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FCBF
Antidumping Duty Compliance
for Importers and Customs Brokers

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“Dumping” is defined by Statute (19 U.S.C. § 1677) as the “sale or likely sale” of goods at less than fair value. (“LTFV”).

- Dumping occurs where a product is sold in the U.S. at a price which is lower than the price for which it is sold in the home market (“normal value”), or at a price that is lower than the cost of production.
- In the absence of home market sales, sales to third countries are considered. In the absence of home market or third country sales, a “constructed value” is used, which include costs of production and anticipated profits.

Interested parties (“Petitioners”) may file antidumping duty Petition alleging an industry in the U.S. is “materially injured” or “threatened with material injury” by reason of imports sold in the U.S. at less than fair value (“LTFV”).

Petitioners may include:

- U.S. manufacturers, producers, wholesalers of domestic like product.
- Certified union or group of workers in affected industry.
- Trade or business association.
- Processors, producers and growers (agricultural products).

Persons other than the Petitioners (end users, consumer organizations) may file entry of appearance and file briefs where deemed to have a legitimate interest in proceeding.

Petition must clearly identify the imported product (technical characteristics, parameters) to distinguish the merchandise from products not intended to fall within the scope of the investigation.

- Broad enough to avoid “circumvention”, narrow enough to exclude products not causing injury.
- Petition must clearly identify the “domestic like product”. Domestic like product is defined as “a product which is like, or most similar in characteristics and uses with the article subject to investigation.

Petitions are filed with Department of Commerce (“DOC”) and International Trade Commission (“ITC”).

- ITC must preliminarily determine (within 45 days) whether there is reasonable indication of material injury to the domestic industry by reason of foreign imports.
- Material injury is defined by statute as “harm which is not inconsequential, immaterial, or unimportant.”

- **ITC issues questionnaires to U.S. producers, foreign producers, and U.S. importers to make its determination.**
- **ITC holds public hearings. Petitioner, Respondents (parties in opposition to Petition) and witnesses provide testimony. Parties are encouraged to file post-conference briefs.**
- **A staff report is issued, and the ITC commissions conducts its vote. (within 45 days of filing of Petition).**

If ITC issues affirmative preliminary determination, the DOC (ITA)(IA) must preliminarily determine whether there is “reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value. (within 160 days after initiation).

If ITC issues negative preliminary determination, the case is terminated.

DOC issues questionnaires to foreign producers (Respondents) for the period of investigation (“POI”) which is typically the 4 fiscal quarters preceding the filing of the Petition:

- **Section A:** Information regarding organization, accounting, and sales practices.
- **Section B:** A listing of sales transactions in the home market for use in determining the normal value of the foreign like products.
- **Section C:** A listing of sales transactions in the U.S. market to determine the export price or constructed export price.
- **Section D:** Information regarding the manufacturing process and cost of production.

If affirmative, the preliminary determination must include an estimated average amount by which normal value exceeds the export price.

Effect of affirmative preliminary determination is twofold:

- DOC orders the suspension of liquidation of all entries of the subject imports that are entered, or withdrawn from warehouse, for consumption – on or after the date of publication of the determination in the federal register.
- Importers are required to post a cash deposit, bond, or other appropriate security for all entries of subject imports in an amount equal to the dumping margin.

If the DOC determination is negative DOC conducts the final phase of its investigation, but there is no requirement that importers post a cash deposit or bond.

- Within 235 days after the Petition is filed, DOC is required to issue final determination whether the subject merchandise is being sold or is likely to be sold at less than fair value (“LTFV”).
- If the DOC final determination is negative, the investigation is terminated, including any suspension of liquidation which is in effect.
- All estimated duties are refunded, and all appropriate bonds or other security are released.
- If the DOC final determination is affirmative, suspension of liquidation remains in effect, as does the requirement importers post a cash deposit, bond, or other appropriate security.

In AD investigations in which the Petitioner alleges “critical circumstances”, the DOC must determine on the basis of available information:

- If there is a history of dumping and material injury in the U.S. or elsewhere; or
- Importers knew or should have known that merchandise was being sold at less than fair value (“LTFV”); and
- That there was likely to be material injury by reason of such sales; and
- There have been “massive imports” of the merchandise over a relatively short period of time.

If the DOC’s finding is affirmative, AD duties are applied retroactively to unliquidated entries of imported merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date the duties would have otherwise been levied.

Within 280 days after the Petition is filed, the ITC makes a final determination whether there is an industry in the U.S. is materially injured, or is threatened with material injury, by reason of imports of merchandise subject to the investigation.

The ITC final phase consists of distinct phases including:

- Issuance of questionnaires to U.S. and foreign producers, U.S. importers, and U.S. purchasers.
- Issuance of a pre-hearing staff report containing industry and market information.
- Petitioner(s) and Respondents file pre-hearing briefs.
- Public hearing before the its commissioners.
- Issuance of final staff report and legal issues memorandum.
- Petitioner(s) and Respondents file final comments.
- ITC Commission vote

The ITC must to transmit its final determination to the DOC. (120 days after notification of preliminary determination, or 45 days after notification of final determination, whichever is later.

DOC is required by law to publish in the federal register and antidumping order, no later than 7 days after being notified by the ITC of an affirmative final determination.

Importers are then required to post a cash deposit equal to the amount of the estimated antidumping duty orders pending liquidation of entries of the merchandise.

The Antidumping Duty Order:

- Directs U.S. Customs (“CBP”) to assess AD duties equal to the amount by which normal value exceeds the export price.
- Describes the merchandise to which the AD duties apply.
- Requires the deposit of estimated AD duties pending liquidation of entries, at the same time estimated normal customs duties are deposited.

If a cash deposit or bond collected as security for estimated AD duties pursuant to an affirmative preliminary or final less than fair value (“LTFV”) determination is greater than the amount assessed per the AD duty order:

- The difference between the deposit and the amount of the final duty will be refunded to the importer (plus interest) for entries prior to the final injury determination.
- The same is true for entries after the final injury determination, but prior to issuance of the AD duty order.

If a cash deposit or bond collected as security for estimated AD duties pursuant to an affirmative preliminary or final less than fair value (“LTFV”) determination is less than the amount assessed per the AD duty order:

- The difference between the two amounts is disregarded for entries prior to the final injury determination.
- For entries after the final injury determination, but prior to issuance of the AD duty order, importers must pay the difference, along with the interest on such underpayment.

Administrative Reviews

DOC is required, upon request, to conduct an annual administrative review of outstanding AD orders. The period of review (“POR”) for an administrative review is 16-17 months for a first review, and 12 months for all subsequent reviews.

For the first administrative review, the period of review (“POR”) is the time between suspension of liquidation of entries and issuance of the AD duty order, plus 12 months).

The results of the annual review are published in the federal register, including notice of any duties to be assessed, and estimated duties to be deposited.

An interested party dissatisfied with a final AD determination or administrative review, may file an action in the U.S. Court of International Trade (“CIT”) for judicial review.

To obtain judicial review, a Summons and Complaint must be filed within 30 days of publication of the final determination.

The standard of review used by the by the court is whether the determination is supported by “substantial evidence on the record” or “otherwise not in accordance with law.”

An appeal of a negative preliminary determination is based on whether the determination is arbitrary, capricious, an abuse of discretion, or is otherwise not in accordance with the law.

Antidumping Duties

- Enforcement of Antidumping Duty (ADD) Orders by U.S. Customs and Border Protection (CBP)
- CBP Bonds
- Customs Brokers Penalties
- Scope Ruling Requests to U.S. Department of Commerce

Enforcement of Antidumping Duty (ADD) Orders by U.S. Customs and Border Protection (CBP)

- Honey from China
 - Alfred L. Wolff
- Crawfish Tail Meat from China
- Fish from Vietnam

➤ CBP Bonds

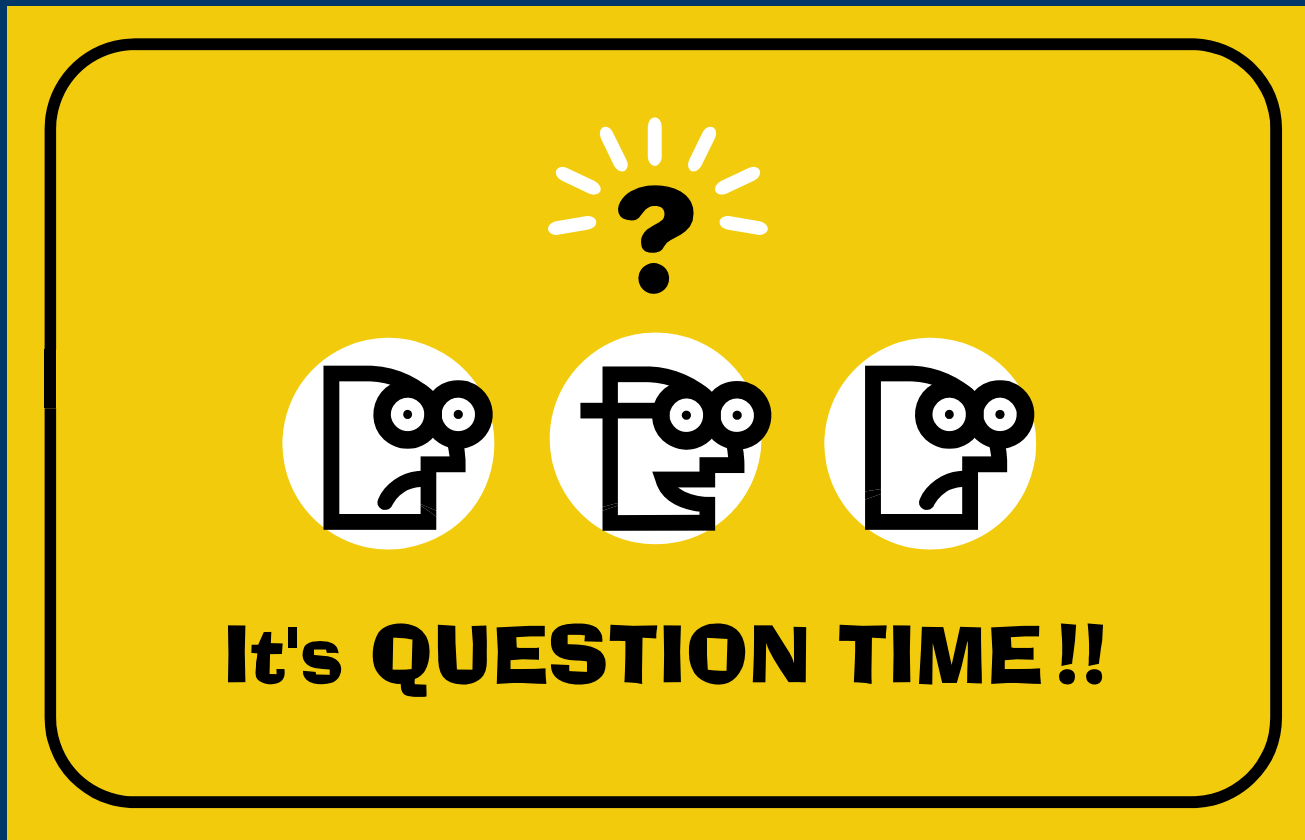
➤ Customs Broker Penalties

Scope Ruling Requests to U.S. Department of Commerce

Example:

Candles

Question and Answer period





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