



United States Department of Commerce
Import Administration

**U.S. Trade Policy: Antidumping
and Countervailing Duties, and
Safeguards Measures**

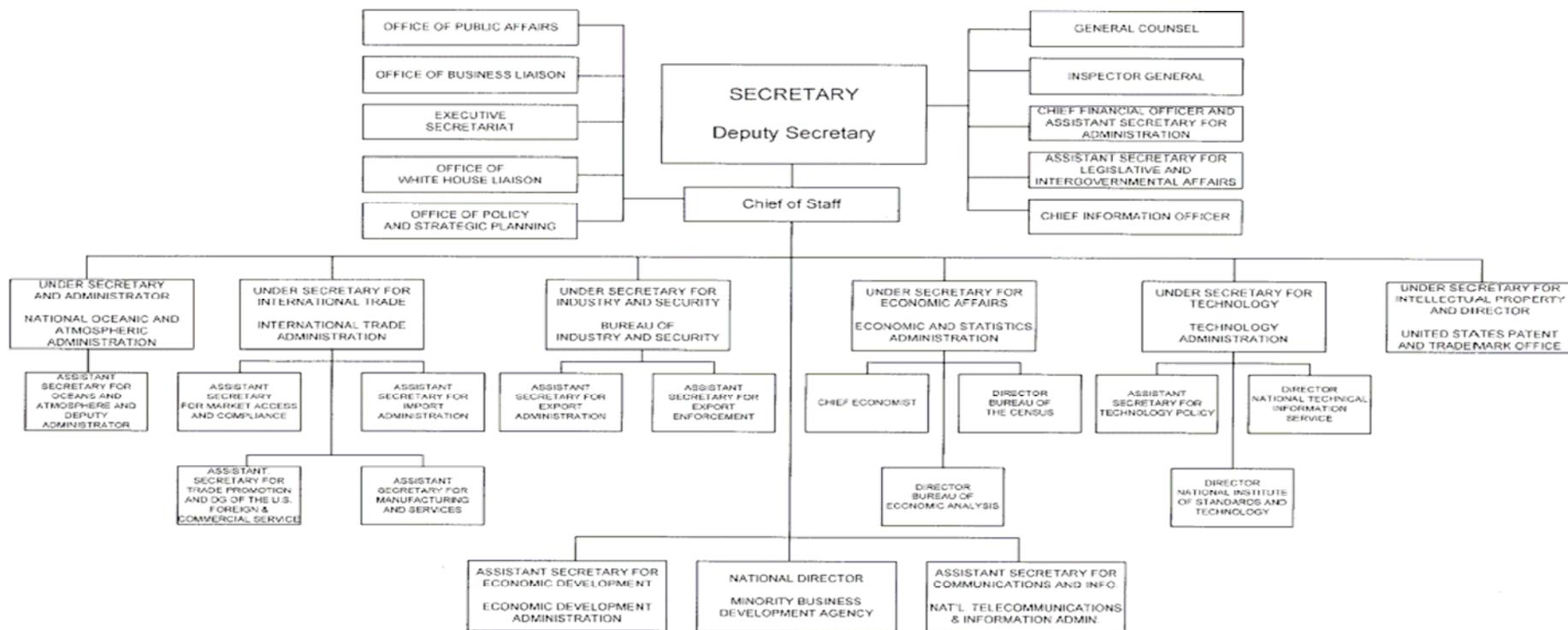
Presented by

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September 19, 2007



U.S. DEPARTMENT OF COMMERCE

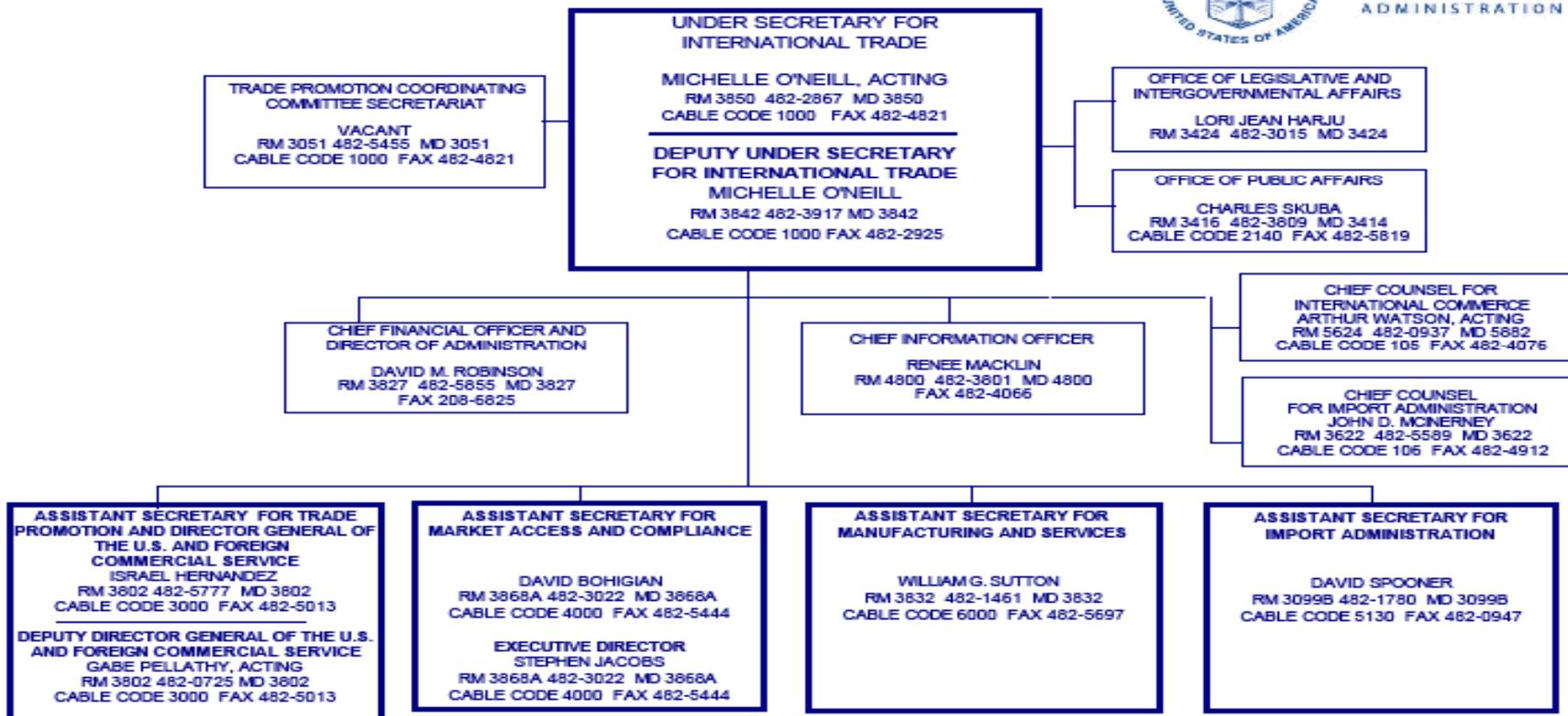




U.S. DEPARTMENT OF COMMERCE INTERNATIONAL TRADE ADMINISTRATION WORK REFERENCE CHART



INTERNATIONAL
TRADE
ADMINISTRATION

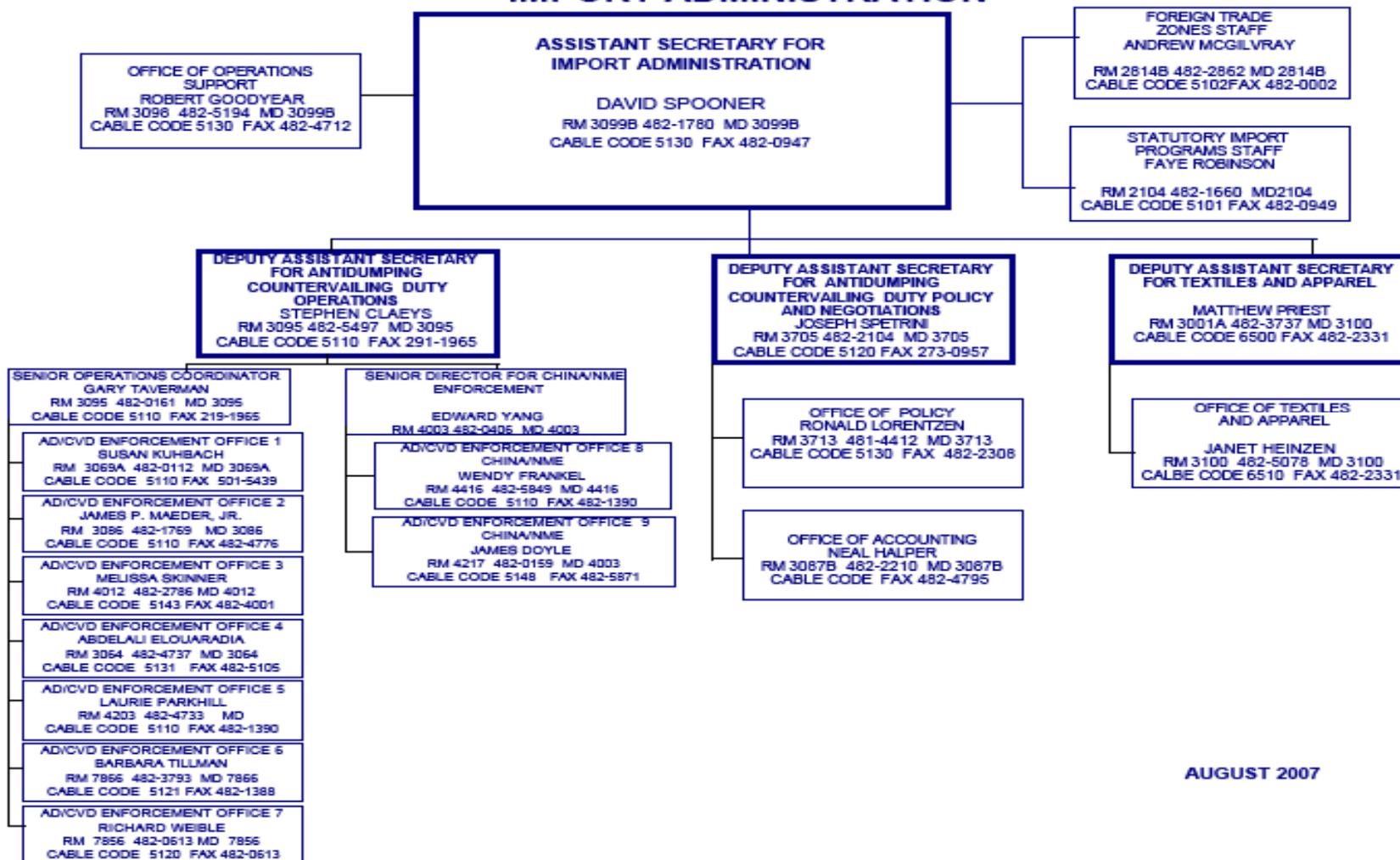


NOTE: This is a working document. Some persons are designated as acting pending the completion of personnel actions. This chart depicts only persons for which personnel actions have been submitted. The most up-to-date chart can be accessed via the CFO Website (<http://ita.doc.gov/ooms/itawrc.htm>).

SOURCE: Office of Organization and Management Support
AUGUST 2007



IMPORT ADMINISTRATION



AUGUST 2007



Antidumping and Countervailing Duty Procedures - Overview

- ❖ **Petitions and Initiations**
- ❖ **Commerce and the ITC**
- ❖ **AD and CVD Investigations**
 - Timeline
 - Participation
 - Collection of Information
 - Methodologies
 - Determinations
 - Collection of Duties
- ❖ **AD and CVD Orders**
- ❖ **Administrative Reviews**



Initiation of Antidumping Investigations

- ❖ Commerce may initiate investigations in one of two ways:
 - Self-initiation
 - Based on a petition filed by a U.S. Industry



Self-Initiation

- ❖ Commerce has the authority to self-initiate an investigation, but may do so only if “special circumstances” are present.
- ❖ Commerce has interpreted the “special circumstances” provision narrowly.



Petitions

- ❖ Commerce and the International Trade Commission (ITC) receive petitions from the affected U.S. industry simultaneously.
- ❖ However, Commerce is the agency responsible for determining the adequacy of the petition and whether or not to initiate a case.



Petition Requirements

- ❖ U.S. law mandates that certain legal requirements be met before an AD or CVD case can be initiated. These requirements exist for both petition-based and self-initiated cases.
- ❖ Under U.S. law, documentary evidence of dumping or alleged subsidies must be information that is reasonably available to the petitioner.



Antidumping Petition

An AD petition must contain:

- ❖ Evidence of dumping, including a calculation of the U.S. price of the subject merchandise and the normal value of the foreign like product.
- ❖ Evidence of injury.
- ❖ Demonstration of industry support.
- ❖ Identify the domestic like product and scope.



