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ATCC 2026: Evasion, Circumvention and Trade Enforcement: Practical Guidance to Navigating CBP Investigations

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2025 marked another critical year for U.S. Customs enforcement. With President Trump's aggressive trade priorities, including de minimis reform, forced labor restrictions and tariff hikes, we are encountering an even more assertive customs landscape. These developments are further reshaping the rules of engagement for importers, brokers, and stakeholders.



Section 701 and 731 Trade Remedies



Product	Number of Orders
Iron and Steel Mill Products	323
Machinery and Automotive	54
Iron and Steel Pipe Products	91
Chemical Products	114

Currently 797 Active AD/CVD Orders

- 580 Antidumping
- 217 Countervailing

Antidumping Duties

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Antidumping

- Defined as selling at prices in the United States at less than the price charged in the home market (i.e., the domestic market of the producer).
- A unique and complex litigation conducted by the U.S. government with unusual information requests, and particular data requirements specialized to this kind of proceeding.
- These are product, company and country specific duties and the duties are calculated to offset the price difference between the identical or similar product that is sold at a higher price in the exporters home market versus what price that same product is sold in the U.S.

Subject Merchandise

= Product under investigation. Sales of only the product under investigation are taken into account for the dumping margin calculation.

Price Comparison

= To the extent possible, the dumping margin calculation will be based on a comparison of the identical or most similar products on an ex-factory basis (invoice price less all movement and direct selling expenses).

Countervailing Duties

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Countervailing Subsidies

- A subsidy is a financial contribution by a foreign government authority which confers a benefit to a manufacturing entity in a manner that enables that entity to either produce more goods or export more goods to gain foreign market share
- Subsidization occurs when a foreign government provides assistance and subsidies, such as tax breaks or an influx of monies to manufacturers that export goods to the U.S., enabling the manufacturer to sell the goods cheaper than domestic manufacturers.
- These are country specific, and the duties are calculated to duplicate the value of subsidy.
- Under U.S. law, countervailing duties may be imposed to offset such injurious subsidization.
- A U.S. anti-subsidy countervailing duty (CVD) investigation is usually conducted in conjunction with an antidumping (AD investigation). Most of the procedures that apply to antidumping duty investigations also apply to countervailing duty investigations.

CBP Is Responsible For Collecting AD/CVD Duties

CBP has a statutory responsibility to enforce U.S. trade laws and collect duties, including AD/CVD

- Imports subject to AD or CVD duties must be declared at entry, usually via a Type 03 entry
- CBP collects estimated AD/CVD at the time of entry, but the final amount of AD/CVD an importer is required to pay is not known until Commerce issues appropriate liquidation instructions – possibly years later

Billions of dollars in AD/CVD duties owed go uncollected

- For FY 2021, CBP reported it was working to collect on nearly 79,000 unpaid AD/CVD bills from FY 1993 through FY 2020 totaling approximately \$5.4 billion
- While CBP has made strides in preventing new evasion and collecting current duties, the original \$5.4 billion in legacy debt from the specified period is still largely outstanding and being actively pursued or deemed uncollectible through various means

The Enforce and Protect Act of 2015 (EAPA)

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EAPA Requirements

- “Enforce and Protect Act” (“EAPA”) – “new” law passed in 2015 to give CBP more power . “Enforce and Protect Act” (hence “EAPA”) – “new” law passed in 2015 to give CBP more power to enforce antidumping duty laws and protect US industry
- EAPAs are their own investigations/process. See 19 CFR 165, but briefly
 - Someone complains (petitions to CBP)
 - CBP investigates complaint if evidence “reasonably suggests” evasion ADD/CVD
 - If CBP thinks complaint + CBP own investigation = reasonable suspicion of evasion of ADD/CVD, case begins
- ADD/CVD are applied to importer’s entries RETROACTIVELY to all entries during period of investigation and going forward must be paid until end of case
- CBP then proceeds to gather information from importer, exporter, producer and perhaps others
- CBP may conduct verification of information provided to it
- CBP issues evasion decision if there is substantial evidence of evasion
- Decision may be appealed to CBP HQ and/or Court of International Trade

EAPA, codified at 19 U.S.C. § 1517, established a new administrative process directing CBP to investigate evasion of AD/CVD orders. In this Part, we discuss how this new authority contrasts with CBP’s historical, non-EAPA role in interpreting and enforcing AD/CVD orders. We then provide a brief overview of the EAPA’s legislative history and statutory framework and analyze the procedure for making covered merchandise referrals under the EAPA statute. We also provide an evaluation of recent trends in EAPA investigations.

Trade Facilitation and Enforcement Act of 2015, Pub. L. No. 114–125, § 421, 130 Stat. 122 (2016). CBP has promulgated additional procedures by regulation. 19 C.F.R. Part 165.



CBP Targets Importers Who Evade AD/CVD

- In FY2024, CBP collected approximately \$2 billion in AD/CVD deposits and levied monetary penalties totaling over \$80 million on importers for fraud, gross negligence and negligence related to AD/CVD requirements
- CBP entry summary reviews during FY2024 resulted in recovery of over \$422 million in AD/CVD duties owed
- CBP audit activities led to the collection of \$117.6 million in additional duties during FY2024.

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Enforce and Protect Act of 2015 (“EAPA”)



EAPA established formal procedures for industry to submit and for CBP to investigate alleged evasion of AD/CVD duties.



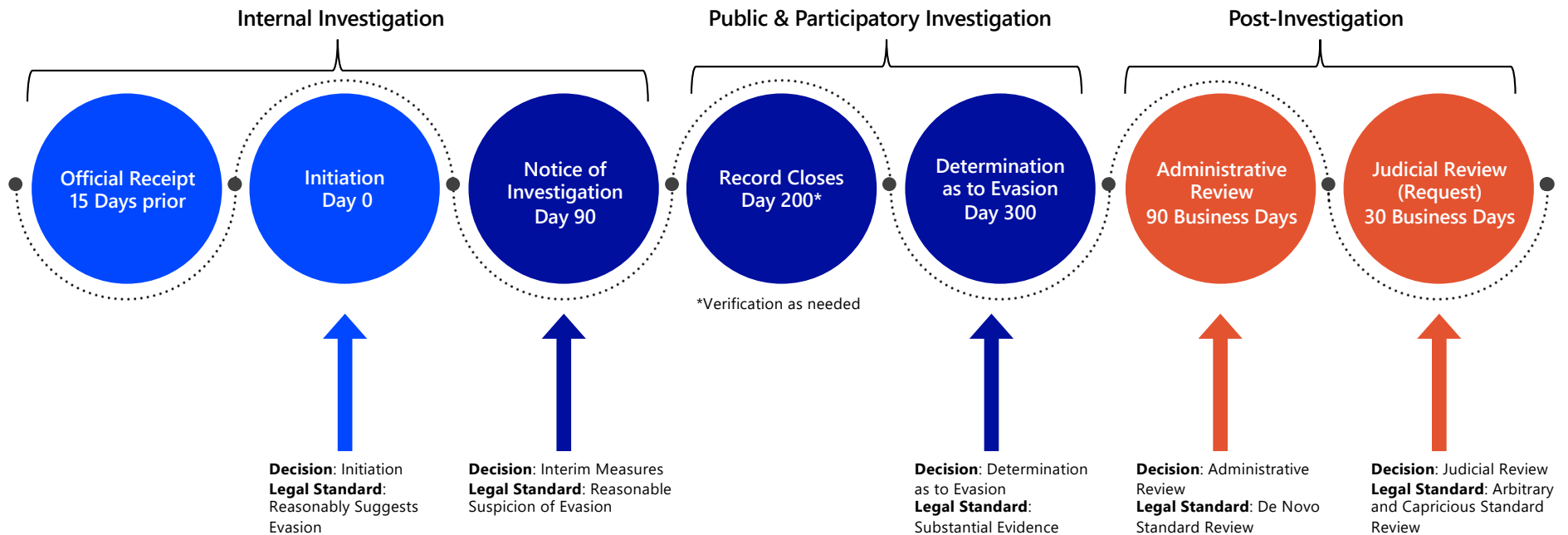
The investigation is conducted by CBP’s Trade Remedy Law Enforcement Directorate (TRLED). The determination by TRLED can be requested for de novo review by Regulations and Rulings (ORR) at CBP. ORR’s decision can be appealed to the Court of International Trade.



EAPA imposes a timeline and process requirements on CBP that do not exist under the e-allegations process and gives interested parties (limited) participation rights.

EAPA Process Overview and Key Decision Points

■ Investigation Decisions ■ Post-Investigation Decisions



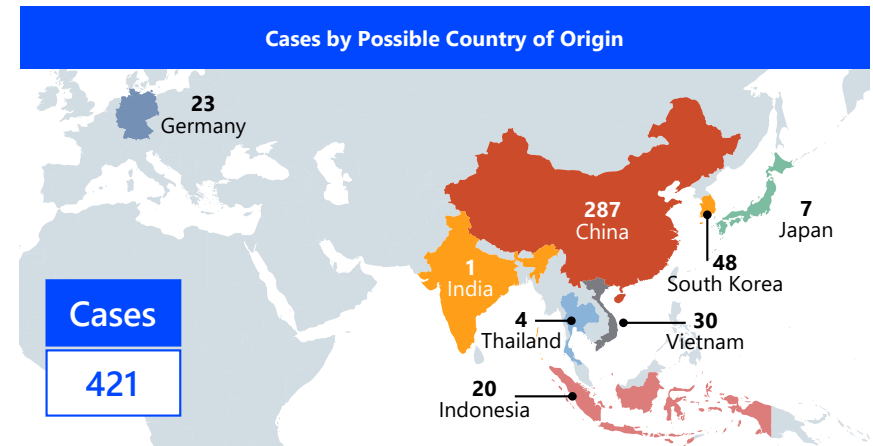
EAPA Will Financially Debilitate the Importer

- For Example – An Importer historically imports \$20 million per year and pays no duties (or very little duties, e.g., \$500k in duties) because it is not evading any ADD/CVD.
- Suddenly the importer is investigated and found to be evading resulting in a Customs bill that is several times the annual revenue in readily available cash to pay the bill and also defend the company.
- CBP will capture entries going back 5 years or more on a retroactive basis
- CBP is going to treat importer as if it is guilty of evasion for about 1 year so importer will need to pay duties until case is finished
- The bond company is going to increase the bond to an amount equal to annual estimated ADD/CV amounts (again, as if you're evading) and you'll need **2x to 3x that amount in collateral** for the bond company – again, you're effectively guilty until you prove yourself innocent
- Even if importer wins its case, importer will not see its collateral returned to it for years
- Importer will need **MILLIONS** in cash/assets/collateral – just for its bond + **MILLIONS** for CBP

The Enforce and Protect Act of 2015 (EAPA)

- Launched more than 400 investigations
- Identified over \$2 billion in AD/CVD duties owed to the U.S. Government
- Conducted over 60 distinct foreign on-site visits or verifications
- Protected revenue within 90 days if evasion is found

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Source: EAPA Case Management System. Data as of 03/04/2025

*The "Other Countries" category for cases by country of transshipment includes Canada, Israel, Philippines, Poland, Portugal, Singapore, Sri Lanka, Turkey, U.A.E.

Cases by Primary Evasion Scheme



382

Transshipment



14

Misclassification



18

Failure to Pay
AD/CVD Duties



3

Use of Wrong
AD/CVD Rate

EAPA Requests for Information: Recent Examples

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Part II: General Import Compliance

1. Describe your company's overall import compliance program, including any written policies and/or procedures related to the declaration and payment of AD duties and countervailing duties (CVD).
2. Identify all individuals or groups responsible for determining how imported merchandise is classified and describe the types of records maintained to support these classifications (*e.g.*, mill certificates, CAD/engineering drawings, schematics, product catalogs, product samples).
3. Where a customs broker is utilized for your import entries, explain your process for communicating AD/CVD applicability and rates to your broker.

Part III: Sourcing and Manufacturer Selection

1. Describe your company's overall process for sourcing the merchandise covered by the AD order on carbon and alloy steel threaded rod from India. This should include initial manufacturer identification, selection criteria, and ongoing supplier management.
2. Explain your internal verification process for confirming that the imported merchandise was indeed produced by the manufacturer declared on Form 7501 for each entry.
3. Beyond the manufacturer identification code declared on Form 7501, specify what information your company possesses to verify the identity and location of the manufacturer

EAPA Violations: Recent Examples

EAPA Case 8137: Island Home Building Materials, Inc. (Notice of Determination as to Evasion, October 30, 2025)

Notice of Determination as to Evasion for EAPA Case 8137 – Wooden Cabinets and Vanities

WASHINGTON— On October 30, 2025, CBP issued the notice of determination as to evasion for EAPA case 8137 filed by Newport Pacific Cabinets, Inc., against U.S. importer Island Home Building Materials, Inc., for evasion of AD/CVD orders A-570-106 and C-570-107 on wooden cabinets and vanities (WCVs) and components thereof from China. Specifically, evidence on the record indicates that the importer entered Chinese-origin WCVs that were transhipped through Taiwan. As such, CBP has determined that there is substantial evidence of evasion of AD/CVD duties by the importer; therefore, CBP has issued a formal notice of determination as to evasion and has taken enforcement actions.

EAPA Cons. Case 8135: Various Importers (Notice of Determination as to Evasion, November 6, 2025)

Notice of Determination as to Evasion for EAPA Consolidated Case 8135 – Wooden Bedroom Furniture

WASHINGTON— On November 6, 2025, CBP issued the notice of determination as to evasion for EAPA consolidated case 8135 filed by the American Furniture Manufacturers Committee for Legal Trade, against U.S. importers USASourcing Inc. (“USASourcing”) and Tradewide Inc. (“Tradewide”), for evasion of AD order A-570-890 on wooden bedroom furniture from China. Specifically, evidence on the record indicates that USASourcing and Tradewide imported China-origin wooden bedroom furniture into the United States and misclassified it as merchandise not covered by the aforementioned AD order, thereby failing to pay cash deposits associated with that AD order. As such, CBP has determined that there is substantial evidence of evasion of AD duties by the importers and, therefore, issued a formal notice of determination as to evasion and has taken enforcement actions.

Circumvention

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Commerce Can Expand Scope Based on Circumvention

- DOC can find circumvention of AD/CVD orders if product from a subject country is further assembled or processed in a 3rd country or in the U.S. 19 U.S.C. 1677j
 - DOC is not bound by the substantial transformation test re sufficiency of the third country processing to change COO
- In 2025 DOC was actively conducting 78 individual circumvention inquiries
- DOC may also self-initiate circumvention inquiries and has exercised this authority several times over the past few years (e.g., aluminum wire and cable, oil country tubular goods, quartz surface products)

Commerce Can Expand Scope Based on Circumvention (cont.)

- If DOC finds circumvention, it can expand AD/CVD orders to merchandise finished outside the subject country
- Commerce is not bound by Customs substantial transformation test
- DOC frequently applying circumvention determinations on a country-wide basis (vs. company-specific basis)
 - Example: Circular Welded Pipe (Standard Pipe) produced in Vietnam with intermediate steel inputs from South Korea found to be circumventing AD/CVD orders on Standard Pipe from South Korea
 - U.S. importers of Standard Pipe from Vietnam must certify to CBP that the pipe was not made with South Korean steel (and be prepared to prove it)



The statute outlines two different types of circumvention related to the manipulation of a product's country of origin: completion or assembly through "minor or insignificant" processing in the United States and "minor or insignificant" processing in a third country. Although the statute differentiates between these two types of circumvention, the statutory criteria for both are substantially similar. As a result, Commerce has historically employed the same analytical framework and methodologies for evaluating both types of minor assembly operations

[See 19 U.S.C. §§ 1677j\(a\)–\(b\).](#)
[See id.](#)

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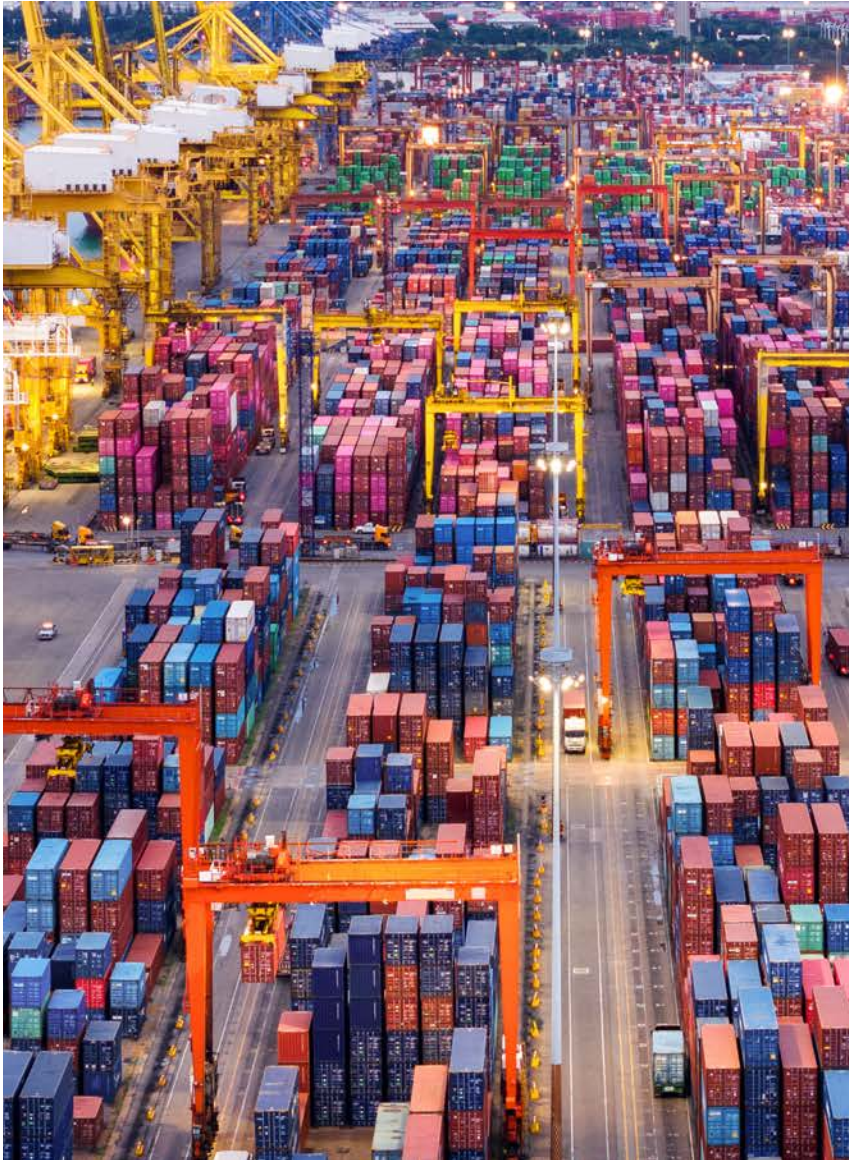




Pursuant to 19 U.S.C. § 1677j(a), Commerce may include within the scope of an order imported parts and components that are used to assemble or complete in the **United States** the merchandise subject to an order if four conditions are met:

- A. the “merchandise sold in the United States is of the same class or kind as” merchandise subject to an order;
- B. such merchandise “is completed or assembled in the United States from parts or components produced in the” country with respect to which such order applies;
- C. “the process of assembly or completion in the United States is minor or insignificant”; and
- D. “the value of the parts or components” used constitute “a significant portion of the total value of the merchandise.”

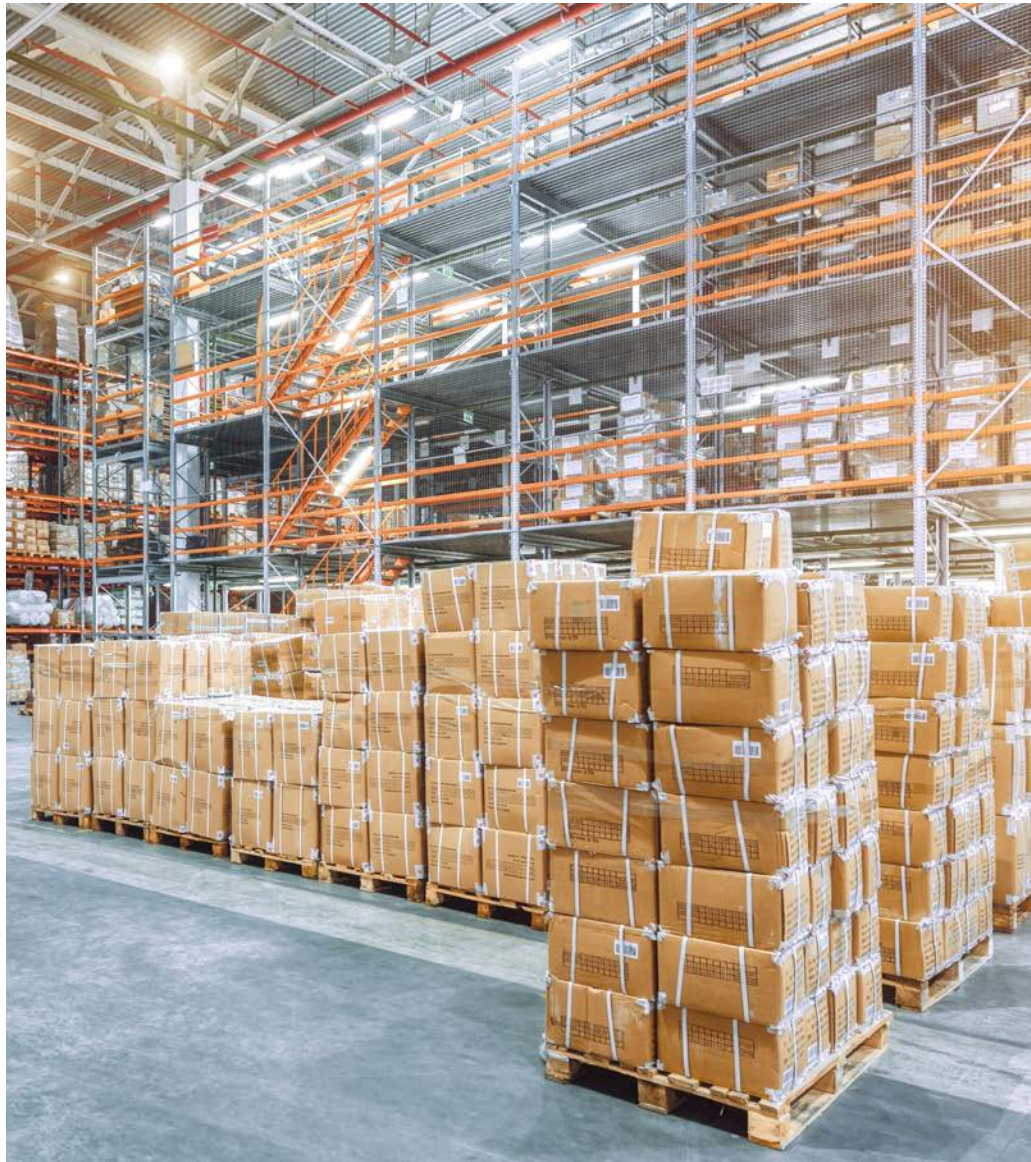
19 U.S.C. § 1677j(a); see also *Spa v. E.I. Dupont De Nemours*, 26 C.I.T. 1357, 1362-63 (2002) (“Commerce thus interprets the effect of an affirmative circumvention determination as rendering ‘parts or components’ ispi dixit the same ‘class or kind’ of merchandise as the completed merchandise.”). 19 U.S.C. § 1677j(b).



Pursuant to 19 U.S.C. § 1677j(b), Commerce may include within the scope of an order merchandise imported from a **third country** that was produced from parts and components manufactured in the country subject to an order if five conditions are met:

- A. the “merchandise imported into the United States is of the same class or kind as any merchandise produced in a” country subject to an order;
- B. “before importation into the United States, such [imported] merchandise is completed or assembled in” a third country from parts or components which is subject to an order;
- C. “the process of assembly or completion in the” third country “is minor or insignificant”;
- D. “the value of the” parts and components used in the production process constitute “a significant portion of the total value of the merchandise exported to the United States”; and Commerce finds “that action is appropriate... to prevent evasion of the order.”

19 U.S.C. § 1677j(a); see also *Spa v. E.I. Dupont De Nemours*, 26 C.I.T. 1357, 1362-63 (2002) (“Commerce thus interprets the effect of an affirmative circumvention determination as rendering ‘parts or components’ ispi dixit the same ‘class or kind’ of merchandise as the completed merchandise.”).
19 U.S.C. § 1677j(b).



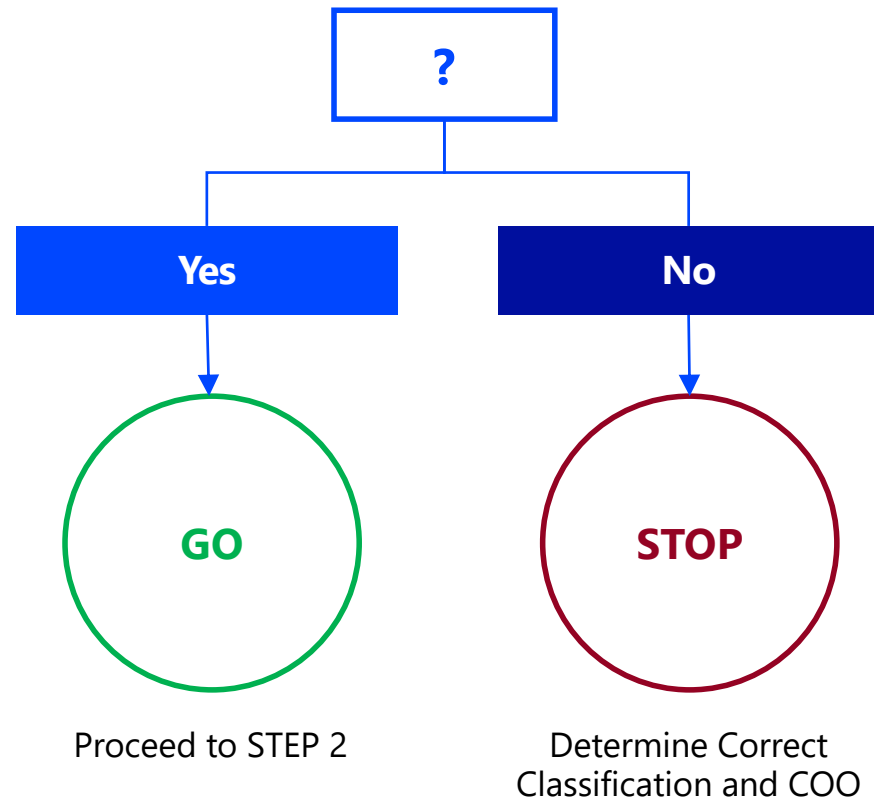
Pursuant to 19 U.S.C. § 1677j(c), Commerce may include within the scope of an AD/CVD order “articles altered in form or appearance in minor respects,” even if the altered product is included in a different tariff classification. In essence, the minor alterations provision “includes within the scope of an antidumping duty order products that are so insignificantly changed from a covered product that they should be considered within the scope of the order even though the alterations remove them from the order’s literal scope.”

Wheatland Tube Co. v. United States, 161 F.3d 1365, 1371 (Fed. Cir. 1998).
Id.

Know Your Product

Do I know, with a high degree of confidence, the HTSUS classification and country of origin (COO) for this product?

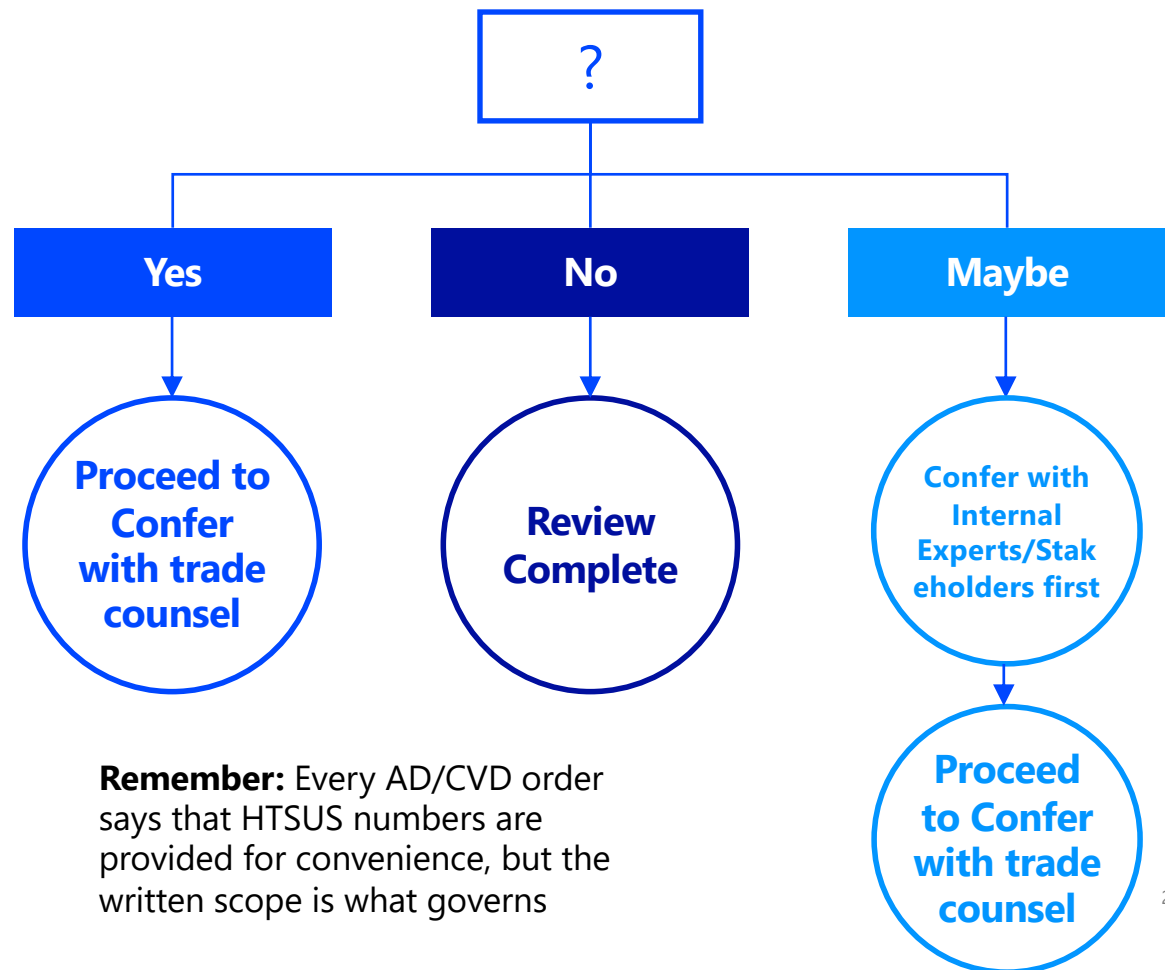
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Carefully Read the Scope

Is this product within the scope of an AD or CVD order based on a review of the written scope description?

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Remember: Every AD/CVD order says that HTSUS numbers are provided for convenience, but the written scope is what governs

Importer Watchouts: Scope Analysis Best Practices

Key Principle

When scope applicability is unclear, timely escalation and documentation reduce risk.

Technical Complexity

- Trade remedy scopes are highly technical and complex — never assume applicability (or not) without an expert review

Scope Language Over HTS

- Scope language governs; HTS references are illustrative, not determinative. It is a good starting point to understand what the scope is trying to capture, however.

Early Expert Engagement

- Involve internal subject-matter experts early in the assessment. If you don't know who they are – find them!

Documentation & Defensibility

- Document analysis, conclusions, and supporting rationale (as with all customs matters).

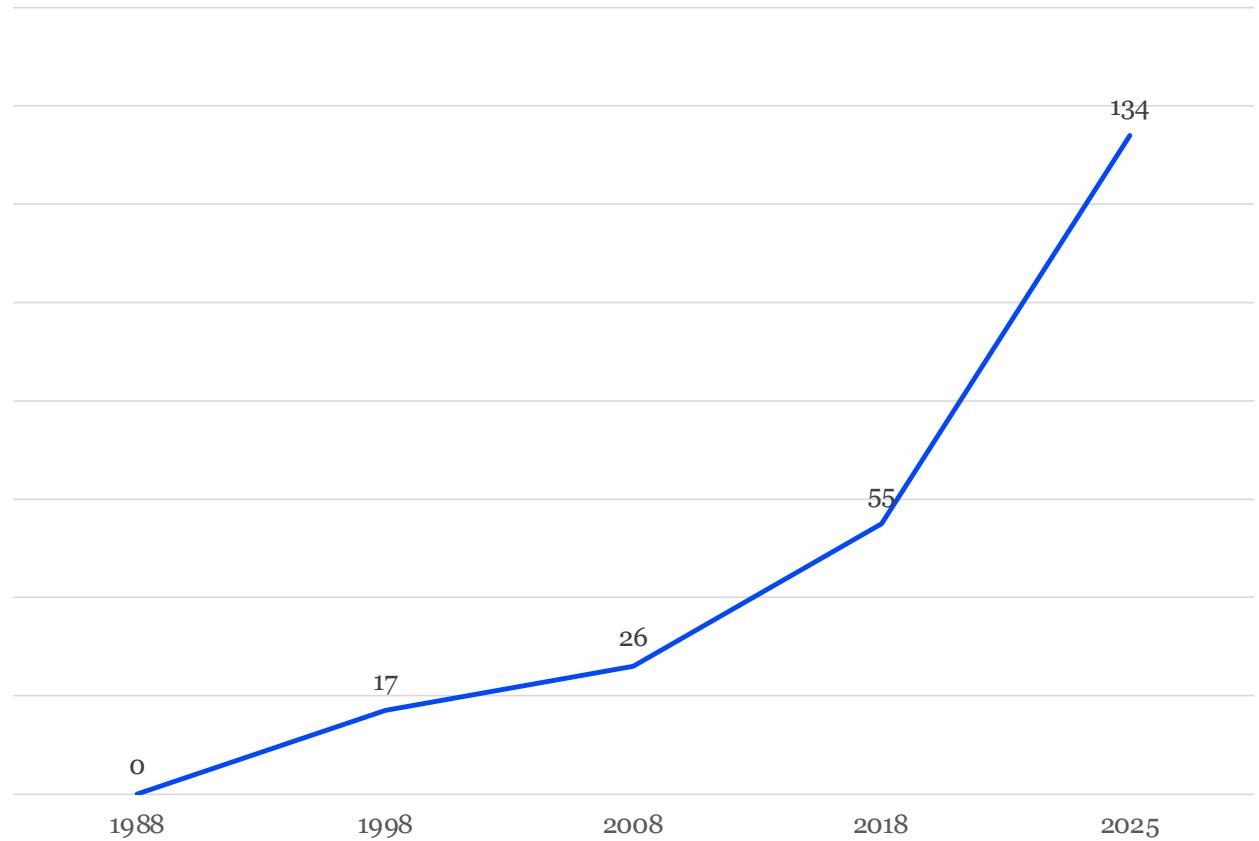
Legal Escalation

- Escalate uncertainty to legal counsel (internal and external);
- assess scope exclusion options where appropriate.

Commerce's Circumvention Determinations

1988-2025

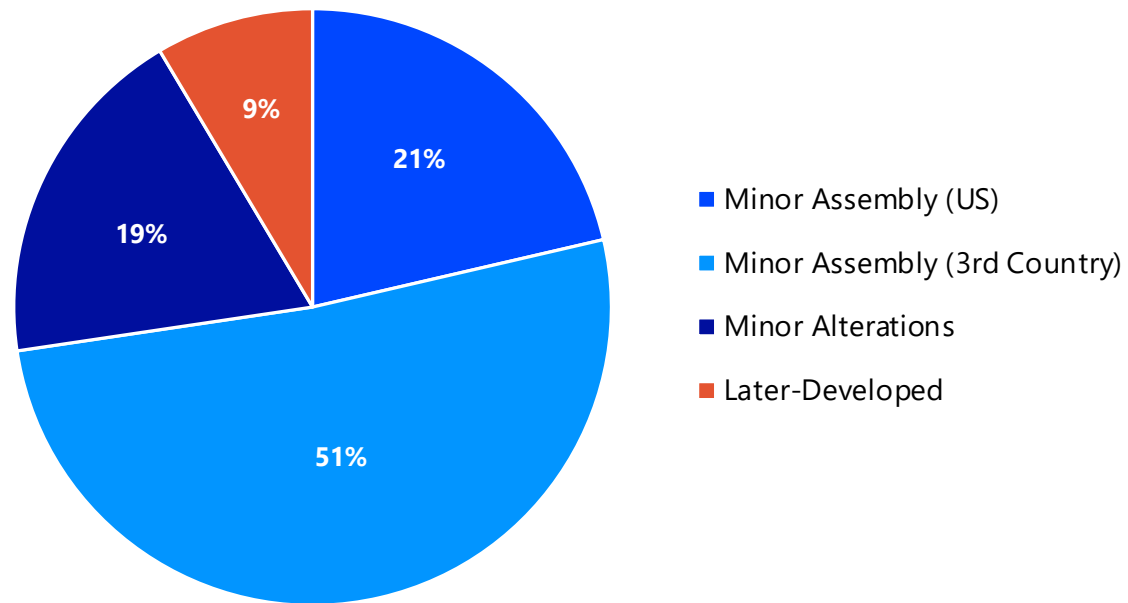
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Circumvention Determination by Type

1988-2025

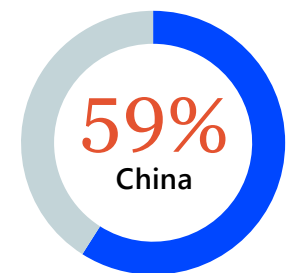
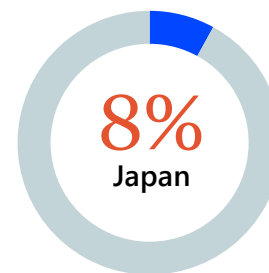
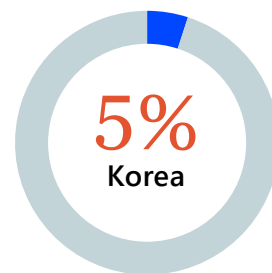
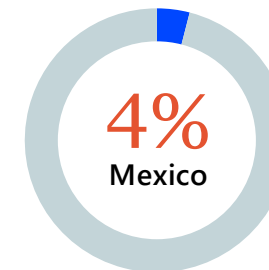
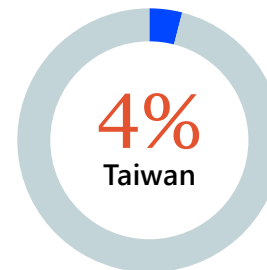
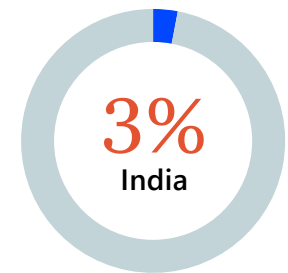
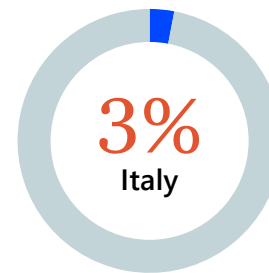
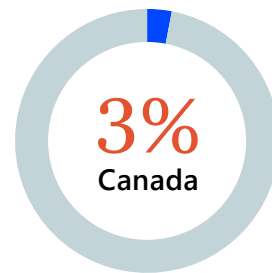
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Circumvention Determination by Order Country

