AMERICAN WIRE PRODUCERS ASSOCIATION

ANTIDUMPING 101

Presentation by AWPA Counsel
Annual Meeting 2024
Los Cabos Mexico
February 26-28, 2024

Overview

WHO: Who can file an antidumping or countervailing case?

Who are the agencies conducting these investigations and what are their responsibilities?

Who else can participate?

WHAT: What does “dumping” mean?

What foreign government subsidies can lead to the application of countervailing duties?

WHEN: After an investigation begins, when do the government agencies make their determinations?

When do importers have to deposit duties?

When do importers know their final duty liability?

WHERE: Where in the world are countries subject to U.S. AD/CVD orders?

<u>WHO are Petitioners?</u>

Under the *Tariff Act of 1930*, a <u>U.S. industry</u> may petition the government for relief from imported goods:

(1) that are sold in the United States at <u>less than fair value</u> ("dumped"); and/or

(2) which benefit from <u>subsidies</u> provided through foreign government programs

The following "interested parties" can file a petition on behalf of a U.S. industry:

(1) a U.S. <u>manufacturer, producer, or wholesaler</u> of the domestic product;

(2) a certified or recognized <u>union</u> or group of workers that is representative of the industry;

(3) a <u>trade or business association</u> a majority of whose members manufacture, produce, or wholesale the domestic product; or

(4) a coalition of firms, unions, or trade associations (1, 2, and 3, above)

Petitioners must demonstrate that they have industry support.

Petitioners have "standing" to file a petition if they meet two tests:

(1) domestic producers or workers who support the petition account for at least 25% of the total production of the domestic product, and

(2) domestic producers or workers who support the petition account for more than 50% of the production of the domestic product produced by the portion of the industry expressing support for or opposition to the petition.

WHO are the US Government Agencies?

A successful antidumping petition requires the U.S. industry to demonstrate that:

(a) the imported merchandise in question is being "<u>dumped</u>" in the U.S. market and/or subsidized; and

(b) the U.S. industry is being <u>materially injured</u> or threatened with material injury by reason of the dumped and/or subsidized imports.

The U.S. Department of <u>Commerce</u> (Commerce or DOC) conducts the investigation of dumping and subsidies.

The U.S. International Trade <u>Commission</u> (Commission or ITC) makes the injury or threat determination.

- The Commission is an independent federal agency with six Commissioners nominated by the President and confirmed by the Senate.
- Currently, the Commission has only 4 Commissioners.

Commerce and the Commission conduct simultaneous and overlapping investigations.

Currently, Commerce and the Commission are conducting 78 AD and CVD investigations.

NOTE: Both Commerce and the Commission must make affirmative final determinations in order for antidumping and/or countervailing duty orders to be issued.

WHO are the Other Parties?

Parties Participating Before Commerce:

- Foreign Producers/Exporters/Affiliated Importers; and
- Foreign Governments

Commerce issues lengthy questionnaires to these entities in order to collect company-specific cost and sales data used to calculate dumping margins and to collect subsidy-specific information used to calculate subsidy margins

Parties Participating Before the Commission:

- Foreign and U.S. Producers;
- US Importers; and
- US Purchasers/Industrial Users

The Commission issues questionnaires to each of these categories of parties to collect information about the condition of the U.S. industry, US market conditions, competition between domestic and imported products, and purchasing decisions.

<u>WHAT is Dumping?</u>

<u>Dumping</u> is defined as the act of selling an imported product in the US market at "less than fair value".

What does this mean?

In making a dumping determination, Commerce normally compares the following:

- the <u>foreign producer's price</u> for merchandise sold to customers in the home market ("<u>normal value</u>") and
- the <u>foreign producer's price</u> to customers in the United States (the "<u>US price</u>")

If the US price is lower than the normal value, this means that the product is being sold for less in the United States than in the home market.

- This is the definition of a product being "dumped".

Commerce also investigates whether the foreign producer is selling its products at prices which are below its cost of production.

- The difference between the foreign producer's price (or cost) and the foreign producer's price in the US market is called the <u>dumping margin</u>.
- Below-cost sales in the home market are generally excluded from the dumping calculation, resulting in a higher dumping margin.

WHAT about China?

Countries like China and Vietnam are considered **nonmarket economy ("NME")** countries.

Commerce applies a different methodology to NME countries when making its dumping determinations:

- Commerce ignores the foreign producer's home market prices and costs.
- Commerce asks the foreign producer to identify its **factors of production** (inputs).
- These factors of production include direct and indirect materials, energy, labor, and packing materials.
- Factors of production are reported in quantities – not values.
- Commerce calculates the NME's cost of production using values from a "**surrogate**" market economy country.
- Commerce also reviews the public financial statements of market economy companies that make the same or comparable products in order to derive values for factory overhead, SG&A expenses, profit, and other costs.
- From these calculations, Commerce computes the "normal value" for the product sold in the NME, and it compares this normal value with the U.S. price in order to calculate the dumping margin.
- This **NME methodology** often results in triple digit dumping margins on Chinese goods.

WHAT are Subsidies?

Foreign governments subsidize industries when they provide financial assistance to benefit the production, manufacture or exportation of goods.

The amount of subsidies a foreign producer receives from the government is the basis for the subsidy rate by which the subsidy is offset, or "countervailed," through higher import duties.

Some examples of government programs that may be countervailable subsidies include:

- Government grants, loans, equity infusions, or loan guarantees
- Tax credits or deductions from taxable income
- Loans at terms that do not reflect market conditions
- Provision of goods for “less than adequate remuneration” (*i.e.*, less than prevailing market conditions)

Subsidies can be provided by national, regional, and/or local governments.

- But not all government subsidies are countervailable.

WHEN do the government agencies make their determinations?

Initiation of Investigation	Commerce decides within 20 days of the petition filing
Preliminary Injury Determination	The Commission decides whether there is a "reasonable indication" that imports are causing material injury or threat of injury. This decision comes 45 days after the petition filing
Preliminary Dumping Determination **Preliminary Subsidies Determination**	Commerce determines whether dumping and/or subsidies exist Usually the preliminary CVD determination is 150 days after petition filing Usually the preliminary AD determination is 210 days after petition filing
Final Dumping/Subsidies Determination	Commerce calculates the final dumping and subsidies margins If fully extended, the final determination is 345 days after petition filing
Final Injury Determination	The Commission determines whether the US industry is materially injured or threatened with injury by reason of subject imports
	If fully extended, the final determination is 390 days after petition filing

Model Schedule for AD / CVD Investigations

The dates listed in the right-hand columns represent the last day by which the agency in question must take the action discussed. The agency may, however, act at an earlier time.

Decision/Action	Days After Filing	
	AD	CVD
Filing of petition with U.S. Department of Commerce ("DOC") and U.S. International Trade Commission ("ITC"); or self-initiation of investigation by DOC.	0	0
Determination of adequacy of petition by DOC.	20	20
Public conference (or hearing) before ITC staff.	21	21
Preliminary injury determination by ITC.	45	45
Effective date of "critical circumstances" if the investigation follows a "normal" schedule.	70	0
Effective date of "critical circumstances" if the investigation is treated as "extraordinarily complicated."	120	60
Preliminary dumping or subsidy determination by DOC if the investigation follows a "normal" schedule.	160	85
Preliminary dumping or subsidy determination by DOC if the investigation is treated as "extraordinarily complicated."	210	150
Final dumping or subsidy determination by DOC if the investigation follows a "normal" schedule.	235	160
Final injury determination by ITC if the investigation follows a "normal" schedule.	280	205
Final dumping or subsidy determination by DOC if the investigation is treated as "extraordinarily complicated."	285	225
Final injury determination by ITC if the investigation is treated as "extraordinarily complicated."	330	270
Final dumping determination by DOC if the investigation is treated as "extraordinarily complicated" <u>and</u> the deadline for the final determination is extended.	345	—
Final injury or countervailing duty determination by ITC if the investigation is treated as "extraordinarily complicated" <u>and</u> the deadline for the final determination is extended.	390	—

<u>WHEN do US importers have to deposit duties?</u>

US importers are liable for potential AD/CVD duties when Commerce makes its preliminary determinations:

CVD – usually 150 days (5 months after the petition was filed)

AD – usually 210 days (7 months after the petition was filed)

NOTE: Duty liability can attach even earlier (90 days prior to these dates) if Commerce and the Commission each determine that “critical circumstances” exist.

- “Critical circumstances” refers to a surge in imports after the petition was filed.

If Commerce calculates both preliminary AD and CVD margins, these margins are combined and collected from the US importer, except that any export subsidies which Commerce calculates will be deducted from the AD margin.

If Commerce makes affirmative preliminary determinations of dumping and/or subsidies, it will instruct US Customs and Border Protection (CBP) to <u>**suspend liquidation**</u> of entries of subject merchandise and require a <u>**cash deposit**</u> of the “estimated duties”.

NOTE: If Commerce makes a <u>preliminary determination of no dumping</u>, there is no suspension of liquidation or collection of duties, but the <u>investigation continues</u>.

WHEN are AD/CVD investigations terminated?

- If the Commission makes a preliminary finding of no injury or threat, the investigation is terminated
- If Commerce makes a final determination of no dumping or no subsidies, the investigation is terminated
- If the Commission makes a final determination of no injury or threat, the investigation is terminated
- If the US industry withdraws its petition, the investigation is terminated

WHEN do importers know their final duty liability?

