



Consuming Industries  
Trade Action Coalition

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Filed electronically to [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov)

Mr. Ronald K. Lorentzen  
Deputy Assistant Secretary of Commerce for Import Administration  
U.S. Department of Commerce  
Room 1870  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

**RE: Comments of Consuming Industries Trade Action Coalition  
("CITAC") on Retrospective Antidumping and Countervailing Duty  
System**

Dear Mr. Lorentzen:

The Consuming Industries Trade Action Coalition ("CITAC") files these comments in response to the Notice published on March 31, 2010 by Import Administration (75 Fed. Reg. 16079 (March 31, 2010)). CITAC is an organization of American manufacturers and retailers, from auto parts to household items, who seek to ensure that consuming industries and manufacturers in America have access to reliable supplies of materials necessary for those industries to produce and sell their products. CITAC's goal is to ensure that trade remedy actions, including antidumping actions, designed to protect one domestic industry not unduly harm other domestic industries, especially downstream industries.

To remain competitive, it is critical that antidumping duties be fairly calculated and reasonably predictable by exporters, importers and U.S. purchasers of these products as well as competing products. In today's economy, manufacturing in the United States is challenged. Unfairly traded imports are a part of this challenge, but other factors are of equal concern to manufacturers that employ millions of workers.

CITAC believes that the retrospective system of assessment and collection of antidumping and countervailing duties is an important factor in making these laws work against U.S. consuming industries, importers, distributors and consumers. It is important for Congress and the Department to understand completely the problems caused by the current system and to consider options for reform. Only the United States, as far as the undersigned is aware, employs the retrospective system.

## Problems with the Current System

Under the retrospective system, entries into the United States for consumption that are covered by a preliminary determination or an antidumping or countervailing duty (“AD/CVD”) order are subject to the payment of those duties. However, the duty is not assessed at the time of entry. The Department, through U.S. Customs and Border Protection (“CBP”) requires the deposit of estimated antidumping and countervailing duties at the time of consumption entry. Except for entries during the initial investigation, which are subject to a deposit “cap,” the final liability for duties is not limited by the duty deposit. Importers therefore do not know at the time of entry the final amount of AD/CVD duties that may be applied to their imports subject to antidumping and countervailing duty proceedings.

The entire burden of liability for additional duties lies on the “importer of record.” However, the importer is not in possession of the facts on which to base an estimate of the final duty liability. In an AD case, the necessary information includes, *inter alia*:

- Home market selling prices of the exporter/producer
- Costs of production of the exporter/producer
- The accounting records and ability to cooperate of the exporter/producer
- Identity and amount of adjustments for physical characteristics of merchandise sold in the home or third country market
- Circumstances of sale adjustments
- Packing, movement expenses, insurance

In a countervailing duty review, the existence of subsidies found by Commerce may be known, but any new infusions or changes in the conditions that led to the calculation of margins is unknown to the importer.

In cases involving non-market economy countries, such as China and Vietnam, the uncertainties are even greater for importers. The “surrogate country” analysis is subject to radical change every review period and the results are even more unpredictable. There are examples of enormous liabilities laid at the feet of importers for failings, not of the importers but of their suppliers. These additional duties imposed by CBP under the Customs laws can extinguish importers, whose margins are woefully inadequate to support such unknown and unknowable risks.

Importers are precluded from imposing these risks on the exporter or producer by the Commerce Department’s regulations. As a condition of entry, the importer must certify that it is not being reimbursed for AD duties. *See* 19 CFR § 351.402. Reimbursement for CVDs can also result in the increase of AD margins for importers.

In sum, importers face unacceptable risks from importing products that are subject to AD/CVD duties, and cannot pass those risks back to exporters or producers overseas, nor can they pass them on to customers, because they cannot quantify them at the time of sale.

Moreover, the retrospective system does no significant damage to foreign producers and exporters, unless it is assumed that the U.S. is the only market where they can sell. This is

not usually the case. With respect to intermediate goods and raw materials, producers have a wide variety of markets. This trend is increasing as emerging markets ramp up their manufacturing. A producer that is foreclosed from the U.S. market is much more likely to sell to domestic customers or third-country markets, where there is certainty regarding conditions of competition.

The result is that imports tend to dry up when these orders are imposed. This is not universally the case, but it is the norm. CITAC members report that they cannot obtain products subject to AD/CVD orders in many cases because imports have essentially ceased.

When imports are lost to the U.S., the adverse consequences for the U.S. economy are severe. Importers in the U.S. lose business, of course, along with our ports, transportation and logistics providers. Domestic purchasers of these products generally face higher prices because there will be less competition in the U.S. market. The retrospective system also results in uncollected duties for CBP, as a number of reports have confirmed.

The absence of imports in the market is not limited to unfairly traded imports. Because of the tremendous exposure importers face from retrospective assessments, and the lack of information about the amount of potential duties, imports are deterred whether they are fairly traded or not. Clearly, the U.S. market loses the benefit of competition from imports even if they are fairly traded.

The question is whether the losses are compensated for by gains to other sectors of the U.S. economy. Petitioners in AD/CVD cases tend to benefit from the absence of competition in the market, which in the short term can raise prices for their products. However, over a longer period of time, the market adjusts to these orders. When imports into the U.S. decline, they will be replaced by downstream products that are not subject to AD/CVD duties because of the scope of the existing orders. Foreign companies and workers will make products from the inputs excluded from the U.S. market, reducing activity and employment in the U.S., and ultimately undermining the market for the very petitioners that filed these cases.

Even if we assume that it is legitimate to transfer wealth from the broad consumer sectors to a few producers by virtue of the operation of the retrospective system, it is clear that this transfer is temporary at best. The weight of the evidence therefore suggests that the retrospective system, by deterring imports that are fairly traded, creates significantly more harm than benefit for the U.S. economy.

## **Options for Improvement**

CITAC supports enforcement of trade remedy laws. These laws should pay attention to the needs of all sectors of the U.S. economy. It is this attention that is lacking with the retrospective system. This system has been defended as more “accurate” than the alternative prospective system, but this, CITAC has found, is largely a myth. In cases where imports are relatively small, a review cannot be justified financially by the exporters and importers involved. Thus, the deposit rate remains the final duty, even where margins have declined. If petitioners request a review, it is because they believe that the margins have increased, or that the exporters and importers cannot afford to participate fully in a

review, with all its financial burdens and uncertainties. In larger cases where exporters and importers have a significant financial stake, the processes are burdensome and uncertain. The prospect of “facts available” margins, surrogate country assumptions, among other uncertainties and the expense of participation makes reviews a daunting prospect for most exporters.

There is a better way to enforce the law and balance the interests of all. The prospective system of assessment is employed by all countries that enforce AD/CVD laws in the world, except the United States. The report to Congress should acknowledge that the U.S. is an outlier in this regard, and that there are substantial arguments in favor of a system based on greater certainty of the amount of duties on imports, and therefore the collection of duties.

In a prospective system, the amount of duty to be paid is known at the time of entry. That itself is a major advantage to importers and U.S. purchasers. CITAC believes that such a system would provide ample room to protect the interest of domestic producers and petitioners in providing an adequate remedy for dumping and subsidies. The final duties are not likely to be de minimis; moreover, the potential for an administrative review will still be available to petitioners who believe that the magnitude of dumping or subsidies is increasing. The results of that review would be available for entries after the determination of such a review.

Thank you for the opportunity to comment on this important issue. We ask that your report to Congress reflect CITAC’s views.

Sincerely,



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