from U.S. producers, primarily by surveying them. ITC officials told us that they generally strive to cover 100 percent of industry production in their surveys and usually receive responses from producers accounting for a substantial share of production. In situations with a relatively small number of producers, ITC officials said they often succeed in getting coverage of 90 percent of the domestic industry. However, in certain circumstances, such as with agricultural products, which have a large number of small producers, ITC surveys a sample of U.S. producers

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instead of the entire industry.<sup>17</sup> In these situations, it is not uncommon for the share of production reflected in the ITC's questionnaire responses to account for 10 percent or less of production.

Other Factors May Further Limit  
List of Eligible Producers ITC  
Provides CBP

The following four factors additionally define the list of eligible producers:

- The questionnaires that the ITC sends to domestic producers during its investigations have only asked respondents to indicate their position on the petition since 1985. For cases prior to 1985, only petitioners and producers who indicated support of the petition by letter in the ITC's public reports or documents have been considered "affected domestic producers."
- The ITC considers the most recent answer a company provides as the one that determines eligibility. In its investigations, the ITC sends out both preliminary and final surveys in which producers are asked about support for petitions. Presently, producers have the option of checking one of three boxes: (1) support, (2) take no position, and (3) oppose. According to ITC officials, because the statute requires support, only those firms that check the "support" box are considered eligible. Moreover, ITC's practice has been to look to the most recent clear expression of a company's position on the petition to determine its CDSOA eligibility. For example, if a company's response was "support" on the preliminary survey but "take no position" on the final survey, the ITC interprets "take no position" as non-support, and considers the company ineligible for CDSOA disbursements.
- The ITC limits its list of potentially eligible producers to those who indicate their support can be made public. The ITC is required by statute to keep company information, including positions on petitions, confidential, unless the company waives its confidentiality rights.<sup>18</sup> CDSOA requires CBP to publish the list of potentially eligible producers; as a result, the list the ITC provides CBP only includes companies who have affirmatively indicated willingness (in the original investigation or after) to have their support be made public.

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<sup>17</sup>In situations where the ITC has good information about the universe of producers, the agency takes a stratified sample by dividing the universe of companies into different groups by size. It then draws a random sample from each group. However, in situations where the ITC has no information about the size of the industry, it simply takes a random sample.

<sup>18</sup>See 19 U.S.C. § 1677f.

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### Several Companies Have Challenged CDSOA's Eligibility Restrictions

- Because of CDSOA's interpretation of the phrase "support of the petition," the ITC only considers evidence of support during its initial investigation to satisfy CDSOA requirements. Once an investigation is over, a producer that has not communicated its support to the ITC cannot later become eligible for CDSOA disbursements, even if it supports the continuation of an existing order at the time of the 5-year "sunset review."

Several companies have brought legal action challenging agency decisions that rendered them ineligible to receive disbursements, but none of these challenges have been successful. The following examples illustrate challenges to agency decisions:

- A case was brought by candle companies to compel the payment of CDSOA distributions to them.<sup>19</sup> The companies were not on the ITC's list of potentially eligible producers and did not file timely certifications with CBP. The companies asserted that the ITC had violated CDSOA by failing to include them on the list of affected domestic producers and that this omission excused their failure to timely file their certifications.<sup>20</sup> A federal appellate court held that the ITC properly excluded the two producers from the list of affected domestic producers because the producers provided support for the AD petition in a response to a confidential questionnaire and failed to waive confidentiality.<sup>21</sup> The court also held that when the ITC properly excludes a producer from the list, the producer still must file a timely certification with CBP to obtain retroactive consideration for CDSOA distributions.<sup>22</sup> As a result, the court found that the firms were not entitled to CDSOA disbursements for the years in question.

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<sup>19</sup>*Cathedral Candle Co. v. United States Int'l Trade Comm'n*, 400 F.3d 1352 (Fed. Cir. 2005).

<sup>20</sup>*Id.* at 1360.

<sup>21</sup>*Id.* at 1361, 1367.

<sup>22</sup>*Id.* at 1372.

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- Another set of candle companies, which had opposed the relevant petition and subsequently acquired companies in support of the same petition, brought a case seeking to obtain CDSOA disbursements on behalf of the acquired companies.<sup>23</sup> An appellate court held that CDSOA bars claims made on behalf of otherwise affected domestic producers who were acquired by a company that opposed the investigation or were acquired by a business related to a company that opposed the investigation.<sup>24</sup> The court also found that the acquired companies are also barred from claiming disbursements for themselves.<sup>25</sup>
  - A seafood producer brought a case seeking an evidentiary hearing and/or inclusion of affidavits in the agency record where the producer was excluded from the list of affected domestic producers because the ITC had no record of the producer's support for the petition.<sup>26</sup> The producer claimed that it had mailed a questionnaire response indicating support to the ITC on time and wanted to have its affidavits in support of the contention included in the agency's records.<sup>27</sup> The U.S. Court of International Trade held that because the producer failed to allege the proper reasons for amending the agency record, affidavits concerning the timely mailing of a questionnaire could not be added to the agency record and considered when reviewing the producer's eligibility for a CDSOA distribution.<sup>28</sup>

Two other legal challenges are still pending and involve claims that CDSOA violates the First Amendment of the U.S. Constitution ("free speech") by conditioning the distribution of benefits on a company's expression of support for an AD/CV relief petition.<sup>29</sup>

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<sup>23</sup>*Candle Corp. of America v. United States Int'l Trade Comm'n*, 374 F.3d 1087 (Fed. Cir. 2004).

<sup>24</sup>*Id.* at 1094.

<sup>25</sup>*Id.* at 1094.

<sup>26</sup>*Bergeron's Seafood v. United States Int'l Trade Comm'n*, 306 F.Supp.2d 1353 (CIT 2004).

<sup>27</sup>*Id.* at 1357.

<sup>28</sup>*Id.* at 1359.

<sup>29</sup>*See PS Chez Sidney, L.L.C. v. United States Int'l Trade Comm'n*, Court No. 02-00635 and *Bergeron's Seafood v. United States Int'l Trade Comm'n*, Court No. 03-00448.

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**Monies Collected on All Active Orders Fund Annual CDSOA Disbursements; Company Claims Determine Share of Disbursements**

The second key CDSOA feature provides for CDSOA funding and a *pro rata* mechanism for allocating funds among the companies that claim disbursements based on a broad definition of qualifying expenditures. Partly as a result of the incentive this creates, company claims approached \$2 trillion in fiscal year 2004.

**AD/CV Duties Fund CDSOA Disbursements**

Each fiscal year's duty assessments on all AD/CV duty orders that were in effect for that year fund annual CDSOA disbursements. Each fiscal year, CBP creates a special account that acts as an umbrella over multiple holding accounts used to track collections by specific active AD/CV duty orders and deposits collected duties under an order into its respective account. Within these accounts, CBP indicates that the dollar amounts attributable to each specific case are clearly identifiable. For example, a total of 351 AD/CV duty orders were in effect as of April 15, 2005, covering 124 products from 50 countries. In other words, as of that date, CBP intended to allocate CDSOA disbursements not from "one CDSOA pie" but from "351 CDSOA pies." Each of these accounts constitutes a separate fund from which CBP makes annual distributions. After the fiscal year closes, CBP distributes the duties collected and interest earned under a given order that year to the affected eligible producers filing timely claims related to the specific order.

The agency cannot distribute funds collected from one order to producers that were petitioners under other orders. For example, funds collected from the order on pineapples from Thailand cannot be used to pay producers covered by the frozen fish from Vietnam order. As a result, in fiscal year 2004, the one U.S. producer of pineapples received all the money collected under that order, but CBP did not make CDSOA disbursements to U.S. producers of frozen fish because the agency had not collected any funds under that order.

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CDSOA Has Broad Definition of Qualifying Expenditures

CDSOA's definition of expenses companies can claim is very broad. The law defines ten categories of qualifying expenditures, such as health benefits and working capital expenses, incurred during the production of the product under the order.<sup>30</sup> According to CBP officials we spoke with, this broad definition means companies can include a wide range of expenses in their certifications. Moreover, CDSOA allows companies to claim any expenses incurred since an order was issued, a period that may span as far back as the early 1970s for some orders.<sup>31</sup> Indeed, 68 of the 351 orders in effect have been in place for 15 years or more. Companies can also make claims under multiple AD/CV orders. For example, in fiscal year 2004, one of the top recipient companies filed claims for different products under 89 AD/CV orders. Finally, the law allows companies to submit claims for qualified expenditures that have not been reimbursed in previous fiscal years. However, CBP implementing regulations require that producers relate claimed expenditures to the production of the product that is covered by the scope of the order or finding.

CDSOA Disbursements Are Proportional to Company Claims

CDSOA uses a *pro rata* formula to allocate disbursements under a given order among the eligible companies filing claims, with percentages determined according to the claims of qualifying expenditures submitted. If the amount collected under an order is insufficient for all claims to be paid in full, as is often the case, each company receives its *pro rata* share of the amount collected. This *pro rata* formula creates an incentive for producers to claim as many expenses as possible relative to other producers so that their share of the funds available under an order is as large as possible. CBP officials cited the increase in claims—from \$1.2 trillion in fiscal year 2001 to just under \$2 trillion in fiscal year 2004—as an indication of this incentive.

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<sup>30</sup>Namely, these expenditures might include expenses for manufacturing facilities; equipment; research and development; personnel training; acquisition of technology; health care benefits paid by the employer; pension benefits paid by the employer; environmental equipment, training, or technology; acquisition of raw materials and other inputs; and working capital or other funds needed to maintain production.

<sup>31</sup>Specifically, producers can claim expenses incurred after the issuance, and prior to the termination, of an order.

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## CDSOA Sets a Tight Time Frame for Disbursing Payments

The third key feature of CDSOA is that it sets a strict deadline by which CBP must distribute payments for a fiscal year. Most disbursement-related activities cannot begin until the fiscal year ends. As a result, CBP has a significant workload in October and November and cannot perform all the desired quality controls prior to disbursement.

CDSOA gives CBP a flexible time frame for processing claims and the CBP has used its discretion to give itself more time. Specifically, the law directs CBP to publish a *Federal Register* notice of its intent to distribute payments, and the list of affected domestic producers potentially eligible to receive payments under each order, at least 30 days before distributions are made. However, CBP has scheduled the publication, which is the first step in processing claims, at least 90 days before the end of the fiscal year for which distributions are being made. For the fiscal year 2004 disbursements, CBP actually published the notice on June 2, 2004—about 120 days before the end of the fiscal year. CBP requires producer claims/certifications to be submitted within 60 days after this notice is published. The fiscal year 2004 deadline for submitting claims was August 2, 2004. This gave CBP the months of August and September to examine certifications, seek additional information from the producers, send acceptance or rejection letters to producers, and finalize a list of recipients.

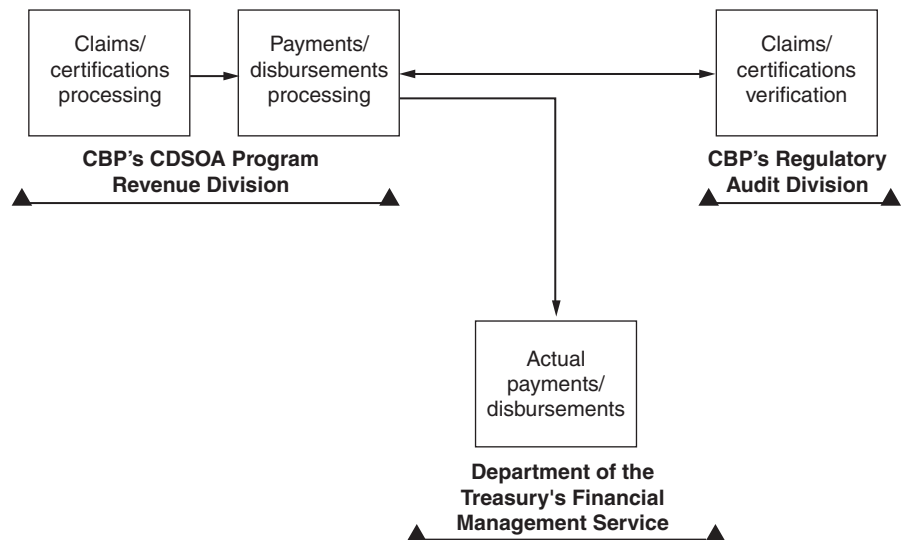
The law is not flexible in the time frame allowed for processing disbursements for a given fiscal year, specifying that payments must be made within 60 days after the first day of the following fiscal year. Because of the need to calculate funds available based on a completed fiscal year, CBP cannot commence these calculations until the following fiscal year. This tight time frame means that during October and November, CBP must perform the bulk of the tasks associated with calculating the funds available for disbursement under each order and the funds that will be distributed to each recipient company under an order. In discussions with us, CBP officials said CDSOA's 60-day time frame for disbursing payments was tight, posing the biggest risk associated with running the program. For instance, in fiscal year 2002, the program missed this deadline by about 2 weeks and, in the process, overpaid some producers. Efforts to collect these overpayments have yielded some results but are still continuing. An extension of 30 days in the disbursement deadline would give CBP additional time to undertake desired quality control measures before sending the instructions to Treasury and issuing payments. The present schedule does not allow sufficient time for quality control, forcing CBP to ask companies for repayment if errors are subsequently detected.

## CBP Faces Three Key Problems Implementing CDSOA

CBP faces three key problems in implementing CDSOA. First, despite some recent improvements, CBP's processing of CDSOA claims and disbursements is labor intensive, and the agency is facing a dramatic increase in its 2005 workload. Second, the agency does not systematically verify claims and thus cannot be sure it appropriately distributes disbursements. Third, CBP disbursed only about half the funds that should have been available in fiscal year 2004 because of ongoing problems collecting AD/CV duties.

Figure 1 depicts how the various units of CBP and Treasury interact when processing claims, verifying claims, and making payments. Following the consolidation of CBP's CDSOA program within the Revenue Division at Indianapolis in 2004, the division is now fully responsible for processing claims and disbursements. The division issues payment instructions for Treasury's Financial Management Service, which actually issues CDSOA disbursement checks to U.S. companies. CBP's Regulatory Audit Division may selectively perform claims verifications upon request of the CDSOA program.

**Figure 1: CBP's and Treasury's Units Involved in CDSOA Efforts**



Source: GAO depiction based on CBP information.



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In addition to these offices within CBP, the Office of Regulations and Rulings addresses legal matters, the Office of the Chief Counsel addresses litigation, the Office of Information Technology provides necessary reports, and the Office of Field Operations is responsible for liquidations.

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### CBP's CDSOA Program Faces Problems Processing Claims and Payments

The CDSOA program's efforts to process claims and disbursements are cumbersome and likely to become more challenging with impending workload increases. The processing of claims and disbursements requires intensive manual efforts, in part because CBP does not require companies to file claims using a standardized form. Also, existing computer systems do not have the capabilities to produce the data needed to calculate amounts available for distribution. CBP's guidance for filing claims is not sufficiently specific and causes confusion, requiring extra effort by CBP staff to answer questions from companies. CBP officials are concerned that, despite recent staffing increases, the number and experience level of staff may not be sufficient to handle the dramatic workload increase in fiscal year 2005. Despite being aware of these problems, CBP's CDSOA program lacks plans for improving its processes, staff, and technology.

### Processing of Claims Is Labor Intensive

CDSOA claims processing is cumbersome and labor intensive. Through fiscal year 2004, CBP only received updates to the list of potentially eligible companies from the ITC in hard copy. As a result, CBP had to manually update its electronic database of potentially eligible producers. During the course of our review, ITC officials took the initiative to provide the list to CBP in hard copy and in electronic format to facilitate CBP's processing of this information. CBP officials noted that getting the file electronically was very helpful. However, because CBP still needed to perform considerable data re-entry to get the list into the format they preferred, ITC and CBP officials told us they are exploring whether to formalize and improve this file exchange in the future. Because CBP does not require companies to submit claims electronically using a standardized form, program staff scan all the documents received for electronic storage and subsequently archive all paper copies of the documents. CDSOA program staff must review each claim to ensure it contains the required information, contact claimants to clarify basic information, and send out letters concerning rejected claims.<sup>32</sup> Staff must manually enter information from accepted claims into a

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<sup>32</sup>Claims may be rejected if a claimant is not an eligible producer or fails to meet certain other CDSOA criteria.

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“standalone” database, and perform repeated checks to ensure that they followed the prescribed procedures and that their data entries are valid and accurate.

**Gaps in Computer Systems  
Force Reliance on Manual  
Calculations of Disbursements**

The payments processing component is also labor intensive because existing computer systems do not have the capabilities to provide precise information on the amounts available for disbursement under each order or the amounts to be disbursed to each claimant. CBP’s CDSOA program continues to face a risk in this area because its staff must manually perform the calculations and any inaccurate calculations can result in over or underpayments. Multiple data elements are required to determine the amounts available for disbursement, and these come from different computer systems. In some instances, the computer systems produce conflicting information, and program staff must manually reconcile these differences. While internal control procedures are in place to ensure the validity and accuracy of the calculations, the process is nonetheless subject to human error. Program officials told us that the new computer system being implemented agencywide will not have the financial component needed to perform this task for several more years.

**Guidance to Companies  
Generates Questions to CBP and  
Uncertainty by Companies**

Claims processing is further complicated because the guidance about how to file CDSOA claims is very general and open to interpretation. As a result, CDSOA program staff field many phone calls from claimants regarding their claims, including clarification questions on how to file claims. Respondents to GAO’s questions generally praised CBP for its handling of these calls. However, a recent CBP verification of a company’s claims raised various claims-related questions. For example, CDSOA provides that companies can receive disbursements for qualifying expenditures not previously reimbursed, but officials involved in the verification said it was not clear whether companies must subtract all past disbursements when making claims under multiple orders, or only those disbursements related to a particular order. Also, one CDSOA recipient company reported that, because of uncertainty about whether cumulative expenses could be claimed, it claimed only 1 year’s expenses. As a result, it received a much smaller share of disbursements than it otherwise could have.

**CDSOA Program Has Increased  
Staff but Faces Dramatic Growth  
in Workload**

Although the number of staff assigned to process claims and payments has grown, program officials noted that this increase may not be sufficient to handle the dramatic workload increase expected in fiscal year 2005. Specifically, the number of eligible claimants has grown by 500 percent between fiscal years 2004 and 2005, and the number of claims might

increase more than 10-fold, from 1,960 to over 29,000. This growth is largely due to AD duty orders on certain warm-water shrimp or prawns recently coming into effect. Table 1 shows the number of program staff for fiscal years 2003-2005 and the program's responsibilities and workload during those years.

**Table 1: CBP's CDSOA Program Staff, Responsibilities, and Workload**

Fiscal year	Number of staff	Responsibilities	Workload
2003	4	Process payments forwarded by CBP's Office of Regulations and Rulings  Prepare for consolidation of the program	<ul style="list-style-type: none"> <li>• Eligible claimants–1,000</li> <li>• Claimants that filed-545</li> <li>• Claims filed–2,196</li> <li>• Claims per staff–549</li> </ul>
2004	7	Process CDSOA claims and payments	<ul style="list-style-type: none"> <li>• Eligible claimants–1,100</li> <li>• Claimants that filed-493</li> <li>• Claims filed–1,960</li> <li>• Claims per staff–280</li> </ul>
2005	9	Process CDSOA claims and payments	<ul style="list-style-type: none"> <li>• Eligible claimants–5,400</li> <li>• Claimants that filed–unknown</li> <li>• Claims to be filed (est.)–29,300</li> <li>• Claims per staff (est.) 3,255</li> </ul>

Source: GAO analysis of CBP data.

Program officials are concerned about fiscal year 2005 processing activities because only about half of the staff has processed claims and payments before. The rest are new and not experienced with the procedures. Moreover, if the workload becomes unmanageable, CBP may be unable to quickly bring new staff on board and up to speed. This is because new employees must undergo a 4 to 6 month background check and initial training of entry-level college graduates takes 3 to 4 months. New staff attains full proficiency only after they complete a full annual cycle of processing claims and payments.

Despite these challenges, the CDSOA program does not have formal plans for improving its processes, technology, and staff. In our efforts to help improve the federal government's performance, we regularly emphasize that processes, staff, and technology are vital to agency performance and that planning is central to managing and improving these three

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organizational components.<sup>33</sup> For instance, our work on human capital issues throughout the government has revealed the importance of having a human capital plan in place to address problems, such as those faced by the CDSOA program, and ensure that staff with the right skills and abilities is available continuously and can meet changing organizational needs.<sup>34</sup>

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## CBP Has Not Verified Claims Systematically

Claims verification poses another implementation problem for CBP. Companies are not held accountable for the claims they file because CBP does not require them to provide any supporting documentation for their claims and does not systematically verify company claims. The only comprehensive verification conducted to date found significant issues. Although CBP has put in place procedures for verifying CDSOA claims, it does not plan to implement them on a systematic or routine basis.

Program officials told us they basically accept the information in company claims and rely on complaints from competitors to initiate verifications. In reviewing certain claims and CBP's procedures, we found that claims are generally not questioned even though top CDSOA recipient companies have claimed over \$2 trillion since fiscal year 2001 (see app.II). CBP normally does not take steps to determine that companies are still in business and producing the item covered by the order under which they are making a claim. Neither CDSOA nor CBP require companies to explain their claims, provide supporting documentation about their claims, or follow a format when listing their qualifying expenditures. For example, in reviewing the 2004 claims filed by top CDSOA recipients, we found that most companies did not provide any details about their claimed expenditures. Indeed, one company listed all of its claimed expenditures under the category of raw materials. CDSOA and CBP do not require that companies have their claims reviewed by a certified public accountant or a party outside of the company.

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<sup>33</sup>See *Human Capital: Managing Human Capital in the 21<sup>st</sup> Century*, [GAO/T-GGD-00-77](#) (Washington, D.C.: Mar. 9, 2000).

<sup>34</sup>See *Human Capital: Major Human Capital Challenges at SEC and Key Trade Agencies*, [GAO-02-662T](#) (Washington, D.C.: Apr. 23, 2002); *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#), (Washington, D.C.: March 2002); *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 2003); and *Human Capital: Observations on Final DHS Human Capital Regulations*, [GAO-05-391T](#) (Washington, D.C.: Mar. 2, 2005).

