



EMERGENCY COMMITTEE FOR AMERICAN TRADE

April 20, 2010

Mr. Ronald K. Lorentzen
Deputy Assistant Secretary for Import Administration
U.S. Department of Commerce
14th St. and Constitution Ave., N.W.
Washington, D.C. 20239

Submitted via
webmaster-support@ita.doc.gov

Re: Retrospective Versus Prospective Antidumping and Countervailing Duty Systems

Dear Mr. Lorentzen:

In accordance with the notice in the *Federal Register* on March 31, 2010 (75 Fed. Reg.16079), please find below the comments of the Emergency Committee for American Trade (ECAT) on the impact of a retrospective versus a prospective trade remedy system in the United States.

ECAT is an association of the chief executives of leading U.S. business enterprises with global operations. ECAT was founded more than four decades ago to promote economic growth through expansionary trade and investment policies. Today, ECAT's members represent all the principal sectors of the U.S. economy – agriculture, finance, high technology, manufacturing, merchandising, processing, publishing and services. The combined exports of ECAT companies run into the tens of billions of dollars. The jobs they provide for American men and women – including the jobs accounted for by suppliers, dealers and subcontractors – are located in every state and cover skills of all levels. Their collective annual worldwide sales total over \$1.6 trillion, and they employ more than 6.2 million persons. ECAT companies are strong supporters of negotiations to eliminate tariffs, remove non-tariff barriers and promote trade liberalization and investment worldwide, all of which promote America's economic growth and prosperity, create good-paying jobs and help increase the standard of living for all Americans.

With regard to the antidumping and countervailing duty laws (or trade remedy laws), ECAT companies have been participants as petitioners, importers and purchasers of subject products in the United States and exporters and purchasers of subject products in foreign countries.

With its broad experience with trade remedy regimes in the United States and overseas, ECAT strongly believes that there would be strong benefits to the United States, its agriculture, manufacturing and retail and distribution service industries, as well as U.S. consumers and the U.S. budget, for the United States to adopt a prospective normal value antidumping and countervailing duty system.

Impact on Effectiveness of the Trade Remedy Laws

Trade remedy laws serve a useful purpose in ensuring fair competition in the U.S. market. They are intended to make the price of products imported into the U.S. market fair when there has been a showing of injurious dumping or subsidization.

Use of a prospective normal value system in the United States will not change the purpose or effect of the trade remedy laws. Properly designed, it will provide as accurate assessment of the dumping and subsidy rate as the current retrospective system. Indeed, since a prospective normal value system is based on an entry-by-entry analysis, it should provide a more accurate assessment and a more immediate incentive to change pricing behavior by foreign producers, who will see on a much more timely basis the costs of injurious dumping or subsidization. Depending upon its design,¹ such a system can allow for the periodic review of the normal value calculation to ensure that changes have not occurred that would allow foreign producers to evade the assessment of appropriate tariffs.² While questions have been raised about ensuring the accuracy of a prospective system, the General Accounting Office in the reports discussed below emphasizes that there are a number of different options in the development of a prospective systems that can

¹ There are a number of different prospective systems used around the world, such as the European Union's so-called *ad valorem* system and the prospective normal value systems used by Canada and several other countries. From ECAT's perspective, we believe that a prospective normal value system represents the best model on which to base a new U.S. prospective system, with appropriate modifications to best meet U.S. policy objectives.

² For example, the prospective normal value systems of Australia, Canada and New Zealand authorize reviews.

make it more accurate. As discussed below, these reports also indicate that a prospective system will provide a more effective remedy in many respects since it will make it easier to collect the duties owed on a more-timely basis. Indeed, prospective trade remedy systems are the norm and have been adopted by most countries throughout the world.

Impact on U.S. Agriculture, Manufacturing and Retailing Industries

Many food and agricultural producers and U.S. manufacturers increasingly rely on global production networks, using inputs from domestic and foreign sources, to improve their competitiveness in global markets as well as the very large U.S. market. These producers are often at the forefront of generating and maintaining jobs in the United States and in the forefront of exporting. Indeed, as study-after-study has documented, American companies with global engagement play a disproportionate role in exporting goods and services beyond our borders. In 2007, these companies generated nearly half of total U.S. goods exports, while accounting for about a quarter of total U.S. private-sector output.³

As a result of this increasing form of participation in the international economy, however, the impact of the U.S. antidumping and countervailing duty system has an impact on a wider number of domestic food and agricultural producers and manufacturers than ever before. The U.S. retrospective trade remedy system creates great uncertainty for all companies that purchase products subject to antidumping and countervailing duty investigations. These producers will not know for months, if not years, what the final price will be. Without this information, producers are unable to make knowledgeable business decisions about future purchases, undermining their business operations. The negative impact of the United States' retrospective system affects U.S. industries not only in the United States, but also in their global sales. Competing with companies from around the world that are not impacted by a retrospective system, U.S. companies are put at a competitive disadvantage, to the detriment of the companies and their workers. By contrast, a prospective system will

³ *Global Investments, American Returns (GIAR)* (1998 and 1999 Update), Matthew Slaughter, Published by Emergency Committee for American Trade; *U.S. Multinational Companies: Operations in 2006*, Raymond J. Mataloni Jr., BEA (Nov. 2008); *How U.S.*

provide greater certainty and predictability to agricultural and food producers and manufacturers that rely on global supply chains. Appropriate antidumping and/or countervailing duties will be paid at the border and purchasers of these products will know their full cost.

For retailers, the uncertainty created by the U.S. retrospective system is compounded by the amount of imported products purchased. Given the short product life of many consumer goods, the application of duties in a retrospective system can effectively take the product off the shelf because of the unpredictability created in determining the appropriate pricing for such fast-moving products.

For all of these reasons, the adoption of a prospective normal value antidumping and countervailing duty system would provide important commercial benefits to U.S. food and agricultural producers, manufacturers and retail and distribution service providers.

Impact on Duty Collections

It should also be noted that a prospective system will address one of the key problems that the United States government has had in fully collecting the antidumping and countervailing duties that it is imposing. The General Accounting Office (GAO) undertook a major review of uncollected antidumping and countervailing duties in **Antidumping and Countervailing Duties: Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection** (March 2008). See also General Accounting Office, **Agencies Believe Strengthening International Agreements to Improve Collection of Antidumping and Countervailing Duties Would Be Difficult and Ineffective** (July 2008). In those reports, GAO found that the retrospective trade remedy system was a contributing cause of the \$600 million shortfall in duty collections because duties oftentimes increased above the bonding rate after the original investigation and there was a significant lag time (on average, more than three years) in the collection of the duty. The GAO found that some of these duty collection issues could be addressed through an appropriately structured

prospective antidumping and countervailing duty system. Ensuring more accurate collections of antidumping and countervailing duties not only benefits the U.S. government through ensuring proper receipt of revenues, it also supports a stronger and more effective trade remedy system, by ensuring that importers of products subject to antidumping and countervailing duties pay the actual duties owed.

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For all of these reasons, ECAT strongly believes that the United States should consider the adoption of a prospective normal value antidumping and countervailing duty system. While we recognize that the parameters and details of such system will require further analysis, a prospective normal value system can provide a fully effective remedy to dumped and subsidized goods, an administratively efficient system for collecting those duties and greater certainty and predictability for the U.S. companies that rely on global supply chains.

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in black ink that reads "Calman J. Cohen". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Calman Cohen
President