



The Bottom Line

October 2019 | VOL. 8

POTENTIAL RISE IN ILLEGAL TACTICS TO AVOID DOUBLE DUTY HIT FROM CHINA TARIFFS AND ANTI-DUMPING DUTY

Summary

Recent analyses from both GateHouse Media and attorney Benjamin Bucy reveals an increase in attempted avoidance of additional duties levied on products from China. The products are either assigned an incorrect Harmonized Tariff number (from which duty rates are derived) or mislabeled with an incorrect country of origin. Importers may be attempting to circumvent either punitive China tariffs, anti-dumping duties, or both.

Background

Anti-dumping (AD) occurs when a foreign manufacturer sells goods in the United States for less than the fair market value, causing injury to U.S. industries. AD cases are company and country-specific. The duty is calculated to bridge the gap between the fair market value and the sale price of the goods. Under the Tariff Act of 1930, U.S. industries may petition the government for relief from imports that are sold in the United States at less than fair value ("dumped"). Under the law, the U.S. Department of Commerce determines whether the dumping exists and, if so, the margin of dumping. The U.S. International Trade Commission (USITC) determines whether there is material injury or threat of material injury to the domestic industry by reason of the dumped imports. If a finding of dumping is confirmed, subsequent imports of the specific commodity from the specific manufacturer(s) are subject to an additional anti-dumping duty. Anti-dumping duties are calculated independently of either standard duty rates or punitive China tariffs. It is possible for all three to be applicable to any one entry. Every type of product shipped to the U.S. bears its own 10-digit classification code, known as the Harmonized Tariff Schedule (HTS) code. The more similar the product types, the more similar the codes. A simple switch from a 10 to 20 at the end of a code could reduce a tariff without raising suspicion. The False Claims Act is a federal law that imposes liability on entities who defraud the U.S. government. The law allows (under a "qui tam provision") people not affiliated with the government, called "relators" under the law, to file actions on behalf of the government. The actions are informally called "whistleblower" suits when the relator is employed by the organization accused.

Current Status

For its analysis, GateHouse Media examined several pairs of similarly coded Chinese imports where one was subject to increased tariffs and the other was not. The data, obtained from the U.S. Census Bureau, showed that imports of the affected products decreased after the trade war while those of the unaffected products increased. Similar findings were found across several commodity lines, including discharge lamps, hardwood lumber, and tufted cotton fabrics. It's hard to prove a direct relationship between the increased tariffs and the potential for increased misclassification, but anecdotal evidence supports the attempts in several cases. Benjamin Bucy, of Froshin, Barger & Walthall, compiled a database of all trade fraud cases pursued in the United States between 2000 and 2016 and found a nine-fold increase in cases: 42% have been criminal prosecutions, while 58% have been civil cases, initiated under the False Claims Act. The Justice Department has reported recoveries totaling over \$11.2 billion resulting from False Claims Act cases from 2016-2018. This year, the Virginia based home furnishings company, Bassett Mirror Company, paid \$10.5 million to resolve allegations that it knowingly made false statements on customs declarations to avoid paying anti-dumping duties on wooden bedroom furniture imported from the People's Republic of China (PRC). The Department alleged that between January 2009 and February 2014, Bassett Mirror evaded these anti-dumping duties by knowingly misclassifying the furniture as non-bedroom furniture on its official import documents.

Impact

CBP collected some \$40.6 billion in duties in FY2018 alone—a 23% increase from the previous fiscal year, mostly attributed to Trump's new tariffs on China, according to a July CBP report. Early in his administration, President Trump declared the enforcement of Anti-dumping Duty orders a "priority trade issue" and has been establishing enhanced measures to collect duties and heightened enforcement posture for trade violations that threaten the safety and economic security of the United States. Importers should all be aware of the commodities and countries covered by these orders so as to avoid falling into a "too good to be true" trap.

RESOURCES:

[Antidumping and Countervailing Duties \(CBP\)](#)