



February 1, 2020

Big Changes Planned for CBP Enforcement of E-Commerce Imports to Fight Counterfeits

The Department of Homeland Security will take several new steps toward preventing the importation of counterfeit goods, executive branch officials said during a Jan.24 press conference to discuss a [report](#) on the subject. Among other plans, “CBP will adjust its entry processes and requirements, as necessary, to ensure that all appropriate parties to import transactions are held responsible for exercising a duty of reasonable care,” the report said. The agency will also “treat domestic warehouses and fulfillment centers as the ultimate consignee for any good that has not been sold to a specific consumer at the time of its importation.” With this approach, the burden will shift to companies like Amazon, Alibaba, eBay and Walmart.com, an administration official said.

CBP will also require formal entry for shipments deemed risky, “notwithstanding that such shipments might otherwise qualify for duty-free or informal entry treatment,” it said. The agency will also work with the Justice Department to provide guidance on possible whistleblower claims involving e-commerce customs violations and will “enable the public to identify and bring such violations to the attention of the government,” it said. CBP should also consider whether new regulations are needed to “better define and subsequently enforce Section 321 eligibility requirements.”

DHS also recommends that “the administration pursue a statutory change to explicitly permit the government to seek injunctive relief against third-party marketplaces and other intermediaries dealing in counterfeit merchandise,” it said. Until then, “DHS will provide information and support to registered brand owners looking to utilize statutory authorities to seek injunctive relief against persons dealing in counterfeit merchandise, whether through direct sales or facilitation of sales, following seizures of goods that are imported contrary to law.” The department also calls for a review of “the legal framework for allowing non-resident importers in the Section 321 de minimis low-value shipment environment.” CBP will also consider whether more fees are needed to fund the enforcement efforts.

USMCA Unlikely to Enter Into Force Before July 1

The many complicated “provisions” for implementing the U.S.-Mexico-Canada Agreement on free trade plausibly means July 1 is the “absolute earliest” date it can “enter into force,” Nicole Bivens Collinson, international trade expert with Sandler, Travis, told a Sports & Fitness Industry Association webinar Jan. 29. Though there “had been hopes” that Canada would “move pretty quickly” to ratify USMCA, “it’s not clear Canada’s going to be able to do that,” Collinson said. Even after Canada ratifies, “you can’t implement the agreement until all countries have met their obligations that they’ve committed to,” she said.

Formal inter-country “notification” procedures built into USMCA would follow, Collinson said. “Once that notification goes forward, then you can anticipate that at the soonest it would be 30 days later that the agreement will actually enter into effect.”

When USMCA actually takes effect “will depend on whether Canada moves quickly and countries are able to certify that they have met all their obligations and all the uniform rules are put in place,” Collinson said. “I’m thinking, and I’ve heard a few people even in the administration saying this, that it may be January 2021 before the agreement actually goes into effect.”

New Section 232 Tariffs Cover 10 Subheadings

The Presidential Proclamation establishing new Section 232 tariffs on finished goods of steel and aluminum and the annexes detailing the covered goods was [published](#) Jan. 29. The new 10 percent tariffs on aluminum goods and 25 percent tariffs on steel goods are set to take effect on Feb. 8. The new tariffs on steel cover nails and tacks under subheadings 7317.00.30, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5560, 7317.00.5580, 7317.00.6560, as well as automotive and tractor stampings in subheadings 8708.10.30 and 8708.29.21. Items covered under the new aluminum tariffs include stranded wire and cable under subheadings 7614.10.50, 7614.90.20, 7614.90.40 and 7614.90.50, as well as automotive and tractor stampings under subheadings 8708.10.30 and 8708.29.21.

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FDA Steps Up FSVP Enforcement

The Food and Drug Administration has stepped up enforcement of Foreign Supplier Verification Program requirements for importers, moving beyond imported foods that pose imminent food safety risks to now also take enforcement action against all importers that fail to meet FSVP requirements, an agency spokesperson said. The agency's new approach can be seen in a barrage of four recent warning letters issued to importers for FSVP violations in the span of a month.

