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The Washington Monitor is a product of the Japan Fair Trade Center in cooperation with the international trade practice of the U.S. law firm of Winston & Strawn LLP. All questions concerning its content should be addressed to:

Washington Monitor
Winston & Strawn L.L.P.
1700 K Street, N.W.
Washington, D.C. 20006
rmassony@winston.com

Trade Briefs

DOC Requests Comments on Retrospective Versus Prospective AD and CVD System

On March 30, the Department of Commerce (DOC) gave notice in the *Federal Register* of its request for comments on whether the U.S. should continue with its current retrospective duty assessment system in antidumping (AD) and countervailing duty (CVD) investigations or shift to a prospective system.

The DOC request for comments was precipitated by a provision in the 2010 Consolidated Appropriations Act directing the Secretary of Commerce to work with the Departments of Treasury and Homeland Security (DHS) to determine the relative advantages and disadvantages of a retrospective and prospective system for collection of antidumping and countervailing duties. This direction from Congress was, in turn, precipitated by a 2008 study by the Government Accountability Office (GAO) recommending that steps be taken to address the gap between antidumping and countervailing duties assessed and those paid. This gap led the GAO to conclude that the imposition of antidumping and countervailing duties was not adequately preventing the dumping of products subject to antidumping duties or offsetting the subsidization on products subject to countervailing duties. Thus, as framed by the GAO, the issue is whether a prospective system would result in better protection of domestic industries from imports found to be dumped or subsidized than a retrospective system.

Most importers and exporters believe that a prospective system of determining antidumping and countervailing duties is preferable. The main reason for this is that in a prospective system there is certainty as to the amount of the antidumping or countervailing duty that will be paid at the time a transaction is concluded. In a retrospective system, however, there is no certainty at the time a transaction is concluded and the product enters the U.S. market. Rather, there is a deposit of an estimated duty based on the most recent investigation or review but no limit on the final amount of the duty that will be assessed after a retrospective review. This creates substantial risks that generally discourage imports.

However, whether a prospective or retrospective system is preferable depends on the entirety of the system of duty assessment and the rules surrounding that system, not just the question of prospective or retrospective. For example, there are situations where a company can make adjustments which allow it to export to the U.S. without incurring antidumping duties. These include lowering domestic prices, changing the comparison market, shipping only products that have no margins of dumping, and entering into long terms contracts at a point in time when the currency relationship with the dollar is more favorable. Under a retrospective system, the company will realize the benefits on all of its exports after the date the dumping is eliminated, because the duties will be applied retroactively. However, under a prospective system, the dumping duties will continue to be assessed until after a review shows the elimination of dumping. The elimination of dumping will only be recognized prospectively. Other questions arise regarding the revocation after three consecutive reviews with zero dumping margins, which effectively would postpone any revocation until the sunset review, and having to pay dumping duties on entries which are not dumped because you need shipments as a basis of a review.

At the same time, there are questions about what may be done if the system remains retrospective. The GAO recommends either changing to a prospective system or making “adjustments within the existing system.” One of the adjustments referred to specifically is revising bonding requirements to protect additional AD/CV revenue. This was applied in the case of the shrimp antidumping investigations and was quite expensive. The importer, in addition to having to deposit cash deposits of estimated duties also had to post a bond based on the value of its prior year imports. While there were exceptions to this rule, either CBP or the surety or both would be examining the “risk” of default on duties carefully and without any real objective benchmark to measure those standards.

Any legislation to change the antidumping and countervailing duty laws from retrospective to prospective would provide an opportunity to make other substantial changes in the laws, possible even WTO-inconsistent changes. It is unlikely that such an exercise would benefit foreign interests.

Dumping Watch

Amended Final Determination in CVD Case on Chinese Circular Welded Carbon Quality Steel Line Pipe

On March 31, the Department of Commerce (DOC) announced the amended final determination in the countervailing duty (CVD) case regarding circular welded carbon quality steel line pipe from China. On November 24, 2008, the DOC gave notice of its final determination in this CVD investigation. On December 1, 2008, a respondent and a petitioner submitted allegations of ministerial error on the part of the DOC with respect to the DOC's final determination. Another petitioner eventually submitted comments on the respondent's allegations. On January 7, 2009, the International Trade Commission (ITC) reached the conclusion that a domestic industry had been materially injured by reason of imports of the subject merchandise. On January 29, 2009, the DOC gave notice of an amended final determination in this case. The DOC considered these allegations and comments and accepted some allegations of ministerial error. The subsidy rates for one respondent, Huludao Companies, was reduced from 35.63% to 31.29%. The all-others subsidy rate for this product imported from China was originally calculated by averaging the rates of the two respondents. Since the rate for one of the respondents changed, the all-others rate was recalculated, dropping from 37.84% to 35.67%. Subsequently, petitioners challenged this final determination at the Court of International Trade (CIT), arguing that the DOC erred in finding that Huludao was a private company and not a state-owned enterprise (SOE). On September 10, the CIT granted the DOC's request for a voluntary remand in order to correct its findings regarding Huludao. The DOC then issued its remand redetermination on October 20, 2009, finding that Huludao was a SOE and recalculating Huludao's subsidy rate to 33.43%. In addition, the DOC recalculated the all-others rate to be 36.53%. This redetermination was sustained by the CIT on December 11, 2009. The amendment from the DOC was therefore published on March 31 in order to reflect this final conclusive decision.

Federal Register Notices

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation;

Advance Notification of Sunset Reviews *75 FR 16738*, April 2, 2010.

[A-570-822] Certain Helical Spring Lock Washers From the People's Republic of

China: Rescission of Antidumping Duty Administrative Review *75 FR 16753-16754*, April 2, 2010.

[A-570-863] Honey from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review *75 FR 16752-16753*, April 2, 2010.

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation;

Opportunity To Request Administrative Review *75 FR 16426-16427*, April 1, 2010.

[A-570-848] Freshwater Crawfish Tail Meat From the People's Republic of China:

Notice of Decision of the Court of International Trade Not in Harmony *75 FR 16427-16428*, April 1, 2010.

[C-552-805] Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam:

Final Affirmative Countervailing Duty Determination *75 FR 16428-16431*, April 1, 2010.

[A-560-822] Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value *75 FR 16431-16434*, April 1, 2010.

[A-552-806] Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value *75 FR 16434-16436*, April 1, 2010.

[A-533-840] Certain Frozen Warmwater Shrimp From India: Initiation of Antidumping Duty Changed Circumstances Review *75 FR 16436-16437*, April 1, 2010.

Initiation of Five-Year ("Sunset") Review *75 FR 16437-16438*, April 1, 2010.

U.S. Travel and Tourism Advisory Board: Meeting of the U.S. Travel and Tourism Advisory Board *75 FR 16438*, April 1, 2010.

[C-489-502] Certain Welded Carbon Steel Standard Pipe From Turkey: Preliminary Results of Countervailing Duty Administrative Review *75 FR 16439-16445*, April 1, 2010.

[C-570-936] Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Determination Pursuant to Final Court Decision *75 FR 16071-16072*, March 31, 2010.

[A-570-851] Certain Preserved Mushrooms From the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews *75 FR 16075-16076*, March 31, 2010.

Civil Nuclear Trade Advisory Committee Public Meeting *75 FR 16077-16078*, March 31, 2010.

Report to Congress: Retrospective Versus Prospective Antidumping and Countervailing Duty Systems; Request for Comment and Notice of a Public Hearing *75 FR 16079-16080*, March 31, 2010.

[A-421-811] Certain Purified Carboxymethylcellulose from the Netherlands: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review *75 FR 15678-15679*, March 30, 2010.

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part *75 FR 15679-15684*, March 30, 2010.

Middle East Public Health Mission; Application Deadline Extended *75 FR 15686*, March 30, 2010.

Safety and Security Equipment and Services Trade Mission to Brazil *75 FR 15687-15689*, March 30, 2010.

[A-570-806] Silicon Metal From the People's Republic of China: Notice of Amended Final Results of New Shipper Reviews Pursuant to Court Decision *75 FR 15412-15413*, March 29, 2010.

[A-570-895] Certain Crepe Paper Products From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order *75 FR 15415-15416*, March 29, 2010.

[A-552-801] Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews *75 FR 15416-15417*, March 29, 2010.

[C-570-917] Laminated Woven Sacks from the People's Republic of China: Rescission of Countervailing Duty Administrative Review *75 FR 15418-15419*, March 29, 2010.

International Trade Commission

[Inv. No. 337-TA-709] In the Matter of Certain Integrated Circuits, Chipsets, and Products Containing Same Including Televisions, Media Players, and Cameras; Notice of Investigation *75 FR 16837-16838*, April 2, 2010.

[Inv. No. 337-TA-708] In the Matter of Certain Stringed Musical Instruments and Components Thereof (II); Notice of Investigation *75 FR 16838-16839*, April 2, 2010.

[Investigation No. 731-TA-44 (Third Review)] Sorbitol From France *75 FR 16839-16840*, April 2, 2010.

[Investigation Nos. 701-TA-384 and 731-TA-806-808 (Second Review)] Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia *75 FR 16504-16507*, April 1, 2010.

[Investigation No. 337-TA-661] In the Matter of Certain Semiconductor Chips Having Synchronous Dynamic Random Access Memory Controllers and Products Containing Same; Notice of Commission Determination To Review in Part an Initial Determination Finding Respondents in Violation of Section 337; Denial of Respondents' Joint Motion To Extend Target Date; Schedule for Briefing on the Issues on Review and on Remedy, Public Interest, and Bonding *75 FR 16507-16509*, April 1, 2010.

[USITC SE-10-005] Government in the Sunshine Act Meeting Notice *75 FR 16509*, April 1, 2010.

[Investigations Nos. 701-TA-473 (Final) and 731-TA-1173 (Final)] Certain Potassium Phosphate Salts From China *75 FR 16509-16510*, April 1, 2010.

[Investigation No. 731-TA-1088 (Preliminary) (Remand)] Polyvinyl Alcohol From Taiwan; Determination *75 FR 15726*, March 30, 2010.

The Week Ahead

- On April 6, the ITC will hold a vote on the five-year sunset review of the AD order on Chloropicrin from China.
- On April 8, the ITC will hold a hearing on the five-year sunset review of the AD orders on stainless steel wire rod from Italy, Japan, Korea, Spain, and Taiwan.
- On April 9, the ITC will hold a vote on the five-year sunset review adequacy determination regarding the AD orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam.