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Antidumping Rule Change Leads to Unexpected Bills for Many Importers

In recent months, many importers have begun receiving bills from U.S. Customs and Border Protection (“Customs”) for additional antidumping duties and interest owed for items imported years ago, but only recently liquidated in accordance with newly implemented Department of Commerce (“Commerce”) dumping assessment guidelines. This policy change applies to imported merchandise sold from a re-seller, rather than the producer or manufacturer of the merchandise.

Under previous Commerce’ guidelines, if an importer purchased merchandise subject to antidumping duties, the importer was allowed to deposit antidumping duties at the margin rate applicable to the producer of the imported merchandise, provided the re-seller of the merchandise had not established its own rate. Once Commerce completed its administrative review for such imports, the transactions would liquidate at the producer’s antidumping duty rate for the period under review. Thus, re-sellers (and their importers) have generally enjoyed the application of a producer’s antidumping margin rate, in lieu of an “all other” rate applied to unspecified producers and exporters. Most importers prefer using a producer’s rate, in lieu of the “all others” rate, because producer rates are generally lower and based upon more precise factors.

However, on May 6, 2003, Commerce published a “clarification” of its antidumping assessment policies ruling that, for transactions involving a re-seller, it would no longer allow the application of a producer’s rate unless the producer knew, or should have known, the merchandise it sold to the re-seller was destined for the U.S. This change in policy took effect for antidumping administrative reviews commenced May 2003 or later.

Due to the length of time necessary to complete most antidumping administrative reviews, the rule change is just beginning to impact importers. As administrative reviews are just reaching completion, numerous import transactions are being re-assessed from producer rates to significantly higher “all other” antidumping rates. Customs will generally issue bills for any additional antidumping duty owed at liquidation, plus interest, thus creating an unpleasant surprise for importers years after they purchased merchandise from re-sellers and deposited antidumping duties at the rate in effect for the producer. Commerce indicated this change in policy was necessary to prevent importers from “shopping” for producer antidumping margin rates, as well as to provide an incentive for re-sellers to obtain their own antidumping margin rates.

If your company purchases merchandise subject to antidumping duties from a foreign re-seller, this rule change could result in significant additional bills for antidumping duties unless you timely seek a separate antidumping margin rate for your past import transactions or are able to convince the government that you fall within the exception to the general rate. If you have recently received, or anticipate receiving, bills from Customs seeking to collect additional antidumping duties, or have questions concerning how this rule change might affect your imports, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below.

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