Countervailing Duty Petition

A CVD petition must contain:

- ❖ Names of subsidy beneficiaries.
- ❖ Documentary evidence of alleged subsidies.
- ❖ Evidence of injury.
- ❖ Demonstration of industry support.
- ❖ Identify the domestic like product and scope.



Initiation Requirements: Injury

- ❖ As defined by the Act, “material injury” is harm which is not inconsequential, immaterial, or unimportant.
 - The ITC is responsible for determining whether a domestic industry is materially injured or threatened with material injury as a result of the allegedly dumped imports.
 - However, Commerce assesses the adequacy of the injury allegation for purposes of initiating an investigation.



Initiation Requirements: Injury

❖ Commerce's Assessment of Injury Allegation

- Declining domestic prices
- Reduced levels of production
- Reduced levels of capacity utilization
- Declining net sales and market share
- Sales lost to imports
- Declining profitability
- Reduced levels of employment
- Bankruptcy



Initiation Requirements: Industry Support

- ❖ In cases involving initiation by petition, Commerce must find that the petition has been filed by or on behalf of the U.S. industry seeking relief.
- ❖ Minimum thresholds:
 - 25 percent of total production of the domestic like product
 - More than 50 percent of those expressing an opinion must support the case
- ❖ Polling



Initiation Requirements: Industry Support

❖ Positions Disregarded:

- Commerce shall disregard position of domestic producers who oppose the petition if they are related to foreign producers unless they demonstrate that their interests as a domestic producer would be adversely affected by the imposition of an order.
- Commerce may disregard positions of domestic producers who are importers of the subject merchandise



Initiation Requirements: Like Product

- ❖ A petition must clearly identify the domestic like product, the product produced in the United States which is most similar to the foreign product covered under the scope of the investigation.
- ❖ Commerce determines the like product for the purposes of the initiation. The ITC makes its own separate like product determination.



Initiation Requirements: Scope

- ❖ When filing a petition, the petitioner is required to include a detailed description of the merchandise to be covered under the investigation including:
 - The technical characteristics and uses of the merchandise
 - Its current U.S. tariff classification number (HTS number)



Initiation of an Investigation

- ❖ If all elements are properly alleged/
demonstrated, Commerce will initiate an
investigation
- ❖ Day 20
- ❖ Notification of CBP but no border measures
are implemented



Interested parties in an AD/CVD proceeding

- ❖ a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise, or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise
- ❖ the government of a country in which such merchandise is produced or exported
- ❖ a manufacturer, producer, or wholesaler in the United States of a domestic like product (continued)...



Interested parties in an AD/CVD proceeding

- ❖ a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product
- ❖ a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States



Timing of Commerce Events in Investigations



- Petition Analyzed
- Issue Initiation Notice

- ❖ Questionnaire Issued
- ❖ Questionnaire Responses Due
- ❖ Supplemental Questionnaire Issued
- ❖ Supplemental Response Due

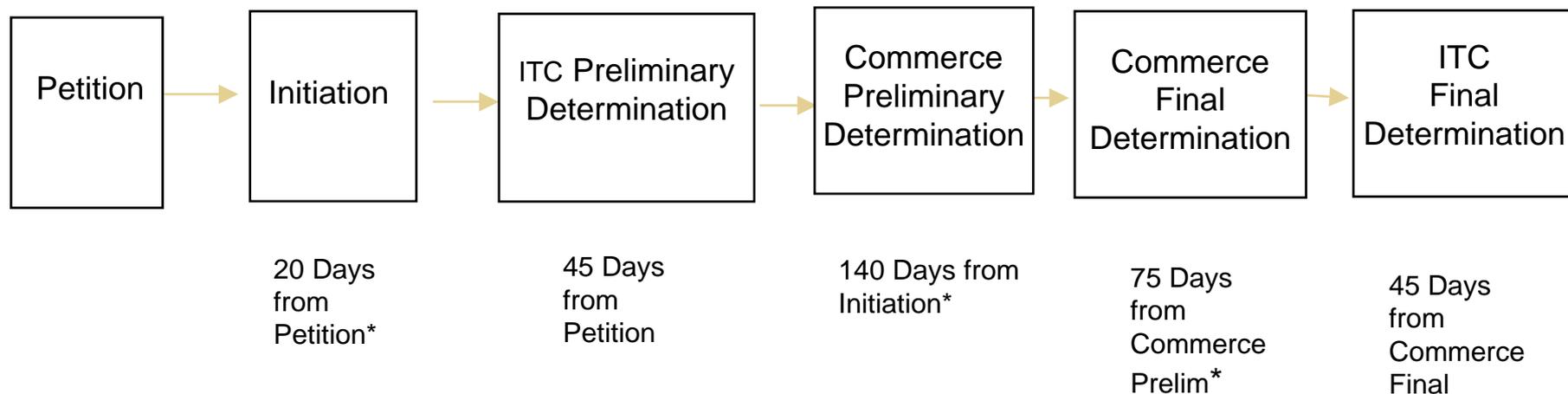
- ♦ Publication of FR Notice
- ♦ Disclosure
- ♦ Ministerial-Error Correction
- ♦ Suspension of Liquidation (if affirmative)
- ♦ Verification & Commerce Reports
- ♦ Case & Rebuttal Briefs
- ♦ Hearing

- Publication of FR Notice
- Disclosure
- Ministerial- Error Correction
- Suspension of Liquidation (continues or lifted)

- AD Order (if affirmative)
- Suspension of Liquidation (continues if affirmative)



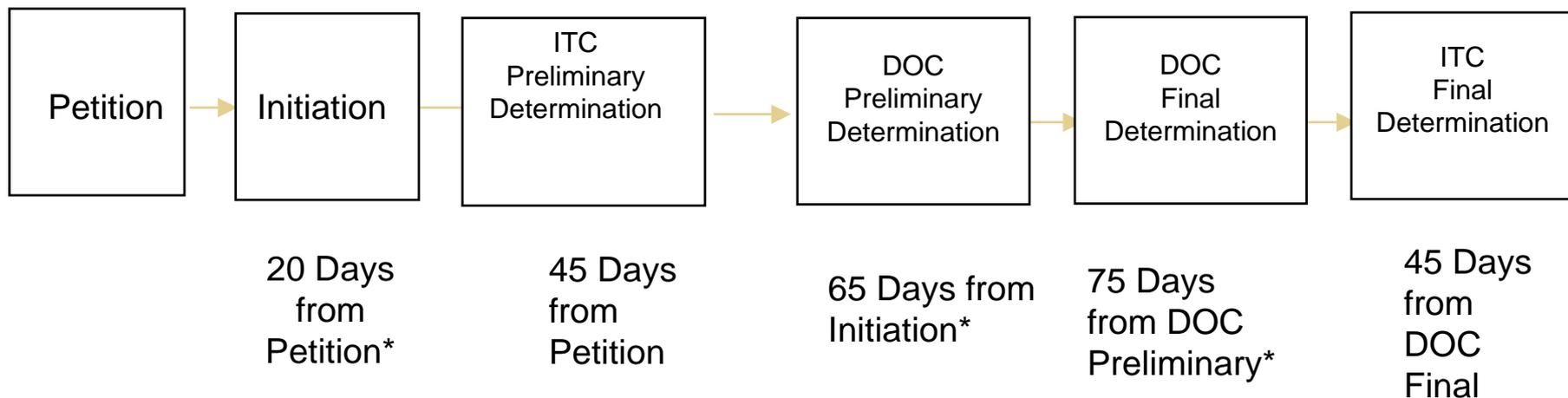
Timing of Events in AD Investigations



* May be extended under certain circumstances



Timing of Events in CVD Investigations



* May be extended under certain circumstances



CVD Administrative Procedures

- ❖ Most of the procedures that apply to antidumping duty proceedings also apply to countervailing duty proceedings.
- ❖ One key difference under U.S. law is that the deadlines for CVD proceedings are shorter.



CVD Consultations

- ❖ Article 13 of the WTO Subsidies Agreement requires that prior to initiation of a CVD investigation, WTO Members provide the foreign government an opportunity to hold consultations regarding the alleged subsidies and other elements of the petition, including alleged injury caused to domestic producers.



Respondent Selection – AD

Mandatory Respondents

- ❖ Where it is not practicable to examine each known producer or exporter, Commerce limits its examination to:
 - a statistically valid random sample of producers or exporters, or
 - the producers or exporters accounting for the largest volume of the subject merchandise that can be reasonably examined.



Respondent Selection – CVD

Mandatory Respondents

- ❖ Respondent selection CVD proceedings is very similar to that in AD proceedings. However, one important distinction is that the respondent government is also required to submit data.



Voluntary Respondents

- ❖ Where Commerce is unable to examine all producers or exporters, the companies it did not select may request to be voluntary respondents.
- ❖ Commerce decides whether to examine a voluntary respondent on a case-by-case basis.



Questionnaire Process

- ❖ Once a case is initiated, Commerce identifies the foreign producers who will be responsible for submitting sales and production cost data.
- ❖ In CVD proceedings, the respondent government is also required to provide information regarding its subsidy programs.
- ❖ This information forms the basis for the margin or subsidy rate calculations.



AD Period of Investigation (POI)

- ❖ Market economy countries - the four most recently completed fiscal quarters
- ❖ Nonmarket economy countries - the two most recently completed fiscal quarters
- ❖ Examples: Petition filed December 6, 2006

Market Economy POI = October 1, 2005, through September 30, 2006

Nonmarket Economy POI = April 1, 2006, through September 30, 2006



CVD Period of Investigation

- ❖ Generally the most recently completed calendar year



Antidumping - Market Economy vs. Nonmarket Economy Comparisons

- ❖ U.S. antidumping law applies differently to countries considered to have nonmarket economies (NME) than to those with market economies (ME).



What is an NME?

- ❖ Section 771 (18) (A) of the Act - “The term ‘nonmarket economy country’ means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.”
- ❖ Section 771 (18) (C) (i) of the Act - “Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.”



NME – Factors to be considered

❖ The extent to which:

- the currency of the foreign country is convertible into the currency of other countries
- wage rates in the foreign country are determined by free bargaining between labor and management
- joint ventures or other investments by firms of other foreign countries are permitted in the foreign country



NME – Factors to be considered

- ❖ The extent of:
 - government ownership or control of the means of production
 - government control over the allocation of resources and over the price and output decisions of enterprises
- ❖ Such other factors as the administering authority considers appropriate



Fair Comparisons - ME

- ❖ The dumping calculation is a comparison of the price at which subject merchandise is sold in the United States -- the U.S. price – with either the “normal value” of a sale of the same or similar product in the comparison market or a “constructed value” based on the cost of production of the product plus profit.



AD Margin Calculation

- ❖ In investigations and reviews we calculate a single weighted-average dumping margin for an exporter/producer that will be used for bonding (investigation preliminary determinations only) or cash deposit purposes until there is a subsequent administrative review.
- ❖ In administrative reviews Commerce also establishes dumping margins for each U.S. importer for actual duty assessment purposes.



AD Margin Calculation

- ❖ Calculated as the difference between the normal value in U.S. dollars and the net U.S. price
- ❖ The aggregate dumping amount is divided by:
 - total net U.S. price to determine the *ad valorem* rate, or
 - the quantity sold to determine the per-unit amount



Normal Value

Normal Value can be based on:

- ❖ Home Market Sales,
- ❖ Third-country Sales, or
- ❖ Constructed Value



Normal Value – Third-country Sales

Normal value may be based on sales to a third-country if:

- The respondent did not have sales of “sufficient quantity” in its home market; or
- A particular market situation exists that does not permit a proper comparison.



Normal Value – Constructed Value

Normal value may be based on “constructed value” if:

- ❖ The respondent does not have a viable home or third-country market; or
- ❖ The respondent’s comparison market sales were made below the cost of production.



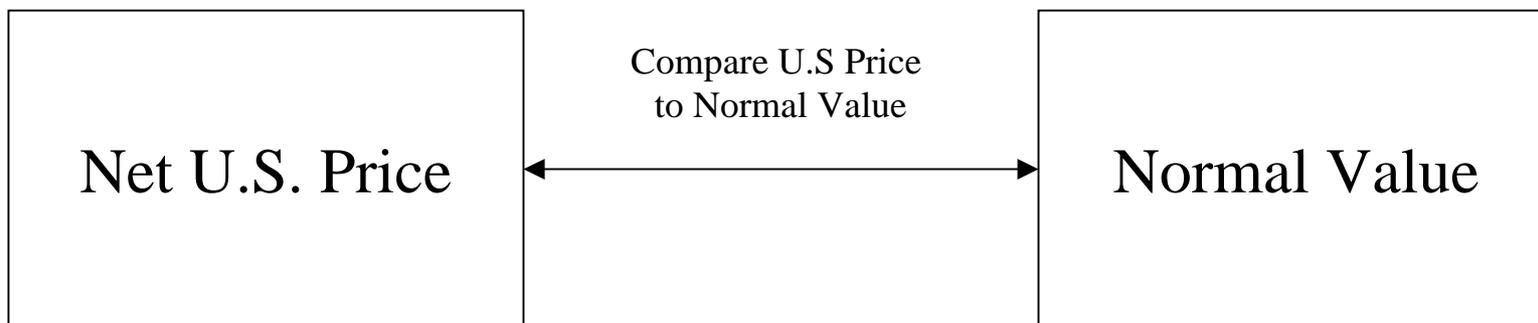
Normal Value – Constructed Value

Constructed value includes:

- ❖ the cost of materials and fabrication of the subject merchandise
- ❖ selling, general, and administrative expenses and profit of the foreign like product in the comparison market
- ❖ the cost of packing for exportation to the United States



Sample Dumping Margin Calculation



Normal Value

\$136.00

Net U.S. Price

\$90.00

Difference Attributable to Dumping

\$46.00

Dumping Margin

=

Difference Attributable to Dumping/U.S Price

$\$46.00 / \$90.00 = 51.11\%$



Fair Comparisons - NME

- ❖ The dumping calculation is a comparison of the price at which subject merchandise is sold in the United States -- the U.S. price -- with the “normal value” based on the factors of production (FOP) and surrogate values.



Separate Rate Application - NME

- ❖ Presumption of one country-wide entity
- ❖ Commerce assigns separate rates in NME cases only if the applicant can demonstrate an absence of both *de jure* and *de facto* government control over its export activities in accordance with the separate-rates test criteria. Commerce focuses on activities of exporters rather than manufacturers of subject merchandise.



Surrogate Country Selection - NME

- ❖ Comparable level of economic development
- ❖ Significant production of comparable merchandise



Factors of Production and Surrogate Value Information - NME

- ❖ After selecting a surrogate country Commerce will collect factors of production information from respondents, and will accept information regarding surrogate values from the following sources:
 - Publicly available trade data and publications
 - Financial statements of producers of the subject merchandise in the surrogate country



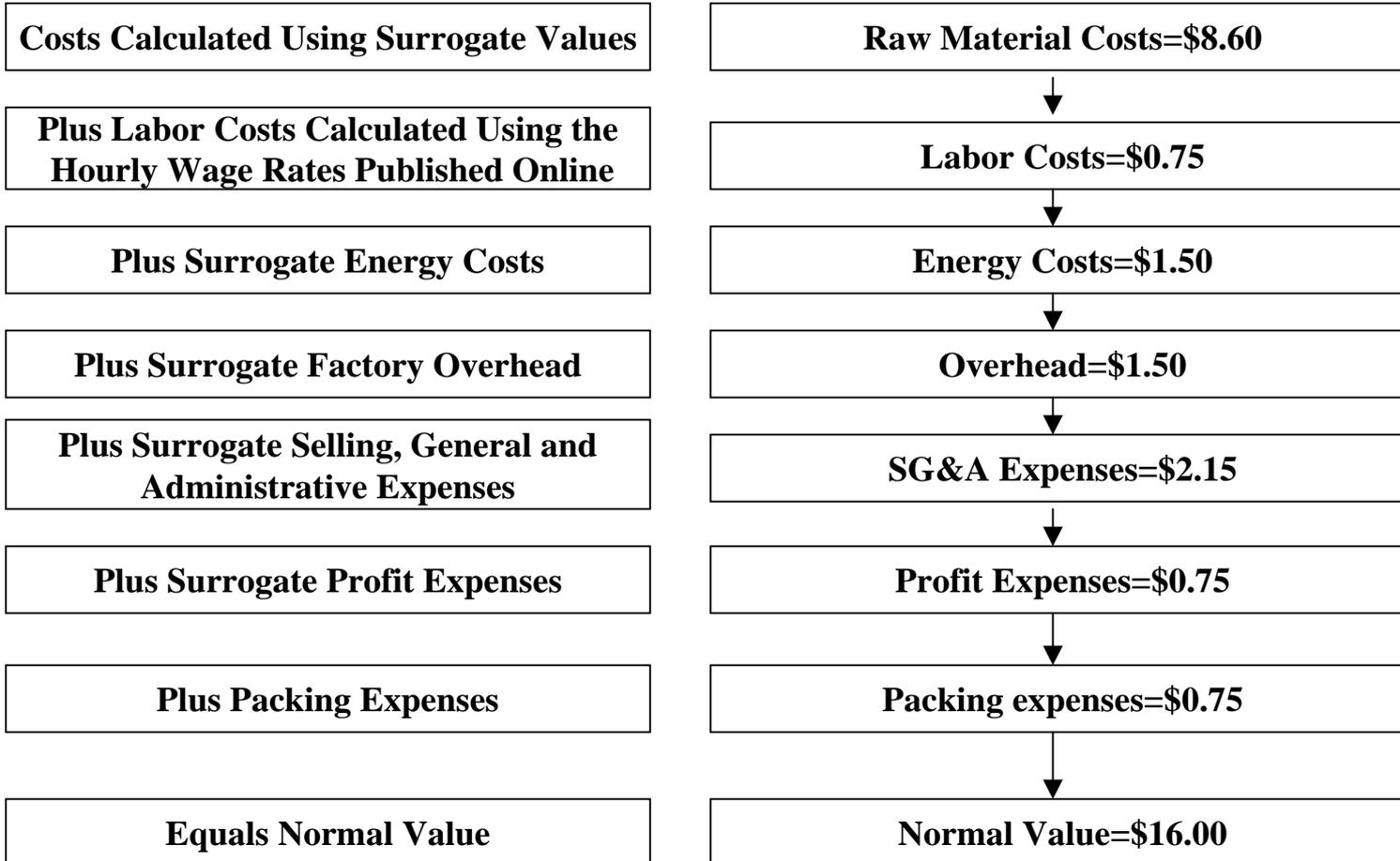
Raw Material Cost Calculation in a Non-Market Economy: Simplified Example

Knit Shirt

| Material inputs | Units/pc | Unit | Surrogate Value (US\$) | Cost/pc (US\$) |
|------------------------|-----------------|-------------|-------------------------------|-----------------------|
| Fabric | 0.10 | Kg | 60.00 | 6.00 |
| Thread | 0.02 | Kg | 50.00 | 1.00 |
| Elastic | 0.01 | Kg | 60.00 | 0.60 |
| Buttons | 4 | Pc | 0.05 | 0.20 |
| Labels | 2 | Pc | 0.40 | 0.80 |
| Total | | | | \$8.60 |