1988-2024

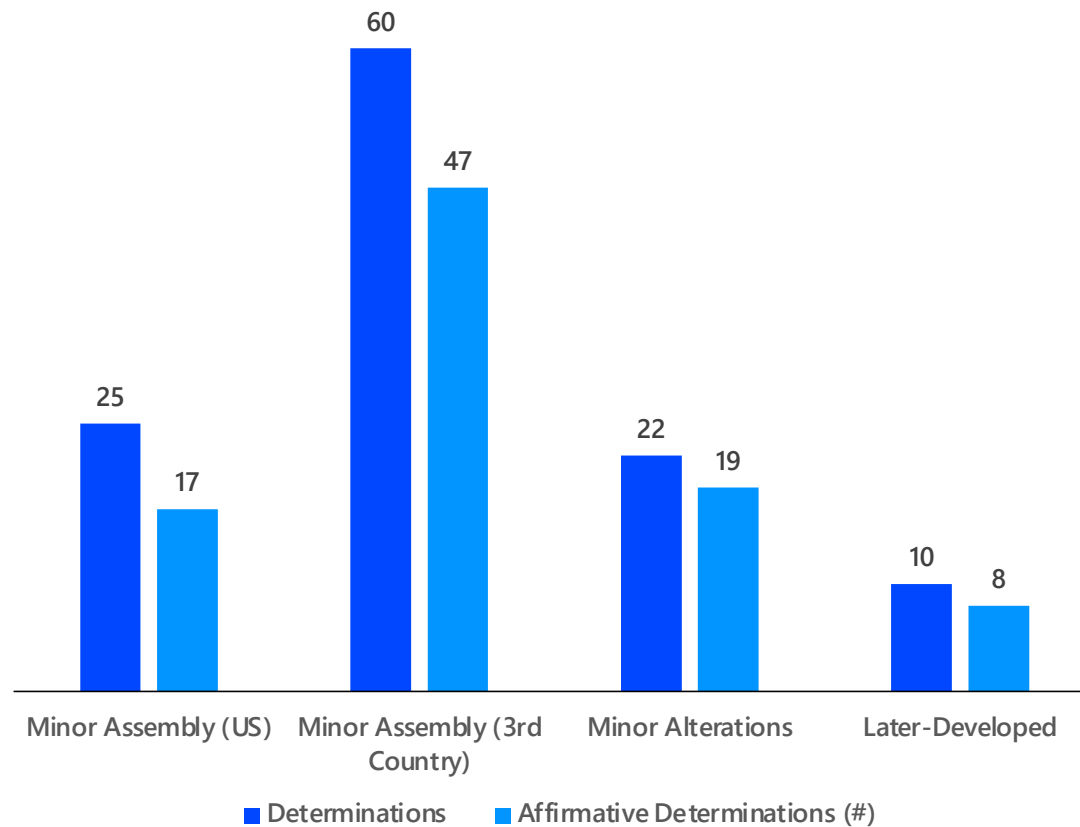
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Circumvention Determination by Commerce

1988-2024

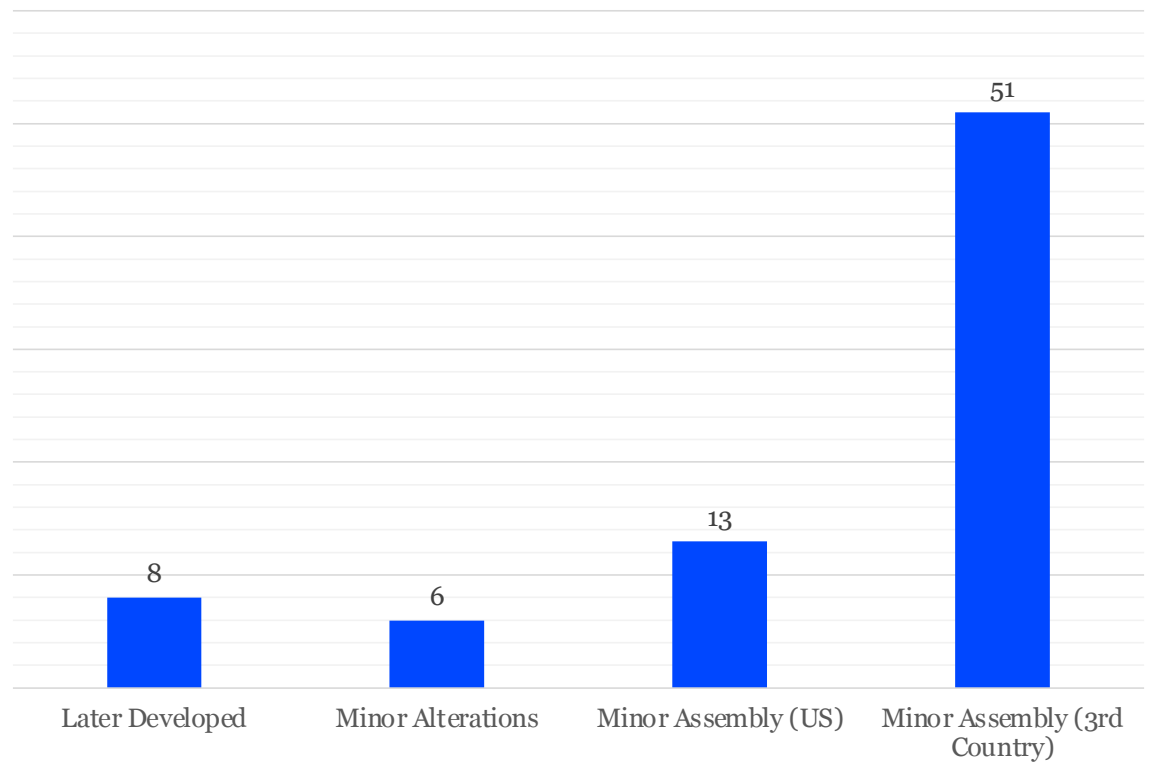
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Ongoing Circumvention Investigations by Commerce

2025

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Circumvention

Compliance Risks:

- Commerce institutes duties but CBP enforces them
- CBP in 2023 reviewed entries and recovered \$161.1 Million in unpaid AD/CVD duties
- Visit suppliers and check to mitigate risk
- Have a trusted and transparent supplier relationship
- Be prepared to certify that a product is not made in a specific country

Avoiding Circumvention Risks

Importance of Supplier Audits:

- Regular visits and audits ensure suppliers adhere to trade regulations and ethical standards, mitigating risks of non-compliance.
- Engage in transparent supplier relationships to understand their production/distribution processes.
- These actions in closely engaging with suppliers/partners also helps ensure stronger adherence to classification, valuation, and other trade areas in imports/exports.

