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Trade Remedies: Antidumping and Countervailing Duties

Overview

What are they? Antidumping (AD) and Countervailing Duties (CVD) address unfair trade practices by providing relief to U.S. industries and workers that are “materially injured,” or threatened with injury, due to imports of like products sold in the U.S. market at less than fair value (AD), or subsidized by a foreign government or public entity (CVD).

What is the relief provided? At the end of an investigative process, in AD cases, the remedy is an additional duty placed on the imported merchandise to offset the difference between the price (or cost) in the foreign market and the price in the U.S. market. In CVD cases, a duty equivalent to the amount of subsidy is placed on the imports.

Who conducts AD and CVD investigations? The U.S. International Trade Commission (USITC) determines if a U.S. industry has suffered material injury. The International Trade Administration of the Department of Commerce (ITA) determines the existence and amount of dumping or subsidy.

What is the statutory authority for AD and CVD investigations? AD/CVD laws are found in Title VII of the Tariff Act of 1930 (19 U.S.C. 1671-1677n, as amended). U.S. laws and those of other World Trade Organization (WTO) members must comply with obligations under the WTO Antidumping and Subsidies Agreements.

What is the value of goods currently subject to AD and CVD orders? In FY2020, \$18.2 billion of imported goods were subject to AD/CVD and U.S. Customs and Border Protection (CBP) assessed approximately \$1.8 billion in AD/CVD deposits and levied more than \$31 million in fines and penalties for fraud, negligence, and gross negligence of AD/CVD requirements.

Supporting Views. Supporters of AD/CVD actions say that they are necessary to shield U.S. industries and workers from unfair competition, and that they help to increase public support for additional trade liberalization measures.

Opposing Views. Opponents, including some importers and downstream consuming industries, say that AD/CVD actions create inefficiencies in the world trading system by “artificially” raising prices on imported merchandise. Some U.S. exporters are also concerned because U.S. products are subject to these AD/CVD actions in foreign markets.

Process

How are AD and CVD investigations conducted?

Investigations are conducted through an administrative process (see **Figure 1**) within specified time limits, which

can be extended under certain conditions. Each phase of an investigation is notified in *the Federal Register*.

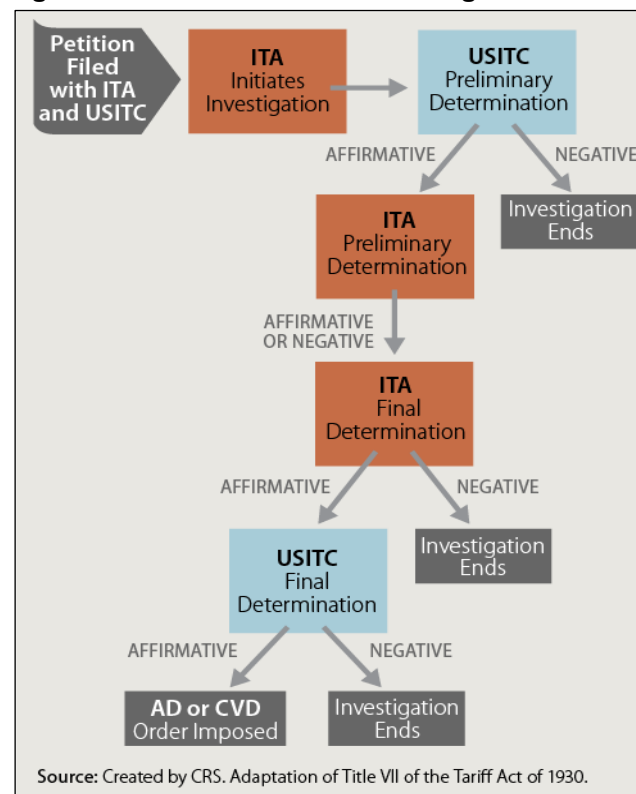
What is the role of the International Trade Commission?

The USITC determines whether a U.S. industry “is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded,” due to sales of the targeted merchandise in the U.S. market.

What is the role of the International Trade Administration?

The ITA is the “administering authority” in the statute. The ITA evaluates the petition, decides whether to initiate an investigation, determines whether dumping or subsidies exist, and calculates the amount of dumping (dumping margin) or subsidy. If an investigation results in final affirmative determinations by both the ITA and the USITC, the ITA issues an AD or CVD order directing U.S. Customs and Border Protection to collect duties on the imported merchandise.

Figure 1. Overview of AD/CVD Investigations



What are the steps in the investigative process?

Initiation. After a petition is filed simultaneously with the ITA and the USITC, the ITA generally has 20 days to determine if the petition has enough information and industry support to initiate an investigation. If the ITA

decides not to initiate, the petition is denied and the proceedings end.

