

Customs and International Trade

April 1, 2010

The U.S. Department of Commerce Wants Your Input on How Antidumping and Countervailing Duties Should Be Assessed

On March 31, the Department of Commerce published a Federal Register Notice seeking comments from the public on the Department's system of assessing antidumping and countervailing duties on imported merchandise.

Historically, Commerce has assessed antidumping and countervailing duties retrospectively. Under this system, an importer would deposit antidumping duties at the time of entry, but the duties assessed would not be finalized until after the Department reviewed the extent of dumping or subsidization for that period.

While this system may lead to more "accurate" duty margins, it causes great uncertainty among importers. Entries can remain unliquidated for years, and changes in duty rates can result in additional duties plus interest assessed on years-old inventory.

For example, assume that an importer brought in a shipment of goods valued at \$100,000 in 2007. These goods were subject to a 25 percent antidumping duty at the time. The importer deposited the \$25,000, and the merchandise cleared. However, that entry is still in limbo.

Fast forward to 2010, when Commerce finishes its review of the level of dumping for goods imported in 2007, and determines—unbeknownst to the importer—that the final dumping margin was really 75 percent. The importer would then receive a bill from Customs for the additional \$50,000, plus interest, despite having no involvement in Commerce's review. This process works both ways: If the duty margin were reduced to 10 percent, the importer would receive a refund of \$15,000 plus interest.

Under a prospective system, any antidumping or countervailing duties paid by the importer at the time of entry would be "final." This system would provide more certainty for importers of merchandise subject to antidumping or countervailing duties. However, it also would mean that the duties may not accurately reflect the level of dumping or subsidization that is taking place at the time of entry.

Under this system, the importer in our example would pay the \$25,000 in antidumping duties at the time of entry, and the entry would liquidate under a normal cycle. Any revisions of dumping margins—whether up or down—would not affect that entry.

The Department seeks comments on the extent to which each scenario would likely achieve the Department's goals. The Department wants specific input on how each system would likely: (1) remedy injurious dumping or subsidized exports to the United States; (2) minimize uncollected duties; (3) reduce incentives and opportunities for importers to evade antidumping and countervailing duties; (4) effectively target high-risk importers; (5) address the impact of retrospective rate increases on U.S. importers and their employees; and (6) create minimal administrative burden. The Department also plans to hold a public hearing on this subject on April 27.

Anyone interested in submitting comments to the Department must do so no later than April 20. These comments, and the information received at the April 27 public hearing, will be part of the Department's report to Congress that is scheduled to be transmitted by June 14. Katten will be working with clients who plan to submit comments.

If you have any questions, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below:

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