



UNITED STATES  
ASSOCIATION OF  
IMPORTERS OF  
TEXTILES AND  
APPAREL

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April 20, 2010

Ronald K. Lorentzen  
Deputy Assistant Secretary for Import Administration  
Room 1870  
U.S. Department of Commerce  
14<sup>th</sup> Street, N.W. and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Retrospective Versus Prospective Antidumping and Countervailing Duty Systems, 75  
Fed. Reg. 16079 (March 31, 2010)

Dear Mr. Lorentzen:

The U.S. Association of Importers of Textiles and Apparel, USA-ITA, is pleased to provide its views to the Department of Commerce in response to its request for public comments on the relative advantages and disadvantages of prospective and retrospective antidumping and countervailing duty systems.

USA-ITA has more than two hundred member companies, including apparel manufacturers, distributors, retailers, importers and related service providers, such as shipping lines and customs brokers. The member companies source textile and apparel products, as well as many other consumer goods, from around the world. As a result, many USA-ITA members have experienced and/or are experiencing the application of antidumping and/or countervailing duty orders to products they source globally for the U.S. retail market. Examples include woven electric blankets, narrow woven ribbons with selvedge, bedroom furniture, candles, and even tissue paper and notebook paper. That experience compels member companies to respond to the Department's request for comments on the idea of replacing the current retrospective system with a prospective system of collecting antidumping and countervailing duties.

### **Summary of Comments**

USA-ITA is strong proponent of the principle of a prospective system, under which the amount of dumping or subsidization is calculated on the basis of a prior period (generally, one year, although less in the case of an initial investigation involving a product of a non-market economy) and then offsetting duties are put in effect going forward. USA-ITA firmly believes a fairly implemented prospective system of duty collection can and would effectively meet the goals of the antidumping and anti-subsidy agreements and laws while mitigating the most harmful and unnecessary effects of the retrospective system.

A retrospective system, by which the amount of dumping or subsidization, as calculated on the basis of a prior period, is considered only an estimate going forward, pending an administrative review to calculate the levels of dumping or subsidies in the subsequent period, is not any more effective in meeting the goals of the antidumping and anti-subsidy agreements and laws, although it may certainly be more trade restrictive simply because of the uncertainty it engenders and the burden it imposes on the trade community.

A prospective system is equally effective in remedying injurious dumping or subsidized exports to the United States than the current retrospective system. A prospective system certainly would minimize the issue of uncollected duties which has arisen under the retrospective system. A prospective system also reduces incentives and opportunities for evasion of antidumping and countervailing duties. A prospective system further ensures that all importers whose goods are subject to antidumping and countervailing duties pay those duties, eliminating the need to consider whether one importer represents a higher risk of non-collection than another. Importantly, a prospective system means that importers and their employees are not subject to subsequent increases in antidumping and countervailing duties, long after the merchandise at issue has been resold at a price that was based upon the original assessment. And, finally, a prospective system undeniably carries less administrative burden than the current retrospective system, for both the U.S. Government and business.

**1. A Prospective System Remedies Injurious Dumping or Subsidized Exports to the U.S. Just As Well As the Retrospective System**

A prospective system of duty collection is just as effective at remedying injurious dumping or subsidy practices as the retrospective system currently in use. That is because there is no reason to believe that a retrospective system is any more accurate than a prospective system in timely identifying and assessing the appropriate amount of duties to offset the level of dumping or subsidization.

Under the retrospective system, the amount of duty assessed at the time of entry is considered only an estimate, subject to recalculation following an administrative review at a much later point in time. If, as a result of that review, the amount initially deposited is deemed to be incorrect, either because it was too little or too much, the domestic industry for whom the duties were established is either already injured by the insufficiency or already over-protected by the excess deposit. The fact that the deposit amount may be subsequently revised as a result of an administrative review, which occurs well after the goods at issue entered U.S. commerce, does not change the consequences of what occurred at the time the goods were in the U.S. market.

The same situation is true with respect to the prospective system. While the duties collected at the time of entry are final, based upon a calculation that considered trade during an earlier point in time, those duties may be more or less than the amount of dumping or subsidization that occurs during the period when the duties are assessed. The prospective system recognizes that retroactive adjustments will not provide the petitioning industry with any greater or better remedy; the market will have already moved on.

There is in fact a particular risk of over-protection under the retrospective system with respect to

products of non-market economies. There, the rates determined during the initial investigation are likely to be much higher due to the vagaries of the surrogate methodology and the administrative requirements and limitations of the Separate Rate policy (which cause most exporters to fall within the “All-China” or “All-Vietnam” rates). Thus, the result may be that the imports subject to the order are simply not even imported; that arguably constitutes over-protection. The prospect of a refund down the road, for those exporters that use the administrative review process to obtain their own rate, is often not a sufficient incentive for an importer to maintain that business. On the other hand, exporters subject to the “all others” rate and who believe that a rate based upon their own transactions would be more favorable do have the incentive to request an administrative review to establish such an individual rate going forward.

If the United States were really concerned with implementing antidumping or countervailing duties that are “effective in remedying injury,” it would apply the “lesser duty rule,” under which duty payments are limited to that amount necessary to remedy injury, even if it is an amount less than the level of dumping or subsidization. Such a rule could be implemented under either the retrospective or the prospective system of duty collection.

## **2. A Prospective System Significantly Minimizes Uncollected Duties**

There is no question that a prospective system would eliminate the risk of uncollected duties that has been created by the retrospective system of duty collection. The hundreds of millions of dollars in uncollected duties identified at first by U.S. Customs & Border Protection and then by the U.S. Government Accountability Office, are a direct result of a retrospective system and the substantial lag in time between the date of entry of goods, when an estimated duty is deposited, and the date of liquidation, when a final duty bill is rendered.

The retrospective system encourages non-resident importers and other risk-takers to deposit estimated duties without regard to what the final potential liability may be or what their financial condition will be when a final duty bill is eventually rendered. Indeed, some of those non-resident importers are the foreign suppliers of the product, determined not to lose a sale to a responsible importer or retailer who must have certainty with respect to the retail sales price. Such practices would be discouraged with a prospective system, because the U.S. buyer would have certainty, thereby eliminating the incentive to shift the risk to the supplier.

In addition, especially in difficult economic times, even responsible importers could end up not paying a duty bill that arrives years after the fact, simply because businesses can and sometimes do fail. Bills arriving after a company is out of business end up being uncollectible.

That is not to say that the prospective system means that the collected duties will be lower than under the retrospective system. Indeed, they could be greater, because responsible importers will have the certainty they need regarding the final pricing of their merchandise and can plan their purchases and sales accordingly. Instead of not doing business at all with suppliers subject to an order, they will be able to act as informed importers and buyers when deciding whether to place business with them.

## **3. A Prospective System Reduces Incentives and Opportunities for Evasion of Antidumping and Countervailing Duties**

The retrospective system allows and may even encourage evasion of antidumping and countervailing duties, because the initial duty collection is only an estimate and because of the significant lag times between the date of entry and the date of liquidation.

A prospective system, however, eliminates the opportunity for evasion of duties through non-payment because the duties are due at entry. Yet, there is still an incentive for exporters to seek an administrative review in order to obtain a lower duty rate going forward. Unfortunately, even under a prospective system, there also may still be an incentive for petitioners to demand administrative reviews as well, for the purpose of having a higher rate applied going forward (or for extracting settlement payments from suppliers/exporters in exchange for canceling a request for an administrative review, thereby maintaining the existing duty rates).

A prospective system also may reduce incentives for design engineering to remove products from within the scope of an AD or CVD order. While some engineering may be inevitable in any event, to the extent that the uncertainty of final liability is the primary concern, the finality provided by the prospective system mitigates that motivation.

#### **4. A Prospective System Eliminates Concerns About High-Risk Importers**

With a prospective system, concerns about high-risk importers, which USA-ITA assumes refers to those importers most likely to eventually not pay the final assessed antidumping and countervailing duty payments, are eliminated because the duties are due and payable at the time of entry. The retrospective system, to some extent, creates high risk importers and, in so doing, the need to target those entities that represent a risk of non-payment.

