

SPC&B Update

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Congress Passes Customs Authorization Bill With Significant Enforcement Provisions Reauthorization Bill



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In legislation entitled "Trade Facilitation and Trade Enforcement Act of 2015," there is much more emphasis on trade enforcement than on trade facilitation, with respect to several key areas administered by Customs & Border Protection (CBP). In officially authorizing the establishment of the Centers of Excellence and Expertise (CEEs), the bill specifically states that one of the main missions of the Centers is to "improve enforcement efforts." In addition, among many directives for the Commissioner of Customs is the requirement to report to Congressional committees on the effectiveness of each CEE in improving enforcement efforts.

Congress also focused on the issue of ensuring the legitimacy of importers of record, requiring CBP to develop criteria that importers must meet in order to obtain an importer of record number, including verification of the existence of the importer. Moreover, CBP is required to establish a program to adjust bond amounts for importers based on risk assessments of such importers, with particular emphasis on new importers and non-resident importers. The risk assessment program for bond adjustments will not apply to validated Tier 2 or Tier 3 C-TPAT members. Congress also has placed additional burdens on Customs brokers, requiring them to verify the identity of importers, with penalties for failure to collect required information about importers.

The most significant enforcement provisions relate to preventing evasion of antidumping (AD) and countervailing duty (CVD) orders. The bill directs the Secretary of Homeland Security to establish a Trade Remedy Law Enforcement Division within CBP's Office of Trade, to develop and administer policies to prevent AD and CVD evasion, to direct enforcement and compliance assessment activities regarding evasion, to develop and conduct risk assessment targeting of incoming cargo, and to develop policies on single entry and continuous bonds for entries of covered merchandise. The new Enforcement Division will be responsible for receiving allegations of duty evasion and following up on such allegations, including notifying the person(s) that make the allegations of actions taken with respect thereto. CBP must launch an investigation within 15 days of receiving an allegation, if there is reason to believe that there is duty evasion. If a person fails to cooperate with CBP's investigations, such as failing to respond to questionnaires, CBP can make an inference that is adverse to the interests of that person. In cases where CBP is unable to determine whether merchandise is covered by an AD or CVD order, the matter will be turned over to the Department of Commerce (DOC). Both CBP and DOC have strict timelines that must be followed in these investigations. Affirmative determinations will result in civil and/or criminal proceedings.

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