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Importers beware



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Last June, a grand jury indicted 10 companies and six individuals for allegedly conspiring to import catfish from Vietnam under false pretenses to avoid anti-dumping duties. Two persons were arrested, and the Justice Department is seeking the forfeiture of all falsely imported merchandise, or a \$16 million fine. In December, the U.S. Court of International Trade fined two persons and their companies more than \$36 million for falsely importing Chinese silicon metal as Korean origin, also to avoid anti-dumping duty liability. These prosecutions are the latest actions by the Commerce Department and Customs and Border Protection to strengthen the enforcement of anti-dumping and countervailing duty orders.

Because U.S. law makes importers responsible for all duties and penalties levied against the goods they enter, companies involved in the import of goods subject to AD/CVD orders should take particular care to ensure that they fully comply with U.S. law, and are not accidentally caught in a foreign producer's attempts to circumvent it. Here are some things that importers should consider:

- U.S. importers should ensure that their foreign suppliers know they must participate fully, completely and truthfully in U.S. AD/CVD proceedings. In nearly all of these proceedings, the Commerce Department seeks detailed information from foreign producers — their U.S. sales, sales in comparison markets and, often, their cost of production. If Commerce concludes that a foreign supplier has not responded truthfully, or that it has failed to act to the “best of its

abilities,” or even that its reported information cannot be reconciled to its company documents, Commerce can and likely will impose a punitively high margin on the foreign producer's exports. But it is the importer who must pay the duties.

U.S. importers should take an active role in AD/CVD proceedings, and educate their suppliers about their responsibilities. They should secure commitments from their suppliers that the foreign producers will comply with any informational requests. Importers may also ask their suppliers to ensure that their books and records could withstand Commerce Department scrutiny.

- Importers should ensure that they are not unwittingly involved in AD/CVD circumvention. A foreign producer subject to an AD/CVD order may be tempted to label its products with a different country of origin, and U.S. importers must ensure that they are not inadvertently implicated. For example, if an anti-dumping duty order is imposed on a product from China, and shortly thereafter a new exporter begins to offer nearly identical “Vietnamese” merchandise, an importer should be aware of the possibility that Chinese product is being transshipped through Vietnam (or simply being relabeled).

One consequence of an AD/CVD order is the development of competing industries in countries not covered by the order, so the emergence of new exporters is not per se evidence of transshipment. Nevertheless, a prudent importer should ensure that its new supplier is properly labeling its goods' origin, and not simply take a supplier's representation on faith.

- Importers should be well-versed in the country-of-origin rules governing imports subject to AD/CVD orders. Foreign producers often mark the country of origin based on the law in the exporting country. However, the question of a product's origin — and whether it is potentially subject to an AD/CVD order — is decided under U.S. law. For example, assume that a Thai producer purchases an input from a Chinese supplier that, if shipped directly to the U.S., would be subject to an anti-dumping duty order. The Thai producer then processes that Chinese input into a different product with the same general characteristics. Customs may conclude that the processing is sufficient to confer Thai country-of-origin on the finished product. Commerce may disagree, and conclude that the product — even though processed in Thailand and shipped from Thailand by a Thai company — remains of Chinese origin for purposes of enforcing the Chinese anti-dumping order.

It is true that one of the leading causes for this increased enforcement effort — the Byrd Amendment, which provided for distribution of AD/CVD duties to affected domestic industries — has now been repealed. Nevertheless, having been alerted to fraud and lost duties in the AD/CVD area, the U.S. is unlikely to reduce its enforcement activities any time soon. U.S. importers should therefore be alert to the many ways they could be implicated, and act accordingly.

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