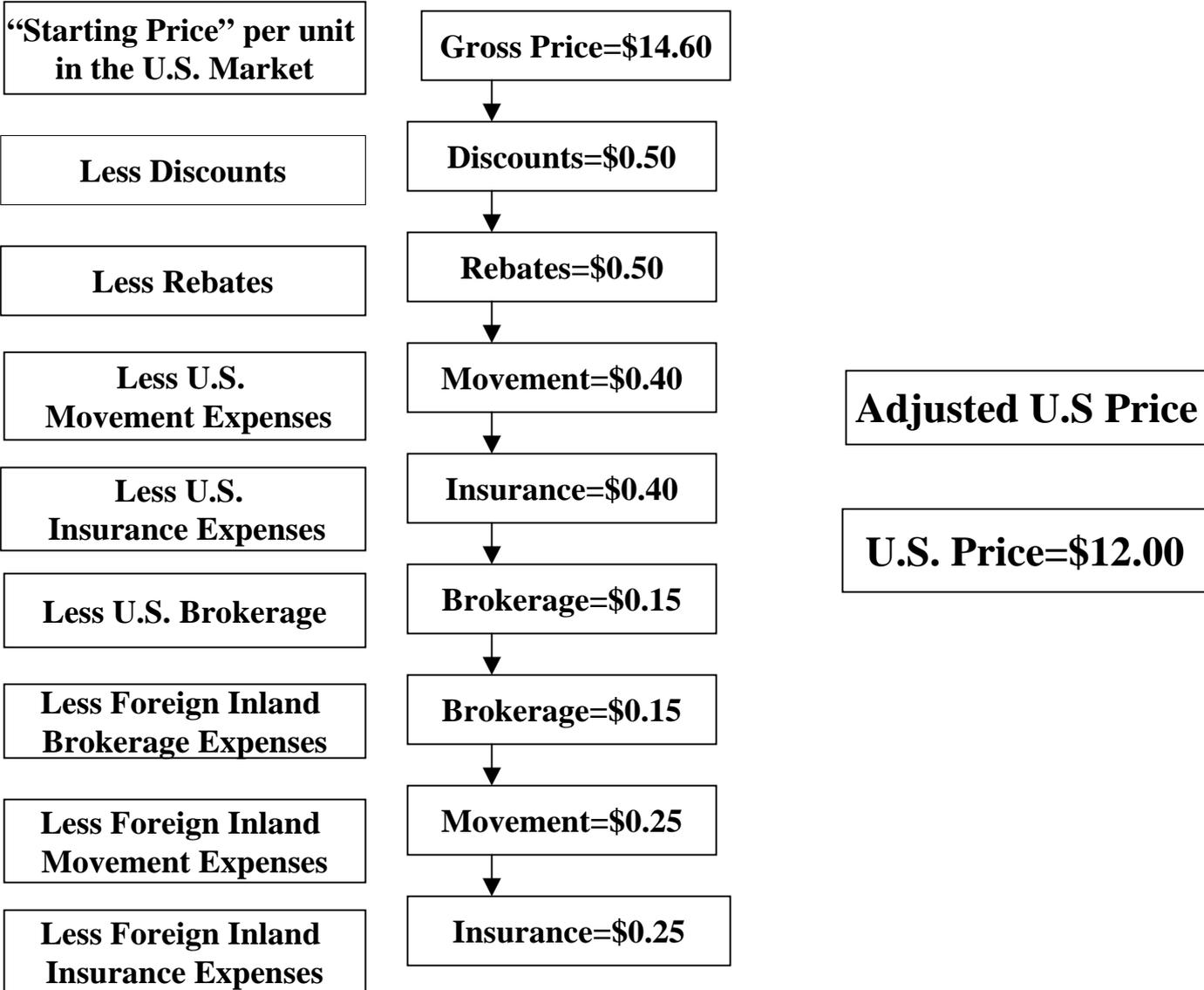


Normal Value Calculation for a Non Market-Economy (NME) Investigation





Sample Nonmarket (NME) U.S. Price Calculation





Calculated Rates in ME Investigations

- ❖ Rates for Mandatory Respondents
- ❖ “All Others” Rate

Calculated Rates in NME Investigations

- ❖ Rates for Mandatory Respondents
- ❖ Country-wide Rate
- ❖ Separate-Rate Average



CVD Subsidy Rate Calculation

❖ Determination Of CVD Rate

A company-specific *ad valorem* rate is calculated for each program and then the rates for all programs are summed to determine each company's subsidy rate for the merchandise in question.



CVD Basics

Countervailable subsidies must:

- ❖ Involve a “financial contribution”
- ❖ Confer a “benefit”
- ❖ Be “specific”



Financial Contribution

FINANCIAL CONTRIBUTION means:

- ❖ A direct transfer of funds (grants, loans, equity infusions) or the potential direct transfer of funds or liabilities (loan guarantees);
- ❖ Foregoing or not collecting revenue that is otherwise due (tax credits, deductions from taxable income, import duties);
- ❖ Providing goods or services for less than adequate remuneration, other than general infrastructure;
- ❖ Purchasing goods for more than adequate remuneration.

(Section 771(5)(D) and SCM Article 1)



Financial Contribution: “Direct” and “Indirect” Subsidies

❖ DIRECT SUBSIDIES

The government provides funding *directly* to producers or exporters of the subject merchandise.

(Section 771(5)(B) (i) and (ii), and SCM Article 1.1(a)(1)(i), (ii), and (iii)).



Financial Contribution: “Direct” and “Indirect” Subsidies

❖ INDIRECT SUBSIDIES

A government makes a payment to a funding mechanism to provide a financial contribution, or **entrusts or directs** a private entity to make a financial contribution, if providing the financial contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments.

(Section 771(5)(B)(iii) and SCM Article 1.1(a)(1)(iv)).



Benefit Defined

❖ BASIC CONCEPT

A benefit exists to the extent that the subsidy recipient gets financial or in-kind assistance on terms more favorable than those which would otherwise be available on the market.

(Section 771(5)(E))



Benefit Defined

❖ STANDARD

The Statute and SCM Agreement generally call for a “benefit-to-recipient” standard. (Article 14 of the SCM Agreement)

❖ IDENTIFICATION

The statute lays out specific rules for how the benefit for certain types of financial contributions normally will be identified (equity infusions, loans and loan guarantees, provision of goods or services). (Section 771(5)(E))

For any financial contributions without a specific rule, the Regulations (at 351.503(b)) state that a benefit exists “where a firm pays less for its inputs . . . than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn.”



