

Interim Regulations Issued on Investigations of Evasion of Anti-Dumping and Countervailing Duties

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The anti-dumping (AD) and countervailing duty (CVD) laws provide companies that manufacture products in the United States with a remedy for the injury caused by imports of products that are dumped (*i.e.*, sold at unfairly low prices) and subsidized. This remedy takes the form of increased duties (*i.e.*, AD/CVD duties) on dumped and subsidized imports that allow U.S. producers to compete on a level playing field with such imports. U.S. Customs and Border Protection (CBP) is responsible for ensuring that the appropriate duties are collected on all imports of merchandise. However, foreign producers and exporters of products that are subject to AD/CVD duties sometimes attempt to evade payment of these duties and, as a result, undermine the relief afforded to U.S. producers. The tactics used to avoid the payment of AD/CVD duties may include misrepresentation of a product's true country of origin, false or incorrect shipping and entry documentation, or misreporting the product's physical characteristics.

On February 24, 2016, President Barack Obama signed into law the Enforce and Protect Act of 2015 (the Enforce Act).¹ While CBP already had pre-existing authority to investigate the evasion of AD/CVD duties, the Enforce Act strengthens this authority by establishing a formal process to investigate allegations of such evasion that are made by interested parties or other federal agencies.² This process includes the right of interested parties to participate in evasion investigations by providing factual information and submitting written arguments to CBP.³

On August 22, 2016, CBP published interim regulations regarding the investigation of claims of evasion of AD/CVD duties.⁴ These interim regulations clarify a number of issues regarding how CBP will conduct such investigations, including but not limited to:

- **Entries to Be Investigated.** CBP will investigate the evasion of AD/CVD duties with respect to entries of merchandise that were made within one year prior to the receipt of an allegation of evasion.
- **Interested Parties.** Interested parties that may participate in an investigation include: (i) a foreign manufacturer, producer, exporter or any importer of merchandise covered by an AD/CVD order or trade associations that consist of such foreign producers, exporters or importers of such merchandise, (ii) a manufacturer, producer or wholesaler in the United States of the product in question, (iii) certain unions, worker groups and trade associations involved in the manufacture, production or wholesale in the United States of the product, and (iv) for agricultural products, associations that are representatives of processors, producers and growers.
- **Evidentiary Record.** The evidentiary record on which CBP will base its determination will consist of information (i) obtained by CBP independently, (ii) submitted by the parties voluntarily and (iii) submitted by the parties at the request of CBP. CBP may conduct verifications of the information submitted by the parties in the United States or in foreign countries.
- **Adverse Inferences.** CBP may draw adverse inferences against interested parties that fail to cooperate and comply to the best of their ability with requests for information made by CBP.
- **Procedural Issues.** The interim regulations address a number of procedural issues such as the specific information that must be contained in an allegation of evasion,

¹ Pub. L. 114-125, 130 Stat. 122, 155 (Feb. 24, 2016).

² *Id.*

³ *Id.*

⁴ See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, 81 Fed. Reg. 56477 (Aug. 22, 2016) (interim regulations; solicitation of comments).

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who may make submissions on behalf of interested parties, how to protect business confidential information submitted to CBP, the ability to submit written arguments, and the general schedule of deadlines pursuant to which an evasion investigation will be conducted.

U.S. producers injured by dumped and subsidized imports should be aware that it will now be significantly more difficult for foreign producers and exporters to evade any AD/CVD relief that they are able to obtain. In addition, U.S. producers that are currently being impacted by the evasion of AD/CVD duties should be aware that they may already file allegations of evasion pursuant to the interim regulations issued by CBP. Importers of products that are subject to AD/CVD duties also may file allegations against competitors that are gaining an unfair competitive

edge in the market by unlawfully evading the payment of such duties. Finally, foreign producers, exporters and importers should ensure that they take appropriate steps to comply with U.S. laws and regulations concerning the payment of AD/CVD duties and, if allegations are filed against them, ensure that they effectively participate in any investigations initiated by CBP regarding the evasion of AD/CVD duties on imports of their merchandise.

The interim regulations published by CBP are effective as of August 22, 2016. Any parties that wish to comment on CBP's interim regulations may do so by October 21, 2016. CBP will take these comments into consideration before issuing its final regulations regarding investigations of AD/CVD evasion.