Anti-Dumping & Countervailing Duty

(AD/CVD) Basics

When the U.S. government or U.S. industries feel that imported goods are being sold at unfairly low prices, an investigation may be requested or initiated. The goal of the investigation is to:

1. Determine if claims of low prices are legitimate, and;
2. Determine if local U.S. industry is being harmed by the low-cost imports.

If these are both true, additional duties may need to be added to the imported goods in order to "level the playing field" for domestic producers.

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What does it mean to sell goods at an "unfairly low" price, and why is that a bad thing?

Generally speaking, there are two definitions of goods of what an "unfairly low" price is:

- Foreign producers selling products in the U.S. at a price below what the producer could sell at in their home country, or;
- Foreign producers selling products in the U.S. at less than their cost of production.

If one of these two definitions is met, it could be determined that a producer is dumping goods into the U.S. This may not be a "bad thing" if there are no U.S. companies that are competing with foreign producers, meaning there are no U.S. companies that manufacture or produce those same items domestically. However, if U.S. companies are competing in the same industries, it may be difficult for those companies to match the pricing of the imported goods.

Why would a government subsidize the production of goods?

Many governments provide subsidies to domestic industries that provide great value to that country. For example, the U.S. government has consistently subsidized the farming industry because they feel it is important to have food grown and available in the U.S.

Subsidies can be provided in many ways (e.g., cash, tax concessions, etc.), but it always comes back to a government providing some financial benefit to a specific industry or business with the intent to reduce their cost of doing business.

How would an investigation to confirm if dumping or subsidization is occurring even get started?

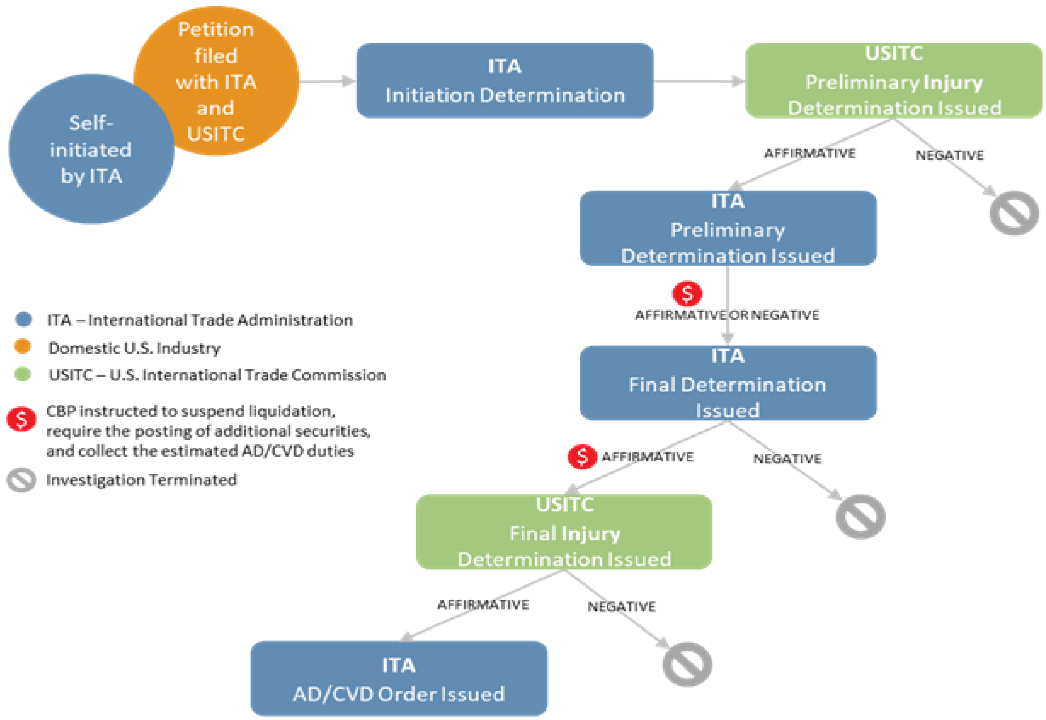
The U.S. government may self-initiate an investigation, or U.S. industries or companies may file a request. Once an investigation is open, these three government agencies work together:

- International Trade Administration (ITA), Department of Commerce (DOC) – determines whether dumping or subsidization is occurring, and if so, how much additional duty is needed to offset any harm;
- U.S. International Trade Commission (USITC) – determines if there is a risk to current or future U.S. industry; and
- U.S. Customs and Border Protection (CBP) – enforce the findings of the investigation.

What process does the U.S. government follow for an investigation?

There are established timeframes for each step of the process, and the ITA and USITC both play significant roles. There are several steps to an investigation, and the process may be stopped if it is found that dumping or subsidies are not occurring or that there is no risk to the U.S. industry.

THE BELOW CHART HELPS TO SHOW THE STEPS AT A HIGH LEVEL:



If it is determined that imports are priced unfairly low and U.S. industry is harmed, what happens?

During the ITA's preliminary determination process, they will determine what additional duty needs to be applied to "level the playing field", or allow U.S. producers to remain competitive. These additional duties are called anti-dumping or countervailing duties.

- Anti-dumping duties (ADD) are intended to offset any dumping that is occurring
- Countervailing duties (CVD) are intended to offset any subsidization that is occurring

The type of additional duties that are required depends on what the U.S. government found during its investigation. The two most common scenarios are that (1) only ADD is required, or (2) both ADD and CVD are required. Importers will be responsible for paying these additional duties at the time of the first affirmative ITA determination.

I paid AD/CVD at the time of import; is that amount set in stone?