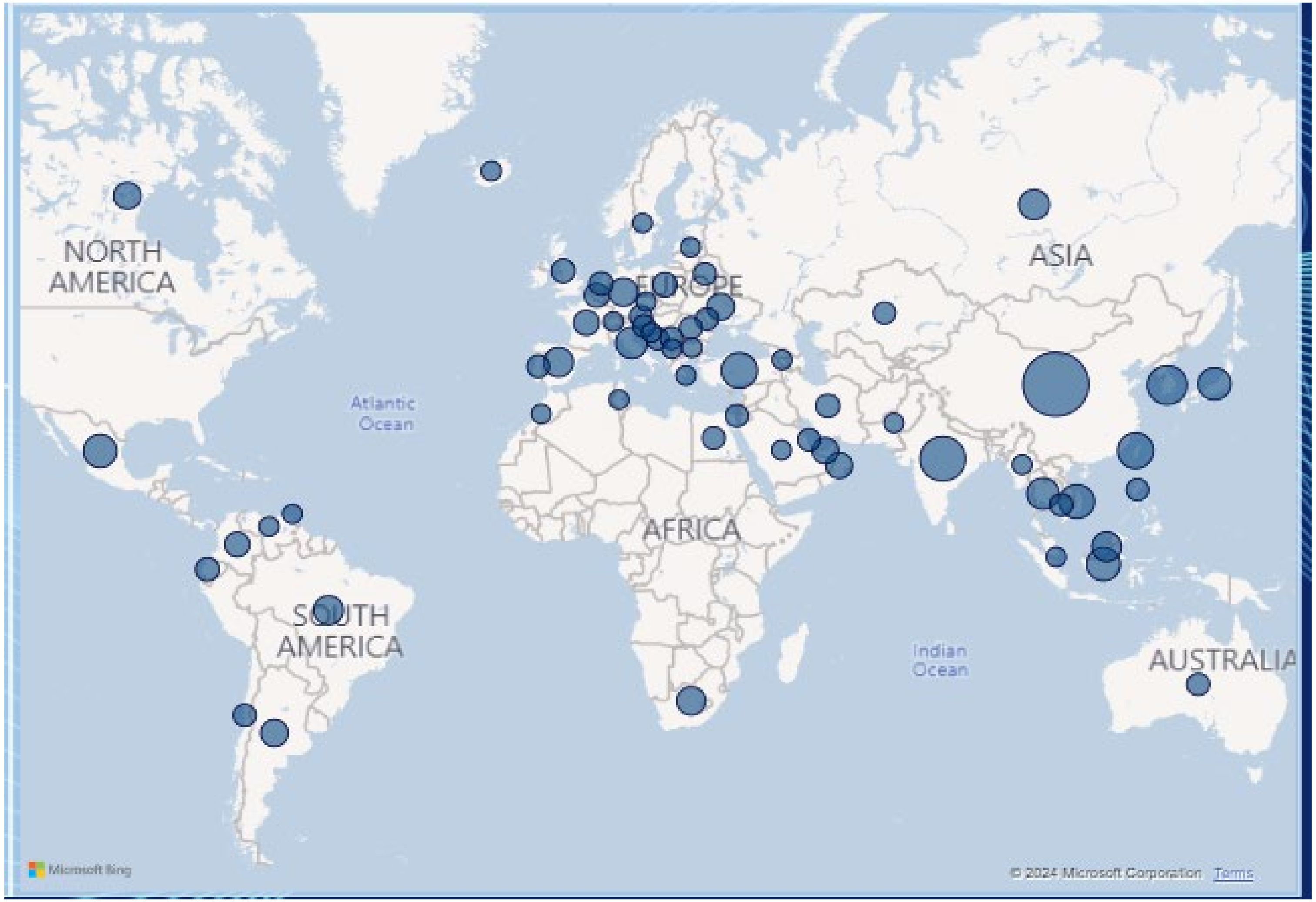
The United States has a retrospective system for assessing and collecting AD and CVD duties.

- This means that final AD and CVD margins may not be determined until the completion of annual reviews of AD and CVD orders – known as “administrative reviews”.
- An importer may not know the final amount of AD or CVD duties to be paid until one year or more after the product was imported.
- No other industrialized nation has a retrospective system for duty assessment.

WHERE in the world are countries subject to U.S. AD/CVD orders?

Today, the US has **678 AD and CVD orders** in place against **more than 60 countries** worldwide.

- China is the number one target with 235 AD and CVD orders and 12 pending investigations
- India is next with 68 orders and 9 investigations
- Korea is third with 44 orders and 4 investigations



https://www.trade.gov/data-visualization/adcvd-proceedings

<u>WHERE in the world are countries subject to U.S. AD/CVD orders on rod and wire products?</u>

There are 20 AD and CVD orders on **<u>carbon and alloy steel wire rod</u>** from 16 countries:

- Brazil, Indonesia, Mexico, Moldova, and Trinidad & Tobago (since 2002)
- China (since 2015)
- Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, UAE, and the UK (since 2018)

There are 4 AD orders on **<u>stainless steel wire rod</u>**:

- India (since 1993)
- Japan, Korea, and Taiwan (since 1998)

There are also numerous AD and CVD orders on a variety of **<u>wire products</u>**:

- Steel Nails
- Steel Wire Garment Hangers
- Uncovered Innerspring Units
- Steel Threaded Rod
- Wire Shelving
- Prestressed Concrete Steel Wire Strand
- Steel Grating
- Collated Steel Staples
- Standard Steel Wire Mesh

More information about all of these orders may be found on the AWPA's website.