Antidumping and Countervailing Duties Coming Back to Haunt You?

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After a relatively quiet week, your CFO calls you into his office to discuss a $280,000 bill received from U.S. Customs for antidumping duty on entries made seven years ago. You were not with the company at that time, you don't have the money, and all of the profit made on this particular imported product has not only evaporated, but is now the largest loss on any product sold by your company in its history. Most of your imported products are either duty free or at a very low duty rate. How could this have happened?

When required, the imposition of antidumping (AD) or countervailing (CV) duties on U.S. imports levels the playing field by protecting U.S. industries against unfair trade practices. AD/CV duties exist in many countries and include U.S. products exported to other countries. According to the Anti-Dumping Act of 1974, when a foreign manufacturer sells a product in the U.S. for less than the price in their own market or at a price lower than the cost of production, an AD duty is imposed. When a foreign manufacturer receives a government subsidy lowering their local production cost, a CV duty is imposed to eliminate the unfair pricing advantage that the foreign manufacturers have due to the subsidy. In FY 2015 alone, "approximately $10.1 billion of imported goods were subject to an AD/CVD order" [1]. Imported products can be subject to either antidumping or countervailing duty, or both in some cases.

AD/CV duty rates can vary significantly and are specific to the manufacturer and country. The following are examples of this variance.

- Green widgets manufactured in China by Sapphire Manufacturing Inc. may be subject to an AD margin of 65%.
- Green widgets manufactured in China by Emerald Manufacturing Inc. may be subject to an AD margin of 98%.
- Green widgets manufactured in China by all other manufacturers (except Sapphire and Emerald) may be subject to an AD margin of 125%.
- Green widgets manufactured in Korea by Sapphire Manufacturing Inc. may not be subject to any AD/CV margin.
- Green widgets manufactured in Korea by Emerald Manufacturing Inc. may be subject to a CV margin of 13.6%.
- All Green widgets manufactured in Brazil may be subject to an AD margin of 3.2% regardless of manufacturer.
- Green widgets manufactured in Germany by Ruby Manufacturing Inc. may be subject an AD margin of 13% and a CV margin of 2.1%.

Petitioning Injury

U.S. manufacturers may file a petition with the International Trade Commission (ITC) alleging that imported goods cause injury to their industry, including reduction in demand for the U.S. product, job losses for U.S. workers, and closure of production facilities. Once the petition is filed, a lengthy and complicated review takes place to allow the ITC to determine whether the U.S. industry is suffering. The investigation includes volumes of written documentation from foreign and U.S. manufacturers, U.S. importers, and considers (among other elements) pertinent economic factors such as, U.S. industry's output, sales, market share, employment, and profits. Generally, the investigations are completed within 12-18 months of presentation of the petition.

The Difference Between Margins and Rates

Margins are assessed, they become rates, and then duty is paid on those rates. These two things happen at two different times in the process. The International Trade Commission conducts investigations to determine the margin to be assessed, advises Customs of the margin, and then it becomes a rate to be paid. The difference between these two words indicates where the process is at the time.

If the ITC makes an affirmative preliminary determination of dumping and injury, then a preliminary AD/CV margin is assessed and paid at time of entry. You could be looking at AD/CV margins as high as 500%. These margins are calculated based on the value of the imported product and is in addition to the usual duties, fees, and taxes due. When the investigation is complete, the final AD/CV margin is determined. Because the preliminary margin can be different than the final margin, entries subject to AD/CV are not settled or liquidated by Customs until the final margin has been determined. This brings us back to how the hypothetical scenario from the beginning happened. In that case, the preliminary margin assessed was lower than the final margin, resulting in that $280,000 bill your CFO received from Customs.

With that being said, even after you have paid the duty based on the preliminary margin at time of entry, you are still not out of the woods. It could be several years down the road before the final margin is determined. At that point, you could be subject to paying much more than you had originally anticipated. There are instances where the final margin is lower than the preliminary margin, meaning you will be refunded the difference by Customs, but those are a rarer occurrence. It is important to be aware that just because you feel that you can afford to pay the AD/CV duties initially, years down the road you may not be able to afford the final margin.

How to Prepare Yourself

It can be difficult to determine whether your specific imported product is covered by an AD/CV order. A comprehensive review and understanding of the scope of the AD/CV order will delineate differences or conditions that will allow you to determine whether your imported product falls inside (meaning you will pay AD) or outside the scope, (meaning you will not pay). Some conditions stipulated within the scope may not be easily discernible.

A hypothetical example would be,

> *flange bearings are classified under 8482.10.5016; some flange bearings are manufactured with two holes and some are manufactured with four holes. It is possible that a flange bearing with two holes is subject to AD and a flange bearing with four holes is not subject to AD.*

An importer cannot rely solely on the 10-digit HTS classification to make this determination. It is crucial to understand your product's scope in order to prepare yourself for the AD/CV duties.

U.S. Customs continues to dedicate significant national resources to target the circumvention of AD/CV and has done so for many years. This includes reviewing and auditing, in high risk circumstances, and testing of imported products. This exceptional focus has led to an increase in identification and disruption of supply chain operations that attempt to circumvent AD/CV, resulting in over $51 million in importer penalties (fraud, gross negligence, and negligence), and seizures valued at over $5.1 million in FY 2015 [2].

It is imperative that you are knowledgeable about your product and to prepare yourself if it is covered by an AD/CV order. Here are some questions to consider:

- As the U.S. is the only country where AD/CV is handled on a retrospective basis (all other countries handle their AD/CV on a prospective basis), how do you manage profitability and margins on products after you imported and sold and the final margin is higher (or lower)?
- Do you question whether your product falls within the scope of the order, or you really believe your product does not fall within the scope of the order, what are your options?
- How long does your organization retain records on your AD/CV shipments?
- What is your process for raw materials subject to an AD/CV order that are integrated into your finished product?
- What type of vetting and review process do you have for your current and future products?
- How do you determine if any new AD/CV cases are applicable to your products?
- What is your company policy on AD/CV?

Footnotes

[1] "Antidumping and Countervailing Duties Brochure," CBP Publication Number 115-0417; U.S. Customs and Border Protection. Retrieved on 07/14/16.

[2] Ibid.

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Do you want help with your antidumping duty processes? Ask us about our **Import Compliance Programs.**