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CBP has only verified the claims of a handful of claimants. One of these verifications was comprehensive and revealed significant problems. In the first 3 years of the CDSOA program, staff in CBP's Office of Regulations and Rulings conducted four, 1-day site visit verifications that revealed no substantive issues. Subsequently, CBP's Regulatory Audit Division decided to conduct a fifth verification using the detailed verification procedures the division developed in mid-2004. This verification, which took about a year and was completed in June 2005, revealed significant problems, including substantial overstatement of claimed expenses. According to CBP, the primary cause of the CDSOA expenditure overstatement was the company's failure to maintain an internal control system to prepare and support its CDSOA claims. This prevented the company from identifying the non-qualifying products and costs associated with them. As a result, the company included expenditures incurred in the production of products not covered by the scope of the AD/CV orders. The company acknowledged that it had wrongly claimed expenditures and subsequently took corrective action.

CBP does not plan to change its present reactive approach or to systematically target more companies for verifications. Although the law does not require verification of claims, CBP has recognized over time the need for them but has always stopped short of implementing a systematic verification plan. In the third year of CDSOA implementation, a CBP working group under the direction of the Deputy Commissioner's office developed a statement of work to, among other things, verify claims according to a risk-based plan. However, CBP does not have any evidence that this plan was ever developed or implemented.

Despite having new claim verification procedures in place and having performed an in-depth verification as a prototype review to determine the extent of work involved in the verification, Regulatory Audit Division officials told us they do not plan to verify claims systematically or on a routine basis. Instead, CBP will continue to rely on complaints from competitors to select companies for verification. According to CBP officials, this approach is logical because the *pro rata* formula for allocating disbursements among firms creates an incentive for other companies to police their competitors. Although CBP has an agencywide risk-based plan for targeting companies for audits, this plan does not target the CDSOA program's recipients because the agency does not consider the program a high risk to revenue or a high priority for policy reasons.

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CBP's current position is at odds with its own Inspector General's (IG) position and our work on financial management, which highlights the importance of verifying claims. In its audit of the CDSOA program, Treasury's IG emphasized the need for more robust claim verification. In the report, the IG questioned why CBP was not reviewing CDSOA claims on an annual basis, and particularly the expenditures claimed. The IG went on to note that certifications are legally subject to verification and that these certifications would serve as a deterrent against the submission of deceptive claims. Moreover, it emphasized that untimely verifications could result in the loss of revenue for other deserving companies if, in fact, deception was later discovered. Our overall work on claims and disbursements throughout the government shows that the systematic verification of claims before they are processed (or after they are paid) is key to ensuring the validity of transactions and to avoid disbursement problems such as improper payments.<sup>35</sup> This work also reveals the importance of internal controls, such as verification, to ensure that only valid transactions are initiated in accordance with management decisions and directives.

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## CBP's Problems in Collecting AD/CV Duties Worsen

Collecting AD/CV duties has been another problem for CBP, compromising the effectiveness of AD/CV trade remedies generally and limiting funding available for distribution under CDSOA. CBP reported that the problem has grown dramatically in the last couple of years. For example, it distributed about half of the money that should have been available under CDSOA in fiscal year 2004. CBP's efforts to date to address the causes of its collections problems have not been successful, leading CBP to pledge further steps in a July 2005 report to Congress.

Customs collections problems have been evident since mid-2003 and have two distinct components. Specifically, the 2003 report on CDSOA by Treasury's IG highlighted CBP's collections problems, raising particular concerns about the following two AD/CV collection issues:

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<sup>35</sup>See, for example, *GAO's Policy and Procedures Manual for Guidance of Federal Agencies*, title 7—*Fiscal Guidance*, ch. 6, Disbursements, pp. 7.6.1-7.6.16, (Washington, D.C.: May 18, 1993); *Streamlining the Payment Process While Maintaining Effective Internal Control*, [GAO/AIMD-21.3.2](#) (Washington, D.C.: May 2000); *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001) p.41; and *Strategies to Manage Improper Payments, Learning from Public and Private Sector Organizations*, [GAO-02-69G](#) (Washington, D.C.: October 2001).

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- Unliquidated entries make the eventual collection of duties owed less certain. Liquidation is the final determination of duties owed on an import entry. Liquidation of import entries subject to AD/CV duties only occurs after Commerce issues a final order, determines final dumping margins or final net countervailable subsidies (i.e. duty), and issues liquidation instructions to CBP. Upon receipt of liquidation instructions, CBP calculates and seeks to collect the actual duties owed. In some cases, such as softwood lumber, liquidation is being suspended due to ongoing litigation. While neither Commerce nor CBP can hasten collection of duties tied up in litigation, Treasury's IG report found that, in some cases, CBP was not collecting duties because Commerce had failed to issue proper liquidation instructions to CBP. In other cases, the report said CBP had overlooked Commerce liquidation instructions. The report said clearing up the liquidation backlog should be given a high priority given the substantial dollars involved—about \$2 billion in 2003. Clearing the backlog is also urgent because discrepancies between unliquidated duties and final duties often means that CBP must attempt to collect additional sums from producers that did not expect to pay more, or that went out of business.<sup>36</sup>
  - Open (unpaid or uncollected) duty bills are liquidated entries for which final bills have been issued but not paid. The Treasury's IG report expressed concern that CBP had not collected \$97 million in duties owed and said that the agency might not be able to recover some of these funds. Treasury's IG said its discussion with CBP personnel suggested recovery could be difficult because: (1) port personnel are accepting bonds that are not sufficient to cover the duties owed plus interest when the entry is liquidated, and (2) the length of time between entry and liquidation is often several years, and in that time, some importers go out of business, leaving CBP with no way to go back for collection of additional duties.

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<sup>36</sup>In the interim between the entry of imports after an AD/CV duty is first imposed and the final liquidation and collection of duties, CBP requires posting of cash deposits or, in limited circumstances, bonds to cover estimated duties. CBP also requires additional security, usually in the form of a continuous bond, on the entry. Because the final AD/CV rate often differs from the rates used to calculate these deposits, there are cases where CBP has collected less money than what is finally due. Moreover, the length of time that can elapse is sometimes several years, which further compromises duty collection. It also means that any measure CBP takes based on estimated duties, such as increasing continuous bond coverage, may not cover duties owed.

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In response, CBP and Commerce took steps to identify and address the causes of CBP's collections problems. CBP attributes the uncollected duties problem largely to "new shippers" with little import history,<sup>37</sup> a problem that is particularly prevalent in the agriculture and aquaculture industries. According to CBP, one of these new shippers accounted for \$130 million in uncollected duties in fiscal year 2004. To address this problem, in 2004, Commerce changed its new shipper review process and listed several steps it has taken to strengthen it. These included steps such as making the bondholder liable for duties owed on each import entry, and formalizing a checklist to ensure the legitimacy of new shippers and their sales. Subsequently in 2004, CBP announced an amended directive to help ensure that duties on agriculture and aquaculture imports were collected properly by reviewing and applying a new formula for bonds on these imports, effectively increasing these bonds by setting them at higher rates.

Nevertheless, since the problem and its basic reasons became known in 2003, the size of CBP's collections problem has more than doubled. As figure 2 shows, according to CBP data, \$4.2 billion in AD/CV duties remained unliquidated and \$260 million in AD/CV duties were unpaid at the end of fiscal year 2004. According to CBP, a large amount of the unliquidated entries involves duties on softwood lumber from Canada

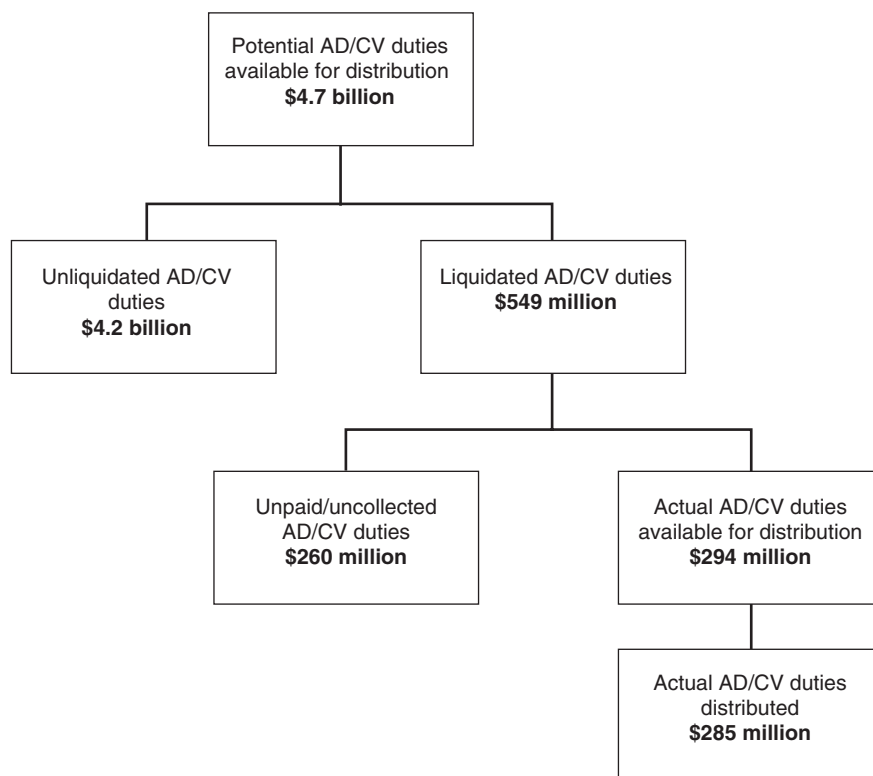
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<sup>37</sup>A "new shipper" is a foreign exporter or producer that did not export, and is not affiliated with, an exporter or producer that exported to the United States during the period of AD/CV investigation and that has begun to export to the United States. This shipper can request a separate, expedited review (called a "new shipper" review) to establish his own estimated dumping margin. The new shipper has the option of posting a bond or security in lieu of cash once Commerce determines that the company meets the requirements and initiates a review. Commerce conducts the review based on at least one shipment. The United States has expressed concern about abuse of such privileges, which were provided for in article 9.5 of the WTO Antidumping Agreement and subsequently codified in U.S. law and regulations at 19 U.S.C. § 1675 (a)(2)(B)(iii). The concern is that, based on a single transaction, new shippers have received very low rates that allow them to post bonds at low rates and ship goods at low prices, subverting entirely or delaying relief to domestic producers from injurious imports. Moreover, CBP has had problems collecting duties when Commerce, after completing its review and finding higher dumping margins, has issued orders for CBP to liquidate the prior entries at higher rates. When CBP has tried to collect these higher rates (on goods that originally entered at a low rate), both new shippers and bondsmen have not been able to pay the duties owed. For example, CBP confirmed that it only collected \$25.5 million of the \$195.5 million in AD duties owed on crawfish between 2002 and 2004. The antidumping order against freshwater crawfish tail meat from the People's Republic of China has involved numerous new shipper reviews. In many of these cases, new shippers were initially granted a very low rate, which was later raised significantly upon review. For example, one Chinese exporter was granted a rate of 0 percent (no duty) in May 1999 after requesting a new shipper review. However, an administrative review completed in April 2000 raised its rate to 201.63 percent.



(about \$3.7 billion). In February 2005, CBP reported to Congress that it had developed a plan to isolate suspended entries that were beyond the normal time frames of an AD/CV case and then worked with Commerce to obtain liquidation instructions, reducing the inventory of one million suspended entries by 80,000. However, many unliquidated entries remain and some of the unliquidated entries are still due to problems within CBP's and Commerce's control. CBP estimates that over 90 percent of all unliquidated AD/CV entries are awaiting Commerce instructions for liquidation. Regarding unpaid duties, a large percentage pertains to imports from China. Specifically, nearly two-thirds of these unpaid duties (about \$170 million) relate to an AD order on crawfish tail meat from China. The second largest amount (about \$25 million) relate to an AD order on fresh garlic from China.

**Figure 2: Potential Fiscal Year 2004 AD/CV Duties Available for Distribution under CDSOA and Actual CDSOA Disbursements**



Source: GAO analysis of CBP data.

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CBP's continued collections problems have led to calls for more drastic measures. Several industry groups, including representatives of the garlic, honey, mushroom, and crawfish industries, have advocated for elimination of the new shipper bonding rules in favor of cash deposits on entries for new AD orders. Most crawfish and some steel recipients responding to our questionnaire also raised concerns about CBP's collection efforts and quality of communication about ongoing problems.

As a result, CBP is pursuing additional measures. In a February 2005 report to Congress, CBP said it is working with Treasury to address financial risks associated with bond holders' insolvency and monitoring of agriculture/aquaculture importers' compliance with its new bonding requirements on a weekly basis. In its July 2005 report to Congress, CBP highlights that it has begun working with other U.S. agencies to develop legislative proposals and other solutions to better address AD/CV duty collection problems. CBP notes that it plans to forward the results of this interagency effort to Congress by December 2005. Meanwhile, Congress is considering legislation that would change new shipper privileges.<sup>38</sup>

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## CDSOA Payments Largely Concentrated on a Few Companies and Industries, with Mixed Effects Reported

Most CDSOA payments went to a small number of U.S. producers and industries, with mixed effects reported. Top recipient companies reported that the payments had positive overall effects, although their assessments of the extent of the benefits varied. Leading recipient companies within the seven industries we examined also reported varying positive effects. In four of these industries—bearings, candles, crawfish, and pasta—recipients we contacted reported benefits, but some non-recipients said that CDSOA payments were having adverse effects on their ability to compete in the U.S. market. Although some have argued that CDSOA has caused increases in the number of AD/CV petitions filed and in the scope and duration of AD/CV duty orders, the evidence to date is inconclusive.

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## A Few U.S. Producers and Industries Received the Bulk of CDSOA Payments

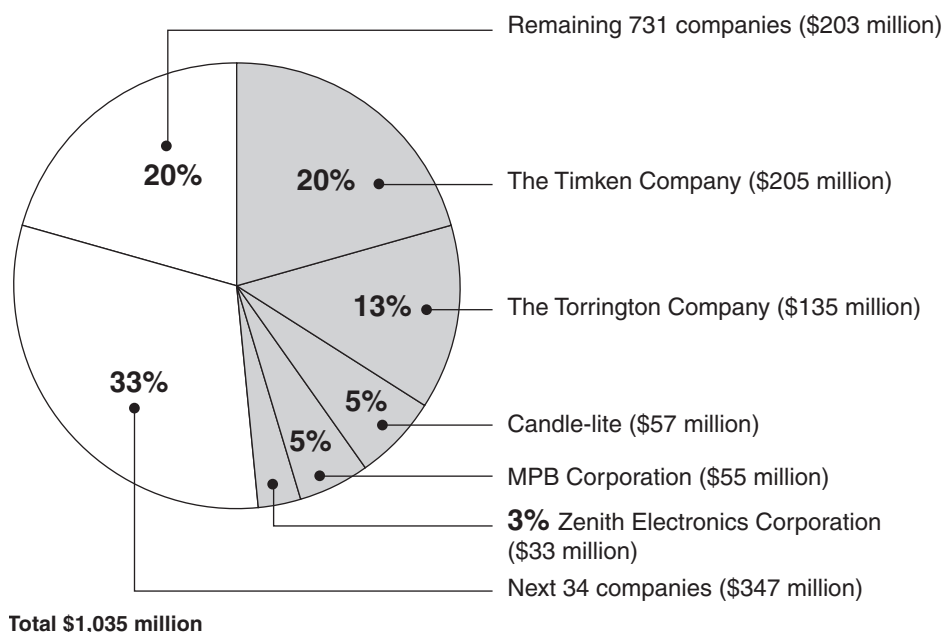
From fiscal year 2001 to fiscal year 2004, CBP has distributed approximately \$1 billion in CDSOA payments to 770 companies from a broad range of industries. These payments have been highly concentrated in a few companies. Figure 3 shows the share of payments going to the top five companies and the share received by the remaining CDSOA recipients.

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<sup>38</sup>See H.R. 3283, 109<sup>th</sup> Cong. (2005).

One company, Timken, a bearings producer, received about twenty percent of total distributions, approximately \$205 million, during fiscal years 2001-2004.<sup>39</sup> Five companies, including Timken, received nearly half of the total payments, or about \$486 million.

**Figure 3: FY 2001-2004 CDSOA Payments to the Top Five Companies and to the Remaining Companies**

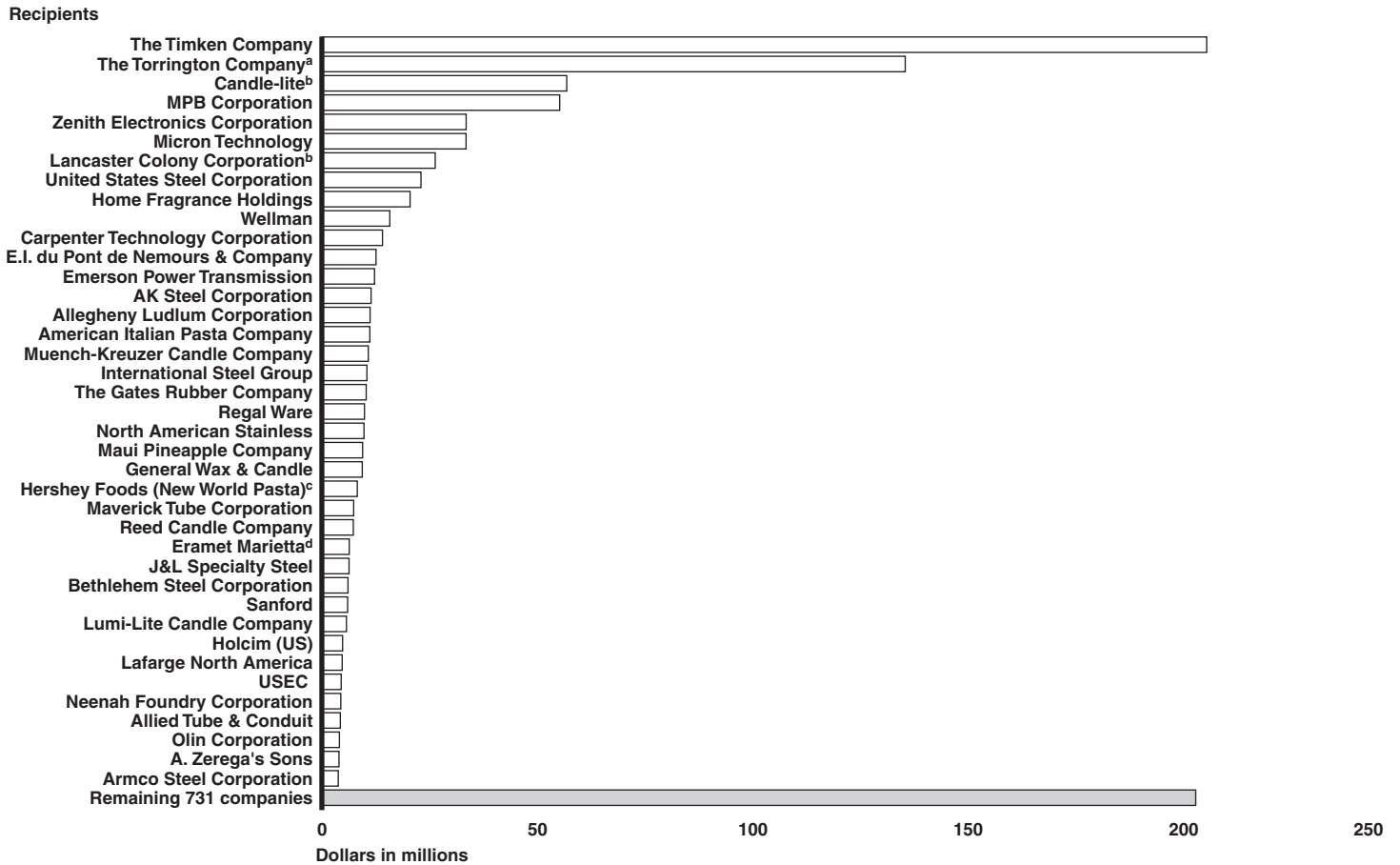


Source: GAO analysis of CBP data.

Figure 4 shows the distribution of payments to the top 39 recipient companies that have received 80 percent of total CDSOA disbursements. These top recipient companies included several producers of steel, candles, and pasta. They also included producers of cement, chemicals, cookware, pencils, pineapples, and textiles.

<sup>39</sup>The fourth-leading recipient, MPB Corporation, is a subsidiary of the Timken Company. For fiscal years 2001, 2003, and 2004, CBP distributed CDSOA distributions separately to Timken and MPB. Timken also acquired the Torrington Company, the second-leading CDSOA recipient, in February 2003.

**Figure 4: Fiscal Year 2001-2004 Distribution of CDSOA Payments to the 39 Leading Recipient Companies**



Source: GAO analysis of CBP data.

Notes:

<sup>a</sup>The data for Torrington reflects the payments it received for fiscal years 2001 and 2002, prior to its acquisition by Timken.

<sup>b</sup>In 1972 Candle-lite was acquired by Lancaster Colony Corporation of which it remains a division today. For fiscal years 2001-2003, Lancaster Colony received CDSOA distributions under the name Candle-lite. The amount paid to Candle-lite and Lancaster Colony should be added together for an accurate account of CDSOA distributions made to the Candle-lite Division of Lancaster Colony Corporation. Total fiscal year 2001-2004 distributions equal \$82,985,544 or 58.21 percent of total distributions to the candle industry.

<sup>c</sup>New World Pasta acquired Hershey Foods Corporation in 1999. CBP also made CDSOA distributions to New World Pasta. The amount paid to Hershey Foods (New World Pasta) does not include these separate distributions to New World Pasta, which were \$3,584,898.

