

**DEFENDING A MARKET ECONOMY
ANTIDUMPING INVESTIGATION**

An antidumping duty investigation is a unique and complex litigation with long-lasting business effects for both U.S. importers and foreign exporters of the merchandise being investigated.. The investigation is conducted by the U.S. government with numerous time-sensitive deadlines, unusual information requests, and detailed complex data requirements which are specialized to this kind of proceeding. In addition, these cases involve on-site scrutiny by U.S. government officials with an ever-present possibility of punitive assumptions being made where data is incomplete or insufficiently verifiable. The Law Offices of Nithya Nagarajan, LLC can assist companies with this entire process enabling them to have continued access to the U.S. market.

The defense of an antidumping duty investigation requires substantial effort and expense by the companies involved. There are two stages to an investigation which are conducted by two separate U.S. government agencies.

(1) The first is an investigation of sales and prices in the United States and the costs of production for the manufactured product, to establish whether U.S. prices are below the “normal value” -- which is the definition of dumping. This phase of the proceeding is conducted by the U.S. Department of Commerce (DOC).

(2) The second is an investigation of whether the imports at issue cause material injury to the U.S. industry. This phase of the investigation is conducted by the International Trade Commission (ITC) and is discussed separately in the section on ITC Investigations.

Both agencies must make affirmative determinations in order for the investigatory process to be completed and an antidumping order on all future imports to be instituted.

Defending such a complex and unconventional investigation requires the assistance of U.S. legal counsel familiar with the peculiarities of U.S. antidumping law. The foreign respondent must dedicate a considerable amount of managerial time and attention to the multiple data requests that are involved. However, if the foreign respondent devotes the necessary resources and time to this process, it may be rewarded with a lower AD rate, and a significant business advantage over its competitors. Defense of a case also involves specialized consultants, such as economists, computer specialists, or cost accountants familiar with DOC practice.

Many firms will promise an easy or guaranteed success in an antidumping duty investigation, but in reality, that is not possible as an antidumping duty investigation involves significant variables and decisions by the United States Government that are not in the control of the company. Rather a company involved or subject to an antidumping duty investigation must, along with its legal counsel, focus on ensuring that it is able to provide the most accurate and detailed information possible in its information requests as well as submit all the legal arguments that are to be considered when participating in this type of administrative legal proceeding.

If a company is found to be dumping, DOC will issue a preliminary affirmative determination that establishes a preliminary dumping rate. From the preliminary determination forward, all imports of the product under investigation are subject to an antidumping duty deposit in the amount of the preliminary dumping rate. After further analysis and an on-site verification, DOC publishes its final dumping margin, which is substituted for the preliminary margin. If a company's final margin is less than 2 percent, the case is terminated with respect to that company. Otherwise all future entries are subject to a duty deposit at the rate found. Each year thereafter, an annual review may be requested in which entries in the past year are examined in order to establish the actual dumping margin. The deposit rate is adjusted to reflect the new rate, and excess deposits may be refunded.

The following are a sample of the primary tasks that a company and its legal counsel must complete during the antidumping investigation.

- Internally review the company's selling and pricing practices to identify potentially important issues regarding product characteristics, selling practices, market differences, movement and sales expenses, and pricing;
- Provide the DOC with information and proposals regarding product matching and other issues relevant to the case;
- If the company is selected as a mandatory respondent, prepare a detailed work plan to guide the company in collecting, checking, and formatting the data required in the investigation;
- Establish and maintain open dialogue with the DOC investigators in order to ensure their understanding of the data and encourage favorable determination of discretionary issues;
- Prepare for and respond to the DOC's initial dumping questionnaire. This will include a detailed narrative response providing information on the company's sales to the United States and the sales and costs in the home country and/or third country markets;
- Prepare computer files which provide details of the company's sales, selling expenses, production inputs, production costs, and other relevant data for the markets being investigated;
- Perform computer analysis of the data before submission to the DOC to ensure it is accurate and to determine how best to present various issues;
- Establish an estimate of the potential duty that can be anticipated under various scenarios, to identify significant issues in the case;
- Respond to one or more supplemental questionnaires requesting additional data and clarification;
- Prepare for on-site verification at the company's home office as well as at its U.S. importer or subsidiary (if any), including thorough review and internal audit to ensure

that all submitted information is verifiable, organized, and presented in the required manner;

- Assist with verification, including responses to data and evidence requests and provision of supplemental information;
- Review the DOC's verification report for indications of issues requiring legal argumentation;
- Review preliminary determination as well as computer program used by the DOC to identify legal, factual, or programming errors;
- If dumping margins are found in preliminary determination, assist in complying with customs regulations;
- Prepare and submit legal briefs and participate in oral hearing advocating the legal position of the company;
- If final antidumping margins are found, assist in strategic analysis of future marketing and pricing decisions.
- Prepare case for appeal to the U.S. Court of International Trade if the DOC committed a procedural or substantive error in its conduct of the investigations

The DOC's investigation normally takes 7-8 months (if there are no postponements). If there are postponements then the investigation will take up to 12 months to complete.