

## **Brief Outline of US Procedures for Countervailing Duty Investigations<sup>1</sup>**

### **What is Countervailing Duty**

Subsidising occurs when a government or a public body provides financial assistance to benefit the production, manufacture, or exportation of a good. Subsidies can take many forms, such as direct cash payments, credits against taxes, and loans at terms that do not reflect market conditions. A countervailing duty (CVD) is a duty to offset the amount of such subsidies extended or paid to producers or exporters in the exporting economy. A subsidy may be subject to countervailing measures only if it is specific<sup>2</sup>.

### **US Countervailing Duty Law**

The US CVD law is laid down in the Tariff Act of 1930, as amended. It provides for assessment of duties on imports whose production and/or importation is found to be (1) subsidised by the government/a public body (or a private party acting at the direction of a government/public body) in their place of origin and (2) injurious to a US domestic producer of like merchandise.

The two aspects of a CVD investigation are handled by two different US government agencies :

- The Department of Commerce (DoC) investigates the existence of subsidies and the amount of CVD to be imposed.
- The International Trade Commission (ITC) investigates whether there is material injury or threat of material injury to the domestic industry caused by the imports.

### **The Investigation Process**

As in US anti-dumping (AD) investigations, there are seven main stages in CVD investigations :

#### *1. Petition*

The petition for a CVD investigation is usually filed by the US domestic industry. The petition must be filed with the DoC and the ITC simultaneously and must provide, among other things, evidence of industry support, a complete narrative description of the covered

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1 While every effort is made to ensure the accuracy of the above information, the Department cannot guarantee this to be so and will not be held liable for any reliance placed on the same. Please refer to the US Tariff Act of 1930 (<http://www.ia.ita.doc.gov/download/title7.txt>), 19 CFR Ch. II Part 207 ([http://www.access.gpo.gov/nara/cfr/waisidx\\_04/19cfr207\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/19cfr207_04.html)) and 19 CFR Ch. III Part 351 ([http://www.access.gpo.gov/nara/cfr/waisidx\\_04/19cfr351\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/19cfr351_04.html)) of the US Code of Federal Regulations or seek legal advice for clarification of the US countervailing duty proceedings whenever necessary.

2 A subsidy is specific if it is limited to an enterprise, industry, or group of enterprise or industries within the jurisdiction of the granting authority. Subsidies that are contingent on export performance or on the use of domestic over imported goods are deemed to be specific in all cases.

merchandise, the name of the economy (or economies) where the covered merchandise is produced, allegations of the elements necessary for the imposition of a CVD and information reasonably available to the petitioner in support of its allegations.

2. Initiation of Investigation (Within 20 Days after the Filing of Petition)<sup>3</sup>

If the DoC considers the information contained in the petition is adequate and accurate, it will initiate a CVD investigation. Otherwise, it dismisses the petition and terminates the proceeding. The US CVD law also allows the DoC to self-initiate a CVD investigation, but this rarely happens.

3. ITC Preliminary Injury Determination (Within 45 Days after the Filing of Petition)

In the preliminary phase, the ITC issues questionnaires to domestic producers of the like merchandise, US importers and foreign producers. The questionnaires for foreign producers are composed of three parts. The first two parts consist of general questions about the firm's operations in the economy in question and in the US. The third part requests data on the firm's capacity, production, home-market shipments, exports to the US and other markets, and inventories of the subject merchandise.

The ITC also holds a public conference where interested parties may present legal and factual arguments and testimony by witnesses, and accepts post-hearing briefs. The ITC then makes a preliminary injury determination. If it is an affirmative determination, the investigation continues. Otherwise, the investigation terminates.

4. DoC Preliminary Subsidy Determination and Provisional Measures (Within 85 Days after the Filing of Petition)

At this stage, the DoC sends out CVD questionnaires, which focuses on detailed description of the alleged subsidy programmes, and the foreign producer/exporter's participation in these programmes. CVD questionnaires are heavily customized to the specific industry and alleged subsidies under investigation. They set out general instructions on where and how to respond to the questions. Responses to such questions require the submission of documents like governmental policy documents, programme descriptions and financial documents quantifying the benefit received by the respondent under the programme. Supplementary questionnaires for additional information may also be sent. Another questionnaire is specifically designed and sent to the government of the exporting economy.

