

Service

International Trade &
Supply Chain

Trade Legislation Addressing Evasion of Antidumping and Countervailing Duty Orders May Affect U.S. Producers, Foreign Producers and Importers

As part of the bipartisan, bicameral package of trade legislation currently moving through Congress (read our previous coverage of this development), both the Senate and House are considering bills which would require U.S. Customs and Border Protection (CBP) or the U.S. Department of Commerce (Commerce) to make determinations on the alleged evasion of antidumping and countervailing duty orders. Such determinations must occur within a set time period, and after review, the agencies are charged to take appropriate action.

These bills come after many years of complaints by U.S. companies alleging that the effectiveness of antidumping and countervailing duty orders have been undermined by foreign producers and some U.S. importers who illegally transship or intentionally mislabel imported products. The complaints also have alleged that CBP has not acted quickly or in a transparent manner to address the evasion or mislabeling. The new legislation, if passed, will respond to those complaints by setting time limits for reviews and by providing more formal administrative proceedings. U.S. companies would be allowed to participate in these proceedings in a manner similar to current antidumping and countervailing duty reviews.

Under the laws being considered, either CBP or Commerce (depending on whether the House or Senate approach is accepted in Conference Committee) will be required to:

- initiate an investigation soon after receiving a complaint;
- make a preliminary determination within about nine months;
- allow for comments of interested parties; and
- issue a final determination.

Determinations of the agencies will be subject to judicial review.

Many questions remain about whether the bills will be passed, what version will come out of Conference Committee, and how they will be implemented. Looming over all the issues is whether Congress will provide additional funds for this increased effort, or whether it expects the agencies to divert funds from other efforts to address evasions. The House bill provides that Commerce will be in charge of the investigations of evasions, while the Senate bill gives authority to CBP. It is unclear which will prevail in conference. Also unclear is what rights foreign producers or importers will have in the proceedings, which are focused on input from U.S. producers. With evasion having implications of criminal penalties in many cases, the relationship between civil and criminal ongoing investigations also presents a challenge to the parties.

For U.S. producers, these bills have the potential to make the process much more transparent and predictable, and they provide companies with an opportunity to have formal input in the process. For importers and foreign producers, the new procedures create the need to monitor such evasion investigations carefully to ensure that they are not adversely affected. Neither of the bills makes clear what, if any, notice will be given to foreign producers or importers, so the evasions cases could be a trap for the unwary.

What This Means To You

Because of the important implications of these bills, all U.S. and foreign producers and importers should consider the implications for their businesses; work with counsel to comment on any rulemaking that results from passage of the legislation; and monitor filings that could have an impact on their business.

Contact Us

For assistance with this, or for more information concerning the legislation and its potential impact on your business, please contact Jeffrey Neeley at 202.378.2357 or Michael Holton at 202.378.2351.