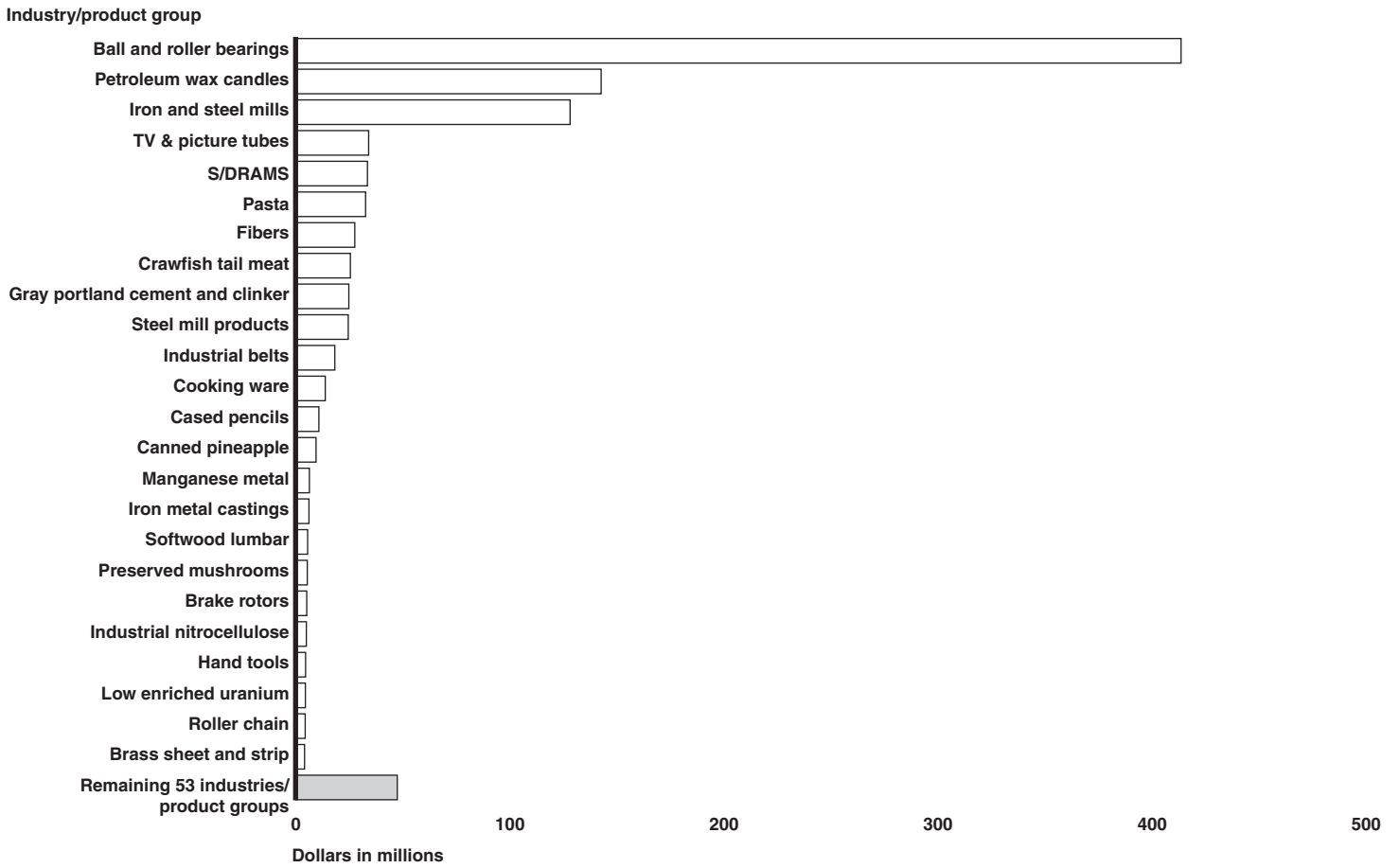
<sup>d</sup>Eramet Marietta is included in this figure as a top recipient company because it is listed by CBP as having received CDSOA funds for fiscal year 2002. After contacting this company, we discovered that it was required to send back its CDSOA money to CBP due to a CBP overpayment error.

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For most of the top recipient companies responding to our questionnaire, the ratio of CDSOA payments to sales was less than 3 percent. Specifically, the ratio of payments to sales ranged from less than 1 percent to over 30 percent. The ratio was generally the smallest for steel companies and the largest for candle companies.

In analyzing CDSOA distributions by industry, or product group, the payments are similarly concentrated among only a few industries or product groups. For example, approximately two-thirds of total CDSOA distributions went to three product groups—bearings, candles, and iron and steel mills—which received approximately 40 percent, 14 percent, and 12 percent respectively. Also, 95 percent of all total payments went to 24 out of the 77 product groups. Figure 5 shows the leading industries or product groups that received CDSOA distributions.

**Figure 5: Top 24 Product Groups Receiving CDSOA Disbursements, FY 2001-2004**



Source: GAO analysis of CBP data.

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## Companies Report Mixed Effects from CDSOA Payments

### Top Recipients of CDSOA Payments Reported Varying Positive Effects

As detailed in appendix II, the 24 companies that responded to our survey of top CDSOA recipients indicated that the CDSOA disbursements had positive effects, but the extent of benefit varied from slight to substantial.<sup>40</sup> We asked these companies to assess CDSOA's effects at both the industry and company level on a number of different dimensions including prices, investment, employment, and ability to compete. The top recipients reported that CDSOA had the most positive impact in areas such as net income and employment. For example, one company commented that CDSOA payments have allowed for substantial investments in its factory and workers, providing, among other things, supplemental health care benefits. Another company reported that CDSOA payments have been helpful in justifying continued investment during periods when prices are depressed, due to dumping or subsidization. The top recipients reported that CDSOA had less of an effect in other areas such as prices and market share. For example, a company commented that disbursements have had little or no effect on prices for its CDSOA product because such prices are ultimately determined by market forces.

### Companies in Seven Industries Reported a Mix of Positive and Negative Impacts

As detailed in appendix III, in our examination of seven industries that received CDSOA payments—bearings, steel, candles, pasta, dynamic random access memory (DRAM) semiconductors, crawfish, and softwood lumber—leading recipients we contacted generally reported benefits to varying degrees, and the non-recipients we contacted either complained about being disadvantaged or did not report effects.<sup>41</sup> In four industries—bearings, candles, crawfish, and pasta—recipients generally reported benefits, but some non-recipients complained that the disbursements were having negative effects on them. These industries all involve cases that predate CDSOA. In general, the non-recipients that complained of negative effects are ineligible for disbursements and several complained about their ineligibility.

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<sup>40</sup>We did not verify the accuracy of statements from these CDSOA recipients.

<sup>41</sup>We did not verify the accuracy of statements from CDSOA recipients and non-recipients in these seven industries.

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- *Bearings.* The leading domestic producer of bearings is eligible for CDSOA disbursements, but several large foreign-owned companies with longstanding production in the United States are its major competitors and ineligible. Three bearings recipient companies commented that CDSOA has had positive effects, although they varied in their assessments of the extent of the benefit. One company stated that the disbursements helped it to replace equipment and enabled it to recover to the position it had held prior to being injured from dumping. Another recipient commented that, while the CDSOA disbursements were helpful, they were distributed several years after the initial injury and did not fully compensate the company for lost profits due to unfair trade. Two non-recipients provided views. One non-recipient commented that CDSOA harms global bearings companies because the antidumping duties they pay are transferred directly to a competitor. It further commented that not only is it forced to subsidize competitors through CDSOA, but the money it is paying in duties limits its ability to invest in and expand its U.S. operations. The other said it is too early to know what injurious effect CDSOA disbursements would have on non-recipients.
  - *Steel.* In this industry, the largest U.S. producers are CDSOA recipients.<sup>42</sup> Recipient companies reported that payments—though small relative to company size and the challenges they face in their capital-intensive industries—had positive effects. Steel accounts for the single largest industry share of outstanding dumping orders, and most major U.S. producers receive CDSOA payments under numerous AD/CV orders on different products. Steel recipients we contacted varied in their assessments of CDSOA's effects, but generally agreed that the program benefited them by providing greater opportunities for making needed capital investments in their plant and equipment. Steel recipients also commented, though, that CDSOA has not been a complete solution to the serious problems they faced. When the Asian financial crisis spawned rising imports, falling steel prices, and consolidating of firms,

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<sup>42</sup>Within the steel industry, the non-recipients tended to be smaller and typically were not direct competitors of the leading recipients. Only one non-recipient steel company responded to our questionnaire on CDSOA, and it did not provide views on the program.



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the receipt of CDSOA disbursements did not prevent several steel producers from joining numerous others in the industry in filing for bankruptcy.<sup>43</sup>

- *Candles.* Ten of the estimated 400 U.S. candle companies are eligible and receive CDSOA disbursements. A number of recipients contended that distributions have helped keep them in business, enabling them to develop newer, better, and safer candles through investment in equipment and research and development. One recipient stated that it has been able to offer employees more consistent and comprehensive benefits packages due to CDSOA. Several large candle producers that are comparable in size to leading recipients complained that they are in favor of the order but are ineligible to receive CDSOA disbursements. Some non-recipients argue that recipients have an unfair advantage in their ability to keep prices lower than they otherwise would. For instance, a major non-recipient company has closed two of four of its domestic manufacturing facilities and has reduced shifts at others. A smaller non-recipient company contended that when it matched its competitors' lower prices, it was not able to make a profit. As a result, the company stated that it was forced to exit this segment of the candle business and release some workers.
- *Crawfish.* About 30 small, family-owned crawfish processors have received CDSOA disbursements.<sup>44</sup> Recipients said CDSOA payments provided the industry with its first effective relief against dumped imports in several years and enabled them to buy and process more crawfish, make long-needed repairs and investments, hire more employees, and pay off debts. In June 2003, the ITC reported that CDSOA disbursements to some domestic producers had converted an industrywide net loss into net income.<sup>45</sup> The 16 crawfish tail meat processors who received CDSOA distributions that we spoke with generally believe that the program has had positive effects on the

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<sup>43</sup>According to data provided by a steel industry representative, 42 steel companies declared bankruptcy and 19 ceased operations from 1997 to 2003. Many of these companies were subsequently acquired by larger companies.

<sup>44</sup>Although CBP data indicates payments were made to 35 different companies between fiscal year 2002 and 2004, several of these companies reported under different names in different years.

<sup>45</sup>See U.S. International Trade Commission *Crawfish Tail Meat from China*, Investigation No. 731-TA-752 (Review), Publication 3614, (Washington, D.C.: July 2003).

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industry and their companies, keeping businesses open and employees working. Non-recipients we spoke with in this industry said that CDSOA had helped recipient companies—but had put them at a competitive disadvantage. These companies want to be eligible for CDSOA disbursements and several reported they had contacted certain government and congressional sources to try to address their eligibility status, but were told they did not meet the law’s eligibility requirements regarding the expression of support during the investigation. As discussed previously, two of these companies brought legal action to challenge agency decisions on their eligibility status. Because they also have to compete against cheap Chinese imports, these non-recipients viewed the application of the law as unfair. In addition, several said they were not able to compete with recipient companies that offer processed tail meat at prices below their cost of production and appear to be able to do so because the recipients’ CDSOA disbursements will compensate them for any losses. In such conditions, some non-recipients said they cannot operate profitably and some decided to stop processing tail meat.

- *Pasta.* Three of the four leading U.S. pasta makers received CDSOA disbursements, but the fourth producer is ineligible. The top two CDSOA recipients in this industry did not respond to our questions, and one of them has filed for bankruptcy. The four CDSOA recipients that responded said they had used the funds to increase or upgrade equipment, invest in research and product development, defray manufacturing costs, and expand production capacity. Nevertheless, CDSOA payments, while not insignificant, were not large relative to sales or enough to offset other problems that the industry faces, such as decreased demand for pasta due to low-carbohydrate diets and low margins. Most non-recipients we contacted said CDSOA had no effect, but a few non-recipients said that the funds had created an uneven playing field and decreased their ability to compete in the marketplace. Several of these companies tried to file for CDSOA funds, but were found ineligible. The large non-recipient company said the money it pays in duties transferred to its competitors could have been used for product development, capital investment, and expansion of its new U.S. operations.
- *DRAMs.* All four major DRAM producers in the United States currently have production facilities in the United States as well as abroad; however, three of these companies are U.S. subsidiaries of foreign producers and have entered the market within the last decade. A CV

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order is in effect for DRAMs produced by one Korean company only,<sup>46</sup> but the bulk of the distributions were made under an AD order on DRAMs of one megabit and above from Korea issued in 1993 and revoked in 2000, as well as on an AD order on SRAMs (static random access memory chips) issued in 1998 and revoked in 2002. A leading CDSOA recipient was the sole recipient of duties on these revoked orders. Fabrication facility costs are high and require complete replacement every few years. The DRAM industry is cyclical in nature and subject to “booms and busts,” where demand is driven by investments in computers and other end products. Both CDSOA recipients reported some net losses. One company reported benefits from receiving payments and another reported fewer effects; both payments were small relative to their net sales.

- *Softwood Lumber.* Both CDSOA recipients and non-recipients include leading softwood lumber producers. Recipients and non-recipients that we contacted indicated that disbursements to date have been too small to have a discernable effect. However, non-recipients expressed concern about potential adverse effects in the future, should the \$3.7 billion in AD/CV duties being held on deposit pending liquidation ever be distributed. These duties are presently in escrow pending the outcome of litigation by Canadian interests against the U.S. duties.

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## Effects of CDSOA on the Number of AD/CV Relief Petition Filings Not Clear

Current evidence does not clearly demonstrate that CDSOA is linked to an increasing number of AD/CV petition filings. Critics have raised concerns that, by awarding a portion of the tariff revenue that results from successful petitions, CDSOA could potentially lead to more AD/CV petition filings and thereby more restrictions on imports, to the detriment of the U.S. economy. However, the evidence we analyzed was inconclusive.

Because CDSOA provides direct financial benefits to firms participating or supporting AD/CV petitions by awarding them a proportion of the tariff revenue, some analysts have warned that CDSOA could lead to more petitions and to more companies supporting the filings because only

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<sup>46</sup>Recipients for this CV order include the U.S. company, and a U.S. subsidiary of a German company. The U.S. subsidiaries of the two Korean companies opposed the petition and therefore are ineligible to receive distributions.

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companies who supported the petition would receive disbursements.<sup>47</sup> A report by the Congressional Budget Office<sup>48</sup> (CBO) supports this view, arguing on economic incentive grounds that CDSOA encourages more firms to file or support petitions and discourages settling cases. CBO also argues that firms may resume production or increase their output due to CDSOA, which would result in inefficient use of resources and would be harmful to the U.S. economy and consumers.

Our examination of the actual number of filings shows that there is no clear trend of increased AD/CV petition filings since CDSOA.<sup>49</sup> Figure 6 shows that since the passage of CDSOA in 2000, the number of petitions spiked in 2001 and then sharply declined over the next three years. Moreover, this fits the historical pattern of the number of AD/CV petition filings, which also do not show a clear upward trend. The number of AD/CV petitions filed each year has fluctuated widely, ranging from a maximum of 120 in 1985 to a minimum of 16 cases in 1995. Economists have found evidence that the number of antidumping filings is closely linked to macroeconomic conditions and real exchange rates.<sup>50</sup>

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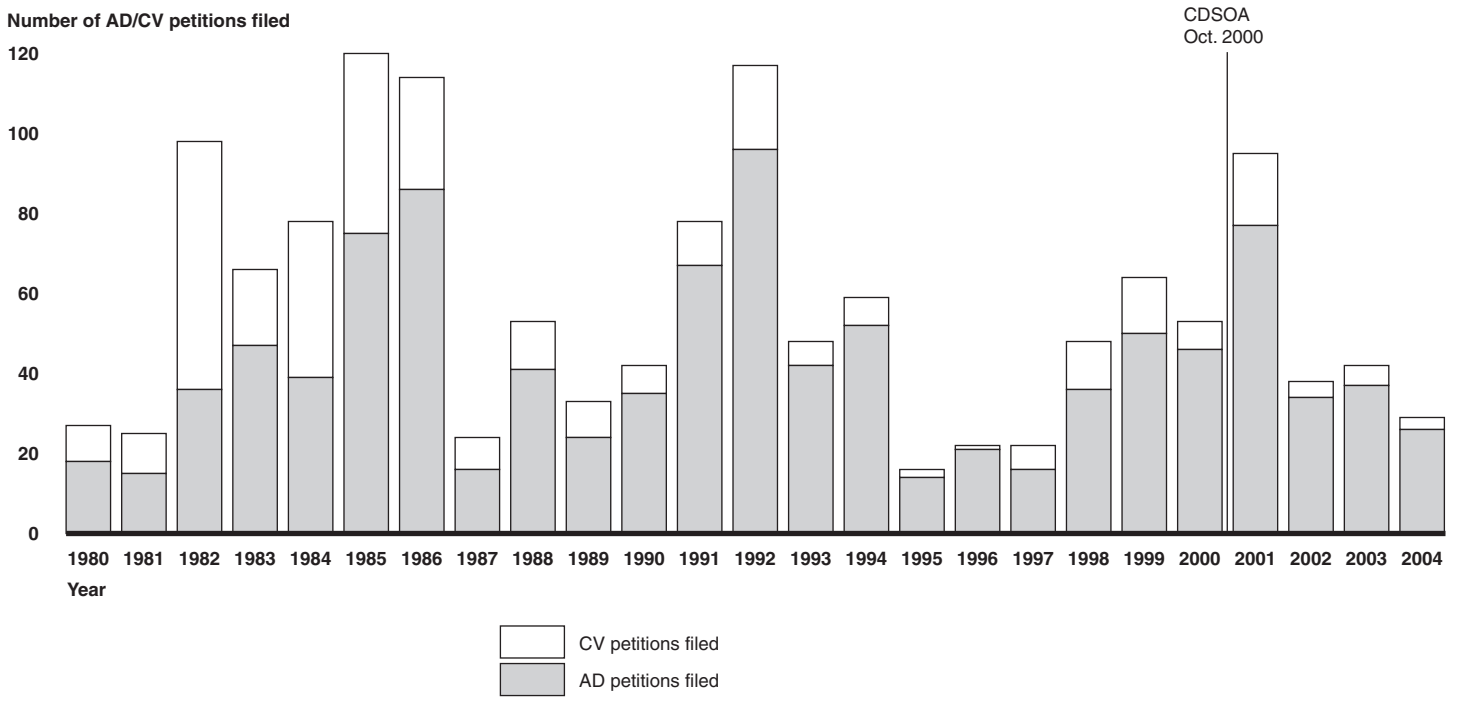
<sup>47</sup>See, for example, Kara Olson, *Subsidizing Rent Seeking: Antidumping Protection and the Byrd Amendment*, American University, 2004.

<sup>48</sup>See *Economic Analysis of the Continued Dumping and Subsidy Offset Act of 2000*, The Congressional Budget Office, 2004.

<sup>49</sup>For example, our regression analysis of the number of filings each year, versus macroeconomic conditions, which include real exchange rates, and CDSOA's passage, was inconclusive and did not show clear evidence that CDSOA had an impact on the number of filings.

<sup>50</sup>Generally, there tend to be more AD/CV filings following years with slower U.S. economic growth and when the U.S. dollar appreciates against foreign currencies, which makes imports cheaper. See, for example, Michael Knetter and Thomas Prusa, *Macroeconomic Factors and Antidumping Filings: Evidence from Four Countries*, NBER Working Paper 8010, 2000; Douglas Irvin, *The Rise of Antidumping Actions in Historical Perspective*, Department of Economics, Dartmouth College, 2004; and Richard Feinberg, *U.S. Antidumping Enforcement and Macroeconomic Indicators: What Do Petitioners Expect, and Are They Correct?*, Department of Economics, American University, 2004.

**Figure 6: Number of AD/CV Petitions Filed 1980-2004**



Source: GAO analysis of ITC data.

Our analysis of company responses to our case study questions similarly reveals mixed evidence but no trend. In general, companies told us CDSOA had little impact on their decision whether to file AD/CV relief petitions. Most companies that responded to our questions said that filing and winning new cases was too expensive, and the receipt of CDSOA payments was too speculative, for CDSOA to be a major factor in their filing decision. For example, producers accounting for a sizeable share of U.S. softwood lumber production freely chose not to support the case, despite being aware of the prospect of sizeable CDSOA disbursements. However, bearings companies that had not supported earlier cases subsequently supported a later case on China brought after CDSOA's passage.

**Effects of CDSOA on Scope and Duration of AD/CV Duty Orders Also Not Clear**

In addition to the number of filings, our interviews and responses from companies in the seven industries we examined revealed a few allegations that CDSOA resulted in orders that cover imports of more products for longer periods—that is, through wider-than-necessary product scopes of

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AD/CV duty orders and longer-than-warranted retention of existing orders. However, these allegations contradicted other examples, and we could not independently verify them.<sup>51</sup> One steel user, for example, complained that CDSOA disbursements were a factor in the denial of its request for narrowing the scope of an order and claimed the result has been to put certain U.S. fastener makers at a disadvantage. In contrast, one steel company noted that the domestic industry has no incentive to overly broaden the scope of an AD/CV relief petition because doing so could undermine its ability to prove injury and to obtain an order in the first place. Bearings recipient companies similarly responded that CDSOA has not affected the scope or duration of AD/CV duty orders and said regular “sunset” reviews should ensure the government terminates unwarranted orders. Bearings non-recipients, on the other hand, drew a connection between the main CDSOA beneficiary within the industry and its support for continuance of orders. In the candle industry, companies universally reported that they are united in supporting retention of the existing order, but divided over efforts by some candle firms to expand its scope.

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## Retaliation Against U.S. Producers Underway for U.S. Failure to Comply with WTO Ruling on CDSOA

After finding the CDSOA inconsistent with WTO agreements and after the United States’ failure to bring the act in compliance with the agreements, in 2004 the WTO gave 8 of the 11 members that complained about CDSOA authorization to suspend concessions or other WTO obligations owed to the United States. Canada, the European Union (EU), Mexico and Japan have consequently applied additional tariffs to U.S. imports, and others are authorized to follow.

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## WTO Rules CDSOA Not in Compliance with U.S. WTO Obligations

In 2003, the WTO found the CDSOA inconsistent with U.S. obligations under WTO agreements and asked the United States to bring the act into conformity with WTO Agreements.<sup>52</sup> Eleven members had brought complaints about the CDSOA to the WTO and prevailed in their claims that

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<sup>51</sup>We were unable to obtain detailed scope-related AD/CV duty orders data from U.S. agencies because this data is not currently available. For instance, the number of petitioners and supporters of an order, the number of products covered by an order, and the number of products excluded from an order after it went into effect are not readily available for the years preceding and following the enactment of CDSOA.

<sup>52</sup>*United States — Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217/AB/BRA, CHL, EEC, IND, JPN, KOR; WT/DS234/AB/CAN, MEX.

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the CDSOA is inconsistent with WTO agreements.<sup>53</sup> The WTO found that CDSOA was not consistent with U.S. WTO obligations because it was not one of the permitted specific actions against dumping and subsidization specifically listed in applicable WTO agreements.<sup>54</sup>

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### The United States Pledges to Comply, but Has Not Yet Done So

The following the ruling, the United States indicated its intention to comply. WTO gave the United States until December 27, 2003, to bring the CDSOA into conformity with the organization's pertinent agreements. However, all efforts to repeal the law have thus far been unsuccessful. Meanwhile, the United States is also pursuing negotiations at the WTO to address the right of WTO members to distribute AD/CV duties.

