

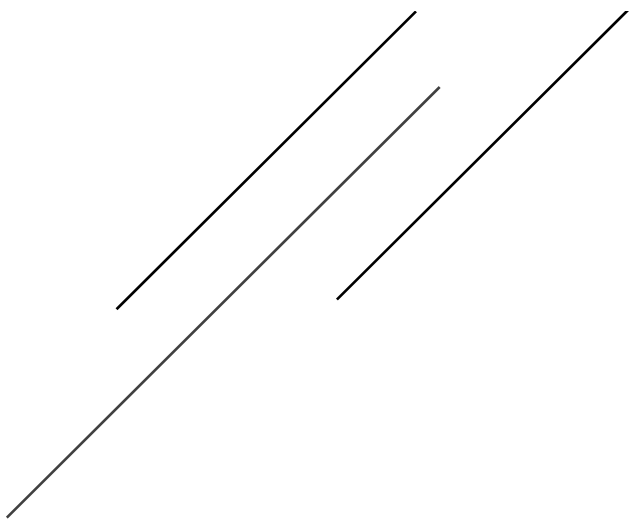


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**U.S. Trade
Restrictions:
Impact on India**

February 2019

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Section 701 and 731 Trade Remedies

Antidumping & Countervailing Duties

Antidumping Investigations

A unique and complex litigation conducted by the U.S. government with numerous tight deadlines, unusual information requests, and particular data requirements specialized to this kind of proceeding.

Cases involve onsite scrutiny by U.S. government officials with an ever-present possibility of punitive assumptions where data is incomplete or insufficiently verifiable.

Defense of an antidumping duty investigation requires substantial effort and expense by the companies involved. There are two stages to each investigation conducted by two separate U.S. government agencies The ITC and the Department of Commerce.

Countervailing Duties

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.

Countervailing Duties

Common Countervailable Subsidies offered by the GOI

- Advanced License Program (Advance Authorization Scheme)
- Duty Drawback
- Export Promotion Capital Goods Program
- Pre-Shipment and Post-Shipment Export Financing
- Export Oriented Units (EOU)
- Income Tax Exemptions Under Section 80-IA of the Income Tax Act
- Special Economic Zones
- Status Holder Incentive Scrip (SHIS)
- Service Exports Incentive Scheme (SEIS)
- Union Territory Central Sales Tax (CST) Program
- Merchandise Export from India Scheme (MEIS)
- Duty Free Replenishment Scheme
- State Government Programs
 - Tax Incentives
 - Exemptions from Utility Payments or Reduced Rates
 - Exemption from Stamp Duty
 - Entry Tax Exemptions
 - Provision of Land for Less Than Adequate Remuneration
 - VAT Refunds

Countervailing Duties

List of Current CVD Orders/Investigations Exports from India

- Hot-Rolled Carbon Steel Flat Products
- Polyethylene Terephthalate Film, Sheet, and Strip (PET Film)
- Prestressed Concrete Steel Wire Strand
- Carbazole Violet Pigment
- Lined Paper Products
- Commodity Matchbooks
- Oil Country Tubular Goods
- Polyethylene Terephthalate Resin
- Corrosion-Resistant Steel Products
- Cold-Rolled Steel Flat Products
- Welded Stainless Pressure Pipe
- Off-The-Road Tires
- Cold-Drawn Mechanical Tubing
- Fine Denier Polyester Staple Fiber
- Finished Carbon Steel Flanges

Antidumping Duties

List of Current AD Orders/Investigations Exports from India

- Welded Carbon Steel Standard Pipes and Tubes
- Steel Wire Rod
- Stainless Steel Bar
- Preserved Mushrooms
- Carbon Steel Plate
- Hot-Rolled Carbon Steel Flat Products
- Polyethylene Terephthalate Film, Sheet, and Strip (PET Film)
- Prestressed Concrete Steel Wire Strand
- Carbazole Violet Pigment 23
- Frozen Warmwater Shrimp and Prawns
- Lined Paper
- Commodity Matchbooks
- Oil Country Tubular Goods
- Polyethylene Terephthalate Resin
- Corrosion-Resistant Steel Products
- Cold-Rolled Steel Flat Products
- Off-The-Road Tires
- Finished Carbon Steel Flanges
- Cold-Drawn Mechanical Tubing
- Fine Denier Polyester Staple Fiber
- Stainless Steel Flanges

Indian Cases on the Rise

- There are several factors that strongly suggest an increase in the U.S. AD & CVD cases against India in the near future:
- Currency Depreciation: Indian currency has depreciated against the dollar in recent years by:
 - 5% in the last 3 years
 - 10.2% in the past year
- Increased Imports from India: The U.S.\$ value of Indian imports totaled \$48.6 billion in 2017, up 5.6% from 2016 and up 101.9% from 2007.
- Withdrawal of GSP Preferential Status Effective May 2019
- Increased Number of Cases: The DOC initiated AD & CVD investigations against 7 products from India in 2017 and 2018 (listed below), whereas only 4 cases were initiated between 2010-2014.
 - Polyester Textured Yarn
 - Glycine
 - Large Diameter Welded Pipe
 - Cold Drawn Mechanical Tubing of Carbon and Alloy Steel
 - Fine Denier Polyester Staple Fiber
 - Stainless Steel Flanges
 - Polytetrafluoroethylene (PTFE) Resin
 - Certain Alloy and Carbon Steel Threaded Rod
- Projected Growth of the Indian Manufacturing Sector: Due to the renewed focus of the Indian government to improve the competitiveness of the manufacturing sector and the increased opportunities to integrate more into global supply/value chains as China's labor costs have risen, the Indian manufacturing sector is expected to grow thereby increasing the likelihood of being subject to trade remedy allegations.

Preparation Is Key

Importance of AD/CVD questionnaires in the DOC's investigations/reviews.

Companies must take questionnaire preparation very seriously.

The company must be prepared to answer follow-up questions and information requests based upon original AD/CVD responses. Poorly-prepared responses will result in difficult supplementary questionnaires.

Poor responses result in further burden on management and staff. Affects normal day-to-day business operations for several months.

Failure to respond to the questionnaire, or provide accurate information in a timely manner often leads Commerce to use adverse facts available (AFA). This is normally the highest rate alleged in the petition.

Sudden and significant duty liabilities arise at the time of entry.

Participation Matters

Difference in Margins With/Without Counsel

| Case | Company | Margin | Represented |
|--|--------------------------------------|---------|-------------|
| Glycine (AD) | Kumar Industries, India | 80.49% | No |
| | Paras Intermediates Private Ltd. | 10.86% | Yes |
| Stainless Steel Flanges (CVD) | Bebitz Flanges Works Private Limited | 256.16% | No |
| | Echjay Forgings Private Limited | 4.92% | Yes |
| Stainless Steel Flanges (AD) | Chandan | 19.16% | Yes |
| | Echjay single entity | 145.25% | Yes |
| | Bebitz/Viraj single entity | 145.25% | No |
| Cold-Drawn Mechanical Tubing (AD) | Goodluck India Limited | 33.80% | Yes |
| | Tube Products of India, Ltd. | 8.26% | Yes |
| Welded Stainless Pressure Pipe (AD) | Sunrise Group | 0.00% | Yes |
| | Steamline Industries Ltd. | 12.66% | No |

Participation Matters

Difference in Margins With/Without Counsel

| Case | Company | Margin | Represented |
|---|---------------------------|---------|-------------|
| Polyethylene Terephthalate Resin (AD) | Dhunseri Petrochem, Ltd. | 19.41% | No |
| | Ester Industries, Ltd. | 14.23% | Yes |
| | JBF Industries, Ltd. | 19.41% | No |
| | Reliance Industries, Ltd. | 8.03% | Yes |
| Polyethylene Terephthalate Resin (CVD) | Dhunseri Petrochem Ltd | 5.12% | Yes |
| | JBF Industries Limited | 153.80% | No |
| Large Diameter Welded Pipe (AD) | Bhushan Steel | 50.55% | No |
| | Welspun Trading Limited | 50.55% | No |
| Large Diameter Welded Pipe (CVD) | Bhushan Steel | 541.15% | No |
| | Welspun Trading Limited | 541.15% | No |



Overview of Section 232 Tariffs

Why Are Section 232 & Section 301 Unique?

- **GOVERNMENT-INSTITUTED TRADE REMEDIES**

- Significantly different than AD/CVD and Safeguard Statutes:
 - No required showing of “injury” to a U.S. industry.
 - No required showing of trade-related “unfairness”.
 - Self-initiated process by the U.S. Government.
 - Unilateral action with confusing procedures.

The President's 232 Proclamation

- Imposes additional tariffs
 - **25 percent** on certain steel products
 - **10 percent** on some aluminum products
- Increased tariffs took effect **March 23, 2018**. Assume to be in effect for the foreseeable future.
- Countries currently with exemptions include: Argentina, Australia, Brazil, and South Korea.
- On April 17, 2018, India requested consultations with the U.S. at the WTO under the Safeguards Agreement along with the EU, China, and Russia. The Dispute Settlement Body named panel members (from the Philippines, Chile, and Uruguay) on January 25, 2019, who will to examine and make findings in this proceeding.
- Exclusions have been granted for certain products but it is not guaranteed.
- Bill proposed in Congress to overrule the president on future 232 actions. It proposes to limit the presidents authority as well as shift the national security threat concerns to the Department of Defense. However, it has not gained enough momentum to earn a floor vote.

What's included



**All steel articles
entering the
U.S. under HTS:**

- 7206.10 through 7216.50 (including ingots, bars, rods and angles)
- 7216.99 through 7301.10 (including bars, rods, wire, ingots and sheet piling)
- 7302.10 (rails)
- 7302.40 through 7302.90 (including plates and sleepers)
- 7304.10 through 7306.90 (including tubes, pipes and hollow profiles)



**All aluminum
products entering
the U.S. under HTS:**

- 7601 (unwrought aluminum)
- 7604 (bars, rods and profiles)
- 7605 (wire)
- 7606 (plate, sheet, strip and foil - flat rolled products)
- 7608 and 7609 (tubes and pipes, and tube and pipe fittings)
- 7616.99.51.60 and 7616.99.51.70 (aluminum castings and forgings)

What to do?

- **Confirm Tariff Classification**

Binding ruling requests

Protests

Expert advice

- **Exclusions Requests**

Secretary of Commerce may grant an exclusion for steel/aluminum products if there is:

insufficient U.S. production

national security considerations

Commerce published the interim rule for submission of exclusion requests on March 19.

- **TWO Different Exclusion Processes**

Country exclusions:
handled by USTR

Product exclusions:
handled by Commerce

- **Product Exclusion Timeline**

90 days minimum to obtain an exclusion
Likely to take longer – AND – exclusions are only in effect for **ONE** year

Section 232 Auto Investigation

- In addition to the 232 Steel and Aluminum tariffs, President Trump has called for an investigation on the impact of [auto imports](#) on U.S. national security under Section 232 of the Trade Expansion Act of 1964.
- The Department of Commerce submitted their report to the President on February 17, 2019, giving him 90 days (until [May 18, 2019](#)) to decide on a course of action, if any.
- This could result in tariffs or quotas in the near future.



Overview of Section 301 Tariffs

Section 301 of the Trade Act of 1974

- Authorizes President to take all appropriate action to remove any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce.
- "The total value of imports subject to the tariff increase is commensurate with an economic analysis of the harm caused by China's unreasonable technology transfer policies to the U.S. economy, as covered by USTR's Section 301 investigation."
- Some of what is included: Technology Products, Transportation Items, Upstream Steel Products, Medical Devices, Weapons, Food Products, Chemicals, Plastics, Finished Goods, and Consumer Products.
- As of November 2018 imports into the U.S. from China were down by \$2.9 Billion. This reduction has to shift somewhere and that shift will be to other markets.