“Since 2017, the FDA has been conducting FSVP inspections, with a primary focus on helping importers understand the requirements and how to take corrective actions if deficiencies are observed, the FDA spokesperson said. “The FDA has always maintained that we will act immediately when FSVP deficiencies are found that pose an imminent public health risk, as was the case with the first FSVP Warning Letter issued in July 2019. Moving forward, the FDA has also begun taking more steps to ensure compliance with FSVP by reinspecting importers that had deficiencies in previous inspections. These most recent Warning Letters are the result of reinspections at the importers,” the spokeswoman said.

Each of the four recent [warning letters](#) said the importer failed to set up FSVPs for its imported foods, and threatened each importer with placement on new import alert 99-41. All of the letters were issued between Dec. 12, 2019, and Jan. 7, 2020, and posted to FDA's public warning letter database in January. FDA had previously issued, or at least released to the public, only two warning letters for FSVP violations in July and August.

CIT Rejects 'Double Drawback' Rule for Excise Taxes

The Court of International Trade issued a [decision](#) late on Jan. 24 finding recent CBP regulations limiting the amount of drawback that can be claimed on excise taxes were "unlawful." The court held that a final rule issued by CBP in December 2018 that aimed to prevent so-called “double drawback” contradicts the legal framework created by Congress for drawback. The regulations, which limit the amount of drawback claimed to the taxes actually paid on the exported good upon which the claim is based, also run afoul of Congress' apparent intent to expand drawback, the court said. CIT gave the National Association of Manufacturers and the Beer Institute, plaintiffs in the case, until Feb. 7 to propose what form of judgment the court should order.

Court Ruling on AD/CVD Scope Interpretation Could Up Enforcement, Lead to Unwelcome Surprises

A recent court decision on CBP's authority to suspend liquidation of entries it suspects are covered by antidumping and countervailing duties cements the agency's stance into one of stricter enforcement and could create some headaches for importers of some goods that are not clearly covered by AD/CVD orders, customs lawyers said in the wake of the ruling. Issued Jan. 7, the Federal Circuit's en banc [opinion](#) says CBP can interpret AD/CVD orders, even when ambiguous, when making decisions related to the release of goods. That's a reversal from the appeals court's own decision from some months earlier, wherein it found only Commerce had that authority. Practically, it means CBP does not have to wait for a Commerce scope ruling when it's unclear whether AD/CV duties apply to an entry. That could mean another swing of the pendulum for CBP's treatment of goods potentially subject to AD/CVD. “I know some years ago, CBP would be willing to hold off on collecting dumping duties if a company decided to seek a scope ruling from Commerce,” said Paula Connelly of Sandler Travis. Now CBP is going to be able to come to its own decision on whether a product is covered by the scope, she said.

WCO Publishes List of 2022 Tariff Schedule Changes

The World Customs Organization published a [list](#) of changes in the upcoming 2022 version of the Harmonized System tariff nomenclature, it said in a [press release](#). The amendments were recommended by the WCO's Harmonized System Committee in June, and took effect in January after a six-month period passed with no objections to the proposals by WCO member states. The changes must be implemented in the tariff schedules of WCO members, including the U.S., by Jan. 1, 2022.

Internal USTR Guidance Details Section 301 Exclusion Carve-Out Process

The Office of the U.S. Trade Representative created a detailed guidance for how to go about creating exclusions through carve-outs from the Section 301 tariff headings. The guide lays out the considerations for USTR when “drafting” such carve-outs, which can be submitted to the International Trade Commission and CBP “for approval and comments.” ProPublica posted a copy of the [document](#), which was likely attained through a Freedom of Information Act request. The document was mentioned in a broader ProPublica [story](#) on tariff exclusions.

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