



1776 K STREET NW  
WASHINGTON, DC 20006  
PHONE 202.719.7000

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

April 19, 2018

Daniel B. Pickard  
202-719-7285  
[dpickard@wileyrein.com](mailto:dpickard@wileyrein.com)

To: Producers, Importers and Purchasers of Stainless Steel Flanges

As you may be aware, the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission have reached affirmative preliminary determinations in the antidumping and countervailing duty investigations into stainless steel flanges from China and India. Pursuant to these preliminary determinations, U.S. Customs and Border Protection (“CBP”) began collecting duties on Indian flanges effective January 23, 2018, and will begin collecting antidumping and countervailing duties on imports of stainless steel flanges from China within the week.

It should be stressed, however, that the preliminary duties do not reflect the final duties that importers will owe on incoming shipments. The Department of Commerce is continuing to assess the duties applicable to Chinese and Indian stainless steel flanges, and has the power to raise the duties applicable to these goods in its final determinations.

However, even if the preliminary duties are not increased in the final determinations in the ongoing investigations, importers nonetheless may remain retroactively liable for higher duties than were paid at entry. Where antidumping and countervailing duties are not at issue, U.S. Customs & Border Protection (“CBP”) typically finalizes duty payments (a process known as liquidation) within 314 days of importation. However, the liquidation of entries subject to antidumping and/or countervailing duties is suspended pursuant to the United States’ retrospective assessment system for such duties. Under this system, the duties paid at entry remain contingent, and changeable, until Commerce concludes a post-investigation administrative review of those duties. With respect to stainless steel flanges from India and China, this means that final duty liability for imports subject to the preliminary duties will not be determined until mid-2019 at the earliest.

Because of the lengthy contingent liability that antidumping and countervailing duties represent, as well as the potential for final duties to be much higher than those paid at entry, importers may need to seek increased Customs bonding to continue to import stainless steel flanges from India and China. Sureties may also require additional fees or security to underwrite bonds on such entries, given the increased uncertainty and risk involved.

Importers should also be aware that the preliminary duties apply not only to finished flanges produced in China and India, but to unfinished and semi-finished goods. Thus, unfinished or semi-finished flanges imported into the United States for

## Producers, Importers and Purchasers of Flanges

April 19, 2018

Page 2

finishing are subject to the preliminary duties, in the same way that finished flanges would be. Importantly, merely finishing an Indian or Chinese forging in a third country does not change the finished good's country of origin for antidumping and countervailing duty purposes. Rather, the country of forging is the country of origin for purposes of the antidumping and countervailing duties. Importers must therefore take care with respect not only to direct imports of stainless steel flanges from China or India, but with respect to products finished in third-countries using Chinese or Indian forgings.

U.S. law imposes severe penalties on foreign producers and importers alike that seek to circumvent U.S. trade remedy duties. Purchasers may also be subject to such penalties, if they assist in "introducing" goods into the United States or cooperate with foreign producers and/or importers in circumventing duties.

All importers are required to use "reasonable care" when entering, classifying and determining the value of imported merchandise. Importers must also provide any other information necessary to allow CBP to properly assess duties, including antidumping duties. This includes correctly identifying imports of Chinese or Indian stainless steel flanges and accurately identifying their country of origin.

Importers and other entities involved in "introducing" goods into the United States by means of incomplete or inaccurate data may be subject to civil and/or criminal penalties. Penalties could be imposed for making false statements on import documentation or for falsely marking imported merchandise, for example, with the wrong country of origin.

U.S. law provides CBP with a wide range of options as to the penalties to apply to such false or fraudulent statements or omissions. For example, pursuant to 19 U.S.C. §1592, CBP can impose penalties for fraud, gross negligence and ordinary negligence. Further, importers that make false statements to avoid paying antidumping duties can be liable for penalties equal to the value of the merchandise, in addition to the underpaid or unpaid duties. Importers and others may be subject to civil and/or criminal penalties under 18 U.S.C. §371 for "conspiracy to commit offense or to defraud the United States," or under 18 U.S.C. §1001 for making false statements generally.

CBP is authorized under 19 U.S.C. §1304(i) to apply an additional duty where goods or their containers are marked with the incorrect country of origin. In addition, falsely marking goods or their containers may also subject an importer to liability under the



Producers, Importers and Purchasers of Flanges

April 19, 2018

Page 3

fraud provision discussed above. Moreover, an importer that falsely marks merchandise or its containers may be in breach of its import bond.

Clearly, these penalties are substantial and, when added to the significant preliminary antidumping and countervailing duties applicable to Chinese and Indian stainless steel flanges, can vastly exceed the value of the merchandise itself. Further, CBP also has the authority to refer circumvention cases to a U.S. Attorney for criminal prosecution. In this respect, importers who seek to circumvent the antidumping duty orders discussed above may be subject to additional criminal fines or imprisonment.

It is the responsibility of parties that seek to “introduce” goods into the United States to know and to accurately report the country of origin of all stainless steel flanges. For this reason, importers and purchasers should exercise extreme caution with respect to imports of stainless steel flanges, and should conduct thorough due diligence as to the country of origin of any such merchandise.

Parties with questions regarding the antidumping and countervailing duties applicable to stainless steel flanges from China and India should contact their legal counsel.

Sincerely,

Daniel B. Pickard

Counsel to the Coalition of American  
Flange Producers