

Miller & Chevalier

Hot Topics in U.S. Customs Enforcement

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Informed Compliance Letters

- **CBP's Informed Compliance Letters have alarmed the importing community**
 - Letters recommend the review of certain Informed Compliance Publications (ICPs) and encourage importers to review their import transactions and file prior disclosures, if appropriate
 - Generally an indication that CBP is considering an audit – either a Focused Assessment or a Quick-Response Audit
 - Failure to file a prior disclosure may result in penalties under a higher standard (e.g., gross negligence)
- **Letter recipients should prepare for a CBP audit**
 - Review import activity data, identify potential compliance risks, consider filing prior disclosures, implement a corrective-action plan, etc.

New Process to Investigate AD/CVD Evasion

- **New regulations establish procedures for CBP to investigate allegations of AD/CVD evasion**
 - Numerous advantages over the prior system (e.g., detailed timelines to initiate and complete an investigation, notice requirements)
 - Some limitations (e.g., parties will have limited access to confidential information, the DOC's role is not yet clear)
- **Expect an uptick in AD/CVD enforcement by CBP**
 - New task force to oversee evasion investigations
 - CBP's Commissioner has promised more aggressive and assertive enforcement
 - GAO Report concluding that CBP failed to collect approx. \$2.3 billion in AD/CVD duties between 2001-2014

Increase in CEE-Driven Enforcement

- **CEEs Playing an Increasingly Prominent Role in Enforcement**
 - Increase in requests for information (CF-28), particularly with regard to AD/CVD scope issues (*i.e.*, whether a product is covered by an AD/CVD order)
 - The same CF-28 can be used to survey an entire industry
 - CEEs apparently behind formal investigations on various issues (*e.g.*, AD/CVD, preference claims), some preceded by CF-28s
 - Collaboration with ICE on commercial fraud investigations

Detention of Imports Made by Forced Labor

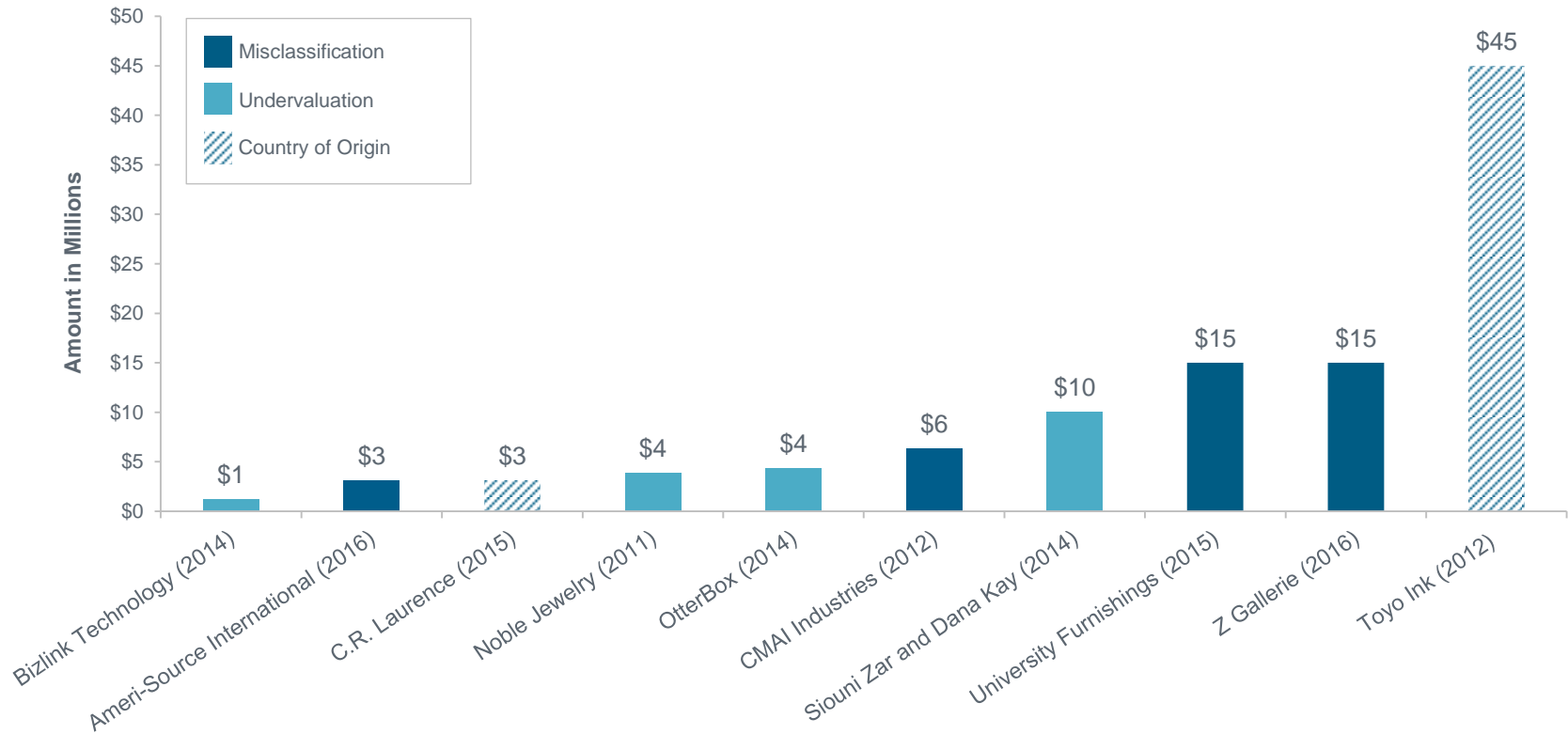
- **CBP has promised more enforcement actions on imports made by forced labor (e.g., child labor, convict labor)**
 - New task force to interdict forced labor imports
 - Products suspected of being made by forced labor have been detained (e.g., chemicals, artificial sweeteners); focus on China
- **But no clear guidance yet from CBP on its investigative process**
 - What satisfies "reasonably but not conclusively" standard to detain merchandise?
 - What must an importer do to successfully petition for the release of detained merchandise?
 - Commingled merchandise
 - Importers encouraged to name screen and audit high-risk suppliers

Privatization of Customs Fraud Enforcement

- **Rise of lawsuits brought by private parties against importers under the False Claims Act (FCA) for customs fraud**
 - Filed by competitors, current or former employees, private companies (a.k.a., “customs trolls”)
 - The FCA incentivizes whistleblowers to file suit – private parties can collect up to 30% of any amount recovered, plus attorney’s fees
 - Common types of customs violations alleged in FCA cases include purposefully misclassifying imported merchandise, misreporting the value of imported merchandise (e.g., purposefully omitting assists), misrepresenting the country of origin (e.g., to evade an AD/CVD order)

Privatization of Customs Fraud Enforcement

Ten Largest Customs-Related FCA Enforcement Actions
(2011 - Present)



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