The President proposed repealing CDSOA in his fiscal year 2004, 2005, and 2006 budget submissions. Senate Bill 1299<sup>55</sup> was introduced in Congress in 2003 to amend the CDSOA and House Bill 3933<sup>56</sup> in 2004 to repeal the CDSOA. Neither of these efforts succeeded during that legislative session of Congress and thus expired. In a March 10, 2005, status report to the WTO, the United States reaffirmed its commitment to bringing the CDSOA into conformity with WTO agreements.<sup>57</sup> The United States also reported that House Bill 1121<sup>58</sup> had been introduced on March 3, 2005, to repeal CDSOA and that it had been referred to the Committee on Ways and Means. Also in 2005, Senator Grassley introduced Amendment 1680 to the Departments of Commerce and Justice, Science and Related Agencies Appropriations bill to prohibit any further CDSOA distributions until the USTR determines that such distributions are not inconsistent with

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<sup>53</sup>These members were Australia, Brazil, Canada, Chile, the European Union, India, Indonesia, Japan, Korea, Mexico, and Thailand.

<sup>54</sup>WT/DS217/AB/EEC, paragraph 274.

<sup>55</sup>Bill to amend the Trade Act of 1974 to provide trade readjustment and development enhancement for America's communities, and for other purposes, S. 1299, 108<sup>th</sup> Cong. (2003).

<sup>56</sup>Bill to repeal section 754 of the Tariff Act of 1930, H.R. 3933, 108<sup>th</sup> Cong. (2004).

<sup>57</sup>WT/DS217/16/Add.14 and WT/DS234/16/Add.14.

<sup>58</sup>Bill to repeal section 754 of the Tariff Act of 1930, H.R. 1121, 109<sup>th</sup> Cong. (2005).

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U.S. WTO obligations.<sup>59</sup> However, as of the date of publication of this report, Congress has not passed House Bill 1121 and the Senate Committee on Appropriations has not adopted Amendment 1680.

Since late 2001, the United States has been engaged in WTO negotiations at the Doha Round, which may include changes to the WTO agreements under which CDSOA was challenged. Following a congressional mandate to the USTR and Commerce that negotiations shall be conducted within the WTO to recognize the right of its members to distribute monies collected from antidumping and countervailing duties,<sup>60</sup> the United States submitted a paper to the WTO Rules Negotiating Group stating that “the right of WTO Members to distribute monies collected from antidumping and countervailing duties”<sup>61</sup> should be an issue to be discussed by the negotiating group. USTR officials told us that, to date, the U.S. proposal has not attracted support from any other WTO member.

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### WTO Authorizes Eight of Its Members to Retaliate; Canada, the European Union, Mexico, and Japan Have Imposed Additional Tariffs

In January 2004, 8 of the 11 complainants—Brazil, Canada, Chile, the EU, India, Japan, Korea, and Mexico—sought and secured authorization to retaliate against the United States. As a result of binding arbitration regarding the level of authorized retaliation, the eight members received authorization to impose an additional import duty on U.S. exports covering a total value of trade up to 72 percent of the total of disbursements made under the CDSOA for the preceding year relating to AD/CV duties on that member’s products each year.<sup>62</sup> The total suspension authorized for 2005 could be up to \$134 million based on the fiscal year 2004 CDSOA disbursements. Specifically, for fiscal year 2004 disbursements, the WTO arbitrators authorized the imposition of additional duties covering a total value of trade not exceeding \$0.3 million for Brazil, \$11.2 million for Canada, \$0.6 million for Chile, \$27.8 million for the EU, \$1.4 million for India, \$52.1 million for Japan, \$20.0 million for Korea, and \$20.9 million for

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<sup>59</sup>See Amendment No. 1680 to the appropriations bill for Science, the Departments of State, Justice, and Commerce, and related agencies for the fiscal year ending September 30, 2006, H.R. 2862, 109<sup>th</sup> Cong. (2005).

<sup>60</sup>See Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, Div. B, title II, 118 Stat. 2809, 2872, 2874 (2004).

<sup>61</sup>TN/RL/W/153.

<sup>62</sup>*United States — Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217/ARB/BRA, CHL, EEC, IND, JPN, KOR and WT/DS234/ARB/CAN, MEX.



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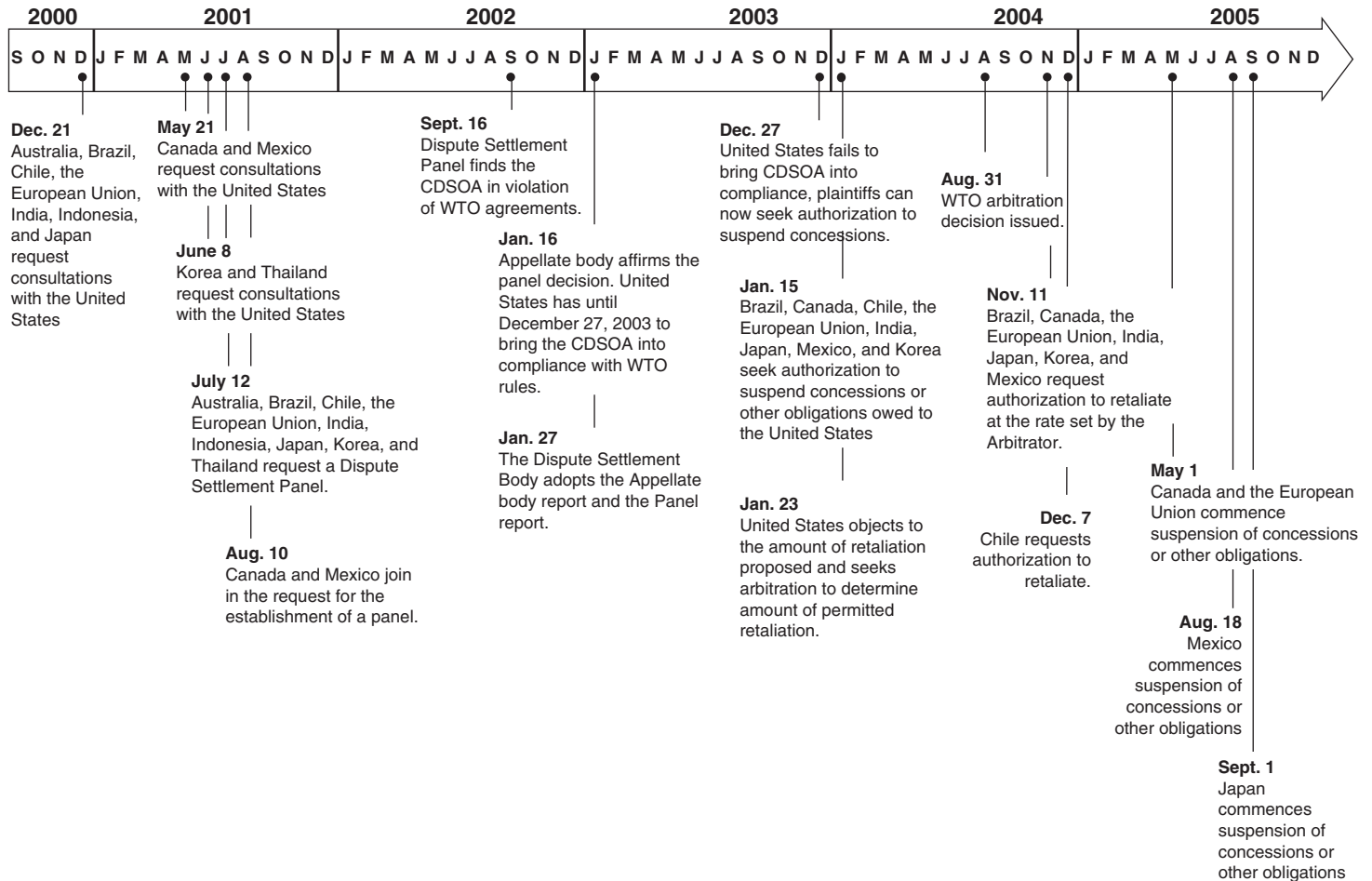
Mexico. On May 1, 2005, Canada and the European Communities began the imposition of additional duties on various U.S. exports. In particular, Canada has imposed a 15 percent tariff on live swine, cigarettes, oysters, and certain specialty fish (including live ornamental fish and certain frozen fish) and the EU have imposed a 15 percent tariff on various paper products, various types of trousers and shorts, sweet corn, metal frames, and crane lorries. On August 18, 2005, Mexico began imposing additional duties on U.S. exports such as chewing gum, wines, and milk-based products. On September 1, 2005, Japan began imposing additional duties on U.S. exports such as steel products and bearings. The remaining four members say they might suspend concessions.

The three members that did not request authorization to retaliate—Australia, Indonesia, and Thailand—have agreed to extend the deadline for requesting authorization indefinitely.<sup>63</sup> As agreed, the countries will give the United States advance notice before seeking authorization to retaliate. In return, the countries retain the ability to request authorization to retaliate at any point in the future, and the United States agreed not to seek to block those requests. See figure 7 for a timeline of events related to the WTO decision on CDSOA.

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<sup>63</sup>See WT/DS217/44, WT/DS217/45, and WT/DS217/46.

**Figure 7: Timeline of WTO-Related Events on CDSOA**



Source: GAO analysis of WTO data.

## Conclusions

Congress' stated purposes in enacting CDSOA were to strengthen the remedial nature of U.S. trade laws, restore conditions of fair trade, and assist domestic producers. Our review suggests that the implementation of CDSOA is achieving some objectives more effectively than others. One reason is that, as a result of some of the key features of CDSOA, the law in practice operates differently from trade remedies. For instance, while trade remedies such as AD/CV duties generally provide relief to all producers in a

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particular market, the eligibility requirements of CDSOA limit relief to only a subset of domestic producers—only those that petitioned for relief or that publicly supported the petition by sending a letter to the ITC or filling an ITC questionnaire while the agency was conducting its original investigation and remain in operation. Our analysis of CDSOA disbursement data and company views on the effects of CDSOA indicate that CDSOA has provided significant financial benefits to certain U.S. producers but little or no benefits to others. As a result, CDSOA has, in some cases, created advantages for those U.S. producers that are eligible and receive the bulk of disbursements over those U.S. producers that receive little relief or are ineligible, by choice or circumstance. Moreover, because the WTO found that CDSOA did not comply with WTO agreements, the EU, Canada, Mexico, and Japan recently retaliated against U.S. exports and this imposes costs on a number of U.S. companies exporting to those markets.

In implementing CDSOA, CBP faces problems processing CDSOA claims and payments, verifying these claims, and collecting AD/CV duties. The CDSOA program's time frame for processing payments is already too tight to perform desired quality controls. The dramatic growth in the program's workload—an estimated 10-fold increase in the number of claims in fiscal year 2005 and the potential disbursement of billions of dollars from softwood lumber duties—heighten program risks. CBP's labor-intensive process for claims could be streamlined through steps such as regularly obtaining from the ITC electronic updates of the list of potentially eligible companies and having companies file CDSOA claims using a standard form and submit them electronically. CBP's recent comprehensive company claim verification effort also indicates that the agency needs additional guidance in place for filing claims. In addition, CBP lacks plans for managing and improving its CDSOA program's processes, staff, and technology. For instance, it needs a human capital plan for enhancing its staff in the face of dramatic growth in workload processing for both CDSOA claims and payments. Accountability for the accuracy of the claims is virtually non-existent and CBP has no plans to verify claims systematically or on a routine basis. Finally, CDSOA has helped highlight CBP's collection problems. Despite reports to Congress on its efforts to address these problems, CBP faced a doubling in the AD/CV collections shortfall in fiscal year 2004, to \$260 million. This shortfall not only reduces the amount available for disbursement under CDSOA, but also undermines the effectiveness of the trade remedies generally.

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## Matters for Congressional Consideration

Given the results of our review, as Congress carries out its CDSOA oversight functions and considers related legislative proposals, it should consider whether CDSOA is achieving the goals of strengthening the remedial nature of U.S. trade laws, restoring conditions of fair trade, and assisting domestic producers.

If Congress decides to retain and modify CDSOA, it should also consider extending CBP's 60-day deadline for completing the disbursement of CDSOA funds. Meeting this deadline has been a problem in the past, and may be even more difficult in the future given that the program is experiencing a dramatic growth in its workload. For instance, extending the deadline for processing payments for another 30 days would give the program's staff additional time for processing payments and for pursuing additional internal control activities.

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## Recommendations for Executive Action

To the extent that Congress chooses to continue implementing CDSOA, we recommend that the Secretary of Homeland Security direct the Commissioner of Customs and Border Protection to enhance the processing of CDSOA claims and payments, the verification of these claims, and the collection of AD/CV duties. Specifically, we recommend that:

- To improve the processing of CDSOA claims, CBP should implement labor savings steps such as working with the ITC to formalize and standardize exchanges of electronic updates of the list of eligible producers, and requiring that company claims follow a standard form and be submitted electronically. This would also reduce data entry-related errors.
- To further improve the processing of claims, CBP should provide additional guidance for preparing CDSOA certifications or claims.
- To enhance the processing of claims and payments in the face of a growing workload, CBP should develop and implement plans for managing and improving its CDSOA program processes, staff, and technology. For instance, a human capital plan would help ensure that the CDSOA program has staff in place with the appropriate competencies, skills, and abilities.

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- To enhance accountability for claims, CBP should implement a plan for systematically verifying CDSOA claims. This plan should aim to ensure that companies receiving CDSOA disbursements are accountable for the claims they make. CBP should also consider asking companies to justify their claims by providing additional information on their claims, such as an explanation of the basis for the claim, supporting financial information, and an independent assessment of the claim's validity and accuracy.
  - To better address antidumping and countervailing duty collection problems, CBP should report to Congress on what factors have contributed to the collection problems, the status and impact of efforts to date to address these problems, and how CBP, in conjunction with other agencies, proposes to improve the collection of antidumping and countervailing duties.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the U.S. International Trade Commission, Customs and Border Protection, and the Office of the U.S. Trade Representative. We obtained written comments from CBP (see app. IV). CBP concurred with our recommendations. We also received technical comments on this draft from our liaisons at CBP, the ITC and USTR, which we have incorporated where appropriate.

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We are sending copies of this report to interested congressional committees, the U.S. International Trade Commission, Customs and Border Protection, and the Office of the U.S. Trade Representative. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me at (202) 512-4347. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive style with a large initial "L" and "Y".

Loren Yager, Director  
International Affairs and Trade

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# Objectives, Scope, and Methodology

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At the request of the Chairman of the House Subcommittee on Trade, Committee on Ways and Means, as well as several House Members, we examined the implementation and effects of the Continued Dumping and Subsidy Offset Act (CDSOA) of 2000. Specifically, we assessed (1) what key legal requirements guide and have affected agency implementation of CDSOA; (2) what problems, if any, U.S. agencies have faced in implementing CDSOA; and (3) which U.S. companies and industries have received payments under CDSOA and what effects these payments have had for recipient and non-recipient companies; and described (4) the status of the World Trade Organization (WTO) decisions on CDSOA.

To determine the key legal requirements that guide and have affected agency implementation of CDSOA, we obtained and reviewed legislation and regulations establishing the requirements and procedures for the International Trade Commission (ITC) to determine company eligibility to receive CDSOA funds and for the Department of Homeland Security's Customs and Border Protection (CBP) to implement CDSOA. We discussed these requirements and their relationship to agency implementation with officials at the ITC and CBP that carry out the agencies' respective roles. We also reviewed judicial opinions and other documents associated with certain legal cases that have been brought to challenge key requirements of CDSOA, and incorporated the viewpoints expressed by some companies that we contacted in addressing our third objective, which illustrated the impacts of certain requirements.

To assess the problems, if any, U.S. agencies have faced in implementing CDSOA, we first determined the agency roles and responsibilities that CDSOA established. We then obtained and analyzed ITC and CBP documents outlining their procedures for carrying out their CDSOA responsibilities and discussed with agency officials the actions the agencies have taken to implement CDSOA. We reviewed evaluations of CDSOA operations in both the Department of the Treasury (Treasury) and ITC conducted by the Inspectors General (IG) of those agencies. We also obtained from CBP a statement of work that had been developed for improving CBP's management of the CDSOA program. We discussed agency implementation of CDSOA with officials from the Departments of Commerce and Agriculture, as well as certain industry representatives, affected companies, and law firms that handle CDSOA-related actions for their clients. We also reviewed GAO's documents on human capital and

disbursements<sup>1</sup> for additional criteria to assess the agencies' implementation of CDSOA. Our work focused on certain problems at CBP:

- To assess CBP's claims and payments processing procedures, we conducted field work at CBP's Revenue Division in Indianapolis where we met with officials and staff of the CDSOA Team. After they gave us a comprehensive briefing of their CDSOA operations, we observed these operations, reviewed documentation of their procedures, and discussed challenges they face in implementing the law. We discussed changes in the CDSOA Team's workload over time with these officials and obtained data on their workload and staff resources. We discussed the team's procedures for counting and recording eligible and actual claimants and claims, which included information they obtain from the ITC on eligible producers and internal controls the team applies to ensure accuracy in receiving and processing claims. We determined that their data were sufficiently reliable for the purpose of analyzing the changing relationship between the team's workload and staff resources.
- To assess CBP's approach to verifying claims, we discussed the approach and the extent of claim verification since the program's inception with CBP officials and we reviewed CBP procedures for verifying company claims that were developed in 2004. We also reviewed documentation of a comprehensive verification of one company's CDSOA claims that was conducted using these new procedures. Because this verification raised issues about the quality and consistency of CBP's guidance regarding claims submission, we examined the fiscal year 2004 claim files for 32 top CDSOA recipients to ascertain the prevalence of these issues and also obtained the viewpoints of certain CDSOA recipients on CBP's claims guidance.
- To describe CBP's efforts to collect the anti-dumping (AD) and countervailing (CV) duties that fund CDSOA, we obtained and reviewed data on CBP's annual CDSOA disbursements and AD/CV duty liquidations and collections. To assess the reliability of the data on unliquidated AD/CV duties, we compared them to data used by Treasury's IG in its 2003 report and performed basic reasonable checks. We determined the data were sufficiently reliable to support the finding that there had been a substantial increase in unliquidated AD/CV duties

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<sup>1</sup>See GAO, *Internal Control and Management Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001).



since 2002. We also reviewed CBP reports to Congress in 2004 and 2005 that reported on AD/CV duty collections issues and problems and the section of the 2003 Treasury IG report that addressed CBP's efforts related to liquidating and collecting AD/CV duties. Finally, we incorporated the viewpoints of certain companies and industry groups about the status of uncollected duties, and CBP's efforts to collect them.

To determine which U.S. companies and industries have received payments under CDSOA and what effects these payments have had for recipient and non-recipient companies, we obtained and analyzed CBP's annual disbursement data for fiscal years 2001 to 2004 and collected information from top CDSOA recipients and from recipients and non-recipients in seven industries. Specifically, we identified 770 companies that had received disbursements at some point during fiscal years 2001 through 2004 and combined the multiple disbursements that companies may have received to calculate the total amount of disbursements made to each company during this period. Some companies received disbursements under different names or were acquired by, or merged with or were otherwise affiliated with, other companies on the list during this period. We did not make adjustments to the number of companies, but rather retained the company distinctions in the data as CBP provided it. We then identified 39 companies that had received the top 80 percent of the disbursements made during fiscal years 2001 through 2004 and we reported information about these disbursements. Using this data, we also identified the top 24 product groups that received 95 percent of disbursements during fiscal years 2001 through 2004, and we reported information about these disbursements.

We assessed the reliability CBP's CDSOA disbursements data, and the related Harmonized Tariff Schedule data, and Census Bureau's data matching the Harmonized Tariff Schedule to the North American Industry Classification System by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of this report.

To further determine the effects of CDSOA payments on recipients and non-recipients, we primarily relied on the views provided by top CDSOA recipient companies and of certain recipients and non-recipients in 7 of the top 24 industries (bearings, steel, candles, pasta, DRAMs, crawfish, and

softwood lumber) to which CDSOA payments have been made.<sup>2</sup> We selected these industries based on a range of criteria including: the leading recipients of CDSOA funds; industries with the most AD/CV duty orders; industries receiving press coverage related to CDSOA; and industries considered by certain experts to have unique or noteworthy situations. In selecting these industries, we also considered including different types of industries and industries with differing numbers of CDSOA recipients. We consulted with experts at the ITC, the Departments of Commerce and Agriculture, and relevant trade associations to help define the industries and identify leading non-recipients companies within them. In addition, we obtained industry background from ITC investigative reports and other official industry sources.

To obtain these companies' views on CDSOA, we developed and sent out a questionnaire to top CDSOA recipient companies, and a set of structured questions to selected recipient and non-recipient companies in the seven case study industries. We developed and pretested the questionnaire between February and April 2005. Our structured questions were based on the items in our questionnaires.

We sent surveys to 32 of the top 39 recipient companies we had identified.<sup>3</sup> Twenty-four of these companies provided written responses to our questions. Their views are not necessarily representative of all CDSOA recipients.

We selected non-probability samples of CDSOA recipients and non-recipients that are U.S. producers for each of our seven case study industries.<sup>4</sup> We selected recipient companies based primarily on the amount of CDSOA funds they had received between fiscal year 2001 and 2004. However, in certain industries with small numbers of recipients,

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<sup>2</sup>We were not able to verify the accuracy of statements from CDSOA recipients and non-recipients.

<sup>3</sup>We sent surveys to the 32 of the 39 companies that received 80 percent of CDSOA payments from 2001-2004. Six of the seven companies that we did not survey either were no longer in operation or had been acquired by another company that did respond to our survey. The additional company that we did not survey was required to send back its CDSOA payments to CBP due to a CBP overpayment error. Eight of the top recipients that we contacted did not respond to our survey.

<sup>4</sup>Some of the recipients and non-recipients may be U.S. producers that are foreign-owned. We did not exclude these companies from our sample because CDSOA does not restrict foreign-owned U.S. producers from receiving CDSOA payments.

including bearings, DRAMs, and candles, we sent structured questions to all recipient companies. We selected non-recipient companies based on industry experts' views of the importance of the companies and recipient company views of their major non-recipient competitors. We also considered available lists of companies by industry, but found that these lists had limitations in terms of coverage and could not be used to draw probability samples. Overall, we selected 69 recipient and 82 non-recipient companies in the seven industries.

In total, we received 61 written responses from recipient companies and 31 written responses from non-recipient companies. Appendix III provides details on how many companies we contacted and received information from for each industry. All recipient companies in the bearings, DRAMs, and candles industries provided responses, and these responses can be generalized. For recipient companies in the other four industries, and for non-recipient companies in all the industries, the responses we received cannot be generalized because of the non-probability samples we used and/or the number of responses we received. Thus, in these cases, the views we report are not necessarily representative of their respective groups. However, we supplemented the information we received with telephone interviews to verify, and in some cases, expand upon, the information that some companies provided. We also compared the overall responses in each industry with industry experts' views and the information contained in available studies, such as ITC reports, and found the information we gathered to be broadly consistent with these sources.

Finally, within this objective, we also conducted an analysis on the trends in the filings of AD/CV relief petitions. We collected data on the number, type, and status of AD/CV duty orders from the ITC and Commerce. We verified this information directly with the *Federal Register* notices, which are the official sources for AD and CV orders. We determined that the data were sufficiently reliable for the purposes of this report. In addition, we reviewed literature on the determinants of AD petition filings. We applied regression analysis to study the effects of macroeconomic conditions, real exchange rates, and CDSOA itself on the number of petition filings. We also asked the companies we surveyed to discuss CDSOA's impact on AD/CV filings and interviewed industry representatives to gain an understanding of what affects their decision to file or support AD/CV petitions, and whether CDSOA was a significant factor in their decision.

To determine the status of the WTO decisions on CDSOA, we analyzed official U.S., foreign government, and WTO documents. We also

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**Appendix I**  
**Objectives, Scope, and Methodology**

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interviewed officials from the Office of the U.S. Trade Representative and the Department of State.

We conducted our work in Washington, D.C., and Indianapolis, Indiana, from September 2004 to September 2005 in accordance with generally accepted government auditing standards.

# Top CDSOA Recipient Companies

This appendix provides information on the CDSOA payments<sup>1</sup> received by the top recipient companies and the views of these companies on CDSOA's effects.

## CDSOA Payments to the Top Recipient Companies

Table 2 lists the top 39 companies that received 80 percent of the total CDSOA payments during fiscal years 2001-2004. This table also presents each company's percentage of the total payments and the cumulative percentages. Each company's industry is also listed.

**Table 2: Fiscal Years 2001-2004 CDSOA Distributions to Top Recipient Companies**

Dollars in thousands

Rank	Company	Amount paid	Amount claimed	Percentage of total payments	Cumulative percentage of total payments	Industry
1	The Timken Company <sup>a</sup>	\$205,328,783	\$59,990,348,732	19.83	19.83	Bearings
2	The Torrington Company <sup>a</sup>	135,349,304	22,175,725,680	13.07	32.90	Bearings
3	Candle-lite <sup>b</sup>	56,759,989	1,285,509,591	5.48	38.38	Candles
4	MPB Corporation <sup>c</sup>	55,131,485	9,158,867,720	5.32	43.71	Bearings
5	Zenith Electronics Corporation	33,412,990	23,270,258,343	3.23	46.93	Television sets
6	Micron Technology	33,389,988	9,093,423,782	3.22	50.16	DRAMs
7	Lancaster Colony Corporation <sup>b</sup>	26,225,555	1,382,869,375	2.53	52.69	Candles
8	United States Steel Corporation	22,925,628	590,935,208,013	2.21	54.91	Steel products
9	Home Fragrance Holdings	20,394,804	444,243,884	1.97	56.88	Candles
10	Wellman	15,681,319	1,291,294,651	1.51	58.39	Polyester fibers

<sup>1</sup>All CDSOA disbursements are in nominal dollars. We also analyzed disbursement data in constant dollars, but the differences between disbursements in nominal and constant dollars are minimal given the short time span and fairly low inflation rate over the period covered by our analysis.

**Appendix II  
Top CDSOA Recipient Companies**

(Continued From Previous Page)

Dollars in thousands

Rank	Company	Amount paid	Amount claimed	Percentage of total payments	Cumulative percentage of total payments	Industry
11	Carpenter Technology Corporation	13,991,133	24,272,753,229	1.35	59.74	Steel products
12	E.I. du Pont de Nemours and Company	12,485,357	6,188,244,053	1.21	60.95	Chemical products
13	Emerson Power Transmission	12,132,932	6,518,385,490	1.17	62.12	Bearings
14	AK Steel Corporation	11,337,171	273,729,695,233	1.09	63.21	Steel products
15	Allegheny Ludlum Corporation	11,107,788	42,821,265,506	1.07	64.29	Steel products
16	American Italian Pasta Company	11,052,969	8,063,794,100	1.07	65.35	Pasta
17	Muench-Kreuzer Candle Company	10,695,594	212,476,879	1.03	66.39	Candles
18	International Steel Group	10,374,465	568,595,773,448	1.00	67.39	Steel products
19	The Gates Rubber Company	10,208,272	2,037,888,247	0.99	68.37	Rubber products
20	Regal Ware	9,804,074	1,364,648,692	0.95	69.32	Stainless steel cooking ware
21	North American Stainless	9,697,133	35,786,766,024	0.94	70.26	Steel products
22	Maui Pineapple Company	9,376,864	335,327,969	0.91	71.16	Pineapples
23	General Wax & Candle	9,297,725	150,256,642	0.90	72.06	Candles
24	Hershey Foods (New World Pasta) <sup>d</sup>	8,136,032	4,853,308,844	0.79	72.85	Pasta
25	Maverick Tube Corporation	7,295,447	35,919,351,631	0.70	73.55	Steel products
26	Reed Candle Company	7,214,429	152,164,485	0.70	74.25	Candles
27	Eramet Marietta <sup>e</sup>	6,274,365	32,661,954	0.61	74.85	Manganese metal
28	J&L Specialty Steel	6,227,041	21,580,366,304	0.60	75.46	Steel products

**Appendix II  
Top CDSOA Recipient Companies**

(Continued From Previous Page)

Dollars in thousands

Rank	Company	Amount paid	Amount claimed	Percentage of total payments	Cumulative percentage of total payments	Industry
29	Bethlehem Steel Company	5,975,849	277,902,636,707	0.58	76.03	Steel products
30	Sanford	5,892,337	478,764,505	0.57	76.60	Cased pencils
31	Lumi-Lite Candle Company	5,625,486	89,582,027	0.54	77.15	Candles
32	Holcim (US)	4,726,614	6,986,480,910	0.46	77.60	Cement
33	Lafarge North America	4,633,793	6,850,627,559	0.45	78.05	Cement
34	USEC	4,401,004	411,300,000	0.43	78.47	Low enriched uranium
35	Neenah Foundry Company	4,307,616	5,849,676,065	0.42	78.89	Iron castings
36	Allied Tube & Conduit	4,198,722	21,792,742,720	0.41	79.30	Steel pipe
37	Olin Corporation	3,987,611	7,517,617,388	0.39	79.68	Brass sheet and strip
38	A. Zerega's Sons	3,889,333	2,290,556,634	0.38	80.06	Pasta
39	Armco Steel Corporation	3,716,372	155,054,850,596	0.36	80.42	Steel products
<b>Total</b>		<b>\$563,228,970</b>	<b>\$2,236,867,713,610</b>	<b>80.42</b>	<b>80.42</b>	

Source: GAO analysis of CBP data.

Notes:

<sup>a</sup>Timken acquired Torrington in February 2003. The CDSOA distributions we report for Torrington in this table reflect the distributions received by Torrington in FY 2001 and FY 2002.

<sup>b</sup>In 1972 Candle-lite was acquired by Lancaster Colony Corporation of which it remains a division today. For fiscal years 2001-2003, Lancaster Colony received CDSOA distributions under the name Candle-lite. The "amount paid" for Candle-lite and Lancaster Colony should be added together for an accurate account of CDSOA distributions made to the Candle-lite Division of Lancaster Colony Corporation. Total fiscal year 2001-2004 distributions equal \$82,985,544 or 58.21 percent of total distributions to the candle industry. Likewise, the amount claimed for Lancaster Colony Corporation is applicable to Candle-lite.

<sup>c</sup>MPB Corporation is a subsidiary of Timken. CDSOA distributions are listed separately for Timken and MPB because they reflect the CDSOA distributions as reported by CBP.

<sup>d</sup>New World Pasta acquired Hershey Foods Corporation in 1999. CBP also made CDSOA distributions to New World Pasta. The amount paid to Hershey Foods (New World Pasta) does not include these separate distributions to New World Pasta, which were \$3,584,898.

<sup>e</sup>Eramet Marietta is included in this table as a top recipient company because it is listed by CBP as having received CDSOA funds in fiscal year 2002. After contacting this company, we discovered that it was required to send back its CDSOA money to CBP due to a CBP overpayment error.

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## CDSOA Effects on Top Recipient Companies

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### Top Recipients of CDSOA Payments Reported Varying Positive Effects

We sent surveys to the companies that received 80 percent of the CDSOA payments from 2001 through 2004, asking for their views on CDSOA's effects.<sup>2</sup> We asked these companies to assess CDSOA's effects on a number of different dimensions including prices, employment, and ability to compete.

We asked the companies to rate CDSOA's effect, ranging from 1 (very positive) to 5 (very negative) for each particular company dimension.<sup>3</sup>

The top recipients reported that CDSOA had the most positive impact in the areas of net income and employment.<sup>4</sup> In its written comments, one company stated that CDSOA payments have allowed it to make substantial investments in its plant and its workers, including providing supplemental health care benefits. The top recipients reported that CDSOA had less of effect in areas such as prices, net sales, and market share. Several companies commented that, for example, disbursements have had little or no effect on prices for its CDSOA products, since such prices are ultimately determined by market forces.

The ratio of CDSOA payments to company net sales ranged from less than 1 percent to over 30 percent. However, this ratio was less than 3 percent for all but five companies.

In table 3 we present summary information on these companies' responses.

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<sup>2</sup>We sent surveys to 32 of the 39 companies that received 80 percent of CDSOA payments for fiscal years 2001-2004. Six of the seven companies that we did not survey either were no longer in operation or had been acquired by another company that did respond to our survey. The additional company that we did not survey was required to send back its CDSOA payments to CBP due to a CBP overpayment error. Eight of the top recipients that we contacted did not respond to our survey.

<sup>3</sup>To conserve space in table 3 we combined the company responses of "very positive" and "positive" into one category for positive effects. Similarly we combined the "very negative" and "negative" categories into one category for negative effects.

<sup>4</sup>We were not able to verify the accuracy of statements from these CDSOA recipients.



**Appendix II**  
**Top CDSOA Recipient Companies**

**Table 3: CDSOA Effects on Top Recipient Companies**

Category	Positive effects	Little or no effects	Negative effects	No basis to judge	Number of respondents
Prices	2	20	0	0	22
Net sales	5	15	0	3	23
Gross profits	12	10	0	1	23
Net income	20	2	0	1	23
Property, plant, and equipment	17	6	0	1	24
Research and development	16	6	0	1	23
Employment	17	5	0	1	23
Ability to compete	14	9	0	0	23
Market share	4	17	0	1	22

Source: GAO analysis of company questionnaires.

**CDSOA Effect on Company Ability to Compete in U.S. Market**

Table 4 shows that 17 of the 24 companies reported that CDSOA had increased their ability to compete in the U.S. market.

**Table 4: CDSOA Effect on Companies' Ability to Compete in U.S. Market**

Increased	Stayed about the same	Decreased	Don't know/no basis to judge	Number of respondents
17	7	0	0	24

Source: GAO analysis of company questionnaires.

# CDSOA Recipient and Non-Recipient Companies in Seven Industries

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This appendix provides information on the CDSOA payments<sup>1</sup> received by recipient companies in seven industries: bearings, steel, candles, DRAMs, pasta, crawfish, and softwood lumber. It also discusses the views of recipient and non-recipient companies in these industries on CDSOA's effects.<sup>2</sup>

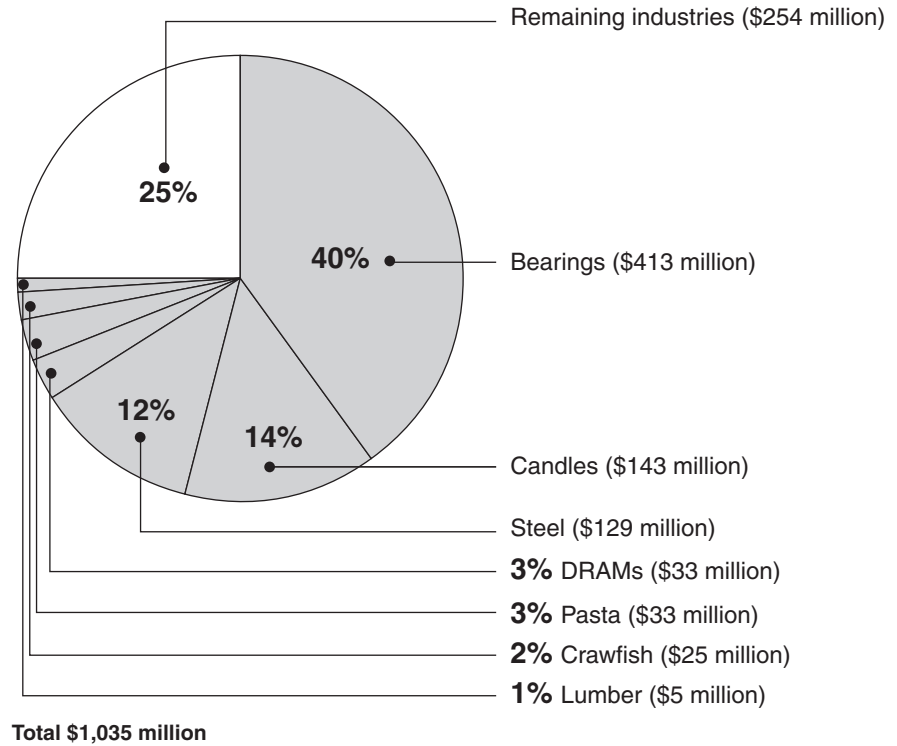
Figure 8 shows the share of CDSOA disbursements received by U.S. companies in the seven industries and in the remaining industries.

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<sup>1</sup>All CDSOA disbursements are in nominal dollars. We also analyzed disbursement data in constant dollars, but the differences between disbursements in nominal and constant dollars are minimal given the short time span and fairly low inflation rate over the period covered by our analysis.

<sup>2</sup>We were unable to obtain the views of CDSOA non-recipients from the steel and DRAMs industries. We also were not able to verify the accuracy of statements from CDSOA recipients and non-recipients in these seven industries.

**Figure 8: Fiscal Year 2001-2004 CDSOA Disbursements by Industries**



Source: GAO analysis of CBP data.

## Views on CDSOA from Recipients and Non-Recipients in the Bearings Industry

### Background

Bearings are used in virtually all mechanical devices and are used to reduce friction in moving parts. Types of bearings include ball bearings, tapered roller bearings, and spherical plain bearings. The market for bearings is

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**Appendix III**  
**CDSOA Recipient and Non-Recipient**  
**Companies in Seven Industries**

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global and dominated by only a few multinational companies.<sup>3</sup> Within the U.S. market the degree of concentration among different segments of the industry varies; the Census Bureau listed 19 producers of tapered roller bearings and 65 producers of ball bearings in 2003. The Timken Company is the largest U.S. bearings company, but several foreign-owned companies have also had a long-standing presence in this country as bearings producers and are Timken's main competitors in the U.S. market. One foreign-owned producer, for example, has operated U.S. production facilities for over 80 years, while two others have produced in this country for over 25 years. These companies have not been eligible to receive CDSOA disbursements because they did not support the original cases.

In 1975 the ITC determined that tapered roller bearings from Japan were harming the domestic industry and a dumping finding was published the following year. The Department of Commerce subsequently published antidumping orders on tapered roller bearings against Japan, China, Hungary, and Romania in 1987. Commerce then issued antidumping orders for ball bearings, cylindrical roller bearings, and spherical plain bearings from a number of other countries in 1989. Currently, there are eight bearings orders in effect against seven countries. Import penetration of the U.S. market has grown from 5 percent of consumption in 1969 to approximately 25 percent in 2003. When Commerce levied ball bearing dumping duties against Japan, Singapore, and Thailand in 1989, an opportunity arose for China. All of the world's major bearing companies, including Timken, now have manufacturing facilities in China.

Timken and Torrington are the two largest CDSOA recipient companies. Together, they received over 80 percent of all disbursements to the bearings industry and one-third of disbursements to all companies in CDSOA's first four years. Table 5 shows CDSOA recipients in the bearings industry from fiscal years 2001 through 2004.

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<sup>3</sup>Public information on the comparative size and market share of leading bearings producers is limited, but a report by the Department of Commerce stated that in 1999, the world's 10 largest producers accounted for about 80 percent of total production.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

**Table 5: Fiscal Years 2001-2004 Bearings CDSOA Recipients**

	<b>Company</b>	<b>Amount paid</b>	<b>Amount claimed</b>	<b>Amount paid as a percentage of total paid to industry</b>
1	The Timken Company	\$205,328,783	\$59,990,348,732	49.7
2	The Torrington Company <sup>a</sup>	135,349,304	22,175,725,680	32.7
3	MPB Corporation <sup>b</sup>	55,131,485	9,158,867,720	13.3
4	Emerson Power Transmission	11,574,736	6,503,215,604	2.8
5	McGill Manufacturing <sup>c</sup>	2,703,403	653,293,608	0.7
6	Pacamor/Kubar Bearings	2,267,413	442,474,178	0.6
7	Kubar Bearings <sup>d</sup>	1,132,137	259,875,305	0.3

Source: GAO analysis of CBP data.

**Notes:**

<sup>a</sup>Timken acquired Torrington in February 2003. The CDSOA distributions we report for Torrington in this table reflect the distributions received by Torrington in FY 2001 and FY 2002.

<sup>b</sup>MPB Corporation is a subsidiary of Timken. CDSOA distributions are listed separately for Timken and MPB because they reflect the CDSOA distributions as reported by CBP.

<sup>c</sup>McGill Manufacturing is owned by Emerson Power Transmission. CDSOA distributions are listed separately for McGill Manufacturing and Emerson Power Transmission because they reflect the CDSOA distributions as reported by CBP.

<sup>d</sup>CBP listed separate CDSOA distributions to Pacamor/Kubar Bearings and Kubar Bearings in its Annual Reports on CDSOA.

## CDSOA Effects on Bearings Companies

### Bearings Recipients Reported Positive Effects from CDSOA Payments

We obtained the views of three bearings recipient companies. These companies commented that CDSOA has had positive effects, although they varied in their assessments of the extent of the benefit. Bearings recipients reported that CDSOA's greatest impact has been in the areas of net income, employment, and ability to compete. These companies also commented that CDSOA has had less of an effect on prices, sales, and profits. One company stated that the disbursements helped it to replace equipment and become more competitive, enabling it to recover to the position it had held

prior to being injured from dumping. Another recipient commented that while the CDSOA disbursements were helpful, they were distributed years after the initial injury and did not fully compensate the company for lost profits due to unfair trade.

The bearings recipient companies vary greatly in their overall size. These companies are also significantly different in terms of the amount they have received through CDSOA, overall and as a percentage of their sales. For the recipient companies in our case study, in fiscal year 2004, CDSOA disbursements as a percentage of company sales ranged from just over 1 percent to 21 percent with the larger recipients generally at the low end of this scale.<sup>4</sup>

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## Non-Recipients Reported Varying Effects

We obtained the views of two non-recipients, one of which reported negative effects, while the other said it is too early to tell the extent of the harm that CDSOA has caused. One company commented that CDSOA is harmful because the antidumping duties it pays are transferred directly to a competitor. The company further stated that the money it is paying in duties limits its ability to invest in its U.S. operations. The other non-recipient company emphasized the size of the CDSOA disbursements in the bearings industry, but commented that it is still too early to know the injurious effect these disbursements will have on non-recipient producers. The leading non-recipient producers have not been eligible to receive CDSOA payments because they did not support the original cases.

Table 6 provides bearings recipient and non-recipients' responses to our questionnaire on CDSOA's effects.

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<sup>4</sup>The ratio of a company's fiscal year 2004 CDSOA disbursements to its 2004 new sales may not be representative of this ratio for prior fiscal years or of the average ratio of disbursements to net sales for the company since CDSOA's inception, because of fluctuations in the size of CDSOA disbursements to net sales. Calculating average ratios would help take account of these fluctuations, but we did not calculate such ratios because we lacked consistent information about disbursements and net sales for all CDSOA recipients that responded to our case study questions.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

**Table 6: CDSOA Effects on Bearings Companies**

<b>Category</b>	<b>Positive effects</b>	<b>Little or no effects</b>	<b>Negative effects</b>	<b>No basis to judge</b>	<b>Number of respondents</b>
<b>Recipients</b>					
Prices	0	3	0	0	3
Net sales	0	3	0	0	3
Gross profits	0	3	0	0	3
Net income	3	0	0	0	3
Property, plant, and equipment	2	1	0	0	3
Research and development	1	2	0	0	3
Employment	3	0	0	0	3
Ability to compete	2	1	0	0	3
Market share	1	2	0	0	3
<b>Non-Recipients</b>					
Prices	0	1	0	1	2
Net sales	0	0	1	1	2
Gross profits	0	0	1	1	2
Net income	0	0	1	1	2
Property, plant, and equipment	0	0	1	1	2
Research and development	0	0	1	1	2
Employment	0	0	1	1	2
Ability to compete	0	0	1	1	2
Market share	0	0	1	1	2

Source: GAO analysis of company responses to structured questions.

**CDSOA Effect on Company Ability to Compete in U.S. Market**

Table 7 provides these companies' responses to our question on CDSOA's effect on their ability to compete in the U.S. market.

**Table 7: CDSOA Effect on Bearings Companies' Ability to Compete in U.S. Market**

Increased	Stayed about the same	Decreased	Don't know/no basis to judge	Number of respondents
<b>Recipients</b>				
2	1	0	0	3
<b>Non-Recipients</b>				
0	0	1	1	2

Source: GAO analysis of company responses to structured questions.

**Company Uses of CDSOA Funds**

We also asked companies to describe how they used the CDSOA payments that they received. However, the law does not require that distributions be used for any specific purpose. The bearings recipient companies varied in their responses to this question. One company responded that it has used the disbursements to rebuild production equipment, maintain employment levels, and add more technical personnel for pursuing bearings customers. A second company commented that it does not earmark funds for a specific project; thus the funds have been spent on debt reduction. The third company did not specify how it used the funds, reiterating that the disbursements were based on previous qualified expenditures and emphasizing that its investments in U.S. bearings production have exceeded the money it received through CDSOA.

**Net Sales and Employment Trends**

No clear trend emerged from these companies' production and employment data over the 4 years that CDSOA has been in effect. One recipient's net sales increased from 2001 to 2004, for example, while another's declined. Similarly for employment, one recipient's number of workers decreased over the 4 years, while another's remained about the same. The responses from the non-recipients also did not show a clear trend for production or employment. For two of the three companies, employment declined, while all three companies' net sales increased to varying degrees.

**Extent of Overseas Production**

Most of the bearings companies that we contacted indicated that they had both domestic and overseas production operations. Of the three recipient companies, only one reported that it imports CDSOA products, but its imports make up a small share of its overall sales.



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## Scope and Methodology

To obtain bearings companies' views on CDSOA's effects, we sent out a set of structured questions to certain CDSOA recipients and certain non-recipients in the bearings industry. CDSOA payments are made in this industry under multiple AD orders that were issued in different years.