#### **5. A Prospective System Would Allow Importers To Timely Identify Their Costs**

The retrospective system has a number of significant negative impacts on U.S. importers who are responsible for paying the duties. First, it creates an extended contingent liability in their accounting systems. Although an importer pays cash deposits to cover the estimated amount of duties at the time of importation of the goods, the importer must then carry a contingent liability on its books pending final determination of the amount of duties owed, a period that can last years. One member company has experienced having customs entries held open for approximately 20 years, due to litigation, over which period the company carried a multi-million dollar accrual on its books, which had to be reviewed periodically to accommodate the cost when the entries would actually liquidate.

Second, for those products subject to AD or CVD orders that are either inputs in a good manufactured and subsequently sold in the U.S. market or are final goods intended for resale, the retrospective system makes it impossible for importer to timely identify its cost of goods sold. A manufacturer or reseller that cannot accurately identify its costs cannot accurately price the merchandise it seeks to sell. This is particularly problematic for importers and retailers of consumer goods (as opposed to commodities), where fast turn on inventory is essential.

As a result, the retrospective system of duty collection has wreaked havoc for importers and retailers, particularly where products of non-market economies are involved, because of the inability to accurately identify the cost of the goods. There is no adjusting sales prices later to account for the increase or decrease in the antidumping or countervailing duty when the entries are finally liquidated.

Instead, any gain or loss must be absorbed entirely within the importer, and when that involves a loss, which is a very real concern, employees within the importing company may bear the brunt of the offsetting cost-cutting.

These problems do not arise in a prospective system. For better or worse, the cost of goods is known and pricing can accurately be set accordingly.

## **6. A Prospective System Reduces The Administrative Burden on Government and the Private Sector**

It is incontrovertible that a prospective system carries a far lesser administrative burden than the current retrospective system. A prospective system also reduces the cost of compliance for importers, compared with a prospective system. The retrospective system does not represent a good use of resources by either the U.S. government or U.S. importers.

CBP has repeatedly noted the significant administrative burden on that agency created by the retrospective system, because of the additional work required to hold open entries for years pending a final determination of duty liability (including the time for reviews and litigation) and the additional resources necessary to either collect duties (and assess interest) years after the entry or issue refunds, again with interest that has to be calculated.

Some have suggested that there might be fewer administrative reviews under a prospective system than under the retrospective system. While USA-ITA is unsure whether that is correct, if it is, a prospective system also would reduce the administrative burden on the Department of Commerce attributable to the number of administrative reviews, which are essentially new investigations with new questionnaires and new verifications and briefing of issues required (and a new prospect of litigation). The resources that the Department is now dedicating to so many administrative reviews would be better applied to initial investigations, to allow more respondent companies to be considered for their own rates. USA-ITA members have increasingly witnessed situations, particularly in investigations involving non-market economies and consumer products in which there are a large number of exporters and foreign manufacturers, yet only two mandatory respondents are selected, presumably because the Department does not have the resources to fully investigate and verify more companies. Given the impact that those two respondents may have on many other suppliers in the subject country, such a result can hardly be viewed as fair and accurate. A far fairer and more accurate result might be achieved if more foreign suppliers were permitted to obtain their own rate in the first place. That, in turn, would reduce the number of administrative reviews sought later by the respondents who were initially relegated to “all other” status.

Importers also are subjected to unnecessary additional administrative and compliance burdens under the retrospective system that would not occur in a prospective system. Thus, in addition to keeping its books open for an extended period pending a final assessment of duties, importers must maintain their entry records for many more years than would be required under a prospective system. That creates a greater risk of records being lost or errors being made.

## Conclusion

The principle of a prospective system is the right one. USA-ITA respectfully urges the Department to strongly consider endorsing a prospective system of antidumping and countervailing duty collection, in place of the current retrospective system. The advantages of the prospective system far outweigh any disadvantages, providing certainty without undermining the effectiveness and value of the relief provided to domestic industries. USA-ITA would welcome the opportunity to work with the Department in constructing an appropriate prospective system.

Respectfully submitted,

A handwritten signature in cursive script that reads "Julia K. Hughes". The signature is written in black ink and is positioned below the typed name.

Julia K. Hughes  
President