The AD/CVD amount paid at the time of import are cash deposits of estimated duties. The final amount will not be determined until CBP liquidates the entry at the ITA's instruction, and that amount may be less, more, or the same amount as the estimated amount originally paid. This whole process can take up to three years.

How does the U.S. government ensure that the foreign producer doesn't reimburse the anti-dumping duties to the importer?

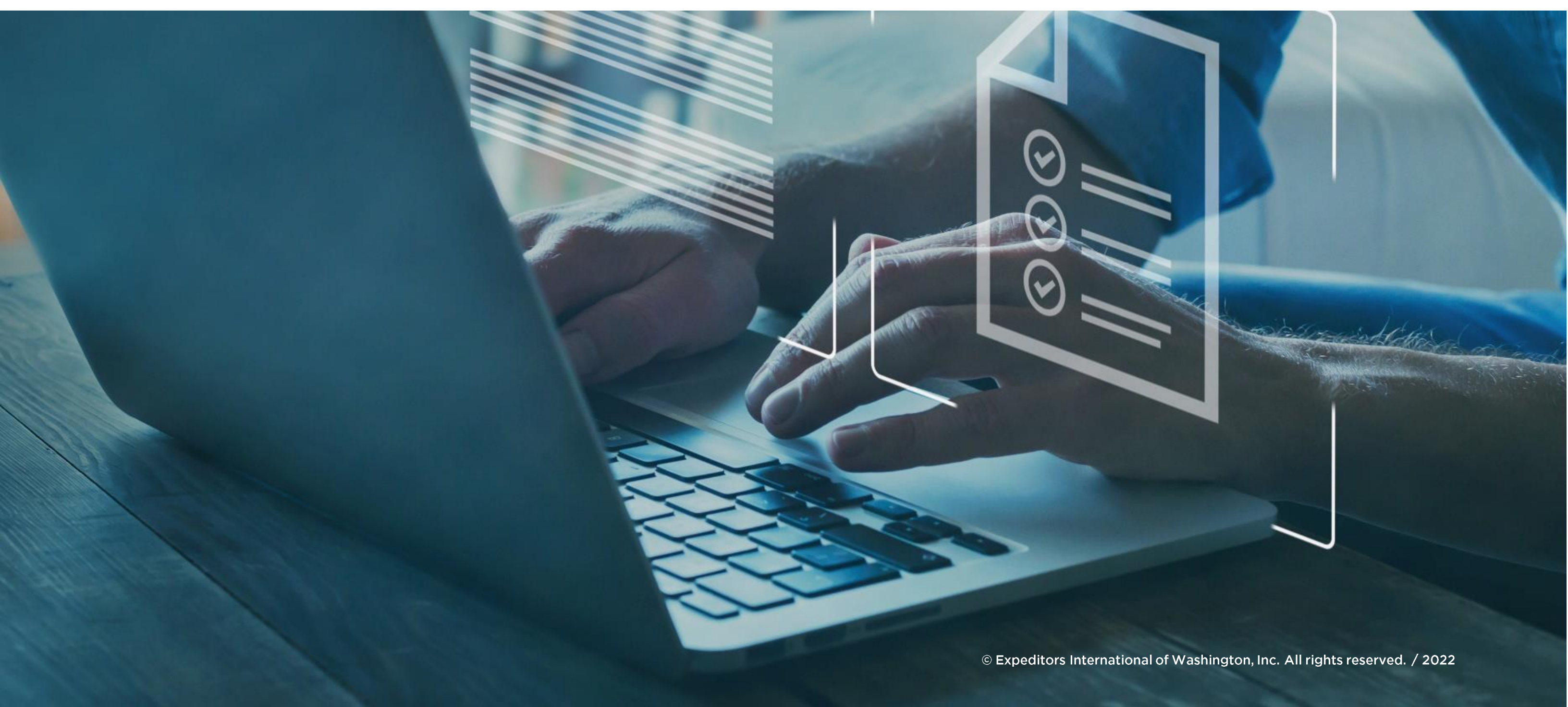
As part of the import process, an importer needs to certify to the U.S. government that no reimbursement was received from the foreign producer. Importers make this statement on what is referred to as an 'Anti-Dumping Non-Reimbursement Statement'. These statements must be on file by the time the entry liquidates. If the document is not present, CBP will presume the importer was reimbursed, and duties owed will be doubled.

Link to CBP's 'Guidance for Reimbursement Certificates'

My foreign supplier is stating that they have a 0% ADD and/or CVD rate. Can that be true?

Potentially, but you may need to do more research to validate this. Once the ITA makes an affirmative determination, they set an estimated dumping and/or subsidization margin for each foreign producer that they investigated and set an "all country all" rate that is used for any producers not specifically called out.

Long story short, there are times when a foreign producer may have a 0% rate assigned to them at the time of entry. However, that rate could always change before the entry liquidates.



Is it true that an Importer can be assessed for AD/CVD after a product is imported and paid duty?

Yes, this can be true and introduces the concept of 'critical circumstances'. The ITA and USITC look at several points to determine if critical circumstances exist for a case. As an example, if a surge of imports occurred during the early period of an investigation (which could indicate companies importing large quantities to avoid potential AD/CVD), that may be deemed a critical circumstance.

If critical circumstances are found, then the ITA can order CBP to suspend liquidation on entries that have been filed and make AD/CVD applicable retroactively.

How do I know what ADD and/or CVD cases may apply to my imports?

We have a whole different document that will help you determine that. Find it here!

What are some additional resources for AD/CVD?

Researching AD/CVD can be daunting, but we recommend the following resources to help you continue to build up your AD/CVD knowledge.

- CBP - AD/CVD FAQ Webpage
- Congressional Research Service – Search: 'Trade Remedies'

For further questions please contact your local Expeditors office.

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