Specificity Defined

❖ BROADLY AVAILABLE/NOT SPECIFIC

Government subsidies are permissible under WTO and U.S. disciplines when they are generally available to and widely used by companies and industries within the jurisdiction of the subsidizing authority.

❖ LIMITED/SPECIFIC

When a government limits the availability of a subsidy to a smaller group of recipients, trade may be distorted and that subsidy becomes addressable under U.S. CVD law.



Specificity: Domestic Subsidies (de jure)

❖ ENTERPRISE OR INDUSTRY SPECIFIC

The authority providing the subsidy expressly limits the subsidy to an enterprise or industry or group of enterprises or industries.

(Section 771(5A)(D)(i) and (ii) and SCM Article 2.1).



Specificity: Domestic Subsidies (de jure)

❖ REGIONALLY SPECIFIC

A subsidy that is limited to designated geographical regions within the jurisdiction of the granting authority is *de jure* specific

(Section 771(5A)(D)(iv) and SCM Article 2.2).



Specificity: Domestic Subsidies (de facto)

- ❖ Despite nominal availability of a subsidy program to all companies and industries, the actual distribution of benefits is also examined to determine if:
 - The number of actual subsidy recipients is limited to an enterprise or industry or group thereof.
 - Certain subsidy recipients are predominant users of the subsidy program or receive disproportionate benefits under the subsidy program.
 - The authority providing the subsidy uses discretion to favor certain industries over other industries.

(Section 771(5A) and SCM Article 2.1(c))



Subsidies “Deemed” to be Specific

❖ SUBSIDIES DEEMED SPECIFIC

Two types of subsidies under the WTO are deemed to be specific for purposes of CVD. No demonstration of specificity is required.



Subsidies “Deemed” to be Specific

❖ EXPORT SUBSIDIES

The first type is a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions (an Export Subsidy)

(Section 771(5A)(B) and SCM Article 3.1(a) and Annex I.)



Subsidies “Deemed” to be Specific

❖ **IMPORT SUBSTITUTION SUBSIDIES**

The second type is a subsidy that is contingent upon the use of domestic over imported goods, alone or as 1 of 2 more conditions (an Import Substitution subsidy).

(Section 771(5A)(C)) and SCM Article 3.1(b).)



CVD Subsidy Rate Calculation

❖ Calculation of CVD Rate

The *ad valorem* CVD rate is calculated by dividing the benefit (numerator) by the relevant sales that benefit from the subsidy (denominator).



CVD Subsidy Rate Calculation

❖ All companies not individually investigated that export subject merchandise receive an “all others” rate derived from the rates found for those companies that were investigated.

-Sample calculation of total countervailable benefit to exporter:

$$\frac{\text{Subsidy Benefit from Program 1}}{\text{Relevant Company Sales}} + \frac{\text{Subsidy Benefit from Program 2}}{\text{Relevant Company Sales}} = \text{Ad Valorem Rate}$$



Preliminary Determination – AD/CVD

- ❖ Federal register notice published, detailing determination
- ❖ If negative, no border action is taken but case continues
- ❖ If affirmative, border measures are imposed and the liquidation of entries is suspended
- ❖ Cash deposit or bond required on all entries



Bond/Deposit Requirements Imposed After Issuance of a Preliminary Determination

- ❖ On the date of the publication of an affirmative preliminary determination in the *Federal Register* and at the request of Commerce, U.S. Customs and Border Protection will suspend liquidation of entries of the product under investigation and begin collecting a deposit of estimated duties based on the preliminary margin Commerce published.



Bond/Deposit Requirements Imposed After Issuance of a Preliminary Determination

- ❖ Until the publication in the *Federal Register* of an AD or CVD order following an affirmative determination by the ITC, the importer has the option of posting a bond or cash deposit for estimated duties.



Post-Prelim Activities

- ❖ Verifications conducted
- ❖ Verification reports issued
- ❖ Petitioners and respondents submit briefs and rebuttal briefs
- ❖ A hearing is conducted if requested



Verification

- ❖ All information used in a final determination must be verified
- ❖ Commerce will conduct an extensive examination of company books and records in order to determine the accuracy of the information submitted
- ❖ In CVD proceedings, Commerce will also verify information provided by the respondent government



Verification

❖ Locations for Verification

- Company facilities where relevant documents are maintained
- Facilities where key staff are located
- Government offices (CVD)
- May need to visit multiple facilities



Post-Prelim Comment

- ❖ Following verification, interested parties may comment on the preliminary determination via case and rebuttal briefs
- ❖ Commerce will analyze and address all comments in its final determination.



Final Determinations

- ❖ Notification of the final margin for each respondent.
- ❖ Notification of the "all-others" rate.
- ❖ Notification of continuation of suspension of liquidation, if final determination is affirmative.
- ❖ Notification of termination of suspension of liquidation, if final determination is negative.



Bond/Deposit Requirements Imposed After Issuance of a Final Determination by Commerce

- ❖ Following an affirmative final determination, Commerce will instruct Customs to continue to suspend liquidation and collect bonds or deposits at the final rate.
- ❖ Commerce does not instruct Customs to apply the rate in the final determination retroactively to entries made between the preliminary and final determinations.



Antidumping and Countervailing Duty Orders

- ❖ If both Commerce and the ITC issue affirmative final determinations, an order is issued.
- ❖ Once an order is issued, importers may no longer post a bond – cash deposits are required.



Recourse Following Final Determination

- ❖ Seek Correction of Ministerial Errors
- ❖ Appeal Decision to the Court of International Trade
- ❖ Governments may seek redress before World Trade Organization Dispute Settlement Body
- ❖ Request Administrative Review during the Anniversary Month of the Order



Administrative Reviews

❖ Purpose

- Determine actual amount of duties to assess on entries during a specific period of review.
- Establish new deposit rates for prospective application.



What if deposits are less than the review results?

- ❖ If the margins or subsidy rates Commerce finds in the review exceed the amounts deposited on entries during the POR, then the importer must:
 - Pay duties to make up for the difference between the deposit rate and the actual calculated assessment rate and
 - Pay interest accumulated since the date of deposit (date of entry).



What if deposits are greater than the review results?

- ❖ If the deposit rate is higher than the rate Commerce calculates for the review, then the importer typically
 - Receives a refund and
 - Receives interest on the refunded portion dating from the date of deposit



What if no review is requested?

- ❖ If no review is requested for a company:
 - An importer's entries are assessed duties at the rate of deposit at the time of entry.
 - Commerce sends “automatic-assessment” instructions to Customs.



AD and CVD Procedures - Conclusion

- ❖ Commerce conducts investigations and reviews using an open and transparent process.
- ❖ The multi-step process allows for the collection of information and participation by the parties in the determination of AD and CVD duties through preliminary and final determinations.



Safeguards Overview



Safeguards Overview

- ❖ The WTO Agreement on Safeguards sets out the conditions under which a global safeguard may be applied.
- ❖ United States has two types of safeguard laws governing safeguard actions, (1) a global safeguard law based on the WTO Agreement on Safeguards and (2) bilateral safeguard laws providing oversight for safeguards negotiated in bilateral trade agreements (FTAs).



Safeguards Overview

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Safeguards Overview

- ❖ Under U.S. law, the U.S. International Trade Commission (ITC) administers safeguard actions and makes injury determinations. If it finds injury, it recommends a remedy to the President.
- ❖ After considering the ITC's report and recommendation, the President makes the final decision on whether to provide relief and in what form and amount.
- ❖ The U.S. global safeguard law is in sections 201-204 of the Trade Act of 1974.



Injury

- ❖ The WTO Safeguards Agreement defines *Serious Injury* as:

a significant overall impairment in the position of the domestic industry.

(See Article 4.1(a) of the Agreement)

- ❖ *Threat of Serious Injury* is defined as:

serious injury that is clearly imminent. A determination of the existence of a threat shall be based on facts and not merely on allegation, conjecture or remote possibility. (Article 4.1(b))



Injury

- ❖ To determine serious injury, a competent authority shall evaluate all relevant factors, including:
 - *Increased quantities* of imports, either actual or relative to domestic production
 - The *share of the domestic market* taken by increased imports
 - Changes in the *level of sales, production, productivity, capacity utilization, profits and losses, and employment* (Article 4.2(a))



Domestic Industry

- ❖ In safeguard cases, under U.S. law and practice, the ITC first defines the domestic industry. The WTO Safeguards Agreement defines *domestic industry* as:

the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive product constitutes a major proportion of the total domestic production of those products. (Article 4.1(c))



Domestic Industry

- ❖ The legislative history of the U.S. law defines “like” to mean “substantially” identical to each other.
- ❖ It defines “directly competitive” to mean commercially competitive with each other – that is, to have the same uses and be commercially interchangeable, but not necessarily “like.”



Causal Link

- ❖ The determination of injury shall not be made unless the investigation demonstrates the existence of the *causal link* between increased imports of the product concerned and serious injury or threat thereof.
- ❖ When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.



Provisional Safeguard Measures

- ❖ In “critical circumstances,” where delay would cause damage which would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination showing clear evidence that increased imports have caused/ threatened serious injury.
- ❖ The duration of such a provisional measure shall not exceed 200 days.



Investigation Procedures

- ❖ U.S procedural requirements follow the WTO Safeguards Agreement, which require that the member conduct an investigation, provide public notice, hold public hearings or provide other opportunities for interested parties to respond, and publish a report that sets out its findings and conclusions on issues of fact and law.

(Articles 3 and 4)



Investigation Procedures

- ❖ U.S. law requires that the ITC protect *confidential business information*.
 - The ITC may not disclose confidential business information unless the submitting party agrees.
 - The ITC typically discloses confidential business information to independent legal counsel of both domestic producers and importers who have signed an *administrative protective order*. This gives counsel for both sides access to the information that the ITC gathers. The ITC may impose sanctions on any person who fails to protect the information covered by the order. (Section 202(a)(8) of the Trade Act)



Investigation Procedures

- ❖ The ITC gathers information from a variety of sources, including *questionnaires* sent to domestic producers, importers, and other persons believed to have relevant information. The ITC often visits domestic plants, retailers, industry experts, and importers to gather first-hand information. When available, the ITC uses import data and other information prepared by other government agencies.



Investigation Procedures

- ❖ All information obtained during an investigation is placed in a *docket file*. Such information, except for confidential business information, is available for public inspection during regular business hours.
- ❖ The ITC holds a *public hearing* during the injury phase of each investigation. All persons expressing a proper interest are allowed to appear and present testimony under oath. A transcript is made of the hearing.
- ❖ ITC Commissioners generally *vote* on the question of injury in a public meeting at the end of the injury phase of the investigation. The Commission typically has 120 days to conduct the injury phase.



Investigation Procedures

- ❖ If the ITC Commissioners make an affirmative determination or are equally divided, the investigation proceeds to the remedy phase. The ITC typically has 30 days to complete this phase.
 - The ITC provides opportunity for interested parties to submit information and arguments on remedy.
 - The ITC Commissioners typically vote on remedy in a public meeting at the end of the remedy phase.



Investigation Procedures

- ❖ Under U.S. law, the remedy may take the following forms:
 - Increase in or imposition of a duty;
 - A tariff-rate quota;
 - Modification of or imposition of a quantitative restriction, and/or;
 - One or more appropriate adjustment measures for the domestic industry

(Section 202(e)(2) of the Trade Act)



Investigation Procedures

- ❖ At the end of the investigation – typically by the 150th day – the ITC must transmit a report to the President. This report is then made public, except for confidential business information.
 - The report includes injury determinations and any remedy recommendations of the ITC Commissioners along with a written explanation of their findings and conclusions on issues of fact and law. It also includes a summary of the information gathered in the ITC investigation.
 - The President typically has 30 days to decide what action, if any, to take.



Bilateral Safeguards

In investigations under U.S. FTA safeguard laws, the ITC focuses on subject imports from the FTA country, as opposed to imports from all countries.

- ❖ The U.S. FTA safeguard legislation is generally in the statutes implementing the respective agreements.
- ❖ The rules concerning the duration of a remedy action and any extension are different, and follow those in the specific agreement.



Bilateral Safeguards

- ❖ The remedy is generally limited to the lesser of the U.S. MFN rate of duty currently in effect or the rate of duty in effect immediately before the FTA entered into force, and would not include quotas. The authority to apply an FTA safeguard measure is generally limited to the transition period of the FTA.
- ❖ The U.S. has not conducted any safeguard investigations under any of the recently implemented FTA agreements.



Current Proceedings - Thailand



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- ❖ Canned Pineapple
- ❖ Frozen Warmwater Shrimp
- ❖ Hot-rolled Carbon Steel Flat Products
- ❖ Polyethylene Retail Carrier Bags
- ❖ Welded Carbon Steel Pipe and Tube
- ❖ Prestressed Concrete Steel Wire Strand
- ❖ Carbon Steel Butt-Weld Pipe Fittings