

An aerial photograph of a port terminal. A large green gantry crane is positioned over a container ship. The ship's deck is filled with stacks of blue, white, and red shipping containers. In the background, there are several yellow forklifts and other port infrastructure. A dark blue rectangular box is overlaid on the right side of the image, containing the name 'Buchanan' in white serif font.

Buchanan

Protecting Domestic Producers

Guide to Antidumping and Countervailing Investigations

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The importance of maintaining the United States' manufacturing base has received heightened recognition from the White House and Congress in recent years. Proposed legislation has put a greater focus on protecting U.S. manufacturers and American jobs from unfair import competition. Additionally, many foreign producers have shifted away from exporting raw materials to more value-added downstream products that compete with traditionally small and medium-sized industries in the United States.

For U.S. manufacturers battling against these unfairly priced imports, there are two key tools for relief. The antidumping and countervailing duty laws allow U.S. manufacturers to petition the government to investigate imports if they are a cause of or threaten material injury to the domestic industry. Today, more diverse domestic industries are taking advantage of these laws to combat foreign competitors and receive adequate remedies and protections.

THE STATUTES

- **Antidumping Statute** – Members of a domestic industry can utilize the antidumping statute to petition the U.S. government to investigate imports of similar foreign goods and impose compensating duties, if: (1) imports are being, or are likely to be, sold in the U.S. at less than fair value, and (2) the domestic industry is materially injured or threatened with material injury due to the dumped imports.

To prove material injury, U.S. manufacturers typically demonstrate that they've lost sales or market share to imports, prices have been depressed or otherwise suppressed, and that

the industry has been negatively impacted by decreased sales, decreased profits, or workforce reduction.

If the U.S. Department of Commerce (DOC) and the U.S. International Trade Commission (ITC) determine that both are true, a dumping duty is imposed on all imports of the product to ensure that they are sold at fair prices.



- **Countervailing Duty Statute** – If a foreign government is subsidizing production or exportation of competing products, members of a domestic industry can use the countervailing duty statute to petition the U.S. government to investigate and impose compensating duties, if: (1) imports are being subsidized by the governments of one or more countries, and (2) the domestic industry is materially injured or threatened with material injury due to the subsidized imports.

Subsidization occurs when a foreign government provides financial assistance to benefit the production, manufacture or exportation of a good. The definition of a subsidy is broad and can range from direct cash payments to tax credits to loan guarantees. The statute establishes standards

for determining when an unfair subsidy has been given. Frequently, U.S. producers simultaneously file antidumping and countervailing duty petitions.

If the investigation results in positive determinations from both the DOC and ITC, compensating duties are imposed to offset the subsidies. If there are final affirmative in both antidumping and countervailing investigations then the duties are essentially additive.



AD AND CVD INVESTIGATIONS AND THE RELIEF PROVIDED

To begin the investigative process, domestic companies or associations file petitions with both the DOC and the ITC. Once initiated, the agencies issue questionnaires to foreign producers and importers to provide information necessary to the investigation.

The ITC is responsible for determining whether the imports are a cause of, or a threat to, material injury to the domestic industry. Injury is defined as harm that is more than inconsequential, insignificant or immaterial.

CALCULATING THE DUTIES

- **Antidumping Duty (AD)** – The antidumping duty is determined by the dumping margin calculated as the difference between the “normal value” of the product and the price charged in the U.S., also called the “export price” or “constructed export price.”

“Normal value” is based on the price of the good in the foreign country where it’s produced (in effect, the home market). If there are insufficient sales of the product in the home market, the normal value is based on the fully distributed cost of production plus profit. When based on price, the normal value is calculated using only sales that are sold at prices above the cost of production. The export price is also adjusted for delivery and selling expenses such as foreign and local transportation costs, importation expenses, U.S. processing and other costs.



Goods are considered dumped if the export price is lower than the normal value. The margin of dumping is then divided by the export price to determine the dumping duty percentage.

- **China /Non-market Economies (NME)** – AD calculations are different when the target country is a non-market economy (NME), such as China or Vietnam. In these types of cases, normal value is calculated by identifying the actual factors of production necessary to manufacture the product. The NME producer would, for example, submit the hours of labor, quantity of raw material, and units of electricity used in manufacturing the subject merchandise. Those factors are then given values based on a comparable “surrogate” market economy, and reasonable overhead and profit are added to generate the normal value. Numerous recent investigations using the NME methodology have resulted in significant AD calculations.
- **Countervailing Duty (CVD)** – Calculating the countervailing duty is a function of the amount of subsidy paid by the foreign government as a percentage of sales of the covered merchandise. CVD investigations of NME countries are permitted giving domestic industries the opportunity to challenge both dumping and subsidized imports from China.



DON'T GO IT ALONE

For manufacturers and industries looking to use the AD and CVD laws, having a team of experienced international trade lawyers on their side can be the difference in obtaining a meaningful remedy. Buchanan Ingersoll & Rooney attorneys have decades of experience representing the interests of U.S.-based companies and manufacturing associations in trade remedy matters. Our international trade attorneys have obtained relief for a variety of U.S. industries including tool manufacturers, plastics manufacturers, metals producers, stainless steel producers, as well as engine companies and those in the renewable energy sectors, among others.

Our International Trade & National Security practice group members have extensive experience working in government and agency capacities, as well as within industries we serve. We have fostered excellent working relationships with key federal, state and regulatory bodies, and routinely appear before the ITC, the DOC, and the Federal Courts. In addition to import remedy cases, our attorneys assist clients with a wide variety of trade-related matters including anti-bribery compliance/Foreign Corrupt Practices Act (FCPA) guidance, U.S. economic sanctions, and export control matters.



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In his specialty practice, Dan helps U.S. manufacturing companies who are losing market share and suffering from decreased profits obtain relief against unfairly priced imports. Specifically, Dan counsels clients on the laws and regulations governing international trade, with particular emphasis on import remedy, antibribery, national security, and export control issues. He has extensive experience in matters related to trade remedy investigations, including antidumping, countervailing duty, and safeguard cases, which provide relief to U.S. producers who have been injured as a result of import competition.

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