

**U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Trade
Hearing on “Customs Trade Facilitation and
Enforcement in a Secure Environment”
Thursday, May 20, 2010**

**Written comments for the record by the
Trade Remedy Reform Action Coalition**

The Trade Remedy Reform Action Coalition (TRRAC) appreciates the opportunity to submit written comments for the Trade Subcommittee’s hearing on Customs Trade Facilitation and Enforcement in a Secure Environment. An important policy to consider when seeking ways to improve trade facilitation and enforcement is the means in which the duties owed under U.S. trade remedy laws (antidumping and countervailing duty laws, or AD/CVD) are collected and enforced. TRRAC believes the most effective system to collect such duties would be a prospective duty assessment system.

**THE BENEFITS OF A PROSPECTIVE DUTY
ASSESSMENT SYSTEM IN AD/CVD CASES**

During the May 20 hearing, U.S. Customs and Border Protection (CBP) Commissioner Alan Bersin commented during questioning, “It is important for us to examine the process and look again at the retrospective enforcement of AD/CVD. The process is designed for us to always be behind in enforcement and tracking people down after the fact.”

Commissioner Bersin’s comment reflects the fact that the U.S. “retrospective” AD/CVD duty assessment system is plagued by collection problems, is more complex and resource intensive, and is less predictable than the “prospective” systems used by all other countries. Under the U.S. retrospective system, it takes an average of 3.3 years *after* the date of import for the U.S. Commerce Department to tell an importer the fairly traded price for imported goods, and the final amount of AD/CVD duties they owe. Thus, the system hinders CBP’s enforcement efforts, creates substantial unpredictability in global supply chains, which hurts U.S. competitiveness, and chills fair trade.

To improve duty collections and enforcement, decrease risk and uncertainty, and enhance U.S. competitiveness, the TRRAC believes the U.S. Government should change to a prospective AD/CVD duty collection system.

A Win/Win Prospective System. Predictability and protection are not mutually exclusive – the United States can develop a prospective assessment system that provides both an effective remedy against unfair trade and greater predictability in the global supply chains critical to U.S. manufacturers, processors, distributors and retailers.

U.S. companies are willing to pay fairly traded prices – they simply need to know what they are so that they can make informed, sound business decisions. As a matter of policy, it makes no sense to tell U.S. companies that Commerce cannot determine what is a fairly traded transaction until years after the fact, but still penalize the companies for not knowing by imposing large duty increases years after import.

Under a “prospective normal value” system, Commerce would determine what the non-dumped price (*i.e.*, “normal value”) is and CBP would apply those results prospectively on a transaction-by-transaction basis. Thus, if subject merchandise were subsequently imported at a price below the normal value (*i.e.*, at a “dumped price”), CBP would, at the time of import, immediately collect final AD duties equal to the amount of the price difference (the dumping margin). Zero duties would be assessed on non-dumped imports. The same system would apply for calculating and assessing CVD duties.

Under such a system, therefore, injurious dumping or subsidization would be remedied immediately upon importation, *and* U.S. companies would know in advance what the actual fairly traded cost associated with each potential source is and could make informed decisions regarding competitive strategies and sourcing. That is good for competing U.S. producers as well as consuming industries and other importers.

A More Immediate, Effective Remedial Impact. The current system of assessing additional duties 3 years after the fact does nothing to help the competing U.S. producer that lost the sale. In contrast, prospective normal values would impact purchasing decisions, prior to import, promoting fair competition when it really matters.

According to a Treasury study, the collection rate for additional retroactive AD/CVD duties is less than 50%. It is inherently difficult to collect duties years after import. Importers faced with an unexpected liability may be unable to pay, or an exporter may game the system. For example, a foreign exporter with a low AD rate can reduce prices and increase exports and then disappear before the additional duties can be collected. This type of “hit and run” scheme is possible only in a retrospective system. Under a prospective system, CBP would immediately assess higher duties at the time of import if import prices declined.

The “Accuracy” Myth. Defenders of the retrospective system argue that it is more accurate and therefore must be a more effective remedy. The accuracy theory is based on the notion that a retrospective system can more precisely reflect the actual amount of dumping or subsidization during a given period because the data for import transactions during a specific period are collected and analyzed after the fact. Fallacies in that argument include:

- Dumping can increase if U.S. prices decrease. A prospective system responds *immediately* to reductions in import prices—the priority concern of petitioning companies-- making the system *more* accurate and effective in that respect.
- Dumping can increase if “normal value” (*i.e.*, home market prices or costs increases) increases without a corresponding increase in U.S. price. Historical data show, however, that approximately 84% of the time dumping rates remain flat or decline; thus increases are the exception, not the rule.
- A rational exporter would not increase normal value by raising its home market prices to subsidize lower U.S. prices when the advantage would be immediately neutralized by higher duties at the time of import.
- Changes in normal value due to increases or decreases in the exporters’ cost of production can be addressed through a process for timely review and revision of prospective normal values to keep them accurate.
- Under a prospective system, collection rates for AD/CVD duties would be nearly 100%, the same rate as other types of duty collections, contributing to greater accuracy and enforcement to offset dumping and subsidization.

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