

Trump Administration Takes New Actions to Enforce Anti-Dumping and Countervailing Duties and Customs Laws

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On March 31, 2017, President Donald Trump signed an executive order calling for U.S. Customs and Border Protection (CBP), the U.S. Trade Representative and the Departments of Commerce, Homeland Security, Justice and Treasury to increase efforts to enforce anti-dumping and countervailing (AD/CVD) duty orders and U.S. customs laws. While the main focus of the executive order is to ensure that duties are collected on imported goods that have been found to be dumped (*i.e.*, sold at unfairly low prices) or subsidized, it also calls for enhanced enforcement of other U.S. customs laws, including restrictions on imports of counterfeit goods.

These steps are the latest indication of the importance that the current administration places on the enforcement of existing U.S. trade laws. As CBP Acting Commissioner Kevin K. McAleenan emphasized in commenting on the executive order, it “gives CBP and our partners at U.S. Immigration and Customs Enforcement important and powerful new tools to further level the playing field for critical U.S. industries.”

As highlighted in the executive order, as of May 2015, at least \$2.3 billion in AD/CVD duties remained uncollected as a result of unlawful duty evasion by certain importers. The executive order aims to close this gap and increase AD/CVD duty collection by instructing CBP to require additional customs bonds at the time of importation and by stepping up enforcement efforts through a strategic, risk-based approach. In this regard, the executive order builds on legislation enacted in 2016 that strengthened CBP’s authority to investigate evasion of AD/CVD duty orders and enhanced the ability of the United States to collect AD/CVD duties and enforce U.S. customs laws.¹

The latest action by the Trump administration will accelerate these efforts by prioritizing enforcement actions and allocating government resources accordingly. Specifically, the executive order calls for CBP (in consultation with other agencies) to develop a plan by June 29, 2017, that will:

- require importers of goods subject to AD/CVD duties who have no prior record of imports or who have failed to timely pay adequate AD/CVD duties to post bonds or provide other security to cover the full amount of AD/CVD duties on their imports;
- combat violations of the trade and customs laws through all available enforcement means;
- enable the interdiction and disposal of inadmissible merchandise, including through methods other than seizure; and
- ensure the timely and efficient enforcement of intellectual property (IP) rights laws on imports, including through the issuance of new regulations to enable IP rights holders to work more closely with CBP in identifying infringing merchandise.

Separately, the executive order instructs the U.S. attorney general to develop recommended prosecution practices and allocate appropriate resources to ensure that federal prosecutors treat violations of trade and customs law as a high enforcement priority.

The rapid implementation of the new executive order will have important consequences for U.S. companies and importers. U.S. manufacturers and workers who have been injured by unfairly traded imports can expect to see fewer instances of duty evasion and other schemes that reduce the effectiveness of AD/CVD orders. For their part, U.S. importers will need to pay increasing attention to their compliance policies and procedures to avoid triggering the increased customs bond requirements and further mitigate the risks of customs violations.

¹ See our September 21, 2016, client alert “Interim Regulations Issued on Investigations of Evasion of Anti-Dumping and Countervailing Duties.”