



Trade, Markets, and Competitiveness: Federal Agencies and Import Injury Investigations

The global market for manufactured goods is interconnected and heavily relies on fair trade including compliance with laws and agreements by both exporters and importers. Laws and agreements exist to protect U.S. businesses from unfair competition within the United States, resulting from unfair pricing by foreign companies and unfair subsidies to foreign companies by their governments.

These trade disputes often center around potential dumping or subsidies that depress the cost of production for sellers who export to the United States. Perhaps because approximately 42% of all global fertilizers are exported (International Fertilizer Association, 2019), the fertilizer industry has experienced its share of trade disputes over the years. The processes for resolving trade complaints are often misunderstood. This White Paper, developed by The Fertilizer Institute (TFI) in consultation with the U.S. International Trade Commission (USITC) attempts to shed light on the process by explaining the roles of the government agencies involved as well as how final rulings are made.

Background

Under the Tariff Act of 1930, U.S. industries may petition the government for relief from imports that are sold in the United States at less than fair value ("dumped") or which benefit from subsidies provided through foreign government programs. Antidumping duty ("AD") and countervailing duty ("CVD") investigations are conducted under Title VII of the Act.

Government Involvement

Both the Department of Commerce's International Trade Administration (ITA) and the U.S. International Trade Commission (USITC) have separate, but critical roles in the process and its outcome. Under the law, the ITA is charged with determining whether dumping or countervailable subsidization exists and, if so, the margin of dumping or amount of the countervailable subsidy.

The USITC conducts a parallel investigation to determine whether there is material injury or threat of material injury to the domestic industry from the dumped or subsidized imports.

Process Timeline

The entire process to resolve a trade dispute can take up to 13 months. The general process is as follows:

1. Typically, an interested party files an AD or CVD petition simultaneously with Commerce (ITA) and the USITC. Within 20 days, Commerce determines whether to initiate an investigation.
2. The USITC conducts a preliminary phase of investigation to determine whether an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise which is the subject of the investigation. The agency generally issues a determination within 45 days of receipt of the petition. If the determination is affirmative the investigation continues; otherwise, it is terminated).

3. Commerce makes a preliminary determination if imported merchandise is being sold or is likely to be sold at less than fair value (LTFV), or whether a countervailable subsidy is being provided with respect to the subject merchandise. Must be complete within 160 days after the date of petition for AD cases or 85 days in CVD cases.
4. Commerce makes a final determination within 235 days after the date of petition in AD cases or 160 days in CVD cases.
5. ITC makes a final determination within 280 days after the date of petition in AD cases or 205 days in CVD cases.

Commerce's preliminary AD & CVD determinations and its final AD duty determinations can be postponed by approximately two months, and its CVD determinations can be aligned with AD determinations. These also impact the USITC's schedule, which is why the entire process may take up to 13 months (390 days).

Investigation

Detailed and structured investigations take place to determine whether a domestic industry is materially injured, or threatened with material injury, by reason of dumped or subsidized imports. USITC preliminary phase investigations may be broken down into stages: (1) institution of the investigation and scheduling of the phase, (2) questionnaires, (3) staff conference and briefs, (4) staff report and memoranda, (5) briefing and vote, and (6) determination and views of the Commission. USITC final phase investigations include additional reports and briefing; a public hearing conducted before the Commissioners, and the closing of the agency record and final comments by parties.

Outcome

For AD or countervailing duties to go into place, both agencies must issue affirmative final determinations. However, it is important to note that if Commerce issues a preliminary affirmative determination, it will direct Customs to suspend liquidation and to require cash deposits or bonds equal to the amount of the estimated dumping margin. In many cases, it is from this point in time that any eventual duties will be applied, although in some cases the date might be later (if the USITC makes an affirmative determination based on the threat of material injury) or earlier (if both agencies find that critical circumstances exist).

Investigations are conducted in accordance with U.S. law, and the decision to initiate an investigation is based solely on the record evidence. The trade remedy laws provide U.S. businesses and workers with a transparent and internationally accepted mechanism to seek relief from the market-distorting effects caused by unfair pricing or subsidization. Commerce and USITC decisions are apolitical in nature and are based on information contained in the official record of the proceeding. They are subject to potential review by U.S. courts and the World Trade Organization dispute settlement system.