

## Client Alert

May 2019

For more information,  
please contact the  
authors:

### Kevin O'Brien

Partner

Washington, DC | USA

+1 202 452 7032

kevin.o'brien

@bakermckenzie.com

### Christine Streatfeild

Partner

Washington, DC | USA

+1 202 835 6111

christine.streatfeild

@bakermckenzie.com

### B. Thomas Peele III

Partner

Washington, DC | USA

+1 202 452 7035

thomas.peele

@bakermckenzie.com

## Suppliers to the US Beware: Increased Compliance and Enforcement of Antidumping and Countervailing Duties

US tariffs on steel, aluminum, solar panels, and numerous antidumping and countervailing duty ("AD/CVD") orders on finished and raw input products have put exporters in a bind. On one hand, sourcing and supply chain decisions have become more complex and uncertain. On the other, opportunities have grown for companies in countries that are not subject to certain tariffs or that are able to obtain exclusions from the tariffs. This increased activity in imposing duties also comes with a heightened focus on US import compliance. Companies in the Asia-Pacific region should be aware of the scrutiny that covered imports face and, in particular where a related entity in the US acts as the importer, should ensure that they understand the scope of the AD/CVD orders and applicable duty rates.

### Why now?

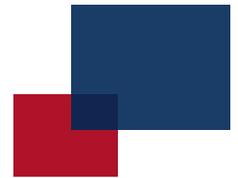
In 2016, before President Trump's tariffs, the US Government Accountability Office issued a report that assessed the collection of AD/CVD. The report found that \$2.3 billion in duties had gone uncollected. A direct result of that report was a heightened focus by US Customs and Border Protection on imports subject to AD/CVD orders, with dedicated teams assessing both inadvertent errors or mistakes and material false statements or omissions.

### What we have seen ...

Customs scrutinizes entries that include products that are or may be covered by AD/CVD orders. Customs may then issue a Customs Form 28 (request for information) and may require a detailed explanation of an importer's determination on the applicable rate or whether a product is covered by an order. If an importer discovers an error, such as its failure to declare a product as covered by AD/CVD, it may be able to disclose and correct the error before Customs notifies it of an investigation. However, if Customs has already initiated an investigation, then the importer could face additional penalties that exceed the amount of the duties owed and, in some cases, reach the domestic value of the entry itself.

Under expanded statutory authority, Customs began investigating allegations that importers failed to pay AD/CVD amounts through material false statements or omissions on entry documents (pursuant to the Enforce and Protect Act and the Trade Facilitation and Trade Enforcement Act of 2015). Customs found:

- evasion of duties for imported aluminum door thresholds from China that were transhipped through Vietnam on March 20, 2019, and identified false declarations of origin and no AD or CV duties deposited;



- evasion of AD/CV duties for imports transhipped through Malaysia on December 11, 2018; and
- evasion of AD/CV duties for Chinese glycine that had been transhipped through Cambodia on July 2, 2018, where unpaid duties were nearly 400 percent.

In addition, during 2017, Customs levied 43 monetary penalties totaling over \$243.6 million on imports for fraud, gross negligence, and negligence for AD/CVD violations. These penalties are up from \$30.6 million levied in 2016. In September 2017, Customs found that a New York company evaded an order by transshipping steel wire hangers, actually made in China, to the United States through a Thai entity. The finding triggered the collection of antidumping duties at the highest possible rate, which in this case was 187.25%, and referral of the matter for possible criminal investigation.



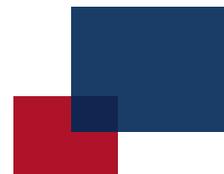
**CBP Office of Trade** @CBPTradeGov

Follow

(2of 2) So far, #CBP has identified over \$600K in #ADCVD owed, and anticipates recovering significant additional AD/CVD from this joint effort with @CommerceGov.  
#RootOutEvasion #TradeMatters  
[bit.ly/2VPHj3p](http://bit.ly/2VPHj3p)



12:08 PM - 11 Mar 2019



## Criminal actions ...

Compliance with AD/CVD is not only about avoiding civil penalties. The US Department of Justice increasingly pursues criminal complaints against individuals and business entities for customs violations such as the circumvention of AD/CVD orders. The allegations usually include violations of the False Claims Act, whereby the importer deliberately misclassified products as not subject to the scope of AD/CVD to avoid the duties. For example, a US federal court in Illinois sentenced the US-based agent for several Chinese honey importers to three years in prison for evading nearly \$40 million in AD/CVD through false labeling. Another investigation led to the indictment of four individuals and one corporation involved in transshipping Chinese-origin aluminum extrusions through Malaysia to avoid AD/CVD.

In another interesting twist, US law includes *qui tam* provisions, which allow individuals to initiate a False Claims Act case on behalf of the US government. Referred to as a "relator," this private plaintiff can file a suit under seal and send the case to the DOJ. The DOJ investigates the matter in coordination with Customs. Then, DOJ has the option to join in the lawsuit. If it declines, the relator can still pursue the action on its own. If there is ultimately a monetary recovery, the whistleblower receives a payout that is a portion of the recovery.

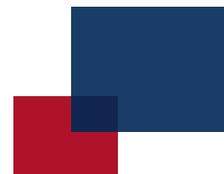
Often, an internal whistleblower initiates the actions based on its knowledge of non-compliance within the company. However, more and more, **competitors** are getting involved.

DOJ reported that it recovered over \$2.8 billion in 2018 from False Claims Act cases (view Dec. 21, 2018 press release [here](#)).

- Several recent high-profile *qui tam* actions include:
  - \$10.5 million settlement involving evasion of AD/CV duties on wooden bedroom furniture from China (view Jan. 2018 press release [here](#))
  - \$2.3 million settlement by textile importer to resolve allegations that it intentionally misclassified goods like bath and shop towels as polishing clothes to avoid tariffs (view Jan. 2018 press release [here](#))

## We can help.

Meaningful internal controls and routine, periodic assessments of exports subject to AD/CV duties or other trade remedies tariffs sharply reduce the risk of enforcement actions that would otherwise impact your supply chain. Such compliance programs for trade remedies include schedules to monitor the key times in a year when applicable AD/CVD rates may be subject to change; careful monitoring of product that will be transhipped through multiple countries, when one country is subject to AD/CVD; and assessments of the scope of AD/CVD cases by competent counsel.



[www.bakermckenzie.com](http://www.bakermckenzie.com)

## Your Key Asia Pacific International Commercial and Trade Contacts:

### **Australia/Singapore**

Anne Petterd  
Principal  
+65 6434 2573  
[anne.petterd@bakermckenzie.com](mailto:anne.petterd@bakermckenzie.com)

### **China**

Frank Pan  
Special Counsel  
+86 21 6105 8523  
[frank.pan@bakermckenzie.com](mailto:frank.pan@bakermckenzie.com)

### **Hong Kong**

Jon Cowley  
Partner  
+852 2846 1744  
[jon.cowley@bakermckenzie.com](mailto:jon.cowley@bakermckenzie.com)

### **Indonesia**

Riza Buditomo  
Partner  
+62 21 2960 8569  
[riza.buditomo@bakermckenzie.com](mailto:riza.buditomo@bakermckenzie.com)

### **Japan**

Kana Itabashi  
Partner  
+81 3 6271 9464  
[kana.itabashi@bakermckenzie.com](mailto:kana.itabashi@bakermckenzie.com)

### **Japan**

Junko Suetomi  
Special Counsel  
+81 3 6271 9741  
[junko.suetomi@bakermckenzie.com](mailto:junko.suetomi@bakermckenzie.com)

### **Malaysia**

Adeline Wong  
Partner  
+60 3228 7880  
[adeline.wong@wongpartners.com](mailto:adeline.wong@wongpartners.com)

### **Philippines**

Ronald Bernas  
Partner  
+63 2 819 4995  
[ronald.bernas@quisumbingtorres.com](mailto:ronald.bernas@quisumbingtorres.com)

### **Taiwan**

Chris Tsai  
Partner  
+886 2 2715 7310  
[chris.tsai@bakermckenzie.com](mailto:chris.tsai@bakermckenzie.com)

### **Thailand**

Panya Sittisakonsin  
Partner  
+66 2636 2000 p 3904  
[panya.sittisakonsi@bakermckenzie.com](mailto:panya.sittisakonsi@bakermckenzie.com)

### **Vietnam**

Frederick Burke  
Partner  
+84 8 3520 2628  
[frederick.burke@bakermckenzie.com](mailto:frederick.burke@bakermckenzie.com)

©2019 Baker Mckenzie. Baker & Mckenzie International is a global law firm with the member law firms around the world. In accordance with the common terminology used in professional service organizations reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome