On January 31, 2020, President Trump issued Executive Order 13904 (“EO”) entitled “Ensuring Safe & Lawful E-Commerce for U.S. Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights.” It begins by stating that e-commerce is “being exploited by traffickers to introduce contraband into the United States, and by foreign exporters and United States importers to avoid applicable customs duties, taxes and fees.” The types of malfeasance cited are counterfeit goods, narcotics (specifically synthetic opioids, such as fentanyl), and other contraband, plus, of course, protection of the revenue. The focus of the EO is on express consignment operators, carriers, hub facilities, international posts, customs brokers and e-commerce platform operations (the “Regulated Parties”). Anyone who participates in the “introduction or attempted introduction” of parcels containing contraband can be held accountable with accountability taking the form of both civil and criminal consequences, as appropriate. The EO goes on to state that CBP’s suspension and debarment procedure will form the framework through which these actions will be carried out. Suspension and debarment apply in the context of doing business with the government, such as government contracts, subcontracts, grants, loans and other assistance programs.

CBP already has a suspension and debarment process in place, the goals for which are to: 1) Enhance legal and regulatory authorities to better posture CBP and
interagency partners to address emerging threats; 2) Enhance and adapt all affected
CBP operations to respond to emerging supply chain dynamics created by the rapid
growth in e-commerce; 3) Drive private sector compliance through enforcement
resources and incentives; and 4) Facilitate international trade standards for e-
commerce to support economic prosperity.

The EO calls for an Importer of Record Program which starts with the issuance of a
proposed rule that will establish criteria importers must meet to obtain an importer
of record number (“IOR” number). The IOR number currently used to make entry is, of
course, most often the company’s Employer Identification Number issued by the
Internal Revenue Service. How will this work?

Any suspended or debarred person (which includes individuals and business entities
of all forms) will not be eligible to obtain such an IOR number. Within 60 days of
publication of any suspended or debarred person in the System for Award
Management (see [SAM Search Page](https://www.sam.gov)), the Regulated Parties are required to notify
CBP of any attempt to import about which they “know or have reason to believe” by
such persons. Enforcement could take the form of limiting the participation of any of
the Regulated Parties in any CBP trusted trader program, but also revocation of
operating privileges or suspension or revocation of any broker license.

There will be similar restrictions placed on international mail services. Metrics will
be established by which each international mail post will be rated. The rate of
trafficking through each post will be considered, as will the effectiveness of that
post to reduce such trafficking, along with cooperation with CBP. Compliance scores
are to be updated quarterly, subject to a minimum threshold. If the international
post is found to be non-compliant for two quarters, targeting shall be increased. If
the international post is found to be non-compliant for six or more quarters,
additional documentation may be required, but all appropriate efforts should be
made to prevent importation of any shipment from that international post if the
additional information requested is not “promptly” provided. If the international
post is non-compliant for eight or more quarters, measures should be taken to
prevent importation of any packages from that location.

Information about seizures in the international mail and express consignment
environments that involve specific types of violations should be published. Those
violations deal with intellectual property rights, illegal drugs and other contraband,
correct country of origin, under valuation and other violations related to CBP’s
priority trade issues (i.e., [Agriculture and Quota](https://en.wikipedia.org/wiki/Agricultural_marketaccess);
[Antidumping and
Countervailing Duty](https://en.wikipedia.org/wiki/Antidumping_and_countervailing_duty);
[Intellectual Property
Rights](https://en.wikipedia.org/wiki/Intellectual_property_rights);
[Revenue](https://en.wikipedia.org/wiki/Revenue);
[Textiles/Wearing Apparel](https://en.wikipedia.org/wiki/Textiles_and_wearing_apparel) and [Trade Agreements](https://en.wikipedia.org/wiki/Trade_agreements)). When
deciding what to publish, repeat offenses are to be given greater weight.

Also under consideration is whether any fees CBP assesses should be revised.
Beside the fact that customs brokers have been added to the list of possible targets
and are the only parties named that generally do not see or handle the cargo, the
definition of an e-commerce platform is worthy of note. An e-commerce platform is
defined to mean “any web-based platform that includes features primarily designed
for arranging the sale, purchase, payment, or shipping of goods, or that enables
sellers not directly affiliated with an operator of a web-based platform to sell
physical goods through the web to consumers located in the United States [emphasis
added].” In short, the focus of this effort is third party platforms, not those a company itself operates through which it sells its own products.

There are currently two definitions to keep in mind when determining who qualifies to be the importer of record. One appears at 19 U.S.C. 1484(a)(2)(B) and defines importer of record as the owner or purchaser of the merchandise or, when appropriately designated, a licensed customs broker. 19 C.F.R 101.1 defines the importer as the person primarily liable for the payment of any duties and other assessments or the authorized agent of the importer, which may be the consignee, the importer of record, the actual owner of the merchandise (which requires a superseding bond) or a transferee of the merchandise. So, a handful of interesting questions arise. Will this EO lead to a different definition of importer of record for entry purposes? Also, how will this Importer of Record program differ from current definitions and practices? Would the first step be that every company wanting to import will now need to be assigned an IOR number by CBP? Here again, traders are faced with changes where the outcome remains to be good, bad or in between. Where that outcome lands is anyone’s guess as of now, but we will continue to keep you updated on these developments.

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