To identify CDSOA recipients, we obtained information from CBP about the companies that have received payments in each of the four years that disbursements have been made and the amount of disbursements they have received. Using this information, we developed a list of seven recipients and ranked them by their total CDSOA receipts. We obtained additional information from company representatives and CBP resulting in our combining certain recipients and treating them as three distinct companies.<sup>5</sup> For example, CBP sometimes listed in its annual reports on CDSOA, as separate distributions, payments to entities that were divisions or subsidiaries of other companies that also received CDSOA distributions. We surveyed the three companies, and all of them provided completed surveys.

The universe of bearings non-recipients is larger than the universe of recipients.<sup>6</sup> We sought to obtain views from a comparable number of non-recipients as recipients. To identify these companies, we obtained information from associations or others that were knowledgeable about the industry. Specifically, we obtained information about non-recipient bearings companies by (1) identifying members of the American Bearings Manufacturing Association, (2) asking recipient companies to identify their competitors, and (3) conducting our own research. We surveyed three non-recipient companies, of which two provided completed surveys.<sup>7</sup> These two non-recipients are multi-national companies that are among the leading global producers of bearings and have had a long-standing history of production in the United States. The views of the non-recipients that responded to our questions may not be representative of all non-recipients.

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<sup>5</sup>Timken, Emerson Power Transmission, and Pacamor/Kubar Bearings.

<sup>6</sup>Whereas there are seven CDSOA bearings recipients, in 2003, the Census Bureau listed 19 producers of tapered roller bearings and 65 producers of ball bearings.

<sup>7</sup>We also sent out and received back a survey from an additional company. We did not include this survey in our results because this company does not produce bearings within the United States.

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## Views on CDSOA from Recipients in the Steel Industry

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### Background

For this case study, we defined the scope of the steel industry to include companies that produce steel by melting raw materials.<sup>8</sup> The two main types of producers of raw steel are integrated mills and minimills. Integrated producers use older, blast furnaces to convert iron ore into steel. They mainly produce “flat” products, such as plate and hot-rolled steel that are used in transportation equipment, construction, and heavy machinery. The minimills are a scrap-based industry, producing steel from recycled metal products, such as crushed cars or torn-down buildings. They use newer, electric-arc furnaces, and account for almost all of the industry’s “long” production, including wire-rod and rebar. The top three domestic steel producers—Mittal, U.S. Steel, and Nucor—together account for about half of overall domestic steel production, which is approximately 100 million tons a year.<sup>9</sup> A third, much smaller sector of the industry is the specialty, or stainless, sector. These producers also use electric-arc furnaces and represent about 2 percent of the overall industry output and about 10 percent of value. The steel industry is by far the largest user of AD/CV duty orders, with over 125 iron and steel mill orders in place as of June 2005.

Several industrywide trends occurring at the same time as CDSOA disbursements are relevant. Between 1997 and 2003 period, 40 steel companies declared bankruptcy, with some of them ceasing operations altogether. CDSOA recipients were not immune from this general trend; several of them have declared bankruptcy and various firm consolidations have also occurred. The Asian financial crisis was an important factor in increasing steel imports to this country, as Asian demand for steel dropped and foreign steel companies increasingly looked to the United States as a

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<sup>8</sup>We excluded from our scope companies that make steel-related products, such as pipe or tubing, from purchased raw steel.

<sup>9</sup>In 2003, according to the Census Bureau, there were 226 producers of carbon steel, 64 producers of alloy steel, and 74 producers of stainless steel in this country.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

market for their products.<sup>10</sup> The surge in imports led to the filing of relief petitions on hot-rolled steel against Russia, Japan, and Brazil beginning in 1998. Companies subsequently filed relief petitions against 11 other countries. In 2002, the President also took action under section 201 of the Trade Act of 1974,<sup>11</sup> which allows him to implement temporary relief when an industry has been seriously injured by surging imports. Under this authority the President announced a series of safeguard tariffs of up to 30 percent on a range of steel products. These tariffs, which were imposed in addition to the AD/CV duties, remained in place from March 2002 until late 2003. Much of the industry returned to profitability in 2004, when prices rose.

Table 8 depicts the top 10 CDSOA recipients for steel in fiscal years 2001 through 2004.

**Table 8: Top 10 Fiscal Years 2001-2004 Steel CDSOA Recipients**

	<b>Company</b>	<b>Amount paid</b>	<b>Amount claimed</b>	<b>Amount paid as a percentage of total paid to industry</b>
1	United States Steel Corporation	\$22,610,280	\$589,595,769,913	17.6
2	Carpenter Technology Corporation	13,991,133	24,272,753,229	10.9
3	AK Steel Corporation	11,337,171	273,729,695,233	8.8
4	Allegheny Ludlum Corporation	11,107,788	42,821,265,506	8.6
5	International Steel Group	10,374,465	568,595,773,448	8.1
6	North American Stainless	9,697,133	35,786,766,024	7.5

<sup>10</sup>We identified the vulnerability of the U.S. steel and semiconductor industries (among others) to surging imports in the wake of the Asian financial crisis, as well as concerns over dumping and subsidies, in a 1999 report to Congress. See GAO, *International Monetary Fund: Trade Policies of IMF Borrowers*, GAO/NSIAD/GGD-99-174 (Washington, D.C.: Jun. 23, 1999), pp. 29-35.

<sup>11</sup>19 U.S.C. § 2251.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

*(Continued From Previous Page)*

	<b>Company</b>	<b>Amount paid</b>	<b>Amount claimed</b>	<b>Amount paid as a percentage of total paid to industry</b>
7	J&L Specialty Steel	6,227,041	21,580,366,304	4.8
8	Bethlehem Steel Company	5,975,849	277,902,636,707	4.6
9	Armco Steel Corporation	3,716,372	155,054,850,596	2.9
10	Maverick Tube Corporation	3,454,452	13,870,701,890	2.7

Source: GAO analysis of CBP data.

## CDSOA Effects on Steel Companies

### CDSOA Recipients Commented That Disbursements Have Had a Moderately Positive Effect

Recipient steel companies varied in their assessments of the payments' effects, but generally agreed that they had a positive impact in the areas of net income and investing in plant, property, and equipment. For example, several recipients said disbursements enabled them to make investments needed to survive the steel crisis and be competitive in the future. The companies also generally stated that CDSOA disbursements have had little or no effect on prices, net sales, and market share. Some steel recipients also commented that CDSOA has not been a complete solution to the problems they faced due to unfairly traded imports. One recipient commented, for example, that while CDSOA payments could be presumed to have had a tangible benefit for the industry, they have not come close to erasing the years of financial injury brought on by unfairly traded steel products.

Some steel companies acknowledged that the CDSOA disbursements have not been significant in relation to their size or capital expenditure needs. For each of the 13 steel companies in our case study, the CDSOA

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

disbursements they received amounted to less than 1 percent of their net sales in fiscal year 2004.<sup>12</sup>

Table 9 provides steel recipients' responses to our questionnaire on CDSOA's effects.

**Table 9: CDSOA Effects on Steel Companies**

<b>Category</b>	<b>Positive effects</b>	<b>Little or no effects</b>	<b>Negative effects</b>	<b>No basis to judge</b>	<b>Number of respondents</b>
<b>Recipients</b>					
Prices	0	11	0	0	11
Net sales	0	12	0	0	12
Gross profits	6	6	0	0	12
Net income	10	2	0	0	12
Property, plant, and equipment	9	3	0	1	13
Research and development	8	4	0	0	12
Employment	6	5	0	1	12
Ability to compete	8	4	0	0	12
Market share	1	10	0	0	11

Source: GAO analysis of company responses to structured questions.

**CDSOA Effect on Company Ability to Compete in U.S. Market**

Table 10 provides these companies' responses to our question on CDSOA's effect on their ability to compete in the U.S. market.

<sup>12</sup>The ratio of a company's fiscal year 2004 CDSOA disbursements to its 2004 new sales may not be representative of this ratio for prior fiscal years or of the average ratio of disbursements to net sales for the company since CDSOA's inception, because of fluctuations in the size of CDSOA disbursements to net sales. Calculating average ratios would help account for these fluctuations, but we did not calculate such ratios because we lacked consistent information about disbursements and net sales for all CDSOA recipients that responded to our case study questions.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

**Table 10: CDSOA Effect on Steel Companies' Ability to Compete in U.S. Market**

Increased	Stayed about the same	Decreased	Don't know/no basis to judge	Number of respondents
9	4	0	0	13

Source: GAO analysis of company responses to structured questions.

**Company Uses of CDSOA Funds**

We also asked companies to describe how they used the CDSOA payments that they received. However, the law does not require that distributions be used for any specific purpose. The steel recipient companies generally did not provide specific replies to this question. General comments by these companies included that they used the CDSOA payments to make capital investments, reduce debt, and assisted in the acquisition of steel-making assets.

**Net Sales and Employment Trends**

Sales, profit, and income figures generally improved markedly for the steel companies between 2003 and 2004, as the overall industry enjoyed a strong rebound from the previous years. In some cases companies went from showing net losses to net income between these 2 years. Some companies also expanded greatly among all categories as they grew by acquiring the assets of other companies. Overall, some companies gained employees, while other companies lost them.

**Extent of Overseas Production**

None of the recipient steel companies responding to our questionnaire reported that they are involved in overseas production or importation of CDSOA products.

**Scope and Methodology**

To obtain steel companies' views on CDSOA's effects, we sent out a set of structured questions to certain steel CDSOA recipients and non-recipients. CDSOA payments are made in this industry under multiple steel and steel-related AD and CV orders that were issued over several years. For this case study, we defined the scope of the steel industry to only include companies

that produce steel by melting raw materials.<sup>13</sup> Our scope excludes companies that primarily make steel-related products (such as pipe or tubing) from purchased raw steel. As discussed below, we were not able to obtain information from steel non-recipients on CDSOA's effects.

To identify CDSOA recipients, we obtained information from CBP about the companies that have received payments, according to our definition of the industry, in each of the 4 years that disbursements have been made and the amount of disbursements they have received. We obtained information from representatives of the ITC, Commerce, and industry associations to determine precisely which companies fit under our definition of the steel industry. Using this information, we developed a list of 69 recipients and ranked them by their total CDSOA receipts.<sup>14</sup> Because of time and resource constraints, we decided to survey the top 15 steel recipient companies that had received 90 percent of the distributions made under the orders included in our scope. Two of these companies had ceased operations. We surveyed the remaining 13 companies and received completed surveys from all of them. The 13 respondents accounted for about 72 percent of the CDSOA payments to this industry; their views may not be representative of all recipients, particularly those that received relatively small CDSOA receipts.

The universe of steel non-recipients is larger than the universe of recipients.<sup>15</sup> We sought to obtain views from a comparable number of non-recipients as recipients. To identify these companies, we obtained information from associations or others that were knowledgeable about the industry. Besides ITC, we spoke with several steel industry associations (American Iron and Steel Institute, Steel Manufacturers Association, and the Specialty Steel Industry of North America) to identify leading steel non-recipients. We also asked recipient companies to identify their competitors. Based on these meetings and our own research, we surveyed 12 leading non-recipient steel companies, from which we received 1 completed

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<sup>13</sup>These are classified under the North American Industry Classification System (NAICS) code, 331111 – Iron and Steel Mills.

<sup>14</sup>The calculation of the total number of steel companies to receive CDSOA funds may include some payments that were received separately by different divisions of the same company. In calculating the total number of recipient steel companies we added the number of entities to receive distributions for steel products, as listed by CBP.

<sup>15</sup>Whereas there are 69 CDSOA steel recipients, in 2003, the Census Bureau listed 226 producers of carbon steel, 64 producers of alloy steel, and 74 producers of stainless steel.

survey. However, this survey did not include comments or views on CDSOA's effects. As a result, we are not able to present the views of steel non-recipient companies on CDSOA's effects.

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## Views on CDSOA from Recipients and Non- Recipients in the Candle Industry

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### Background

Petroleum wax candles are produced in several forms including columns or pillars, wax-filled containers, tapers or dinner candles, votives, and novelty candles. They are sold to consumers through retail outlets, the largest percentage of which are through mass merchandisers (such as Wal-Mart or Target); these are followed by department stores, discount retailers, card and gift shops, and door-to-door sales through membership groups. The majority of petroleum wax candles are produced and imported for national markets. The number of domestic producers has grown from over 100 when the ITC performed its original investigation in 1986 to over 400 at the time of its second 5-year review in 2005. Only 10 domestic candle producers are eligible for CDSOA payments. Table 5 shows these companies' CDSOA disbursements and claims. According to the ITC, these recipients, in addition to approximately 35 other candle producers, make up 70 percent of U.S. candle production.

In 1985 a petition was filed by the National Candle Association (NCA) alleging that the U.S. candle industry was materially injured by dumped imports of petroleum wax candles from China.<sup>16</sup> The ITC determined injury in 1986, and Commerce issued an antidumping duty order of 54 percent on all Chinese producers and exporters. The ITC conducted a 5-year, expedited review in 1999, and the duty doubled from 54 percent to 108 percent after another expedited review in 2004. U.S. producers' share of the market by quantity (pounds) went from 43 percent in calendar year

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<sup>16</sup>The ITC determined in the original investigation that beeswax candles should not be included within the domestic like product. Beeswax candles are composed of more than 50 percent beeswax, manufactured by U.S. producers principally for religious and specialty markets, and priced considerably higher than petroleum wax candles.



**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

1999 to 53 percent in calendar year 2004. Imports from China, which some perceive as lower-end candles, accounted for 20 percent in 1999, rising to 27 percent in 2004. U.S. producers and Chinese suppliers have both gained market share in recent years. U.S. producers' share of candles dollar value was 66 percent in 1999 rising to 70 percent in 2004, while China's share rose from 10 percent in 1999 to 14 percent in 2004. The ITC is presently conducting a full 5-year "sunset" review of this order, and recently presented its findings to Commerce. Also, Commerce is considering whether the scope of the order should be changed, inquiring whether mixed wax candles composed of petroleum wax and varying amounts of either palm or vegetable wax alter the product so that they are not subject to the current order.

Table 11 depicts CDSOA recipients for candles in fiscal years 2001 through 2004.

**Table 11: Fiscal Years 2001-2004 Candle CDSOA Recipients**

	<b>Company</b>	<b>Amount paid</b>	<b>Amount claimed</b>	<b>Amount paid as a percentage of total paid to industry</b>
1	Candle-lite <sup>a</sup>	\$56,759,989	\$1,285,509,591	39.81
2	Lancaster Colony Corporation <sup>a</sup>	26,225,555	1,382,869,375	18.39
3	Home Fragrance Holdings	20,394,804	444,243,884	14.30
4	Meunch-Kreuzer Candle Company	10,695,594	212,476,879	7.50
5	General Wax & Candle	9,297,725	150,256,642	6.52
6	Reed Candle Company	7,214,429	152,164,485	5.06
7	Lumi-Lite Candle Company	5,625,486	89,582,027	3.95
8	A.I. Root Company	3,338,318	163,393,408	2.34
9	Candle Artisans	1,171,570	57,421,924	0.82
10	Cathedral Candle Company	1,155,876	56,565,862	0.81
11	Will & Baumer	691,842	913,379	0.49

Source: GAO analysis of CBP data.

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<sup>a</sup>In 1972 Candle-lite was acquired by Lancaster Colony Corporation of which it remains a division today. For fiscal years 2001-2003, Lancaster Colony received CDSOA distributions under the name Candle-lite. The "amount paid" for Candle-lite and Lancaster Colony should be added together for an accurate account of CDSOA distributions made to the Candle-lite Division of Lancaster Colony Corp. Total fiscal year 2001-2004 distributions equal \$82,985,544 or 58.21 percent of total distributions to the candle industry. Likewise, the amount claimed for Lancaster Colony is applicable to Candle-lite.

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## CDSOA Effects on Candle Companies

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### Candle Recipients Reported Positive Effects from CDSOA Payments

Recipients report that CDSOA distributions have had positive effects on their net income; on their property, plant and equipment; and on research and development. One of the larger recipients of CDSOA distributions claims that these payments have lessened the need to consider outsourcing their candle products from abroad. However, the company reported that because of the effects of dumped Chinese candles, they continue to lay off workers, though fewer than they may have absent the CDSOA funds. Other recipients claim to have developed new, better, and safer candles with research and development reinvestment of CDSOA disbursements.

Fiscal year 2004 CDSOA disbursements as a percentage of company sales range from 0.4 percent to 34.7 percent for the 10 recipient candle companies, with most companies' shares in the higher end of this range.<sup>17</sup>

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### Candle Non-Recipients Reported Negative Effects

Non-recipients report that CDSOA distributions to their competitors have had negative effects on their ability to compete in the market, on their gross profits, and on net income. They also reported very negative effects on industry competition. One non-recipient company has closed two of four domestic manufacturing facilities, eliminated or reduced shifts, and its released workers. Another non-recipient company claims that their CDSOA-recipient competitors could reduce selling prices. While the

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<sup>17</sup>The ratio of a company's fiscal year 2004 CDSOA disbursements to its 2004 new sales may not be representative of this ratio for prior fiscal years or of the average ratio of disbursements to net sales for the company since CDSOA's inception, because of fluctuations in the size of CDSOA disbursements to net sales. Calculating average ratios would help take account of these fluctuations, but we did not calculate such ratios because we lacked consistent information about disbursements and net sales for all CDSOA recipients that responded to our case study questions.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

company matched competitors' lower prices, they made no profit. Because of this, they have recently exited this segment of the candle business and released workers accordingly. Some non-recipients also expressed the view that their ineligibility for CDSOA disbursements is unfair. One non-recipient company joined the NCA as a leader of the organization a few years after the issuance of the order, but stated that they have no institutional memory of receiving an ITC questionnaire during its original investigation in 1986. This company said it has supported the order as well as NCA's efforts to defend the order since joining the NCA. Another non-recipient is ineligible by virtue of being acquired by a firm that opposed the original investigation, and was unsuccessful in its legal challenge of this.

Table 12 shows candle recipient and non-recipients' responses to our questionnaire on CDSOA's effects.

**Table 12: CDSOA Effects on the Candle Companies**

<b>Category</b>	<b>Positive effects</b>	<b>Little or no effects</b>	<b>Negative effects</b>	<b>No basis to judge</b>	<b>Number of respondents</b>
<b>Recipients</b>					
Prices	1	9	0	0	10
Net sales	2	5	0	3	10
Gross profits	6	3	0	1	10
Net income	9	0	0	1	10
Property, plant and equipment	9	1	0	0	10
Research and development	8	1	0	1	10
Employment	6	4	0	0	10
Ability to compete	6	3	0	1	10
Market share	2	4	0	4	10
<b>Non-Recipients</b>					
Prices	1	0	4	3	8
Net sales	1	0	4	3	8
Gross profits	0	0	4	4	8
Net income	0	0	4	4	8
Property, plant and equipment	1	0	4	3	8

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

*(Continued From Previous Page)*

<b>Category</b>	<b>Positive effects</b>	<b>Little or no effects</b>	<b>Negative effects</b>	<b>No basis to judge</b>	<b>Number of respondents</b>
Research and development	1	1	3	3	8
Employment	1	1	3	3	8
Ability to compete	0	0	4	4	8
Market share	1	0	4	3	8

Source: GAO analysis of company responses to structured questions.

**CDSOA Effect on Company Ability to Compete in U.S. Market**

Table 13 depicts these companies' responses to our question on CDSOA's effect on their ability to compete in the U.S. market.

**Table 13: CDSOA Effect on Candle Companies' Ability to Compete in U.S. Market**

<b>Increased</b>	<b>Stayed about the same</b>	<b>Decreased</b>	<b>Don't know/no basis to judge</b>	<b>Number of respondents</b>
<b>Recipients</b>				
7	2	0	1	10
<b>Non-Recipients</b>				
1	0	4	3	8

Source: GAO analysis of company responses to structured questions.

**Company Uses of CDSOA Funds**

We also asked companies to describe how they used the CDSOA payments that they received. However, the law does not require that distributions be used for any specific purpose. Several recipients claim that they have used CDSOA funds to invest in new and better equipment, and in research and development. One recipient company reports that it has been able to offer employees consistent and comprehensive benefits packages due to CDSOA funds.

**Net Sales and Employment Trends**

For smaller candle companies—both recipients and non-recipient respondents alike—net sales have stagnated, as has employment of production and related workers. Some of the larger non-recipient respondents appear to have experienced some growth in these categories, while some of the larger recipients seem to have experienced some decline

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or stagnation in net sales and some growth or stagnation in production and employment.

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## Extent of Overseas Production

Most candle companies are strictly domestic producers; however, one non-recipient stated that it would start to import some of its candle products from Asia in order to keep its costs down.

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## Scope and Methodology

To obtain the views of candle companies on CDSOA's effects, we sent out a set of structured questions to candle CDSOA recipients and certain non-recipient companies within the industry. CDSOA payments are made under one AD order that was issued in 1986.

To identify CDSOA recipients, we obtained information from CBP about the companies that have received payments in each of the 4 years that disbursements have been made. Using this information, we developed a list of 11 recipients and ranked them by their total CDSOA receipts. One of these companies now receives CDSOA payments under the name of its parent company, leaving 10 distinct companies. We sent surveys to all recipient companies, and all of them provided completed surveys.

The universe of candle non-recipients is larger than the universe of recipients.<sup>18</sup> We sought to obtain views from a comparable number of non-recipients as recipients. To identify these companies, we obtained information from associations or others that were knowledgeable about the industry. Specifically, we (1) obtained a list of members of the NCA from its website; (2) corroborated this list with information from a recent ITC publication; and (3) obtained information about certain non-NCA members based on our own research. Because of time and resource constraints, most of the non-recipient candle companies we contacted are members of the NCA. Surveys were sent to non-recipient candle companies for which an E-mail address could be obtained either from the NCA list or from the company directly. We surveyed 26 non-recipient candle makers, of which 8 provided completed surveys. Respondents included two relatively large candle companies whose net candle sales were similar in magnitude

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<sup>18</sup>Eleven candle companies received CDSOA disbursements during fiscal years 2001-2005. According to ITC estimates, the U.S. candle industry contains about 400 candle producers and 45 of these producers represent approximately 70 percent of the domestic candle industry.

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to one of the largest candle CDSOA recipients, and several smaller candle companies whose net sales were similar to or slightly larger than several of the smaller CDSOA candle recipients. The views of these respondents may not be representative of all non-recipients.

