



ANTIDUMPING AND COUNTERVAILING DUTIES

The Tariff Act of 1930 allows for U.S. industries to petition the government for relief from imports that are determined to be sold in the U.S. below the fair value (dumped) and/or when a foreign government provides subsidies (countervailing) to assist the seller or manufacturer in exporting and selling to the U.S. market. Antidumping or Countervailing Duties (AD/CVD) are additional duties assessed to offset the value of dumping and/or subsidization, thereby leveling the playing field for domestic industries injured by such unfairly traded imports. AD/CVD rates are applied to specific manufacturers or are set at a country rate.

PHASES OF ADD/CVD DETERMINATIONS

Both the International Trade Commission (ITC) and the Department of Commerce (DOC) investigate the AD/CVD complaints filed by domestic industries. AD/CVD cases are very complicated, time-intensive proceedings that may result in a denial of the complaint, or if found to be valid, will move through preliminary and final determinations.

Preliminary Determination– The preliminary determination is conducted in two parts. In the first part, the ITC makes a preliminary determination concerning the likelihood of injury to the domestic industry. If this ITC determination is positive, the DOC then reviews the petition to determine whether the merchandise is being dumped or if subsidies exist. If the DOC determination is also positive, then a Preliminary Duty Order (PDO) is issued and Customs (CBP) will be directed to suspend liquidation of entries for merchandise subject to the investigation and to require cash deposits or bond equal to the amount of the ESTIMATED AD/CVD rate. (*CFR19 §351.205 Preliminary Determination*)

Final Determination- After the preliminary determination phase is complete, the final determination stage begins. If the DOC's final determination is positive, the ITC then proceeds with its final determination. If the ITC agrees and finds the likelihood of injury to the domestic industry, a retroactive, Final Duty Order (FDO) is issued. The DOC instructs CBP to require cash



deposits of estimated AD/CVD duties. Note; cash deposits made following the PDO and FDO are based on estimated AD/CVD rates only. (*CFR19 §351.210 Final Determination*)

Annual Administrative Review– Each year, on the anniversary of an AD/CVD order, the DOC provides the opportunity for foreign producers, exporters, importers and the domestic industry to request an Administrative Review of determinations. If a request is received, the DOC will review the previous 12 months of subject entries. The DOC will determine final rates, and importers will be required to deposit additional duties with interest, or will be refunded any applicable duties with interest. The entries will be liquidated as final. (*CFR19 §351.213 Administrative Review*)

Sunset Review– The DOC and the ITC are required to conduct reviews five years (Sunset Review) after an antidumping or countervailing duty order is issued. If the ITC determines that revocation would likely lead to continuation of material injury to the U.S. industry the order will remain in place. If the determination is negative, the order will be revoked. (*CFR19 §351.218 Sunset Reviews*)

PAYMENT OF ADD/CVD DUTIES

The AD/CVD paid at the time of entry are cash deposits of estimated AD/CVD duties. The final amount owed is not determined until the DOC conducts an administrative review to establish the final AD/CVD rates on past entries. The final AD/CVD amount may increase, decrease, or remain unchanged. After Commerce sends instructions to CBP on the final AD/CVD rate for the entry, CBP will assess this final duty and issue a bill for any increase in duty plus interest or refund any overpayment plus interest. Interest is not applicable to entries made during the provisional measures period in the original AD/CVD investigation. On average, this entire process takes approximately three years.

Critical Circumstances – The DOC may apply Critical Circumstances if it finds that foreign exporters are flooding the U.S. market with imports of a product subject to an ongoing AD/CVD investigation. If the DOC determines that critical circumstances exist, DOC has the authority to suspend liquidations and retroactively apply AD/CVD duties on entries made on or after the later of: (1) 90 days before the effective date the suspension of liquidation was first ordered, or (2) the date of the Federal Register notice initiating the investigation. (*CFR19 §351.206 Critical Circumstances*)



EVASION AND PENALTIES

Transshipment is an illegal tactic used by manufacturers and exporters of goods subject to an AD/ CVD order to evade the duties they have been ordered to pay by the US Government. Transshipment involves an importer falsely declaring the country of origin of the goods and failing to identify the goods as covered by an AD/CVD order. It may also involve using false shipping documents that identify a good as originating in a country other than the point of origin. Additionally, the importer will not identify the AD/CVD order that covers the goods on the entry documents presented CBP. Each of these actions gives rise to a separate violation that may be penalized.

Misclassification is sending goods subject to an ADD or CVD Order into the US under incorrect import Harmonized Tariff (HTS) classification codes or using inaccurate descriptions that wrongly identify the imports as goods that are not subject to the AD/CVD Order. This tactic is used frequently to evade antidumping and countervailing duties.

Other duty evasion tactics include deliberately undervaluing imports to artificially reduce an importer's duty liability, using false Customs declarations that claim imports are not subject to an AD and/or CVD order, and falsely claiming that the imports were produced by an exporter either not covered by the AD/CVD order or who has a much lower duty rate than the actual producer of the goods. A common practice is to ship all goods subject to an AD/CVD order through the producer that obtained the lowest AD and/or CVD rate.

CBP'S ROLE

CBP is responsible for the collection of all estimated and final AD/CVD cash deposits on subject entries. As a Priority Trade Issue (PTI), and as required by the Enforce and Protect Act of 2018 (EFPA), CBP has the responsibility of enforcing the AD/CVD laws as goods are entering the U.S and for detecting, investigating and deterring circumvention of AD/CVD laws. Circumvention of AD/CVD laws can result in significant monetary penalties including civil or criminal penalties.



WHAT IS THE IMPORTERS RESPONSIBILITY?

The U.S. importer has sole responsibility for declaring and paying estimated and final AD/ CVD duties; and as such, the importer must monitor AD/CVD investigations and determinations, understand the significant risk they pose and considered the impact to purchase decisions.

Review and Validate– Do your due diligence. The products included in the scope of an AD/CVD order must be reviewed against the product specifications. Harmonized Tariff Codes (HTS) are provided for convenience; however, the scope of the order is ultimately determined by product descriptions.

Request Scope Ruling – If an importer is unsure if their product falls within the scope of an AD/CVD order, the Importer can request a "scope ruling" from the DOC to determine whether a particular product is within the scope of an order. (19 CFR §351.225 Scope Rulings)

Deposit Estimated and Final Duties – The importer must deposit the estimated AD/CVD at the time of entry and be prepared to deposit additional duties once the final rates are set. It is important to note that the administrative process for determining the final rate can take up to 30 months and may result in a higher or lower final rate. If the final rate is higher than the estimated rate at the time of entry, the Importer must deposit the additional duties with interest. At times, the final rate will be lower than the estimated rate. In those cases, the Importer will be refunded the difference in duty with interest.

Non-Reimbursement Statement– It is illegal for a foreign producer or exporter to reimburse the importer for assessed AD/CVD duties. The importer must file a Certificate of Non-Reimbursement with the entry to certify that AD/CVD duties have not been reimbursed. Failure to file the certificate prior to liquidation will result in doubling of the assessed AD/CVD duties.