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The Trade Facilitation and Trade Enforcement Act of 2015 – Issues for Importers

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The Trade Facilitation and Trade Enforcement Act of 2015 - Process

- Signed into law February 24, 2016
- First comprehensive reauthorization of U.S. Customs and Border Protection in nine years.
- Summer 2015 Trade Package
 - Trade Promotion Authority
 - Trade Adjustment Assistance
 - Trade Preferences (Incl. Retroactive Renewal of GSP)
 - Customs Reauthorization
- Delayed by House/Senate differences on Enforcement as well as unrelated provision on Internet Taxation

Key Provisions

- Importer of Record Program
- Customs Broker Importer ID Requirements
- Improvements to trusted trader programs
- Codifies the Centers of Excellence and Expertise
- Prevention of Evasion of AD/CVD orders – aka the ENFORCE Act

Importer of Record Program

- CBP create a program to assign and maintain importer of record numbers
- To obtain numbers, CBP must collect information to:
 - Allow CBP to verify the existence of the importer
 - Identify linkages between importers
 - Identify changes in address and corporate structure of importers
- CBP must also develop a program to adjust bond amounts for importers based on risk assessments (C-TPAT Tier 2 and 3 participants will be exempt from risk assessments)

Customs Broker ID Requirements

- CBP must develop regulations setting standards for customs brokers to collect and maintain information on importer clients.
 - Collect info from importer to allow identity verification
 - Procedures to verify authenticity of info collected
 - Broker must maintain records
- Failure by the Broker to collect and maintain the information will result in a \$10,000 penalty and license suspension or revocation.

Trusted Trader and CEE

- CBP must improve trusted trader programs such as Customs-Trade Partnership Against Terrorism (C-TPAT) and show that such programs are providing “significant and measureable trade benefits.”
- The law codifies the Centers for Excellence and Expertise that were previously operating at the Director’s discretion.
 - CEE for Industrial and Manufacturing Materials – Buffalo, NY

AD/CVD Evasion Provisions – ENFORCE ACT

- New Trade Remedy Law Enforcement Division
 - Enhanced Bonding
 - Trade Alerts calling for closer inspection
 - Can be filed by U.S. Government, foreign or domestic industry, union or association

- Adverse Inferences
 - If importer is “not acting to the best” of their ability to comply with questionnaire, CBP can make adverse inferences and select information that may be harmful to that party.

AD/CVD Evasion Provisions – ENFORCE ACT

- Statutory Timeline to Investigate Evasion Allegations
 - **15 days** to initiate investigation if allegation “reasonably suggests” evasion
 - **90 days** to determine if “reasonable suspicion” of evasion and if so suspend liquidation
 - **300 days** (w/possibility of 60 day extension) to make a final determination of evasion and require cash deposits
- The party found to be evading has **30 days** to file administrative appeal, and the appeal must be decided within **60 days**.
- Parties may then appeal to Court of International Trade.



Questions?

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