The DoC's policy is to investigate and provide individual assessments of all respondents, while assigning an all-others rate for those producers and exporters that are not investigated, based upon a weighted average of the rates found for the investigated respondents. If there are a large number of respondents which makes individual assessment not practical, the DoC may determine individual rates for a reasonable number of respondents by some form of sampling. If sampling is used and the number of producers/exporters individually examined is limited accordingly, then a voluntary respondent may request calculation of a separate CVD rate, so long as the number of such requests is not unduly burdensome to the DoC.

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3 The deadlines cited here are for normal cases only and some of them can be extended. The statutory timetable can be viewed at the ITC's website ([http://www.usitc.gov/trade\\_remedy/731\\_ad\\_701\\_cvd/TIMETABL.PDF](http://www.usitc.gov/trade_remedy/731_ad_701_cvd/TIMETABL.PDF)).

The DoC then calculates the ad valorem CVD rate by dividing the total amount of the net subsidy received by the total production or exports of the goods during the period of investigation.

Upon publication of the DoC's preliminary determination, including the preliminary CVD rates, in a Federal Register (FR) notice, the US Customs and Border Protection (CBP) will start collecting a cash deposit or bond from importers of the merchandise concerned.

5. *DoC Final Subsidy Determination (Within 160 Days after the Filing of Petition)*

After announcement of the DoC's preliminary determination, interested parties may submit written comments on the determination and may request hearings for clarifications or elaborations on issues previously raised. Meanwhile, the DoC verifies the information contained in the questionnaires collected during the preliminary phase. The DoC then makes its final determination. If it is an affirmative determination, the investigation continues. Otherwise, the investigation terminates.

6. *ITC Final Injury Determination (Within 205 Days after the Filing of Petition)*

The ITC sends questionnaires to US and foreign producers, US importers and US purchasers to obtain information for a final determination. The basic structure of these questionnaires is similar to that of the questionnaires in the preliminary phase. A public hearing is also held for fact-finding. The ITC then reaches its final determination and if negative, the investigation terminates.

7. *Issuance of CVD Order (Within 212 Days after the Filing of Petition)*

If the final determinations of both the ITC and the DoC are affirmative, the DoC will issue a CVD order, which will announce a CVD rate which applies to all subject merchandise exported from the economy investigated, and list the CVD rates for the individual respondents. Following publication of a CVD order, parties have the right to appeal the DoC's and the ITC's decisions to the US Court of International Trade. (Domestic parties also have the right to appeal negative determinations by the DoC or the ITC that terminate an investigation.)

The decisions of the DoC and the ITC on items 2-6 above and the CVD orders are published in FR notices.

## **Major Reviews**

### *Administrative Reviews*

In the 12th month following the publication of a CVD order, any party may request the DoC to conduct an administrative review to determine the amount of duties to be assessed on each entry made during the previous year. The DoC conducts its administrative reviews in generally the same manner as investigations. In following years, administrative reviews can be requested on an annual basis as long as the CVD order remains in effect.

### New Shipper Reviews

New shippers can receive an expedited new shipper administrative review if they did not export the merchandise subject to a CVD order to the US during the period of investigation, or are not affiliated with any exporter or producer who exported the merchandise subject to a CVD order to the US during the period of investigation.

The request for review must be made within one year of the date of sale or exportation of the merchandise. If the above criteria are met, the DoC can commence a new shipper review. When the DoC initiates a new shipper review, the US CBP suspends liquidation of unliquidated entries of the subject merchandise from the relevant exporter or producer and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

### Changed Circumstances Reviews

Changed circumstances reviews may not be initiated less than 24 months after the publication date of the notice of final injury/subsidy determinations or suspension, unless good cause exists.

Interested parties can request a changed circumstances review of a CVD order. The ITC may also institute a changed circumstances review on its own initiative. The DoC or the ITC determines on a case-by-case basis whether changed circumstances sufficient to warrant a review exist. Such a review will be initiated only if the factors underlying its initial determination have changed sufficiently to warrant a review. A CVD order may be revoked in whole or in part through a changed circumstances review.

## **Expiry of CVD Orders**

### Five-Year (Sunset) Reviews

Five year after the publication of a CVD order or a five-year (sunset) review, the DoC and the ITC initiate a review to determine whether revocation of a CVD order would be likely to lead to continuation or recurrence of subsidies. Interested parties may participate in the review and submit the related information. Unless the DoC and the ITC determine that expiration would be likely to lead to a recurrence of subsidies and injury to the US industry, a CVD order expires after the review.