

New Trade Policy Would Eliminate Revocations For Individual Foreign Companies in Antidumping and Countervailing Duty Cases

The two main weapons used to stop imports have historically been the antidumping (AD) and anti-subsidy or countervailing duty (CVD) laws. Based on a newly-proposed rule by the Department of Commerce (DOC) -- the U.S. government agency that administers the AD and CVD laws -- if your company is a domestic producer that wants to stop imports because they are dumped or subsidized, DOC is making it much easier for domestic companies to receive relief. If, however, your company is or could be on the receiving end of an AD or CVD case, the chance that your company will individually have an AD or CVD case terminated will be reduced dramatically if DOC implements its proposed rule.

Historically, only two ways existed for individual foreign investigated companies to be excused from a dumping case: (1) during the investigation, the foreign company could prove that it was not dumping or subsidized, and thereby be excluded from the AD or CVD case; or (2) once the foreign investigated company was found to be dumping or subsidized, it would have to prove to DOC that it had stopped dumping (by proving that it did not dump for three periods) or was no longer subsidized (by proving that it did not receive subsidies for a five-year period), and thereby be excluded from the AD or CVD case.

DOC is now proposing to eliminate these kinds of partial exclusions (called revocations). If implemented, this will likely significantly increase compliance costs for foreign producers subject to AD/CVD cases, because once the foreign investigated company is found to have been dumping or subsidized, the foreign company will never be able to have the AD or CVD order revoked for it individually. Rather, the only way for the foreign company to terminate a dumping case once it has been found to be dumping or subsidized is for the entire AD or CVD order to be revoked during a once-every-five-year process called a "sunset review." Because less than 50 percent of AD or CVD sunset reviews result in revocation, this could mean that foreign companies could be involved in AD or CVD cases for a significant number of years. If so, they will have to continuously monitor their selling practices to the United States or incur high AD and/or CVD duties and possible exclusion from the U.S. market. Therefore, if implemented, this new policy will be a big win for those domestic producers that are opposed to imports and a big loss for those foreign companies are involved in AD and CVD cases.

The DOC has invited public comments on its proposed regulation. Comments are due on April 20, 2011. The DOC has not yet set a date for issuing a final regulation.

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