



December 6, 2021

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Seth Renkema
Chief, Economic Impact Analysis Branch
Office Of Trade, Regulations and Rulings
U.S. Customs and Border Protection
90 K Street, NE
Washington, DC 20229-1177

Re: U.S. Customs and Border Protection: Global Business Identifier (GBI)
OMB Control Number 1651-0NEW

Dear Mr. Renkema:

The E-Merchants Trade Council, Inc. (EMTC) appreciates the opportunity to provide comments on the proposed Global Business Identifier (GBI) information collection and Evaluative Proof of Concept (EPoC) published in the Federal Register at 86 Fed. Reg. 55629 (October 6, 2021).

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC's advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

1. Determining a Single Business Identifier

EMTC understands that CBP seeks to replace the Manufacturer/Shipper Identification Code (MID) through this EPoC by using three unique identifiers to determine which is the best solution:

- Legal Entity Identifier (LEI)-owned and managed by the Global Legal Entity Identifier Foundation (GLEIF) (20 digits)
- Global Location Number (GLN)-owned and managed by GS1 (13 digits)
- Data Universal Numbering System (DUNS)-owned and managed by Dun & Bradstreet (D&B) (9 digits)

CBP's goal to replace the MID must be understood in the context of the intended purpose of the original identifier as articulated in New York Region Pipeline No. 1308 dated November 21, 1986.

In order to operate an effective automated mechanism for selective examination of imported products, the Customs Service requires a method for *uniquely identifying foreign manufacturers (or, if manufacturers are unknown foreign suppliers)*. Various

methods have been tried, but a technique known as "keylining" provides the most effective device for capturing this information.

See, New York Region Pipeline No. 1308 at 1 (emphasis added). In the December 20, 1989 New York Region Pipeline No. 1938, Customs published a proposal to "amend Section 142.6, Customs Regulations to require that the invoice contain the name and complete address of the individual or firm who is responsible for invoicing the merchandise, viz., the manufacturer or the shipper", with effective date of February 20, 1990. See, New York Region Pipeline No. 1938 at 1.

EMTC supports CBP's goal of seeking an identifier that will "uniquely discern main legal entity and ownership; specific business and global locations; and supply chain roles and functions." See, 86 Fed. Reg. at 55629. This proposal is an expansion, not merely a replacement, of the intended use of the MID, identifying the actual manufacturer of the goods or the foreign supplier. We do not believe that exploring the use of the LEI, GLN and DUNS will achieve CBP's policy goal for several reasons.

First, the LEI, GLN and DUNS are all private sector systems that are designed as a basic building block to using an ecosystem of services offered by these entities. In some cases, entities will need to pay a license fee to obtain the identifier for the company. EMTC represents MSME e-sellers who do not have the resources to pay license fees for a GBI that has limited use for its business besides customs compliance, and the ancillary suite of services connected with that GBI from selected private sector providers.

Second, the LEI and DUNS numbers both address financial stability and ownership structures of the identified entity. For example, does the ownership of companies serve as the indicator of risk of fraudulent activities when the majority of legitimate shipments are unrelated parties?

Third, if CBP envisions the final GBI to be a combination of elements from the three identifiers, it faces a similar failure as experienced with the MID. The persons charged with the responsibility to create the MID applied it inconsistently due to a lack of understanding of the process and/or the inconsistency of data presented on trade documents. The same error can be repeated using elements of these data sets. The need to obtain these numbers each time there is a change in one of the supply chain participants will create backlogs in delivery of goods to ultimate consumers, and potential spoilage, damage or theft of the goods. Simply stated, this proposal would cripple the international small package supply chain if GBI were mandated.

The FRN envisages the "utility of collecting and/or combining the identifiers' data" - the fundamental point is whether the underlying controls and processes are sufficient to produce an accurate identifier. Combining three identifiers with specific purposes and attempting to repurpose these for an incongruous use seems unlikely to produce an accurate identifier.

