

ANTIDUMPING AND COUNTERVAILING DUTY LAWS UNDER THE TARIFF ACT OF 1930

Under the Tariff Act of 1930, U.S. industries may petition the government for relief from imports that are sold in the United States at less than fair value ("dumped") or which benefit from subsidies provided through foreign government programs. Under the law, the U.S. Department of Commerce determines whether the dumping or subsidizing exists and, if so, the margin of dumping or amount of the subsidy; the ITC determines whether there is material injury or threat of material injury to the domestic industry by reason of the dumped or subsidized imports. For industries not yet established, the ITC may also be asked to determine whether the establishment of an industry is being materially retarded by reason of the dumped or subsidized imports.

Antidumping and countervailing duty investigations are conducted under title VII of the law. The ITC conducts the injury investigations in preliminary and final phases.

Preliminary Phase Antidumping Investigations (Imports Sold at Less Than Fair Value) and Preliminary Phase Countervailing Duty Investigations (Subsidized Imports)

When: After the simultaneous filing of a petition with the ITC and the U.S. Department of Commerce, the ITC conducts a preliminary phase injury investigation.

Duration: The preliminary phase of the investigation usually must be completed within 45 days of the receipt of the petition. If Commerce has extended its deadline for initiating the investigation, the ITC must make its preliminary injury determination within 25 days after Commerce informs the ITC of the initiation of the investigation.

Finding: The ITC determines, on the basis of the best information available to it at the time of the determination, (1) whether there is a "reasonable indication" that an industry is materially injured or is threatened with material injury, or (2) whether the establishment of an industry is materially retarded, by reason of imports under investigation by the Department of Commerce that are allegedly sold at less than fair value in the United States or subsidized. If the ITC determination is affirmative, Commerce continues its investigation. If the ITC determination is negative, the investigation is terminated. However, if the ITC, in making a preliminary or final determination, finds that imports from a country are negligible, then the investigation regarding those imports must be terminated. Imports from a country under investigation are deemed negligible if they amount to less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period preceding the filing of the petition for which data are available.

There are exceptions to this rule. One exception is that when imports from more than one country are subject to investigation as a result of petitions filed on the same day, imports from one or more of those countries under investigation will not be deemed negligible if the sum of imports from countries subject to investigation whose imports are less than 3 percent on an individual basis collectively amounts to more than 7 percent of the volume of all such merchandise imported into the United States. Further, if there is a potential that imports will imminently exceed the 3 percent or 7 percent thresholds, such imports will not be deemed negligible for purposes of the ITC's threat determination. There are also other exceptions to the negligibility rule.

Final Phase Antidumping Investigations (Imports Sold at Less Than Fair Value) and Final Phase Countervailing Duty Investigations (Subsidized Imports)

When: After a preliminary affirmative determination by the Secretary of Commerce (or after a final affirmative determination if the preliminary determination was negative) that imported products are being, or are likely to be, sold at less than fair value or are subsidized, the ITC conducts the final phase of the injury investigation.

Duration: The ITC final phase injury investigation usually must be completed within 120 days after an affirmative preliminary determination by the Secretary of Commerce or within 45 days after an affirmative final determination by the Secretary of Commerce, whichever is later. However, in cases in which the Commerce preliminary determination is negative but the Commerce final determination is affirmative, then the ITC final injury determination must be made within 75 days.

Finding: The ITC determines (1) whether an industry in the United States is materially injured or threatened with material injury, or (2) whether the establishment of an industry in the United States is materially retarded, by reason of imports that the Department of Commerce has determined to be sold in the United States at less than fair value or subsidized.

If the ITC determination is affirmative, the Secretary of Commerce issues an antidumping order (in a dumping investigation) or a countervailing duty order (in a subsidy investigation), which is enforced by the U.S. Customs Service. If the ITC determination is negative, no antidumping duty or countervailing duty orders will be issued. If the ITC makes a finding of negligibility, the investigation regarding those imports will be terminated. ITC determinations may be appealed to the U.S. Court of International Trade in New York City, or, in cases involving Canada and/or Mexico, to a binational panel under the auspices of the North American Free Trade Agreement. (For further information on antidumping investigations, see section 731 et seq. of the Tariff Act of 1930, 19 U.S.C. 1673 et seq. For further information on countervailing duty investigations, see section 701 et seq. of the Tariff Act of 1930, 19 U.S.C. 1671 et seq.)

Section 753, Tariff Act of 1930 In the case of a countervailing duty order with respect to which an affirmative determination of material injury by the Commission was not required at the time the order was issued, interested parties may request that the Commission initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Such requests must be filed with the Commission within six months of the date on which the country from which the subject merchandise originates becomes a signatory to the Agreement on Subsidies and Countervailing Measures. (For further information, see section 753, Tariff Act of 1930, 19 U.S.C. 1675b.)

Sunset provision The Uruguay Round Agreements Act, approved in late 1994, amended the antidumping and countervailing duty laws in several respects. The most significant change affecting the Commission's workload is the new provision requiring the Commission to conduct a review no later than five years after an antidumping or countervailing duty order is issued to determine whether revoking the order would likely lead to continuation or recurrence of dumping or subsidies and material injury. Known as the "sunset provision," this new requirement will result in review of all outstanding antidumping and countervailing duty orders in existence as of January 1, 1995, by 2001 and in review of subsequently issued orders five years after they become effective. (For further information, see section 751(c) of the Tariff Act of 1930, 19 U.S.C. 1675(c).)