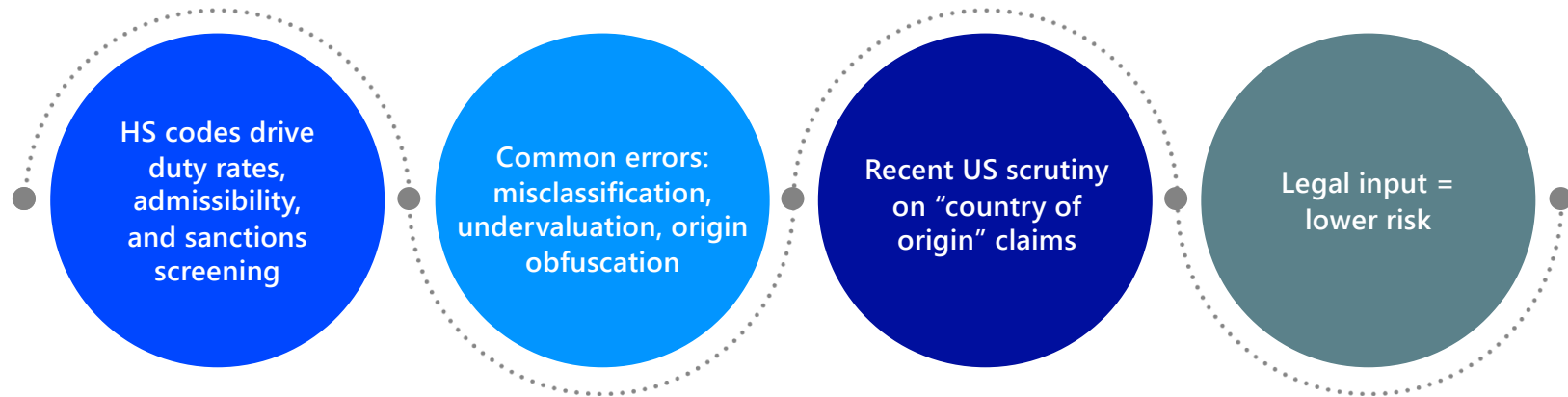
Key Questions to ask Suppliers:

- Can you provide detailed origin documentation for all materials?
- What measures are in place to prevent forced labor in your supply chain?
- How do you ensure compliance with international trade laws and sanctions?

Trade Enforcement

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Be Prepared for Increased Enforcement





- 1 Transshipment penalties – 40% on top of tariffs and duty

- 2 CBP is looking closely at changes in classification, value and COO

- 3 Statute of Limitations for Violations is 5 years from the date of entry

- 4 Records and Compliance Best Practices are KEY

- 5 DOJ Task Force focusing on Trade Fraud and Evasion

Tariffs: What Businesses Should Do Be Prepared for Increased Enforcement

Customs Priorities

Classification

- Tariff engineering as a strategy can lead to concerns of misclassification.
- CBP is paying particular attention to this

Custom Valuation/ Duty Mitigation

- Customs will focus closely on valuation of goods at the time of entry. Be prepared to document each component value for all valuation methods.
- Declaring a lower value of goods to avoid duties is not a good strategy unless due diligence is first undertaken to support the valuation
- Related Party Value is a key focus for CBP

Forced Labor

- Forced labor enforcement is also likely to increase with coordinated enforcement across all levels of government. This could lead to constrained supply chains as more entities are placed on the Entity List
- Not just focused on Uyghur Region but focused on forced labor anywhere in the world
- \$3.67 Billion in detained goods under UFLPA
- Detentions are difficult, and require lengthy releases and substantial submissions of proof
- Pay attention to any questionnaire issued by CBP as the focus of the inquiry will be clearly identified

Tariffs: What Businesses Should Do If Customs Contacts Them

Be Prepared for Increased Enforcement

CF-28 Request for Information

- First step of being on CBP's enforcement radar.
- Uses it to get additional information on a particular shipment
- Pay attention to every question

CF-29 Notice of Action

- Used as a tool to communicate CBP's intent to assess or plan to assess additional duties
- Can go after prior entries

Risk and Analysis Survey Assessment (RASA)

- Conduct focused post-entry audits of importers on specific high-risk categories of imports
- Determine what additional review is warranted
- Examine specific entries for accuracy and completeness
- Failure to cooperate can lead to an audit
- Looking for red flags indicating non-compliance

CBP Reviews/Audits

- CBP is increasing its review of errors and imposing penalties for trade and compliance violations
- Focus on targeted risk areas
- CBP after recovery of lost revenue

Tariffs: What Businesses Should Do

Be Prepared for Increased Enforcement

False Claims Act:

- A provision whereby any party can provide the government with information that a party is making a false claim and depriving the government of revenue. This applies to tariff misclassification, country of origin classification, tariff modifications, etc.
- FCA requires some knowledge of violation and can apply to the importer of record but may also reach companies that assist in the false importation
- Can be used by competitors as private party actors to file a “qui tam” action that DOJ has a statutory duty to investigate
- FCA is a civil and not a criminal statute
- FCA provides for both treble damages for unpaid duties and tariffs as well as per claim penalties

NEW TRADE FRAUD TASK FORCE

A Trade Fraud Task Force has been launched by the Department of Justice, Department of Homeland Security, and U.S. Customs and Border Protection.



MAJOR OBJECTIVES

- Enhance detection of customs fraud
- Improve investigation and prosecution
- Pursue civil and criminal enforcement
- Increase coordination among agencies

TYPES OF CONDUCT TARGETED

- Tariff evasion
- Undervaluation
- Misclassification of goods
- False origin claims

ENFORCEMENT TRENDS

- Parallel civil and criminal inquiries
- Rise in whistleblower actions
- Focus on tariff-related measures
- Ethics and accountability emphasized



Mergers and Acquisitions Implications

- US Customs expects buyers to conduct sufficient due diligence to identify any US customs issues including:
 - Classification, country of origin, valuation, tariff exemptions
- Requires involvement of knowledgeable US customs attorneys to identify and appropriately address any risk areas

Next Steps

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Practical Takeaways



Know your goods, partners, and destination



Document everything and maintain records



Compliance is a leadership issue



Seek early legal guidance from experts



Avoid significant changes for tariff mitigation purposes without evaluation

Robust Compliance Plans

- Devote adequate resources for customs-related functions in your company
- Develop Clear policies and procedures manuals for classification, valuation, and country of origin
- Educate and Train employees on informed compliance principles
- Engage in proactive monitoring, auditing and risk assessments
- Collaborate with brokers and customs (when necessary)





Resources for Staying Up to Date

- Husch Blackwell's [International Trade Insights blog](#) and [Monthly Trade Update](#)
- Whitehouse.gov
- Subscribe to CSMS, Commerce, DOJ and other mailing lists
- Follow President Trump's social media posts

The background is a solid blue color with a pattern of thin, white, wavy lines that create a sense of motion and depth. The lines are more densely packed in some areas and more spread out in others, creating a dynamic, flowing effect.

Questions?

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