Fourth, EMTC is concerned about the government imposing a private sector standard for regulatory purposes. It seems discriminatory to force MSME's to purchase numbers from specific private entities in order to ship internationally to expand their businesses. Small businesses that produce goods in the U.S. create jobs for Americans and increase profits by exporting those goods which helps secure a competitive advantage. EMTC recommends that the government set policy goals for the identification of participants in the supply chain and enables the private sector to develop the means to implement those goals.

CBP has stated that the concerns to identify the entities in a supply chain relate to identifying actors involved in money laundering and IPR violations. The components of the GBI look at financial aspects and

location of the parties. However, in both cases of concern the product is a key indicator of a fraudulent activity and the product itself is not addressed by the GBI.

2. GBI Imposes a Burden Especially on MSME

CBP's proposal to add GBI is an expensive burden to impose on the trade community. Large companies invest significant sums generating trade data to meet current requirements, and really want to limit data elements solely for customs compliance purposes. Most MSME's do not have trade management systems, or knowledge to even know what these unique identifier numbers are or how to get them. Their goods would be backlogged at port warehouses waiting for responses or abandoned due to the increased costs. Practically speaking, how would you ever get these millions of companies to comply? How would these entities have bandwidth to meet this demand? How will e-commerce benefit from a disrupted supply chain?

GS1 identifiers are an inventory control system rather than the information needed to cross borders. For example, the product GS1 is most known for is the barcode (or Universal Product Code UPC) that companies need to sell their product to a retailer. In the case of e-commerce, e-sellers need a UPC to sell their products on an e-commerce marketplace platform. Thus, the GS1 is a product-based ecosystem. In order to obtain a GS1 Company Prefix to connect the UPC to a specific entity, a company needs to purchase a company prefix as noted on the GS1 website:

The GS1 Company Prefix is a unique number that will identify your company as the owner of your barcode and the product it's on. The GS1 Company Prefix is a part of every barcode you will create. Prefixes are available in different "capacities" that allow you to barcode as few as 10 unique products and as many as 100,000 unique products. You'll need a barcode for each product variation, such as size and color. Choose a prefix capacity that best meets the needs of your business now and in the near future.

See, GS1 website at: <https://my.gs1us.org/product/1024/gs1-company-prefix>. Because GS1's Global Location Number is designed to work with other complementary features, such as the Company Prefix and UPC, we do not believe that using one element as a GBI is appropriate.

Participants in this pilot program are required to have three GBI indicators for each of six (6) parties cited to participate, or a total of 18 identifiers. The cost to acquire these 18 identifiers limits the scope of those who have sufficient available funds to procure the necessary GBI elements at their expense to even apply to participate. Micro, small and medium sized e-commerce sellers (E-Merchants) will find this cost prohibitive to participate. The pilot envisions a stable foreign manufacturing entity or related party as is most common with larger importers. MSMEs include re-sellers that have a higher probability of frequent changes in sourcing.

The FRN also suggests that the actual names of the entities involved in the transaction and recorded on an entry will be replaced by this numeric identifier. Long numeric identifiers increase the risk of input errors and inaccurate entry submissions to CBP. (We note that numerical identifiers are preferable to alpha-numeric as automated systems have difficulty processing non-Latin alphabets and Asian language characters, which will limit interoperability of the GBI.) This will unduly frustrate the internal auditing process by requiring additional data tables to interpret the parties named on the document. This is non-value-added work for all importers.

If these assumptions are accurate, MSMEs who make up a significant portion of e-commerce are precluded from participation. The results of the pilot will be skewed toward larger trade parties and traditional transaction methods which are being overtaken in volume by e-commerce. We encourage efforts to ensure that entrants are truly representative of all the intended users of this system as cost will clearly be a barrier to entry to certain sectors of the importing community.

3. GBI EPoC

We understand that CBP seeks EPoC participants who will provide specific information in its application to participate in the EPoC:

- Company/entity legal name,
- legal entity headquarters and/or manufacturing site address,
- business phone number (associated with provided address),
- company website,
- Manufacture/Shipper Identification Code (MID), and
- Authorized Economic Operator (AEO) identification number (optional).

Depending upon the pool of your participants the participant may not have the information or it may not apply to their business. It is not clear how the EPoC will benefit e-commerce shipments.

4. Providing Additional Data Does Not Result in Better Compliance

We note that importers providing CBP with more data is not the answer. We point to Single Window as “Exhibit A” for proof that providing more data to federal agencies has not resulted in the efficiencies and compliance benefits that were promised. In particular, we think it is important that CBP clarify the following points:

- Would the GBI apply to all types of shipments?
- Would the GBI apply to all modes of transportation and service providers?
- Does GBI apply at a product level which is at the center of concern for IPR and money laundering activities?

Assuming the answer to the questions above is “yes,” then why not evaluate alternative existing numbers or certifications such as C-TPAT?

This proposal is another one-sided government proposal. Where is the value and what are the benefits to the private sector?

Additionally, EMTC would like to know whether more data enables better risk assessment? Our experience is that the collection of more data compiled in one place did not work in Single Window.

Our belief is that more data makes it less compliant as data requirements put companies in a position of the “data chase.” In addition to cost, it creates a false sense of compliance by information volume.

5. GBI Requires a Global Solution

The solution to GBI is Customs Modernization. There are many new initiatives that require information (e.g., “Know Your Customer” or “KYC”, optional for OECD for legal identifiers for direct tax purposes). We recommend that CBP look across all taxes where KYC or legal identifiers may be coherent for Customs.

We are aware of the global use of a Legal Entity Identifier which would be a good first point for review (<https://www.gleif.org/en/lei-solutions/regulatory-use-of-the-lei>). Our recommendation is to ensure there is alignment for the legal entity identifier across all the different uses that could be envisaged for a “GBI”, not just in Customs. We are aware of the Know Your Customer requirements for Anti-Money Laundering, the OECD Common Reporting Standard and Platform Reporting Requirements for E-Commerce. It would seem better for these to be maintained by national administrations who make the information publicly available so that APIs can be developed to extract the data. Note that this type of system already occurs in the EU for VAT number validation where the European Commission make available a VAT number validation tool based on information provided by each Member State (https://ec.europa.eu/taxation_customs/vies/). Perhaps the OECD could take such an initiative forward as part of the BEPS Inclusive Framework where identifying beneficial owners is already an identified issue. The larger benefit of this direction is global harmonization for Customs cooperation across borders.

6. Simplify trade documentation

Contrary to the policy goal of having a GBI, CBP is simply adding more data elements and increasing complexity.

- How does GBI simplify trade?
- How will CBP manage GBIs for foreign entities?
- What is the impact of GBI at the border?
- How will GBI be used to assess risk and ensure the process is effective in producing a consistent unique and accurate identifier?
- How will CBP educate foreign suppliers on GBI?
- Does the GBI apply to manifest clearances? If yes, is it a single number for the manifest?

Fundamentally CBP needs to examine the GBI proposal against an operational process mapping prior to undertaking a costly pilot program to determine if this additional data will enable the agency to identify fraud and bad actors. It is hard to envisage at this stage that this objective will be achieved.

7. Conclusion

Whenever CBP requests more data, the private sector must ask “data for what purposes?” We understand that it is critical to identify specific entities in the supply chain to assess risk. However, if the goal of the GBI is to replace MID, that data element has proven to be insufficient as a risk assessment element. The purpose of this FRN is to find a replacement for the MID. However, we believe the proposed GBIs have the same inherent weakness as the MID data accuracy and understanding. CBP is proposing the creation of a new identifier rather than leveraging existing standardized, recognized, globally available identifiers such as those in OECD. In summary, EMTC believes that the proposed additional information collection and this EPoC will not achieve CBP’s policy goal to determine a single unique identifier, which can be used in risk assessment.

EMTC appreciates the opportunity to comment on the GBI and EPoC, and we are happy to discuss the ideas expressed above in more detail.

Sincerely,

A handwritten signature in blue ink that reads "Marianne Rowden". The signature is written in a cursive, flowing style.

Marianne Rowden
Chief Executive Officer