Section 301 Tariffs and Trade Shifts

- Trump Administration states that tariffs on multiple products from China are intended to put pressure on China to change its policies on intellectual property, investment, and other matters
- An agreement to settle these issues seems unlikely in the near future
- In the absence of an agreement some companies are examining the possibility of moving production to other countries but still using certain Chinese inputs for the production in those countries

Retaliatory Actions Against Trump's Tariffs: What Businesses Should Do

Be Prepared for Increased Enforcement

E-Allegations:

Permits a party to make an allegation against an importer anonymously and online for any violation for tariff shifts, country of origin, valuation, etc.

The Enforce and Protect Act of 2015 (EAPA):

Signed into law in 2016. Customs has started using the statute to investigate claims that importers are evading antidumping duties. Intent is not required for a violation. Parties found guilty of evasion are referred to the CBP Fines, Penalties & Forfeitures Branch for a penalty investigation. EAPA allegations can be filed through e-Allegations.

False Claims Act actions:

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.

Customs Valuation and Duty Mitigation Concerns:

Customs will focus closely on valuation of goods at the time of entry. Be prepared to document each component value for all valuation methods.

What Businesses Should Do

Be aware of increased unfair trade actions

The U.S. Government can initiate unfair trade actions, but historically most cases are brought by private parties:

U.S. antidumping law

U.S. countervailing duty law

Section 337 of the Tariff Act of 1930, as amended (dealing with other unfair trade practices not covered by AD or CVD laws, including imported goods that infringe patents or violate trademark law)

Section 301 of the Trade Act of 1974, as amended (formal method for private interest to raise issues of actions of trading partners that either violate agreements or are otherwise unfair to U.S. interests)

What Businesses Should Do

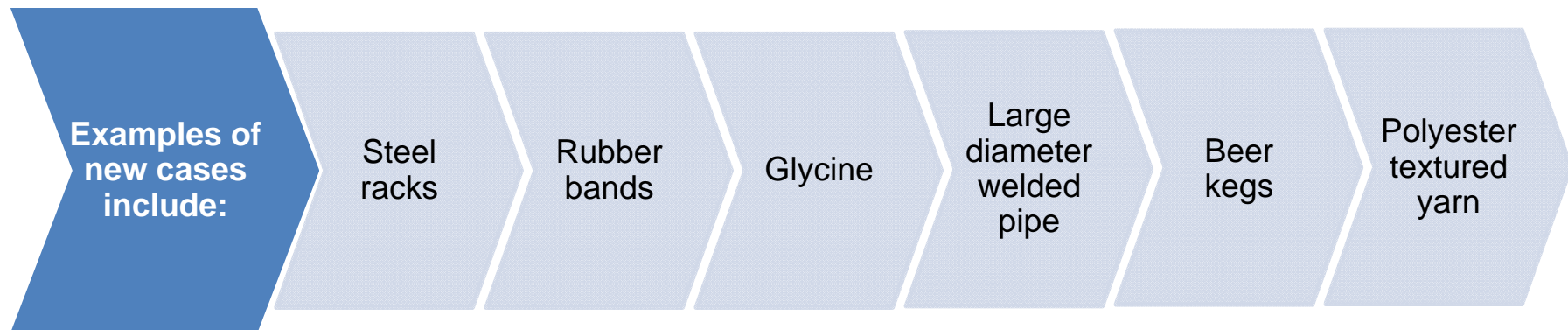
Be aware of increased unfair trade actions

2018:

The number of antidumping and countervailing duty cases is up 20% from the number of cases initiated in 2016.

2017: 82 AD/CVD cases

2018: 56 AD/CVD cases



What Businesses Should Do

Be aware of increased other unfair trade actions

Third Country
Cases Will
Increase with
Shifting Chinese
Operations

Chinese business setting up operations in other Asian countries will face increased scrutiny

Monitor investment approach

Monitor ownership and initial management structures

Monitor sourcing of input goods for country of origin concerns

Monitor local incentives for operations and increased exports in 3rd Countries

Example: Glycine from Thailand where Chinese-owned Glycine respondent received 0.00% CVD Rate and Expect a 0.00% AD Rate with no Particular Market Situation concerns

Risks for Companies Producing Using Chinese Inputs

- Both U.S. industries and the U.S. government are well aware of schemes involving changes in country of origin and/or the tariff headings in a country outside China.
- Purely transshipping goods and changing the labels to a new country of origin is likely to be considered a criminal act and exporters and importers may be subject to prosecution.
- For companies actually producing products outside China using Chinese inputs, there also are major risks that need to be avoided.

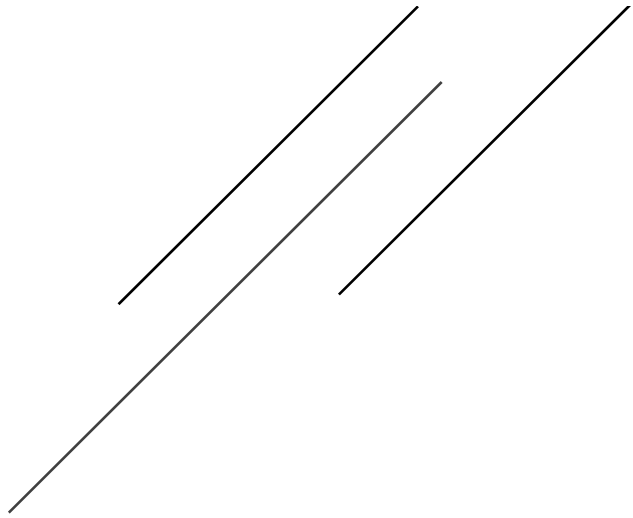


Country of Origin and Substantial Transformation

- U.S. Customs and Border Protection (CBP) has made clear that it will apply the “substantial transformation” test to goods having Chinese inputs that otherwise would be covered by the section 301 tariffs
- “Substantial transformation” is defined generally as work or production which results in the creation of a new and different article of commerce, with a “name, character and use” different from those of its components.
- The determination of whether a substantial transformation has occurred is specific to the facts of the product, the company, and industry and necessitates reviewing rulings of CBP, court cases, and the specific detailed facts of the individual situation.

Penalties for False Country of Origin

- There also penalties for aiding in falsifying country of origin. Thus, an exporter may be charged, along with anyone else involved in a scheme, as well as the importer being held liable.
- There are also criminal penalties for intentional acts to falsify country of origin or intentional misclassifications of merchandise.
- We expect CBP and the Justice Department to put priorities on enforcing these penalties and both importers and exporters need to work to ensure that they prevent exposure to any penalties.



Export Controls and Sanctions

U.S. Export Controls

- The U.S. Government prohibits U.S. companies, their subsidiaries and employees from exporting certain products or services as a means to promote **national security interests and foreign policy** objectives.
- Doing business with foreign companies or persons is an export of services which can be subject to sanctions even if the underlying transaction concerns importing goods into the United States.
- U.S. export controls regimes are organized in several sets of regulations: ITAR, EAR and country-specific embargoes.

Why are Export Controls a big issue?

- Impact of September 11th – shift to national security focus
- Significant government activity (fines and penalties)
- Companies regularly receive purchase orders with “ITAR and EAR compliance” clauses and must understand what this means.
- Sanctions issues can easily disrupt global supply chains (e.g. Russian and Venezuela related sanctions)
- Compliance is becoming a requirement to participate in certain industries.

Who Controls Exports?



U.S. Department of Commerce

- Bureau of Industry and Security (BIS)
- Bureau of the Census



U.S. Department of State

- Directorate of Defense Trade Controls (DDTC)



U.S. Department of Treasury

- Office of Foreign Assets Control (OFAC)



U.S. Department of Homeland Security

- U.S. Customs and Border Protection (CBP)

What Countries Are Sanctioned?

- Cuba
- Syria
- Iran
- North Korea
- Russia/Crimea
- Sudan (North)
- Belarus
- Burma (Myanmar)
- Congo
- Cote d'Ivoire
- Iraq
- Libya
- Lebanon
- Somalia
- Yemen
- Balkans

What is an Export?

- An export is a shipment, transmission or release of items out of the U.S. including commodities, software, technology and services.
- Examples include products, brochures, technical data, engineering drawings.
- The mode of transport or transmission is irrelevant.
- An export can be made by regular mail, express courier, freight forwarder, facsimile, e-mail or hand-carrying an item onto an aircraft.

What is a Re-Export?

A shipment or transmission of a U.S. origin item from one foreign country to another

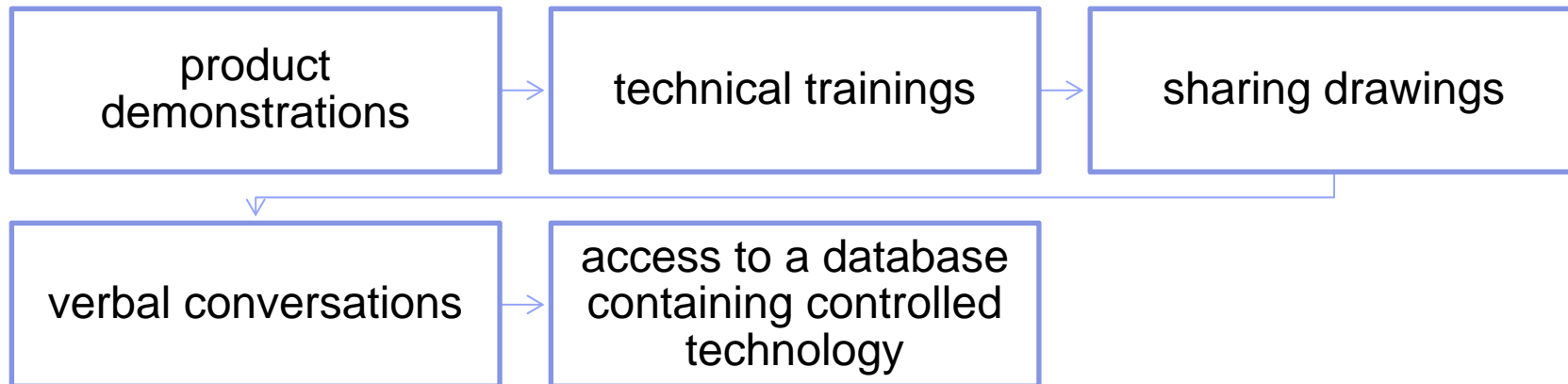
-OR-

A shipment from one foreign country to another of an item manufactured abroad from U.S. origin technology or parts

What is a Deemed Export?

Disclosure or transfer of export controlled software, technologies or technical data to a foreign entity or individual inside the U.S. is "deemed" to be an export to the home country of the foreign entity/individual.

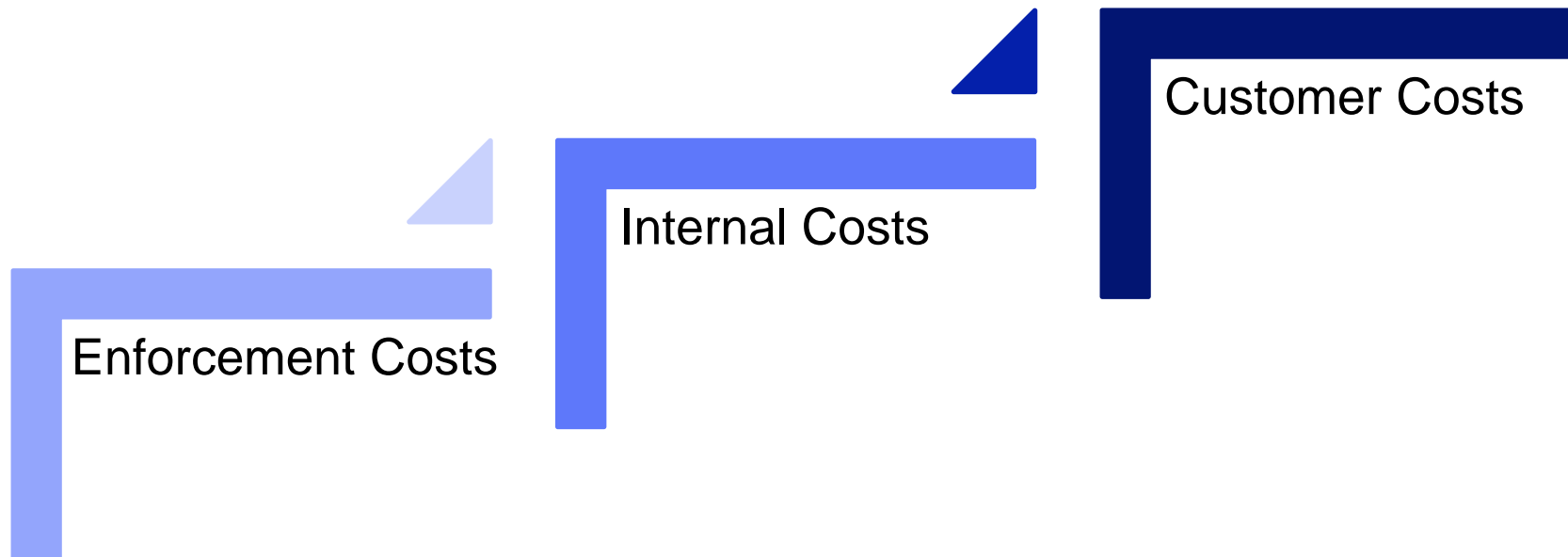
Examples:



Common Export Concerns for U.S. Companies and Indian Business Partners/Contractors

- Transmission and storage of data on cloud servers and licensing concerns.
- Due diligence and post-closing compliance.
- Screening of non-U.S. suppliers, service providers and customers.
- ITAR registration and compliance plans.
- Concerns with access by non-U.S. persons within the U.S. and outside.
- Engaging foreign subcontractors to provide services or foreign made components and sending drawings or specifications with controlled technical data.
- U.S. origin items wherever located are subject to U.S. export control laws.
- Critically important to understand OFAC's ownership rules when screening and looking at potential customers, suppliers and business partners.

Costs of Non-Compliance



Enforcement Costs

EAR Violations:

- **Criminal:** Up to \$1 million per violation/20 years imprisonment (individuals)
- **Civil Fines:** Up to \$250,000 per violation or up to 2x the amount of the transaction; suspension or debarment from government contracts and revocation of export privileges

ITAR Violations:

- **Criminal:** Up to \$1 million per violation/10 years imprisonment (individuals)
- **Civil Fines:** Up to \$500,000 per violation, suspension or debarment from government contracts and revocation of export privileges

OFAC Violations:

- **Criminal:** Up to \$1 million per violation/10 years imprisonment
- **Civil Fines:** Up to \$250,000 per violation, suspension or debarment from government contracts

How Can Husch Blackwell Help?

Trade Remedies and Special Tariffs

- Services with Respect to Imports Subject to Antidumping and Countervailing Duties
 - Representing Exporters Subject to Ongoing Investigations and Reviews
 - Representing Importers facing additional duties at time of entry and liquidation
 - Representing U.S. manufacturers/producers faced with unfair foreign competition
- HTS Classification Compliance
- Duty Exposure Review for section 232 and section 301 special tariffs
- Product Exclusion Requests for Steel and Aluminum Section 232 Tariffs

How Can Husch Blackwell Help?

Trade Remedies and Special Tariffs

- Customs Classification Ruling Requests
- Internal Audits for Import Compliance Measures
- Prior Disclosures and Protests
- Advising for Enforcement Investigations by Customs
- Section 337 and Intellectual Property Trade Actions
- Trade Policy Advising
- WTO Advising
- Foreign jurisdiction trade remedies advice
- Litigation at Court of International Trade and Court of Appeals for the Federal Circuit
- Foreign corruption/bribery, money laundering, and cross-border fraud defense

How Can Husch Blackwell Help?

Export Controls

- Classification and Commodity Jurisdiction (ITAR vs. EAR)
- ITAR Registration and Compliance Measures
- Screening Procedures
- Review of invoice, T&C and commercial contract language
- TAAs, MLAs, and other agreements with Indian subcontractors
- Due Diligence, Reps and Warranties for M&A and Post-Closing Compliance
- Voluntary Disclosures and Enforcement Actions
- Export Compliance Risk Assessment
- Training and Compliance Improvement Measures



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