

LEGAL UPDATES

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Services

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New Rules on Trade Remedies Orders Pose Risks to Importers

On August 22, 2016, U.S. Customs and Border Protection (CBP) published interim rules on new formalized procedures for investigating evasion and circumvention of trade remedies orders. The provisions empower U.S. producers, other importers and foreign exporters to report competitors whom they believe are acting illegally. Importers also face the possibility of having adverse inferences taken against them because of failure of their foreign suppliers to respond adequately.

The Background

For years, U.S. manufacturers and unions complained that the U.S. Department of Commerce and the CBP did not do enough to enforce and protect against evasion and circumvention of antidumping and countervailing duties (ADD/CVD). In response, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was passed with bipartisan support and signed by President Obama on February 24, 2016. The new CBP rules are the first step in implementing that act.

Evasion that is covered under the rules includes, but is not limited to:

Transshipping merchandise through third countries for purposes of changing the country of origin (i.e., the false labeling of the country of origin markings)

False or incorrect shipping and entry documentation

Falsely labeling, misclassifying or falsely reporting the merchandise

Allegations may be filed by almost any party that has knowledge and specific information required under the law that merchandise has entered the United States through evasion. This includes not only U.S. producers but also other

importers and foreign manufacturers of the covered merchandise that believe their competitors are evading ADD/CVD.

What This Means to You

For importers as well as U.S. producers, the new procedures create an enhanced opportunity to provide information to CBP regarding evasion by other parties. Information can be provided to CBP confidentially, and we expect that the new procedures will lead to increased allegations and investigations that uncover illicit activity.

At this point it is not clear whether CBP's procedures will be sufficient to achieve the goals set by Congress, particularly with regard to the transparency of the process, and whether the staffing levels of the government will be sufficient to handle any increased workload.

Importers or exporters engaged in transshipments or circumvention are at higher risk now with the greater emphasis on enforcing the trade laws and preventing this activity. What may not be apparent at first is that even legitimate importers that do not know the goods they are purchasing have been transshipped or are circumventing a dumping or countervailing duty order could be at risk. This is because of the potential use of adverse inferences against non-cooperative foreign producers during the course of an investigation, which could result in higher duties being applied to even a supplier who has no knowledge of illicit activity. Thus, "knowing your supplier" becomes even more imperative for importers.

Contact Us

For a detailed description of the new regulations and their possible effect on your business, contact your Husch Blackwell attorney, Jeffrey Neeley or a member of our International Trade & Supply Chain team.