

# American Federation of Labor and Congress of Industrial Organizations



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April 20, 2010

Honorable Ronald K. Lorentzen  
Deputy Assistant Secretary for Import  
Administration  
Room 1870  
Department of Commerce  
14th Street and Constitution Ave., NW,  
Washington, DC 20230

Attn: Kelly Parkhill, Supervisory Import Policy Analyst

Re: Report to Congress: Retrospective versus Prospective Antidumping and Countervailing Duty  
Systems; Request for Comment and Notice of a Public Hearing; Comments of the AFL-CIO

Dear Deputy Assistant Secretary Lorentzen:

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) appreciates this opportunity to comment on the important issue of retrospective and prospective antidumping and countervailing duty systems, in response to the Department of Commerce's March 31, 2010 *Federal Register* notice. The AFL-CIO is a voluntary federation of 56 national and international labor unions, representing some 11.5 million workers in a wide variety of industries, including numerous manufacturing industries. Our mission is to improve the lives of working families and to bring economic justice to the workplace and social justice to the nation. A system of economic justice requires having trade remedy laws that are as effective as possible at offsetting the injurious harm caused by unfair imports, including dumped and subsidized imports that target our markets and our members' jobs. In that connection, there is no question that a retrospective system of collecting and assessing antidumping and countervailing duties is far superior to a prospective one.

First, a retrospective system makes it possible to measure and account for the under or over-collection of duties. Periodic reviews provide the Commerce Department and interested parties the opportunity to collect and examine recent data with respect to specific entries subject to an order. These reviews are provided for by the statute and can be requested by domestic interested parties, the foreign producer or exporter, or the U.S. importer. Commerce collects information to determine the extent of the actual dumping or subsidization on the specific entries for that particular review period. Where the evidence indicates that the cash deposits posted on those entries during the period did not fully offset the actual dumping or subsidization, then the importer must pay additional duties (with interest). However, if the actual level of dumping or subsidization turns out to be less than the

deposits paid, then the importer is entitled to a complete refund of the excess paid (again with interest). Once the review is completed, Commerce establishes a new cash deposit rates for imports that enter the U.S. after the review period.

Thus, a retrospective system gives interested parties an opportunity to obtain determinations regarding the extent of their dumping or subsidization (or lack thereof) based on the most recent information on changes in the foreign producer or exporter's home market prices and costs and the U.S. importer's U.S. prices (or levels of subsidization in the case of a countervailing duty law). It is difficult to imagine a more accurate system for measuring the actual amount of dumping or subsidization for imports that have entered and are subject to the particular review.

A retrospective system also minimizes the likelihood that continued dumping and/or subsidization will not be captured. This is extremely important to the U.S. industries and workers, including our members, who must continue to compete against these imports in the U.S. market.

It is also the case that a retrospective system helps reduce the chances that foreign producers and exporters, as well as U.S. importers, would have to pay duties that exceed the actual extent of dumping or subsidization. Overpayments are minimized and returned with interest. Annual administrative reviews improve the ability of Commerce and interested parties (both in the domestic industry and in the subject country's industry) to track the level of compliance with the orders. That, in turn, reduces the incentives and opportunities for importers to evade anti-dumping and countervailing duties.

By comparison, prospective systems have a number of important flaws which essentially virtually ensure that accurate collection of antidumping and countervailing duties does not occur. Indeed, they are not designed to do so. Some systems, such as the one used by the European Union, actually can encourage behavior that runs counter to the goal of restoring fair pricing to the market. Other prospective systems which utilize reference prices (such as Canada's) can only estimate fair price conditions. This frequently leads to under collection of duties because, where dumping or subsidization has increased, the actual levels of dumping or subsidies are not measured. This significantly undercuts the corrective effect of antidumping or countervailing duty orders. As the AFL-CIO is aware, prospective systems have not provided a method for increasing the amount of duties to be paid on past entries. Thus, the current systems that are in place don't fully neutralize unfair-trade practices as they don't capture increases in dumping or subsidization on entries made before a reexamination of the level of dumping or subsidization.

Supporters of prospective assessment systems argue that such systems provide for greater certainty in the collection of duties. In that regard, the AFL-CIO understands that there have been legitimate concerns about problems that the U.S. Customs and Border Protection Service has had in collecting duties in certain cases under existing U.S. law. Certainly, steps must be taken to address these concerns and ensure that duties which are owed are collected to the fullest extent possible. However, a recent report from the General Accountability Office indicates that these duty collection problems have largely been limited to antidumping duties covering imports of some Chinese agriculture and aquaculture merchandise.<sup>1</sup> We do not think, therefore, that these particular problems provide the basis for either assessing the relative benefits of a retrospective versus prospective duty collection system nor the potential advantages and disadvantages of system-wide changes.

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<sup>1</sup> See GAO-08-391, Report to Congressional Requesters, *Antidumping and Countervailing Duties, Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection*, March 2008.

More importantly, the problem regarding collection difficulties is not that cash deposits are not being posted by importers at the time that imports enter the U.S. The problem is that in some cases, the foreign producers and the U.S. importers significantly increase the amount of dumping (or level of subsidization from government) during a review period but then go out of business or otherwise disappear before Customs is able to collect additional duties owed. The only security posted (besides the lower cash deposit amount) is a continuous entry bond which is typically quite small compared to the additional liability that has been incurred. Customs can pursue the surety but only to the face value of the continuous entry bond. In these situations, large amounts of duties are not recovered.

Thus, the real problem of under-collections does not involve whether amounts are deposited at the time of entry (no indication this doesn't happen to a high degree) but rather concerns efforts to collect additional duties owed when dumping has increased over the level previously found.

As discussed, the types of prospective systems used by trading partners would not address this problem as they do not go after increased dumping or subsidization on merchandise already entered. If a prospective system were developed to collect additional duties on past entries, the problem of collecting additional duties in instances where foreign producers and/or their importers go out of business but increase the unfair trade practice beforehand would remain the same as for a retrospective system. The "certainty" of collecting duties lauded by the proponents of prospective systems is really nothing more than a system that defines away the problem by only collecting duties paid at the time of importation, (*i.e.*, the cash deposits). Any additional dumping or subsidization is not captured and thus the law's central purpose is undermined.

The AFL-CIO strongly urges that Commerce recommend against implementing changes to the current system of collecting antidumping and countervailing duties that would move the system toward a prospective model. Of course, changes that would improve the collection of antidumping and countervailing duties that fully and accurately offset the amount of dumping and subsidization should be pursued. However, a prospective system would not achieve that goal.

Respectfully submitted,



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AFL-CIO