

LEGAL UPDATES

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Services

International Trade &
Supply Chain

International Trade
Remedies

COVID-19 and the Future of Actions Against Unfairly Traded Imports

The first half of 2020 has presented unanticipated and unique challenges to businesses, both in the United States and worldwide, due to public health-related restrictions on customers and the consequent economic effects. The challenges are likely to continue throughout 2020 and well into 2021. In a world trading system where supply chains often have been disrupted and competition for U.S. companies from foreign suppliers changes frequently, clients report that top management teams are seeking ways to address these challenges both through business actions and, when necessary, through legal action.

Foreign producers are facing many of the same challenges that U.S. companies are. As demand in their home markets decline, these foreign companies often look to the United States, a relatively open market, as a place to sell their goods. Sometimes these sales are at prices that under the law are considered unfairly low. Manufacturers at times even make loss-making transactions in order to cover their variable costs and make some contribution to fixed costs, in an effort to keep their businesses afloat. At other times, foreign government subsidies prop up foreign companies and allow them to sell products in the U.S. market. For U.S. companies faced with this kind of business challenge from overseas competition, there are legal means to help address the problem.

The nature of the cases

In the last few months, we have seen an uptick in cases filed with U.S. government agencies under the antidumping (AD) and countervailing duty (CVD) laws. The relief that can be granted from success in these cases are additional duties, and duties in the range of 25-35 percent are not at all unusual. AD and CVD cases may be filed separately or simultaneously.

The legal basis for AD cases is that a foreign product is being sold at unfairly low prices in the U.S. and that imports of the product are injuring the U.S. industry producing that product. The test for unfairly low pricing is complex, but the pricing of the foreign product need NOT be below cost, despite some news stories that misstate the standard. The legal basis for a CVD case is that foreign companies are being subsidized by foreign governments and the importation of such products into the U.S. are injuring the U.S. industry producing that product.

Market weakness likely explains rise in cases

The AD and CVD laws have been on the books for many years, and such cases tend to be filed more often in times of economic downturns and distress, when U.S. companies are feeling the injurious effects of the imports most acutely. Given the current economic turmoil—the Organization for Economic Co-operation and Development reported a 13 percent decrease in global gross domestic product during the first half of 2020—it is not surprising that the current economic environment has led several companies to consider this option.

Contact us

If your company believes that it is faced with challenges that might be addressed, at least in part, by the trade remedies laws, the trade remedies team at Husch Blackwell would be glad to discuss how an initial assessment could be conducted of your business situation and whether taking further steps against imports make sense. For further information, please contact Jeff Neeley or your Husch Blackwell attorney.

Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.