USITC Preliminary Determination. If the ITA initiates the investigation, the USITC investigates whether there is a “reasonable basis to believe or suspect” that the U.S. industry has suffered material injury. The USITC normally has 45 days from the filing of the petition to make its preliminary finding. If affirmative, the investigation continues at the ITA. If negative, the investigation ends.

ITA Preliminary Determination. The ITA conducts its preliminary investigation to consider whether there is a “reasonable basis to believe or suspect” the existence of dumping or subsidies. If affirmative, the ITA estimates the amount of dumping or subsidies, directs U.S. Customs and Border Protection to suspend liquidation (collection of final duties) on the targeted merchandise and to collect bonds or cash deposits from importers covering the estimated amount. Whether negative or affirmative, the investigation continues on to the final ITA phase. Preliminary determinations take from 60-130 days from the initiation date in CVD cases, and from 100-190 days in AD cases.

ITA Final Determination. Following the preliminary phase, the ITA continues its investigation to determine whether the targeted merchandise has been dumped or subsidized. In CVD investigations, the final determination must generally be made within 75 days of the ITA preliminary determination; in AD cases, 75-135 days after the preliminary determination. If affirmative, the investigation continues to the final stage at the USITC. If negative, the investigation is terminated.

USITC Final Determination. The investigation concludes at the USITC for the final injury phase. The commission has 45-75 days to make its final determination. If negative, the investigation ends. If affirmative, the ITA issues an AD or CVD order.

AD or CVD Order Issued. The ITA issues an AD or CVD order instructing CBP to collect cash deposits for estimated duties owed on all entries of the targeted merchandise.

Reviews

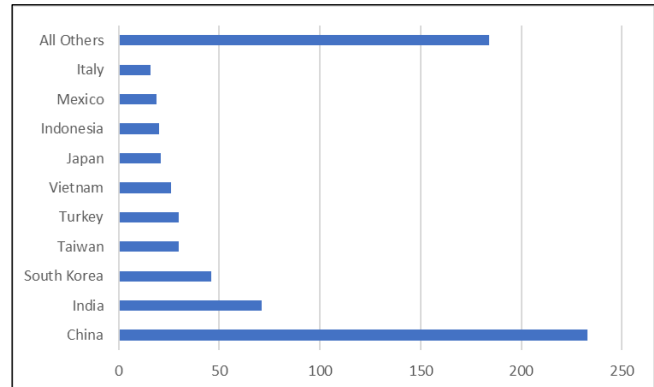
Are AD and CVD orders permanent? No. Orders are subject to several types of review, which could result in the dumping or subsidy margin being adjusted up or down. A review could also lead to continuation or revocation of an AD or CVD order.

What is an administrative review? Each year, during the anniversary month of the publication of an AD or CVD order, an interested party may request that the ITA conduct a review of an order to determine the actual amount of AD or CVD duties to be paid on the entries.

What is a changed circumstances review? Interested parties may also request that the ITA review an AD or CVD order if they have questions about whether an order still applies; for example, if the U.S. industry is no longer interested in covering certain products, or if the business structure of the foreign manufacturer has changed.

What is a “sunset” review? No later than once every five years, the ITA and USITC must review each AD or CVD order. The ITA determines whether dumping or subsidies would be likely to continue or resume if the order is revoked; and the USITC conducts a similar review to determine whether injury to the domestic industry would be likely to continue or resume.

Figure 2. U.S. AD/CVD Orders In Force by Country



Source: ITA as of June 21, 2024.

Issues for Congress

Enforcement. Some in Congress assert that CBP ineffectively enforces AD/CVD orders by not promptly investigating duty circumvention allegations and under-collecting duties. P.L. 114-125, the Trade Facilitation and Trade Enforcement Act of 2015, in part, required that CBP: (1) investigate AD/CV duty evasion based on a time line; (2) more efficiently collect and verify data on importers; and (3) base importer’s bond amounts on risk. Executive Order 13785 (March 31, 2017) required risk assessments for bonds, and strengthened bond requirements for new importers of goods subject to AD/CVD and those who have not paid AD/CVD on time. CBP has stated these new tools have helped prevent evasion.

WTO Rules and Disputes. AD/CVD actions are subject to WTO dispute settlement, and the United States has acted as both complainant and respondent in WTO disputes. The WTO Appellate Body’s (AB) rulings on AD/CVD actions have been the source of some of the strongest U.S. criticism of the AB. The WTO agreements addressing AD/CVD have not been updated since 1994. The United States, Japan, and the European Union have expressed a desire to update the agreements address challenges posed by non-market economies, particularly with respect to subsidies.

Potential Member Involvement. The quasi-judicial investigative process in U.S. law may indicate that Congress intended AD/CVD actions to be conducted apart from political influence. However, AD/CVD investigations also involve constituents—either U.S. petitioning companies, or U.S. importing companies possibly harmed by trade remedy actions. Thus, Members are sometimes asked to write letters or testify at hearings on either side of a trade remedy action to support a constituent’s cause.

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