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## Views on CDSOA from Pasta Company Recipients and Non- Recipients

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### Background

The bulk of pasta production in the United States is dry pasta, with production of frozen or refrigerated pasta constituting a smaller portion of the U.S. industry. After several decades of mergers and acquisitions, and the 2001 sale of one major producer's production facilities and brand names to two of its competitors, the industry's current structure reflects a high degree of concentration among a few large producers. The four largest U.S. producers as of 2001, based on ITC data, were American Italian Pasta Company, New World Pasta, Dakota Growers Pasta Company, and Barilla America, Inc. (a U.S. subsidiary of an Italian pasta company that was set up in 1998 after antidumping and countervailing duty orders on Italian dry pasta imports were issued). An industry expert estimated that these four companies currently account for about 80 percent of dry pasta production in the United States, with the remainder supplied by smaller or specialty companies.<sup>19</sup> Three of the four are eligible for CDSOA disbursements, but Barilla America, Inc., whose share of U.S. production is growing and which said it only imports a small percentage of the pasta it sells here, is not. Overall demand for dry pasta in the United States has been declining since the late 1990s, a trend that has been exacerbated, according to dry pasta companies and industry experts, by diets that emphasize low-carbohydrate intake.<sup>20</sup> Further, the industry has been experiencing decreased sales, excess capacity, and plant closures. Among the more significant indicators

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<sup>19</sup>According to the U.S. Census Bureau, there were 182 dry pasta companies in 2002, down from 249 in 1997.

<sup>20</sup>Information on U.S. demand for pasta for the 1997-2000 period was available from ITC. More recent information was obtained from annual assessments of the pasta industry published by Milling & Baking News, a trade magazine that follows the pasta industry.

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**Appendix III**  
**CDSOA Recipient and Non-Recipient**  
**Companies in Seven Industries**

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of the downturn, New World Pasta—a leading CDSOA recipient—filed for Chapter 11 bankruptcy protection in 2004. According to ITC, about three-fourths of U.S. consumption of dry pasta in 2000 was supplied by domestic producers, with the remainder supplied by imported products. At that time, the largest sources of imported pasta were Italy, Canada, Korea, and Mexico.

Several U.S. producers petitioned for relief from rapidly growing imports in 1995. In 1996, Commerce issued antidumping and countervailing duty orders on certain pasta imports from Italy and Turkey.<sup>21</sup> Initial AD duties rated from 0 to about 47 percent on Italian pasta and about 61 to 63 percent on Turkish pasta, while initial CV duties ranged from about 0 to 11 percent on Italian pasta and about 4 to 16 percent on Turkish pasta. Since Commerce issued the order, dry pasta imports from Italy have declined and Turkey is no longer a leading supplier of pasta to the United States. The ITC completed a sunset review in 2001 that extended the orders until 2006.

The top seven CDSOA recipients have received about 99 percent of the payments made to the industry, with American Italian Pasta Company and New World Pasta/Hershey Foods receiving 70 percent of total payments.

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<sup>21</sup>The orders cover non-egg dry pasta in packages of 5 pounds or less.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

Table 14 shows total payments made to all dry pasta CDSOA recipients in fiscal years 2001 through 2004.

**Table 14: Fiscal Years 2001-2004 CDSOA Pasta Recipients**

	<b>Company</b>	<b>Amount paid</b>	<b>Amount claimed</b>	<b>Amount paid as a percentage of total paid to industry</b>
1	American Italian Pasta Company	\$11,052,969	\$8,063,794,100	34.0
2	Hershey Foods (New World Pasta)	8,136,032	4,853,308,844	25.0
3	A. Zerega's Sons	3,889,333	2,290,556,634	12.0
4	New World Pasta	3,584,898	8,213,502,091	11.0
5	Dakota Growers Pasta Company	2,328,690	3,285,863,416	7.2
6	Philadelphia Macaroni Company	2,002,478	1,176,503,668	6.2
7	Gooch Foods	744,737	30,137,692	2.3
8	Pasta USA	463,953	698,654,710	1.4
9	Fould's	185,155	260,992,108	0.6
10	S.T. Specialty Foods	112,247	282,512,767	0.4
11	D. Merlino & Sons	31,067	43,778, 230	0.1

Source: GAO analysis of CBP data.

<sup>a</sup>New World Pasta acquired Hershey Foods Corporation in 1999.

## CDSOA Effects on Pasta Companies

### Pasta Recipients Reported Mostly Positive Effects From CDSOA Payments

The four pasta recipients that responded to our survey viewed the CDSOA program as having mostly positive effects on their companies. The two largest recipients did not respond to our survey, and we did not contact the three smallest recipients. All respondents cited the most positive company effects in the areas of profit; income; and investment in property, plant, and equipment; and most cited positive effects on net sales and ability to compete. Some recipient companies noted that the program has enhanced their ability to increase production through plant expansions and upgrades;



improved their cash flow, allowing them more operating flexibility; reduced manufacturing costs; and enhanced some companies' competitive position. Funds have also helped some companies develop new products.

CDSOA disbursements to the pasta industry have been small compared to each company's net sales. For example, fiscal year 2004 CDSOA payments to the pasta companies that responded to our survey represented about 1 percent or less of each company's 2004 net sales.<sup>22</sup>

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### **Non-Recipients Reported Minimal or Negative Effects**

Among the six pasta non-recipients that responded to our survey, views about the effect of CDSOA funds were mixed. A few said the funds had impacted their companies negatively in certain areas or created an unfair competitive environment in the industry, while others thought effects were minimal or could not judge the program's effects. About half of the non-recipients thought the program has had little or no effects for their companies in the areas of employment, prices, sales, investment, or market share. Some non-recipients thought the program had negatively impacted their company's profits, income, and ability to compete. Some non-recipients said that the program has probably helped recipients cut prices, and that this has created an unfair advantage in the industry for recipients. One non-recipient stated that it has had to transfer substantial sums of money to its competitors because of CDSOA, and that these funds would likely have been used for product development, capital investment, and expansion at its U.S. facility.

Table 15 provides pasta recipients' and non-recipients' responses to our questionnaire on CDSOA effects.

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<sup>22</sup>The ratio of a company's fiscal year 2004 CDSOA disbursements to its 2004 net sales may not be representative of this ratio for prior fiscal years or of the average ratio of disbursements to net sales for the company since CDSOA's inception, because of fluctuations in the size of CDSOA disbursements to net sales. Calculating average ratios would help take account of these fluctuations, but we did not calculate such ratios because we lacked consistent information about disbursements and net sales for all CDSOA recipients that responded to our case study questions.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

**Table 15: CDSOA Effects on Pasta Companies**

<b>Category</b>	<b>Positive effects</b>	<b>Little or no effects</b>	<b>Negative effects</b>	<b>No basis to judge</b>	<b>Number of respondents</b>
<b>Recipients</b>					
Prices	2	2	0	0	4
Net sales	3	1	0	0	4
Gross profits	4	0	0	0	4
Net income	4	0	0	0	4
Property, plant, and equipment	4	0	0	0	4
Research and development	2	1	0	1	4
Employment	3	1	0	0	4
Ability to compete	2	2	0	0	4
Market share	1	2	0	1	4
<b>Non-Recipients</b>					
Prices	0	3	1	2	6
Net sales	0	3	1	2	6
Gross profits	0	2	2	2	6
Net income	0	2	2	2	6
Property, plant, and equipment	0	3	1	2	6
Research and development	0	2	1	3	6
Employment	0	4	0	2	6
Ability to compete	0	2	2	2	6
Market share	0	3	1	2	6

Source: GAO analysis of company responses to structured questions.

**CDSOA Effect on Company Ability to Compete in U.S. Market**

Table 16 provides these companies' responses to our question on CDSOA's effects on their ability to compete in the U.S. market.

**Table 16: CDSOA Effect on Pasta Companies' Ability to Compete in U.S. Market**

Increased	Stayed about the same	Decreased	Don't know/no basis to judge	Number of respondents
<b>Recipients</b>				
3	1	0	0	4
<b>Non-Recipients</b>				
0	1	3	2	6

Source: GAO analysis of company responses to structured questions.

### Company Uses of CDSOA Funds

We also asked companies to describe how they used the CDSOA payments that they received. However, the law does not require that distributions be used for any specific purpose. Recipients used CDSOA funds for a variety of purposes. For example, some said they used the funds to purchase new equipment or upgrade existing equipment; reduce manufacturing costs and improve cash flow; increase production capacity; and invest in research and product development. This, in turn, led to increased production and employment among some companies. One company that did not respond to our survey disclosed in its 2003 annual report that it used a significant portion of the funds to increased investment in brand building activities and to strengthen the company's organization. One recipient noted that CDSOA funds have been helpful because margins in the industry are very thin and competition is strong. As CDSOA improved one company's bottom line, it was able to obtain more attractive financing rates.

### Net Sales and Employment Trends

Our information about the effect of CDSOA on net sales and employment in this industry is limited because the two largest companies did not respond to our survey. Although press coverage of the industry has noted generally declining net sales among U.S. dry pasta companies in recent years, the companies that responded to our questions reported general increases in net sales during 2001 through 2004. Specifically, two companies reported increased sales in the 2001 through 2004 time frame, and two companies reported fluctuating sales that were higher at the end of the period than at the beginning. Among recipient respondents, two companies' employment levels generally increased, and two companies' employment levels generally decreased since the implementation of CDSOA. Among non-recipient respondents, net sales and employment showed mixed trends. Three companies reported increased sales, one company reported

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fluctuating sales that were higher at the end of 2004, and two companies reported decreased net sales. Three companies reported generally increased employment levels and three reported general decreases.

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## Extent of Overseas Production

All of the recipient pasta companies that responded to our survey produce their product only in the United States. However, the top CDSOA recipients that did not respond to our survey produce pasta domestically and in other countries. Four of the non-recipients produce exclusively in the United States, and two produce both domestically and overseas.

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## Scope and Methodology

To obtain pasta companies' views on CDSOA's effects, we sent out a set of structured questions to certain pasta CDSOA recipients and non-recipients. CDSOA payments are made in this industry under two AD and two CV orders that were issued simultaneously.

To identify CDSOA recipients, we obtained information from CBP about the companies that have received payments in each of the 4 years that disbursements have been made and the amount of disbursements they have received. Using this information, we developed a list of 11 recipients and ranked them by their total CDSOA receipts. CBP provided additional information that indicated there were actually 10 distinct companies.<sup>23</sup> Because of time and resource constraints, we decided to survey the top seven companies that had received 99 percent of the total payments made under these orders, from which we received four completed surveys.<sup>24</sup> The two pasta companies that are top CDSOA recipients did not respond to our survey. Our information about CDSOA effects for recipients is limited to the four pasta companies that responded, which together accounted for about 27 percent of CDSOA payments to this industry.

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<sup>23</sup>One recipient had acquired another recipient.

<sup>24</sup>One company said it lacked information to answer our questions because its CDSOA-eligible subsidiary was no longer producing pasta.

The universe of dry pasta non-recipients is larger than the universe of recipients.<sup>25</sup> We sought to obtain views from a comparable number of non-recipients as recipients, but we had difficulty identifying non-recipient dry pasta companies. To identify these companies, we obtained information from associations or others that were knowledgeable about the industry. Specifically, we obtained company names and contact information from (1) the website of the National Pasta Association, which presently carries out only limited activities on behalf of the industry; (2) an association management company that handles administrative matters for the National Pasta Association; (3) a directory of pasta companies published on <http://www.bakingbusiness.com>, a division of Milling and Baking News, which is a business news organization that ITC had identified as closely following the pasta industry; and (4) other pasta companies. Many of the companies we identified through these sources were not makers of dry pasta as defined in the orders, but were instead makers of egg noodles, fresh or refrigerated pasta, couscous, and boxed or frozen foods that use pasta, or were flour mills or other companies linked to the production of dry pasta. We surveyed eight non-recipient dry pasta manufacturers, from which we received six completed surveys. The respondents include the fourth-largest dry pasta manufacturer in the United States, several smaller pasta companies that produce durum wheat pasta, one company that produces wheat-free pasta, and one company that produces exclusively organic pasta. The views of these respondents may not be representative of all non-recipients.

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## Views on CDSOA from Recipients in the DRAM Industry

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### Background

Dynamic random access memory (DRAM) semiconductors are considered commodity products and compete largely on the basis of price; DRAMs of similar density, access speed, and variety are generally interchangeable

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<sup>25</sup>Whereas only 11 pasta recipient companies have received CDSOA disbursement, the U.S. Census Bureau identified 182 dry pasta companies in its 2002 economic census. See U.S. Census Bureau, Dry Pasta Manufacturing: 2002 Economic Census (Washington, D.C.: December 2004).

regardless of the country of fabrication. Today, four companies produce DRAMs in the United States:<sup>26</sup> Micron Technologies is a U.S. company, Infineon Technologies is a spin-off of the German company Siemens, and Samsung Electronics<sup>27</sup> and Hynix Semiconductor<sup>28</sup> are Korean companies. All of these companies now have production facilities in the United States as well as abroad, but the latter three have entered the U.S. industry within the past decade. The DRAM industry is cyclical in nature, where demand is driven by investments in computers and other end-products. Fabrication facility costs are high and require complete replacement approximately every 10 years. Due to high fixed costs, chip manufacturers cannot afford to scale down production; they must constantly produce chips and invest or go out of business.

One countervailing duty order is currently in effect for DRAMs produced by Hynix only.<sup>29</sup> This duty order came into effect in 2003 and its duty rate is currently 44 percent. Micron Technology received the bulk of distributions in this industry because it was the sole recipient of duties from two antidumping orders dating from the 1990s on DRAMs and other kinds of chips. Payments were made to Micron on DRAMs of 1 megabit and above under one AD order issued in 1993 and revoked in 2000, as well as on an AD order on SRAMs (static random access memory chips) issued in 1998 and revoked in 2002. The vast majority of CDSOA disbursements to the industry (approximately \$33 million) in fiscal years 2001 through 2004 were related to these orders. Infineon did not incorporate in the United States until 2000 and, therefore, did not participate in the earlier investigations. Both Infineon and Micron are eligible and received disbursements under the

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<sup>26</sup>The Department of Commerce's final determination defines the imported merchandise within the scope of its investigation as DRAMs from the Republic of Korea (ROK), whether assembled or unassembled. Processed wafers fabricated outside of the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

<sup>27</sup>Samsung Electronics Co. Ltd. of Korea is associated with Samsung Austin Semiconductor LLC in Texas. Wafers fabricated in the Austin facility are sent to Samsung facilities in Korea for cased DRAM assembly and in some cases module assembly. These do not fall under the scope of the order.

<sup>28</sup>Hynix Semiconductor, Inc. of Korea has two U.S. subsidiaries in California and Oregon. However, DRAM wafers fabricated in Oregon are sent to Korea for assembly. These do not fall under the scope of the order.

<sup>29</sup>The Department of Commerce determined that the Government of Korea directed credit to the Korean semiconductor industry through 1998 and specifically to Hynix and companies that continue to be, or were part of, the Hyundai Group from 1999 through June, 2002.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

current order but Hynix and Samsung are not eligible because they opposed the petition. Because DRAMs are a technologically dynamic product, it is expected that Commerce will revoke these orders when the subject products are obsolete. New products open themselves to new petitions and orders, thereby allowing new potential CDSOA recipients.

Table 17 depicts CDSOA recipients for DRAMs in fiscal years 2001-2004.

**Table 17: Fiscal Years 2001-2004 DRAM CDSOA Recipients**

	<b>Company</b>	<b>Amount paid</b>	<b>Amount claimed</b>	<b>Amount paid as a percentage of total paid to industry</b>
1	Micron Technology	\$33,389,988	\$9,093,423,782	99.98
2	Infineon Technologies Richmond	5,974	590,776,005	0.02

Source: GAO analysis of CBP data.

## CDSOA Effects on DRAM Companies

### CDSOA Disbursements Have Mixed Effects on DRAM Companies

The two recipients of CDSOA disbursements reported mixed effects. One recipient reported that, although at the time it was operating at a net loss, CDSOA distributions improved its profitability, investment, employment, and research and development. The company noted that it would be of greater help if payments were made soon after other countries began their unfair trade practices. Another recipient reported that disbursements were immaterial to their operations.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

Fiscal year 2004 CDSOA disbursements are equal to less than 1 percent of both companies' sales.<sup>30</sup>

Table 18 presents DRAM recipients' responses to our questionnaire on CDSOA's effects.

**Table 18: CDSOA Effects on DRAM Companies**

<b>Category</b>	<b>Positive effects</b>	<b>Little or no effects</b>	<b>Negative effects</b>	<b>No basis to judge</b>	<b>Number of respondents</b>
<b>Recipients</b>					
Prices	0	2	0	0	2
Net sales	0	2	0	0	2
Gross profits	1	1	0	0	2
Net income	1	1	0	0	2
Property, plant, and equipment	1	1	0	0	2
Research and development	1	1	0	0	2
Employment	1	1	0	0	2
Ability to compete	1	1	0	0	2
Market share	0	2	0	0	2

Source: GAO analysis of company responses to structured questions.

**CDSOA Effect on Company Ability to Compete in U.S. Market**

Table 19 shows companies' responses to our question on CDSOA's effect on their ability to compete in the U.S. market.

<sup>30</sup>The ratio of a company's fiscal year 2004 CDSOA disbursements to its 2004 new sales may not be representative of this ratio for prior fiscal years or of the average ratio of disbursements to net sales for the company since CDSOA's inception, because of fluctuations in the size of CDSOA disbursements to net sales. Calculating average ratios would help take account of these fluctuations, but we did not calculate such ratios because we lacked consistent information about disbursements and net sales for all CDSOA recipients that responded to our case study questions.



**Table 19: CDSOA Effect on DRAM Companies' Ability to Compete in U.S. Market**

Increased	Stayed about the same	Decreased	Don't know/no basis to judge	Number of respondents
1	1	0	0	2

Source: GAO analysis of company responses to structured questions.

**Company Uses of CDSOA Funds**

We also asked companies to describe how they used the CDSOA payments that they received. However, the law does not require that distributions be used for any specific purpose. One recipient uses CDSOA distributions to fund U.S. operations and to invest in new U.S. production equipment. The other recipient also uses distributions in operations.

**Net Sales and Employment Trends**

Historically, the DRAM market is subject to periods of "boom and bust." Both CDSOA recipients reported some net losses and have experienced slight declines in production and related workers during the past 4 fiscal years.

**Extent of Overseas Production**

One company has DRAM production facilities in three U.S. states as well as Japan, Italy, and Singapore. The other indicated that it has both domestic and foreign production facilities; they also noted that DRAMs manufactured in the United States can be sold abroad, and DRAMs manufactured abroad can in turn be sold here.

**Scope and Methodology**

To obtain the views of DRAM-producing companies on CDSOA's effects, we sent a set of structured questions to the two CDSOA recipients. Current CDSOA payments on DRAMs are made on a CV order issued in 2003.

To identify CDSOA recipients, we obtained information from CBP about the companies that have received payments in each of the 4 years that disbursements have been made. CBP identified two companies. We surveyed both recipient companies, and both provided completed surveys.

To identify non-recipients, we consulted the recipient companies to identify their competitors, and we obtained information on domestic producers

from the ITC's final determination on DRAM and DRAM Modules from Korea.<sup>31</sup> There are two U.S. subsidiaries of Korean companies that are considered domestic producers who opposed the petition for the current order. We attempted to contact these companies but were unsuccessful in our efforts. We did not attempt to contact a fifth company that is also considered a domestic producer; this company does not list the major DRAM producers as competitors, and has no fabrication facilities.<sup>32</sup> ITC listed other domestic producers for the purposes of its investigation, but these companies have since ceased DRAM production or have ceased to exist.

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## Views on CDSOA from Recipients and Non- Recipients in Crawfish Industry

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### Background

Crawfish are freshwater crustaceans that resemble lobsters but are considerably smaller. U.S. commercial production of crawfish is concentrated within a relatively small area of southern Louisiana, where crawfish are harvested in the wild by fishermen and farmed in ponds. Crawfish may be sold whole and live, whole and boiled, or as fresh or frozen tail meat. Whole crawfish and fresh tail meat is consumed primarily in Louisiana and neighboring states, where there is generally a preference for local products in season. Tail meat is also sold more broadly throughout the United States. U.S. producers supply whole crawfish and fresh and frozen tail meat, whereas imports, mainly from China, are primarily frozen tail meat. U.S. businesses that process whole crawfish into tail meat are primarily small, family-owned concerns. Inexpensive imports and poor harvests have driven many domestic crawfish processors out of business in recent years. It is estimated that there were over 100 processors in

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<sup>31</sup>See ITC, *DRAM and DRAM Modules from Korea*, Investigation No. 701-TA-431 (Final), Publication 3616 (Washington, D.C.: August 2003).

<sup>32</sup>According to the ITC, companies that only package DRAMs into DRAM modules and fabless design houses do not engage in sufficient production-related activities to warrant their inclusion in the domestic industry. Nonetheless, ITC included this company in a list of domestic producers for the purposes of its investigation.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

Louisiana in the 1980s and early 1990s, but that number has dropped by more than half.

In 1996, the Crawfish Processors Alliance, an industry association, and the Louisiana Department of Agriculture and Fisheries, filed a petition alleging that U.S. processors of crawfish tail meat were being injured by dumped imports of crawfish tail meat from China. Significant imports of tail meat began in the mid-1990s, and ITC estimates that imports' share of consumption grew from just over 60 percent in 1997 to about 87 percent in 2002. In 1997, Commerce issued an anti-dumping order on crawfish tail meat and imposed anti-dumping margins that ranged from about 92 to about 202 percent.

Table 20 depicts the top 10 CDSOA recipients for crawfish in fiscal years 2001-2004.

**Table 20: Top 10 Fiscal Years 2001-2004 Crawfish CDSOA Recipients**

	<b>Company</b>	<b>Amount paid</b>	<b>Amount claimed</b>	<b>Amount paid as a percentage of total paid to industry</b>
1	Atchafalaya Crawfish Processors	\$3,054,297	\$5,940,653	12.0
2	Seafood International	2,394,144	4,231,815	9.4
3	Catahoula Crawfish	2,136,763	4,033,844	8.4
4	Crawfish Enterprises	1,722,957	5,559,354	6.8
5	Prairie Cajun Seafood Wholesale Distributors	1,711,875	3,063,186	6.7
6	Bayou Land Seafood	1,512,866	3,083,890	6.0
7	Acadiana Fishermen's Co-Op	1,297,685	2,635,910	5.1
8	Bonanza Crawfish Farm	1,086,372	2,084,090	4.3
9	Riceland Crawfish	1,061,156	2,192,214	4.2
10	Cajun Seafood Distributors	1,052,414	2,172,290	4.1

Source: GAO analysis of CBP data.

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## CDSOA Effects on Crawfish Processing Companies

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### Crawfish Recipients Reported Positive Effects from CDSOA Payments

CDSOA recipient respondents in the crawfish tail meat processing industry stated that the program has generally had positive effects for the industry and their companies. Several recipient respondents credited CDSOA with saving the domestic crawfish processing industry. Because of the program, they said, businesses remained open, employees kept their jobs, and crawfish fishermen continued to fish. The areas in which positive effects were most often cited were income; profits; investment in property, plants, and equipment; employment; and ability to compete. The program was generally seen as having little or no effect on prices, research and development, and market share. Many recipients stated that the program had encouraged them to purchase and process more crawfish and freeze more tail meat for sale in the off-season, leading to increased employment among some processors and higher sales volumes for crawfish farmers and fishermen.

Many respondents noted the poor collection rate and enforcement of the AD order for crawfish and viewed the CDSOA program as providing their only effective relief from dumped imports. (CBP disbursed about \$9.8 million to crawfish processors in fiscal year 2003 but reported that the uncollected duties related to crawfish in that year were about \$85.4 million. In fiscal year 2004, CBP disbursed about \$8.2 million to the industry, but uncollected duties rose to about \$170 million. Nearly two-thirds of all uncollected duties in fiscal year 2004 were related to the crawfish order.) Recipients complained that widespread non-payment of duties means Chinese crawfish continues to enter the U.S. market unabated. In its 2003 review to evaluate continuation of the AD order, ITC found that Chinese tail meat undersold (was sold at a lower price) domestic tail meat to the same degree with the AD order in place as it had before the order was issued, suggesting that the order has not affected the price of imported tail meat.<sup>33</sup>

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<sup>33</sup>See ITC, *Crawfish Tail Meat from China*, Investigation No. 731-TA-752 (Review), Publication 3614 (Washington, D.C.: July 2003).

Although CDSOA disbursements in this industry have been small compared to certain other industries, these payments have been significant for some recipients when compared to net sales. Among the 16 recipients that responded to our survey, their fiscal year 2004 CDSOA disbursement as a percent of their 2004 net sales ranged from a low of about 4 percent for one company to a high of about 350 percent for another.<sup>34</sup> Among the other respondents, four companies' fiscal year 2004 disbursement was about 15 to 18 percent of their net sales that year, five companies' disbursement was about 27 to 33 percent of their net sales, and four companies' disbursement was between 52 and 96 percent of their net sales.<sup>35</sup> One company did not report any net sales information to us.

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## Non-Recipients Reported Negative Effects

Non-recipients crawfish processors that responded to our survey said that the CDSOA program has helped recipient companies, but has harmed non-recipient companies by creating conditions of unfair competition among domestic processors. Most non-recipients cited negative effects for their companies in terms of ability to compete, net sales, profits, income, investment, and employment, which are generally the areas where recipients saw positive effects. Several non-recipients stated that they were unable to compete with the CDSOA recipients. For example, several non-recipients said that recipient companies were offering tail meat for sale at prices that were below the cost of production and were able to do so because their CDSOA funds would compensate them for any losses. In such conditions, some non-recipients said they cannot operate profitably and some decided to stop producing tail meat in recent years.

Table 21 provides crawfish recipients and non-recipients' responses to our questionnaire on CDSOA's effects.

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<sup>34</sup>The ratio of a company's fiscal year 2004 CDSOA disbursement to its 2004 net sales may not be representative of this ratio for prior years or of the average ratio of disbursements to net sales for the company since CDSOA's inception, because of fluctuations in the size of CDSOA disbursements and net sales. Calculating average ratios would help take account of these fluctuations, but we did not calculate such ratios because we lacked consistent information about disbursements and net sales for all CDSOA recipients that responded to our case study questions.

<sup>35</sup>This includes information for two companies based on their fiscal year 2003 disbursements and net sales because we lacked information to calculate the ratio for fiscal year 2004.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

**Table 21: CDSOA Effects on Crawfish Companies**

<b>Category</b>	<b>Positive effects</b>	<b>Little or no effects</b>	<b>Negative effects</b>	<b>No basis to judge</b>	<b>Number of respondents</b>
<b>Recipients</b>					
Prices	3	13	0	0	16
Net sales	9	7	0	0	16
Gross profits	11	4	0	0	15
Net income	14	2	0	0	16
Property, plant, and equipment	11	3	0	0	14
Research and development	5	9	0	0	14
Employment	11	5	0	0	16
Ability to compete	10	6	0	0	16
Market share	5	9	0	0	14
<b>Non-Recipients</b>					
Prices	2	1	5	1	9
Net sales	0	1	8	0	9
Gross profits	0	1	8	0	9
Net income	0	1	7	1	9
Property, plant, and equipment	0	2	7	0	9
Research and development	0	3	4	2	9
Employment	0	2	7	0	9
Ability to compete	0	0	9	0	9
Market share	0	2	6	1	9

Source: GAO analysis of company responses to structured questions.

**CDSOA Effect on Company Ability to Compete in U.S. Market**

Table 22 provides these companies' responses to our question on CDSOA's effect on their ability to compete in the U.S. market.

**Table 22: CDSOA Effect on Crawfish Companies' Ability to Compete in the U.S. Market**

Increased	Stayed about the same	Decreased	Don't know/no basis to judge	Number of respondents
<b>Recipients</b>				
12	3	0	1	16
<b>Non-Recipients</b>				
0	1	8	0	9

Source: GAO analysis of company responses to structured questions.

### Company Uses of CDSOA Funds

We also asked companies to describe how they used the CDSOA payments that they received. However, the law does not require that distributions be used for any specific purpose. Recipient companies reported a wide range of uses for the funds. For example, most of the companies that reported this information said they purchased or upgraded equipment, buying new or larger delivery trucks, boilers, ice machines, freezers, coolers, and vacuum-pack machines. Several companies bought more crawfish to peel and hired more employees, thereby increasing their production of tail meat. Several companies said that they made investments and repairs to their plants, such as installing or expanding docks for receiving shipments of whole crawfish. Several also paid off long-standing company and personal debts. For example, the head of one small family-run company said he paid off mortgages on the plant and his residence, bought new equipment, and made needed repairs without incurring new financing costs. One company said that it started a pension plan for its employees.

### Net Sales and Employment Trends

More than half of the recipient companies that we surveyed had growing net sales in the 2001 through 2004 time frame. Other companies' net sales fluctuated, decreased, or were relatively stable. Several respondents said that one of the most significant outcomes of the CDSOA program was to encourage them to purchase and process more crawfish and freeze more tail meat for sale in the off-season, thereby improving their year-round cash flow. Most non-recipients that responded to our survey did not provide net sales information.

More than half of the crawfish recipient respondents also reported growth in employment levels, and some of these increases were significant. One company quadrupled the number of production and related workers during

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the 2001 through 2004 period (from 28 to 111) and the number of such workers at three other companies doubled. Several stated CDSOA enabled them to hire more people. Three recipients reported net decreases in the number of production and related workers in this time period. Non-recipients also generally did not report employment information.

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## Extent of Overseas Production

Survey respondents said they process tail meat exclusively in the United States. We did not gather any information that disclosed whether, in the course of doing business, any of these processors also import or offer imported tail meat for sale.

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## Scope and Methodology

To obtain crawfish tail meat processing companies' views on CDSOA's effects, we sent out a set of structured questions to certain crawfish CDSOA recipients and non-recipients. CDSOA payments are made in this industry under one AD order.

To identify CDSOA recipients, we obtained information from CBP about the companies that have received payments in each of the three years that disbursements have been made and the amount of disbursements they have received. Using this information, we developed a list of 35 recipients and ranked them by their total CDSOA receipts. CBP provided additional information that indicated that certain companies had received funds under different names in different years. Because of time and resource constraints, we decided to survey 20 of the top recipients that had received about 90 percent of the total payments made under this order. We received 16 completed surveys. These 16 companies accounted for about 73 percent of CDSOA payments to this industry; their views may not be representative of all recipients, particularly those that received relatively small CDSOA disbursements.

The size of the universe of crawfish non-recipients not known.<sup>36</sup> We sought to obtain views from a comparable number of non-recipients as recipients, but we had difficulty identifying non-recipient crawfish companies. To

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<sup>36</sup>Precise information about the number of crawfish processors is unavailable. According to ITC, more companies are licensed to process crawfish than are active in any given year. In a 2003 report to evaluate the effects of the order, ITC received information from 42 crawfish processors, of which 27 were CDSOA recipients. See ITC, *Crawfish Tail Meat from China*, Investigation No. 731-TA-752 (Review), Publication 3614 (Washington, D.C.: July 2003).



identify these companies, we obtained information from associations or others that were knowledgeable about the industry. Specifically, we obtained contact information for current and former tail meat processors that are non-recipients from (1) a law firm that represents the Crawfish Processors Alliance, an entity that was a petitioner in this case; (2) the Louisiana Department of Agriculture and Fisheries, an entity that was a petitioner in this case; (3) the Louisiana Department of Health and Hospitals, which licenses and inspects processors; and (4) certain other tail meat processors. We lacked accurate contact information for several of these companies. We surveyed 17 current and former processors, from which we received 9 completed surveys.<sup>37</sup> The views of these respondents may not be representative of all non-recipients.

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## Views on CDSOA from Recipients and Non- Recipients in Softwood Lumber Industry

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### Background

Softwood lumber generally comes from conifers or evergreen trees including pine, spruce, cedar, fir, larch, Douglas fir, hemlock, cypress, redwood, and yew. Softwood is easy to saw and used in structural building components. It is also found in other products such as mouldings, doors, windows, and furniture. Softwood is also harvested to produce chipboards and paper. U.S. softwood lumber producers are generally located in the southeast and northwest, with the northwest softwood lumber being comparable to Canadian softwood lumber. CDSOA disbursements to the softwood lumber industry went to 143 companies in fiscal years 2003 and 2004. According to one estimate, about half of the softwood lumber companies are eligible to receive these disbursements.

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<sup>37</sup>We sent surveys to all current processors that we identified, with the exception of one company that had just entered the business and felt it lacked perspective on the questions. Included in the definition of current processors are certain companies that are not currently employing people to process tail meat but that continue to hold licenses to process crawfish and/or have engaged other companies to process tail meat on their behalf. We also sent surveys to former processors that had processed tail meat at any time since 2002, when CDSOA disbursements to this industry began.

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**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

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Canada's share of the U.S. lumber market rose from less than 3 billion board feet (BBF) and 7 percent of the market in the early 1950s to more than 18 BBF per year and 33 percent of the market in the late 1990s. In 2003, U.S. imports of softwoods were 49,708 thousands of cubic meters, and the ratio of these imports to consumption was 37.4 percent. Since 1981, the United States and Canada have been involved in several softwood lumber disputes, leading to, among other things, a 15 percent Canadian tax on lumber exports in 1986; a countervailing duty of 6.51 percent on Canadian imports in 1992, which ended in 1994; and a 1996 Softwood Lumber Agreement restricting Canadian exports for five years, until 2001.

The U.S. again imposed antidumping and countervailing duties on Canadian imports in 2002. From May 2002 to December 2004 most Canadian softwood lumber exported to the United States was subject to a combined antidumping and countervailing duty of 27 percent. In December 2004 this combined duty was reduced to 21 percent. These two duty orders funded about \$5.4 million in CDSOA disbursements to U.S. softwood lumber companies in fiscal years 2003 and 2004. Leading U.S. softwood lumber producers are among the industry's top CDSOA recipients. However, major U.S. producers are also among those ineligible to receive CDSOA disbursements. CBP has received over \$3.7 billion in deposits to cover estimated duties from softwood lumber imports from Canada.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

Table 23 depicts the top 10 CDSOA softwood lumber recipients for fiscal years 2003-2004.

**Table 23: Top 10 FY 2003-2004 Softwood Lumber CDSOA Recipients**

	<b>Company</b>	<b>Amount paid</b>	<b>Amount claimed</b>	<b>Amount paid as a percentage of total paid to industry</b>
1	International Paper	\$761,907	\$3,450,790,984	13.98
2	Sierra Pacific Industries	549,622	2,479,493,488	10.09
3	Stimson Lumber	350,766	1,587,151,896	6.44
4	Hampton Resources	321,954	1,459,096,581	5.91
5	Potlatch Corporation	261,543	1,186,058,000	4.80
6	Temple Inland Forest	165,907	763,770,440	3.04
7	Plum Creek Reek Timber	141,260	650,304,609	2.59
8	Swanson Group Inc	135,481	623,700,679	2.49
9	Gilman Building Products	120,249	550,635,410	2.21
10	Seneca Sawmill	107,278	483,738,802	1.97

Source: GAO analysis of CBP data.

## CDSOA Effects on Softwood Lumber Companies

### Softwood Lumber Recipients and Non-Recipients Reported Little or No Effects from CDSOA Payments

Recipient and non-recipient companies generally noted that, because CDSOA disbursements had been so small in fiscal years 2003-2004, totaling about \$5.4 million, they had had little or no effect on their companies.

Although recipient companies vary greatly in their overall size, these companies do not vary significantly in terms of the amount they have received through CDSOA as a percentage of their sales in fiscal year 2004.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

Specifically, CDSOA disbursements to company sales amounted to less than 1 percent for the recipient companies in our study.<sup>38</sup>

However, some recipient and non-recipient companies emphasized that, if the United States ever were to liquidate and disburse the large amount of softwood lumber duties currently being held in deposit by Treasury, these disbursements would have major effects on both recipient and non-recipient companies. One recipient company noted that these disbursements would have positive effects on its company, while a non-recipient company emphasized negative effects. Because capital is a major function in competitiveness, a non-recipient company stated that, if recipient companies were to invest large CDSOA disbursements on new mills, they would be able to dramatically increase their efficiency, output, and market share.

Table 24 provides softwood lumber recipients and non-recipients' responses to our questionnaire on CDSOA's effects.

**Table 24: CDSOA Effects on Softwood Lumber Companies**

Category	Positive effects	Little or no effects	Negative effects	No basis to judge	Number of respondents
<b>Recipients</b>					
Prices	1	12	0	0	13
Net sales	1	12	0	0	13
Gross profits	1	12	0	0	13
Net income	1	12	0	0	13
Property, plant, and equipment	1	12	0	0	13
Research and development	1	12	0	0	13
Employment	1	12	0	0	13

<sup>38</sup>The ratio of a company's fiscal year 2004 CDSOA disbursements to its 2004 new sales may not be representative of this ratio for prior fiscal years or of the average ratio of disbursements to net sales for the company since CDSOA's inception, because of fluctuations in the size of CDSOA disbursements to net sales. Calculating average ratios would help take account of these fluctuations, but we did not calculate such ratios because we lacked consistent information about disbursements and net sales for all CDSOA recipients that responded to our case study questions.

**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

(Continued From Previous Page)

Category	Positive effects	Little or no effects	Negative effects	No basis to judge	Number of respondents
Ability to compete	1	12	0	0	13
Market share	1	12	0	0	13
<b>Non-Recipients</b>					
Prices	0	5	0	1	6
Net sales	0	5	0	1	6
Gross profits	0	5	0	1	6
Net income	0	5	0	1	6
Property, plant, and equipment	0	5	0	1	6
Research and development	0	5	0	1	6
Employment	0	5	0	1	6
Ability to compete	0	5	0	1	6
Market share	0	5	0	1	6

Source: GAO analysis of company responses to structured questions.

**CDSOA Effect on Company Ability to Compete in U.S. Market**

Recipient and non-recipient companies generally reported that the CDSOA disbursements had had no effect on their companies' ability to compete in the U.S. market.

Table 25 presents these companies responses to our question on CDSOA's effect on their ability to compete in the U.S. market.

**Table 25: CDSOA Effect on Softwood Lumber Companies' Ability to Compete in U.S. Market**

Increased	Stayed about the same	Decreased	Don't know/no basis to judge	Number of respondents
<b>Recipients</b>				
2	8	0	3	13
<b>Non-Recipients</b>				
0	2	1	3	6

Source: GAO analysis of company responses to structured questions.

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Company Uses of CDSOA  
Payments

We also asked companies to describe how they used the CDSOA payments that they received. However, the law does not require that distributions be used for any specific purpose. Overall, companies noted that they had used the payments for a variety of purposes, such as paying debt, past qualifying expenditures, general operating expenses, general corporate expenses, and capital investment. Others noted that the payments had been too small to track their use in any area.

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Net Sales and Employment  
Trends

Overall, recipient and non-recipient companies we contacted vary significantly in size. Both show slight increase in net sales and employment over the 4 years that CDSOA has been in effect. Leading U.S. producers are among the CDSOA recipient and non-recipient companies.

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Extent of Overseas  
Production

Most recipient companies we contacted produced CDSOA-related products domestically. Some non-recipient companies we contacted produced these products domestically. Others produced them both domestically and abroad.

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Scope and  
Methodology

To obtain softwood lumber companies' views on CDSOA's effects, we sent out questionnaires to certain softwood lumber CDSOA recipients and non-recipients. CBP made CDSOA payments to recipients in this industry in fiscal years 2003 and 2004 under an AD order and a CV order both issued in 2002.

To identify CDSOA recipients, we obtained information from CBP about the companies that had received CDSOA payments in the 2 fiscal years and the amount of disbursements they had received. Using this information, we developed a list of 143 recipients and ranked them by their total CDSOA receipts in the 2 fiscal years. Because of time and resource constraints, we decided to survey the top 14 recipients that had received about 60 percent of the total softwood lumber payments. CBP provided contact information on these companies to us. From these 14 companies, we received 13 completed surveys. These 13 companies accounted for about 59 percent of all softwood lumber disbursements. Their views may not be representative of all recipients, particularly those that received relatively small CDSOA disbursements.

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**Appendix III  
CDSOA Recipient and Non-Recipient  
Companies in Seven Industries**

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Given that about half of the industry is eligible to receive CDSOA disbursements, we sought to obtain views from a comparable number of recipients and non-recipients. To identify non-recipient companies, we obtained information from public and private sources that are knowledgeable about the industry. Specifically, we obtained information on non-recipients from the ITC and softwood lumber companies. We surveyed 15 companies and we received six completed surveys from them. These respondents included a wide range of top non-recipients, including one of the largest companies in the industry. However, their views may not be representative of all non-recipients.

# Comments from Customs and Border Protection

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

September 7, 2005

Mr. Loren Yager  
Director, International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Yager:

Thank you for the opportunity to comment on draft report GAO-05-979, *International Trade: Issues and Effects of Implementing the Continued Dumping and Subsidy Offset Act*. The Department appreciates the work done in this review to identify areas within the Continued Dumping and Subsidy Offset Act (CDSOA) program that need to be improved.

The Department of Homeland Security's (DHS's) U.S. Customs and Border Protection (CBP) generally concurs with the report's five recommendations to enhance the processing of CDSOA claims and payments and the collection of antidumping or countervailing (AD/CV) duties. Following are comments specific to the recommendations. Technical comments were provided under separate cover.

**Recommendation 1:**

To improve the processing of CDSOA claims, CBP should implement labor savings steps such as working with the ITC to formalize and standardize exchanges of electronic updates of the list of eligible producers, and requiring that company claims follow a standard form and be submitted electronically. This would also reduce data entry-related errors.

**Response:**

CBP representatives met with the U.S. International Trade Commission (ITC) on August 16, 2005 to establish a preliminary methodology on how to formalize and standardize exchanges of electronic updates. During December 2005, CBP will work in conjunction with the ITC to formalize this process. CBP agrees that a standard form is necessary and will have the regulations revised accordingly before the 2006 cycle. While CBP supports electronic filing, we will have to determine if existing statutes give us the authority to require electronic filing. If so, we will work with other government agencies to develop this capability.

[www.dhs.gov](http://www.dhs.gov)



**Recommendation 2:**

To further improve the processing of claims, CBP should have in place clear guidance for preparing CDSOA certifications or claims.

**Response:** CBP believes the regulations pertaining to preparing CDSOA certifications or claims are adequate; however, several issues have been identified that should be clarified. To clarify these issues, we will work to modify the regulations prior to the 2006 filing period. If this deadline cannot be met, we will use the Federal Register to clarify the issues.

**Recommendation 3:**

To enhance the processing of claims and payments in the face of a growing workload, CBP should develop and implement plans for managing and improving its CDSOA program processes, staff, and technology. For instance, a human capital plan would help ensure that the CDSOA program has staff in place with the appropriate competencies, skills, and abilities.

**Response:** CBP has already implemented a formal process with established procedures for handling CDSOA; however, these procedures are continually refined. Except for the areas noted in the previous recommendation, technology issues cannot truly be addressed until the full implementation of the Automated Commercial Environment program in 2009. CBP will develop a human capital plan and execute this plan to conform with budgetary and operational requirements.

**Recommendation 4:**

To enhance the verification of claims, CBP should implement a plan for systematically verifying CDSOA claims. This plan should aim to ensure that companies receiving CDSOA disbursements are accountable for the claims they make. CBP should also consider asking companies to justify their claims by providing additional information on their claims, such as the explanations of the basis for the claim, supporting financial information, and an independent assessment of the claim's validity and accuracy.

**Response:**

CBP agrees that companies receiving CDSOA disbursements should be accountable for the claims they make and should provide additional information when the claim is filed. The additional information will aid CBP in determining the risk of inaccurate disbursements for claims that cannot be justified. In addition, CBP concurs that a method for systematically verifying CDSOA claims prior to payment of the funds should be implemented. CBP will work to formalize this process by April 1, 2006.

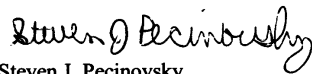
**Recommendation 5:**

To better address antidumping and countervailing duty collection problems, CBP should report to Congress on what factors have contributed to the collections problems, the status and impact of efforts to date to address these problems, and how CBP, in conjunction with other agencies, proposes to improve the collection of antidumping and countervailing duties.

**Response:** CBP has already committed to coordinate with other affected agencies and to report to Congress not later than December 31, 2005, on legislative, regulatory, and procedural suggestions to improve the collection of antidumping and countervailing duties. An Interim Report was completed on July 7, 2005.

We thank you again for the opportunity to provide comments on this draft report and look forward to working with you on future homeland security issues.

Sincerely,



Steven J. Pecinovsky  
Director  
Departmental GAO/OIG Liaison Office

# GAO Contact and Staff Acknowledgments

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## GAO Contact

Loren Yager, (202) 512-4347

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## Staff Acknowledgments

Kim Frankena served as Assistant Director responsible for this report, and Juan Tapia-Videla was the Analyst-in-Charge. In addition to those named above, the following individuals made significant contributions to this report: Shirley Brothwell, Ming Chen, Martin de Alteris, Carmen Donohue, John Karikari, Casey Keplinger, Jeremy Latimer, and Grace Lui. The team benefited from the expert advice and assistance of Jamie McDonald, Jena Sinkfield, Tim Wedding, and Mark Speight.

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