# Supply Chain Basics: Thirteen Things Every Importer Should Know About Risks Involved With Sourcing Products Subject to AD/CVD Orders

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The operation of the antidumping (AD) and countervailing duty (CVD) laws, and the supply chain risks they pose, are often not well understood by importers—with potentially expensive consequences. In making supply chain decisions, it is important to understand how U.S. unfair trade laws work and whether any items in your company's supply chain may be subject to AD/CVD orders. The following examples represent real scenarios that could confront an importer that is unaware of how the U.S. unfair trade laws operate.

**Example 1:** *Importer A has been sourcing a manufactured product from China for several years. The product contains a number of different manufactured pieces, including two significant parts that are aluminum extrusions. The parts are assembled in China and shipped to Importer A, which enters the product as a Type 1 consumption entry under the correct tariff classification for that finished good. Several weeks later, the importer receives a CF 29 from U.S. Customs & Border Protection (CBP) stating that the imported item containing aluminum extrusions is subject to the antidumping and countervailing duty orders on aluminum extrusions from China. This happens even though the product is a finished good consisting of more than aluminum extrusions and the tariff number for the imported item is not listed in the antidumping order as a subject product. CBP requires Importer A to re-enter the product as a Type 3 (AD/CVD) entry and to deposit several million dollars in estimated antidumping and countervailing duties. The duty liability is enough to bankrupt Importer A.*

**Example 2:** *China Exporter offers to sell U.S. Importer widgets made in China. There is an antidumping duty order on widgets from China, but China Exporter tells U.S. Importer "not to worry" because China Exporter has a "0 percent antidumping rate." U.S. Importer signs a contract with China Exporter for $1 million. China Exporter contracts for production of the widgets with Shanghai Widgets, which directly exports the widgets to U.S. Importer using its own affiliated exporter, Shanghai Widget Exports, to allow Shanghai Widgets to collect a VAT rebate offered by the Chinese government on widgets. U.S. Importer has only ever dealt with China Exporter, has no contractual relationship with Shanghai Widgets or Shanghai Widget Exports, but was informed that Shanghai Widget Exports would be handling the shipment. U.S. Importer has fully paid China Exporter against the export documents at the time of exports. At entry, CBP assigns the widgets the 200 percent antidumping duty deposit rate of Shanghai Widget Exports, rather than the 0 percent rate of China Exporter, and sends U.S. Importer a demand for $2 million in estimated antidumping duty deposits. China Exporter, Shanghai Widgets, and Shanghai Widget Exports no longer answer U.S. Importer's calls or emails.*

Dumping is essentially international preferential pricing—involving a foreign producer or exporter selling a product in an export market at a lower price than the same product is sold in the home market or a comparable third-country market (or in some cases at below cost of production). The dumping margin is calculated by subtracting an adjusted factory door price of the product sold in the United States to an adjusted factory door price of an identical or similar product sold in the foreign market, and dividing the difference by the United States price. The resulting ratio is typically expressed as a percentage, which is applied to the entered (customs) value of the good.

Subsidies, addressed by the countervailing duty laws, are financial contributions that are provided by a foreign government to foreign producers or exporters that confer a benefit that is specific to a producer, exporter, or industry. Subsidies include such things as direct transfers of funds (e.g., loans, grants, equity infusions, debt forgiveness), tax benefits, direct export subsidies, and the provision of goods or services at less than adequate remuneration. The subsidy margin is also applied against the entered value of the good.

World Trade Organization rules allow governments to issue AD and CVD orders when a domestic industry successfully demonstrates that an imported product (1) is dumped and/or subsidized, and (2) is causing or threatening to cause material injury to the domestic industry producing a product like the imported product. AD/CVD orders are in place for five years, with an opportunity for the domestic industry to demonstrate the need to renew them in five year increments. Such

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orders therefore represent a long-term influence on import sourcing.

Unlike U.S. antitrust or consumer protection laws that are written to take into account the interests of consumers and other economic actors, U.S. antidumping and subsidy statutes are designed only to protect domestic manufacturers from the injurious effects of unfairly traded imports. *They are not written to benefit importers.* As is apparent from the examples above, importing any product potentially subject to AD or CVD orders carries significant risk for the importer of record. An importer should ensure that it has considered all of the ramifications before acting as importer of record to merchandise subject to AD/CVD orders.

Listed below are 13 things every importer of record should know about the U.S. unfair trade laws when assessing supply chain risks they may impose.

**1. *The U.S. importer of record is solely responsible for payment of all AD/CVD deposits and assessments.***

The most important thing for an importer to remember about importing products subject to AD/CVD orders is that *the importer of record is solely responsible for the payment of all AD/CVD duties*. Not only is the importer of record responsible for the payment of AD/CVD duties, it is illegal for the foreign producer or exporter to reimburse the importer for antidumping duties. United States Department of Commerce ("Commerce") regulations require that the importer of record file with CBP a Certificate of Non-reimbursement prior to liquidation to certify that antidumping duties have not been reimbursed. Reimbursement of AD duties, or the failure of the importer to file a Certificate of Non-reimbursement, will lead to a doubling of the assessed AD/CVD duties.

*The only surefire means for an importer to ensure that it will not have AD/CVD liability on an imported product subject to an order is not to be the importer of record.* This means interposing into the supply chain a third-party importer that is willing to undertake the financial risks involved with assuming the liability for AD/CVD duties. This can be difficult to do, as often the only parties willing to act as importer of record and to assume AD/CVD liability are importers affiliated with the foreign producer or exporter. Importers affiliated with the foreign producer may agree to bear the risk associated with the entries and to "absorb" some or all of the AD/CVD duties rather than passing them down to the customer in the form of a price increase.

Even when such a third-party importer is available, this may not eliminate the risk to the supply chain. As discussed below, duty deposit and assessment rates change over time, and the cost may reach a point that the affiliated importer of record is no longer willing to assume the duty liability without a significant price increase to the customer. The customer may find itself suddenly facing the choice between paying significantly increased prices or being cut off from its source of foreign supply. Where the customer's own ability to maintain production or sales relies on the timely delivery of the imported product at the contracted price, production disruptions or significant cost increases may occur.

**2. *Importers deposit estimated AD/CVD duties at the time of entry, and the actual AD/CVD liability may increase or decrease at the time of final assessment.***

A costly mistake that importers sometimes make is assuming that the AD/CVD deposits made at the time of entry represent the total amount of AD/CVD duties that are owed. In fact, the duties deposited at entry are only *estimates* of the total AD/CVD liability on the entry, and act as security against the final assessment of duties. Unlike most other countries in the world, the United States has a retrospective system of AD/CVD duty assessment. Importers deposit estimated duties at the time of entry based on the rate assigned to the relevant foreign producer/exporter in the AD/CVD order. Each year, during the anniversary month of the order, the United States Department of Commerce (Commerce) offers foreign producers/exporters subject to the order, U.S. importers, and domestic producers the opportunity to request an "administrative review" of the entries during the previous 12 months since the publication of the order on an exporter/producer-specific basis. If no review of a particular foreign producer/exporter is requested, CBP liquidates the entries at the rate deposited at the time of entry. If a review is requested, however, Commerce will examine the entries for the previous year and calculate the actual amount of AD/CVD liability on an entry-specific basis. The final assessment of duties on those particular entries may be greater or less than the amount deposited. If the assessed amount is higher, then CBP will send a bill to the importer of record for the additional duties owed plus interest. If it is lower, CBP will refund the difference between the deposited amount and the assessed amount with interest. The average assessment rate for entries associated with each exporter at the conclusion of a review becomes the duty deposit rate for subsequent entries from that exporter.

**3.** ***Duty deposits can be tied up for long periods, sometimes exceeding several years.***

The annual administrative review process referenced above takes from 12 to 18 months to complete, depending on extensions. In practice, nearly all such reviews take the full 18 months to complete. That means that the U.S. importer of record of goods subject to an AD/CVD order may have its cash deposits tied up for as many as 30 months after entry while the administrative process is completed (up to 12 months between entry and the anniversary month plus 18 months for a review to be completed). Even then, appeals may be taken by parties to the proceeding, potentially extending this period considerably. Appeals can take from one to three years to complete, and some take even longer with multiple remands from the courts to the agency and subsequent challenges before the appellate court. The author is aware of one such appeal filed in 2002 that is not yet resolved in 2013. An importer of merchandise subject to AD/CVD liability should be prepared for the money deposited as estimated duties to be tied up for a significant period of time.

Note that the contingent nature of AD/CVD liability, and the considerable length of time it may take to reach final assessment, may also have implications for financial reporting requirements of public companies, particularly if the imported item is high value element in the supply chain.

**4.** ***It is difficult for an importer to predict the final AD/CVD liability at the time of entry.***

Because the AD/CVD duty deposit rate at the time of entry is based on prices during a previous time period, and the assessment rate is based on actual prices during the current review period, it is very difficult for importers of record to determine with any certainty the ultimate AD/CVD liability at the time of entry. Nearly all of the commercial information necessary to calculate the AD/CVD assessment rate is in the possession of the foreign producer/exporter. Absent the unlikely scenario of the foreign supplier being able and willing to share the detailed proprietary cost of production and pricing information with the importer, the information necessary to determine duty liability is simply not available to the importer at the time of entry. Even where such sharing is possible, those prices and costs can change over a period of review such that what appears to be a non-dumped price at the beginning of a review period may become a dumped price by the time the review period ends. As illustrated in the second example at the start of this article, many an importer has been unpleasantly surprised by a large final duty assessment bill from CBP after posting a modest (or no) duty deposit on an entry.

While predicting a final assessment rate is difficult, an importer can assume that the act of lowering the price paid between the importer and the exporter to attempt to partially or completely offset the cost to the importer of the duty deposit is likely to increase the final assessment of duties (as well as the future duty deposit rate), all other things being equal. Because the assessed duties are based on the actual prices of the subject good entered during the review period, any lowering of the transaction price between the importer and exporter will be largely offset by an increase in the assessment rate after an administrative review.

**Note that the contingent nature of AD/CVD liability may have implications for financial reporting requirements of public companies.**

**5.** ***Importing from non-market economies like China or Vietnam adds to the difficulty in predicting the final AD liability.***

Because China and Vietnam are considered non-market economies for purposes of the AD/CVD laws, they present additional difficulty in predicting final duty liability on goods subject to AD/CVD orders. Under U.S. law, prices and costs in non-market economies are deemed to be unreliable for determining dumping margins, due to the level of government involvement or influence in the marketplace. Instead, the value to which the U.S. price is compared is a constructed cost of manufacture that values the actual input quantities of raw materials, energy and labor at market economy values from a surrogate country at the same level of economic development as the relevant non-market economy. The sum of those surrogate costs is increased by a factor ratio to account for (1) overhead, (2) selling, general and administrative (SG&A) expenses, and (3) a reasonable amount for profit. These ratios are derived from publicly available financial statements for one or more market economy producers of the subject merchandise (expressed as a percentage of variable costs). As one might surmise from the description of this methodology, the dumping margin calculation is highly dependent on the choice of surrogate country from which the surrogate

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values will be taken, the public data available to undertake those valuations, and the choice of the surrogate producer(s) from which the overhead, SG&A, and profit ratios are derived. Those decisions will not be made until the administrative review begins (which is after the price between the importer and exporter has been set), and the available surrogate data may change between the time of purchase and the time the final assessment rate is calculated.

**6.** ***The importer of record typically has no control over the final AD/CVD assessment rate and is at the mercy of the foreign producer/exporter.***

The administrative review process is very involved and typically quite expensive for the foreign producer/exporter, which must answer a series of detailed questionnaires from the Department of Commerce covering every element of its cost of production and pricing related to its home market and U.S. sales. This not only creates a significant burden on the foreign producer's internal resources, it can lead to very significant legal expenses for participating in defending the review. This financial burden can lead some foreign producers/exporters to decide not to participate in a review. If that happens, that foreign producer/exporter will be assigned an "adverse facts available" (AFA) rate that is typically the higher of the highest rate alleged by the domestic industry in its petition or the highest rate found for any cooperating producer in the current or a past review period. These AFA rates are often high double digit or even triple digit *ad valorem* rates.

To the importer bearing all of the financial risk on the entry, the failure of the foreign exporter to participate in a review can be catastrophic, resulting in huge duty liability. Foreign producers/exporters may also use the threat of non-participation as leverage to induce the importer to bear some or all of the costs of defending the review. Such costs may be quite significant, particularly in relation to the value of the goods imported. An importer that does not wish to be left exposed to such legal expenses or the adverse consequences of non-participation by the foreign producer should, at a minimum, address those issues contractually with the foreign producer/exporter. The importer should take caution, however, not to rely on provisions providing for the reimbursement of duties, which could lead to a doubling of the duty liability on the importer. *See* point 1, above.

**7.** ***The administrative review process involves other uncertainties that may make it difficult for the importer or exporter to manage AD/CVD liability risks.***

In managing AD/CVD risk on imported products in a supply chain, an importer should not depend on the ability either to obtain or avoid an annual administrative review covering particular entries. For example, in some cases, an importer may choose to risk importing from a source under order that has a low duty deposit rate in the hope that no administrative review will be requested. Because domestic industries have the ability to request administrative reviews, and are generally attentive to the level of imports of merchandise subject to an AD/CVD order during any given period, a significant volume of imports or low transaction values may lead to the unhoped-for review.

In other cases, an importer and foreign producer may arrange for a transaction that they believe – based on careful planning – will result in a low or no AD/CVD assessment if the transaction is reviewed. In that instance, the importer may agree to pay a higher duty deposit than it might otherwise have risked, with the understanding that the duty assessment phase will result in the return of the deposit as well as a lower duty deposit rate going forward. The importer or foreign producer would then request that Commerce conduct an administrative review to effectuate this plan. Due to a lack of resources, however, Commerce rarely conducts reviews of more than two or three respondents in a given review period, and it focuses on those foreign producer/exporters that account for the greatest import volume during the period. If the foreign producer/exporter involved in the transaction is not one of the two or three largest exporters to the United States during the period subject to a review, its entries likely will not be individually reviewed. Instead, it will be assigned the average dumping margin of reviewed exporters that did not receive a 0 percent or "adverse facts available" rate. Because one cannot plan for what such an average margin might be without access to the information of the reviewed exporters, the careful planning of the importer's transaction(s) may be for naught.

Before assuming the risk involved in either strategy, to the extent possible, an importer should examine (1) the volume of imports during the review period compared to imports during previous periods, and (2) the history of review requests by other foreign producers and the domestic industry. These data, which are to a degree publicly available from government sources and some subscription services, will help the importer to better assess the risk of whether the domestic industry or other exporters are likely to seek reviews that may increase the risk of the entries being assigned duty liability based on other producers' calculated rates.

**8.** ***Export sales made at a profit can still be dumped.***

As explained in the introduction, the U.S. antidumping statute is an international price discrimination statute. Dumping is determined by comparing the adjusted U.S. price of the import to a foreign market value. Thus, a foreign product sold to an importer at above cost and for a profit can still be found to have been dumped if the U.S. price was lower than the adjusted price in the comparison home market. Where the product is being exported from a country that protects its own home market through tariff or non-tariff means, dumping is more likely.

In particular, U.S. businesses often operate under the misconception that low prices for raw materials and low labor prices in China that result in Chinese exporters being able to sell at low prices that nonetheless generate a profit, make it more difficult for dumping margins to be obtained against products manufactured China. That is not the case. The non-market economy surrogate value methodology used by the Commerce Department to calculate antidumping margins on products from China means that there are often antidumping margins, even high margins, when Chinese exporters are nonetheless selling at a "profit" in the United States. Because the Chinese inputs into the exported item are assigned a market economy cost for purposes of a margin calculation, where Chinese companies have access to lower-priced raw materials in China than are available in market economies elsewhere in the world, that input cost differential is usually a signal that dumping will be found under U.S. law.

Note that China hopes to graduate to market economy status under U.S. antidumping law by the end of 2016 when the current agreement governing its non-market economy status runs out. The U.S. law regarding China's status does not contain automatic graduation provisions, and when China's status will change and under what conditions remains to be seen.

**9.** ***AD/CVD deposits apply to entries beginning after the preliminary determination of dumping or subsidization by Commerce, from three to six months after an AD/CVD case is filed.***

Antidumping and countervailing duty investigations are conducted pursuant to statutory deadlines that vary depending on the type of investigation and the number of extensions granted. They generally take approximately 13 months to complete from petition filing to order publication. AD/CVD duty liability, however, attaches even before an order is published and occurs at the time that Commerce makes its preliminary determination of dumping or subsidization. This date can come anywhere from 90 days after initiation of the investigation in CVD cases to about six months after initiation for AD cases. Publication of Commerce's preliminary determination triggers the requirement for importers to begin posting duty deposits, and entries that occur between the publication of the preliminary determination and publication of the order will be subject to the first administrative review for calculation of the duty assessment rate. An importer with a foreign product in its supply chain that is subject to a new AD/CVD investigation will want to follow the case schedule closely.

In some instances, foreign producers will immediately halt exports to the United States as a part of a defensive strategy to avoid an affirmative final determination of injury, leading to supply disruptions for importers and their customers. In other instances, the foreign producer and importer may seek to increase imports temporarily to inventory enough of the subject imports to cover the importer's needs through the period of investigation. In that case, it is critical that the importer know the date that the preliminary determinations are likely to be published in order to avoid having entries with duty liability. Note, however, that U.S. law contains a provision that allows the petitioning domestic industry to seek a "critical circumstances" determination where an increase in imports following the filing of an AD/CVD petition is significant and is likely to undermine the efficacy of the order. An affirmative critical circumstances finding will make duty liability attach retroactively to entries occurring up to 90 days prior to the preliminary determination of dumping. While affirmative critical circumstances are the exception rather than the rule, a significant increase in imports of a product subject to an AD/CVD investigation after a petition is filed can lead to increased risk of AD/CVD liability in the 90 days prior to the preliminary determination by Commerce.

**10.** ***It is critical for the importer to understand whether an imported product falls within the written description of products covered by the scope of an AD/CVD order.***

Given the substantial risk associated with AD/CVD imports, importers should take care to understand whether an imported product in its

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supply chain falls within the written description of products covered by the scope of an AD/CVD order. Notices of Initiation, preliminary and final determinations, and AD/CVD orders are published by Commerce in the *Federal Register*. The products to which any AD/CVD order apply are described in the scope section of these notices. Copies of the public versions of AD/CVD petitions can also be obtained electronically at the United States International Trade Commission website, usually within 24 hours of filing. Thus, importers have ready access to the written scope description of AD/CVD cases almost as soon as petitions are filed, and can immediately begin planning for the anticipated effect on its supply chain.

The scope will provide a written description of the physical, chemical and/or performance characteristics of the imported product, as appropriate. It may also include common industry specifications (*e.g.*, American Society of Testing Materials), intended uses, as well as descriptions of products that would otherwise meet the scope definition of a covered product but have specifically been excluded from the order. Finally, the scope description will list the Harmonized Tariff Schedule of the United States (HTSUS) statistical categories into which the imported product will be classified when entering the United States.

**HTSUS numbers play an important role in AD/CVD enforcement, but they do not determine the scope of the order.**

*It is the written description of the scope that controls, and the HTSUS numbers are provided for convenience purposes only.* While the HTSUS numbers listed in the scope have an important function (*see* point 11 below), the written description of the order's scope is determinative. The scope descriptions are often long and complex and may be written in language that appears to be ambiguous, making it difficult to determine applicability. The very broad scope from a recent case on aluminum extrusions from China, for example, has engendered dozens of requests for scope rulings as importers and CBP alike struggle to determine whether certain imported products that include an aluminum extrusion are subject to the orders. The stakes can be very high, as with the importer in the first example in this article.

The scope description may change over the course of an investigation, as exclusions are added by the domestic industry or Commerce clarifies language. Scope clarifications also are often issued after the order the order is published. There are also anti-circumvention provisions in the law that allow products to be brought within the scope of an existing order that are (1) newly developed since the order was published, (2) a minor alteration to a product already under order, or (3) products assembled in a third country or in the United States from parts from the subject country if the assembled product would otherwise have been within the scope of the order. At last count, the antidumping duty order on petroleum wax candles from China had been subject to 200 completed scope and anti-circumvention proceedings and has more than 200 additional proceedings still pending.

HTSUS numbers play an important role in AD/CVD enforcement, but they do not determine the scope of the order. CBP, the agency charged with collecting AD/CVD duty deposits and assessments, uses the HTSUS numbers as flags to identify entries that may require the deposit of AD/CVD duties. Many HTSUS numbers represent basket categories that may contain products that are both within or outside of the scope language. Products entering the United States may also be misclassified under incorrect tariff headings. Thus, the product being imported may be classified within an HTSUS number that is referenced in the scope, yet still not be subject to the order based on its physical characteristics. Conversely, an imported product meeting the physical description of products covered by the order may be classified within an HTSUS category that is not specifically listed in the scope of the order, resulting in AD/CVD duty liability. When either scenario occurs, the importer may receive a bill for AD/CVD deposits from CBP, requiring the importer to work with the import specialists at the port to resolve the matter. If CBP believes there is any ambiguity about the coverage of the order, the agency is likely to refer the importer to Commerce to seek a scope ruling, and may require the importer to post AD/CVD deposits pending the resolution of the question.

**11.** ***Commerce determines the scope of AD/CVD orders, and CBP only enforces the scope as determined by Commerce.***

After an order is published, there is sometimes a flurry of classification and country of origin ruling requests from importers to CBP. While the importers, knowing that CBP acts as the gatekeeper, are presumably hoping to find a way to import products without falling under the ambit of an order, they rely on such rulings at their own risk.

  

*Commerce is the agency that determines whether an imported product is within the scope of an AD/CVD order, including whether the product falls within the physical description of the order, the country of origin of the product in question, and whether substantial transformation has occurred for purposes of the order.* While classification, country of origin, and substantial transformation questions are a CBP function for customs purposes, CBP must defer to Commerce when the question is whether a product falls within the scope of an AD/CVD order. As a result, obtaining a classification or country of origin ruling from CBP is not determinative of scope for AD/CVD purposes. New rulings from CBP involving merchandise potentially subject to AD/CVD orders typically contain language warning that CBP rulings cannot be relied on for AD/CVD purposes. Older rulings may not contain that warning language, but the same principle applies.

While Commerce employs an analysis for determining the country of origin of a product for AD/CVD enforcement purposes that is similar to that used by CBP for customs purposes, the analyses are not identical and can result in different outcomes. Thus, when a product subject to a dumping order is further processed in a third country before being imported into the United States, it is for Commerce to decide whether substantial transformation has occurred that would place the further-processed product outside the scope of the order if imported into the United States.

Note that ruling requests made to CBP are published on CBP's CROSS system and are available to the domestic industries that brought the AD/CVD case. Such rulings are closely followed by petitioners, and where there is concern that imports properly subject to an order are being imported as Type 1 rather than Type 3 entries, the domestic industry will work with Commerce and CBP to ensure that the order is being properly enforced. It is also not uncommon for domestic industries to provide training to CBP personnel to ensure proper enforcement of orders. If necessary, the domestic industry will themselves seek scope and/or anti-circumvention rulings to ensure proper enforcement of the orders.

If U.S. CBP classification and country of origin rulings are not controlling for purposes of scope enforcement, such rulings from foreign governments are completely irrelevant. For example, there was a recent instance of a product subject to an antidumping order going from China to the United Kingdom (U.K.) for further processing before being exported to the United States. The exporter obtained a ruling from the U.K. government that the exported product was considered a product of the U.K. Both the U.S. importer and the government of the U.K. argued that the United States was obligated to treat the imported product in accordance with the U.K. country of origin ruling. Commerce disagreed, finding that such foreign government rulings are irrelevant to determining the applicability of an U.S. antidumping duty order.

Finally, as noted in item 10 above, there are anti-circumvention provisions in U.S. law that permit certain products that appear to be nominally outside the scope of an order to be brought within the scope under certain circumstances. As a result, all of the facts surrounding the importation of the product potentially subject to the order must be examined using the analysis that Commerce would apply in order to assess properly the risk of application of the AD/CVD order to the imports.

**12.** ***Know the entire supply chain for your transaction and its duty ramifications.***

As the importer in the second example that led off this article found out, it is critical for importers to know the entire supply chain for any imported product that may be subject to an AD/CVD order. AD/CVD orders have exporter-specific and producer-specific margin assignments that determine the ultimate duty liability for the importer. Unless the entire supply chain from production through importation is specified contractually, there is additional risk that a foreign producer's or exporter's choice in the manner of exportation could lead to unanticipated duty liability for the importer. Eligibility for VAT rebates or other tax benefits in the exporting country, supply chain problems, a better deal from a new supplier, or even simple logistical convenience are all reasons that may lead a foreign producer to switch exporters or lead exporters to switch producers. When that happens, it could lead to an unanticipated change in the applicable AD/CVD deposit and assessment rates.

**13.** ***Do your own due diligence and do not rely on the representations of the foreign producer or exporter regarding AD/CVD liability.***

It is up to the importer – the party that bears all of the risk of antidumping duty liability – to undertake its own due diligence to determine all of the risks associated with importing products subject to AD/CVD orders. Unfortunately, there are unscrupulous exporters that may be willing to represent to a U.S. importer that their product is not within the scope of an existing AD/CVD order

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by reason of its tariff classification or some physical characteristic, even when that is not the case. The exporter may represent that other customers are successfully importing its product without AD/CVD liability by classifying the product under a particular HTSUS category. If those representations are wrong (whether intentionally or not), it is the importer that will suffer the financial and supply chain consequences. The risk may be particularly high when dealing with new suppliers or new products. Deals that sounds too good to be true often are. Forewarned is forearmed – know the AD/CVD risks in your supply chain to avoid costly and disruptive surprises. ❏

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