

# **Assistance to U.S. Industries and Workers**

## *Antidumping & Countervailing Duties*

Background on Commerce and USITC AD/CVD  
Investigations

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# Trade Remedy Counseling and Initiations (TRCI)



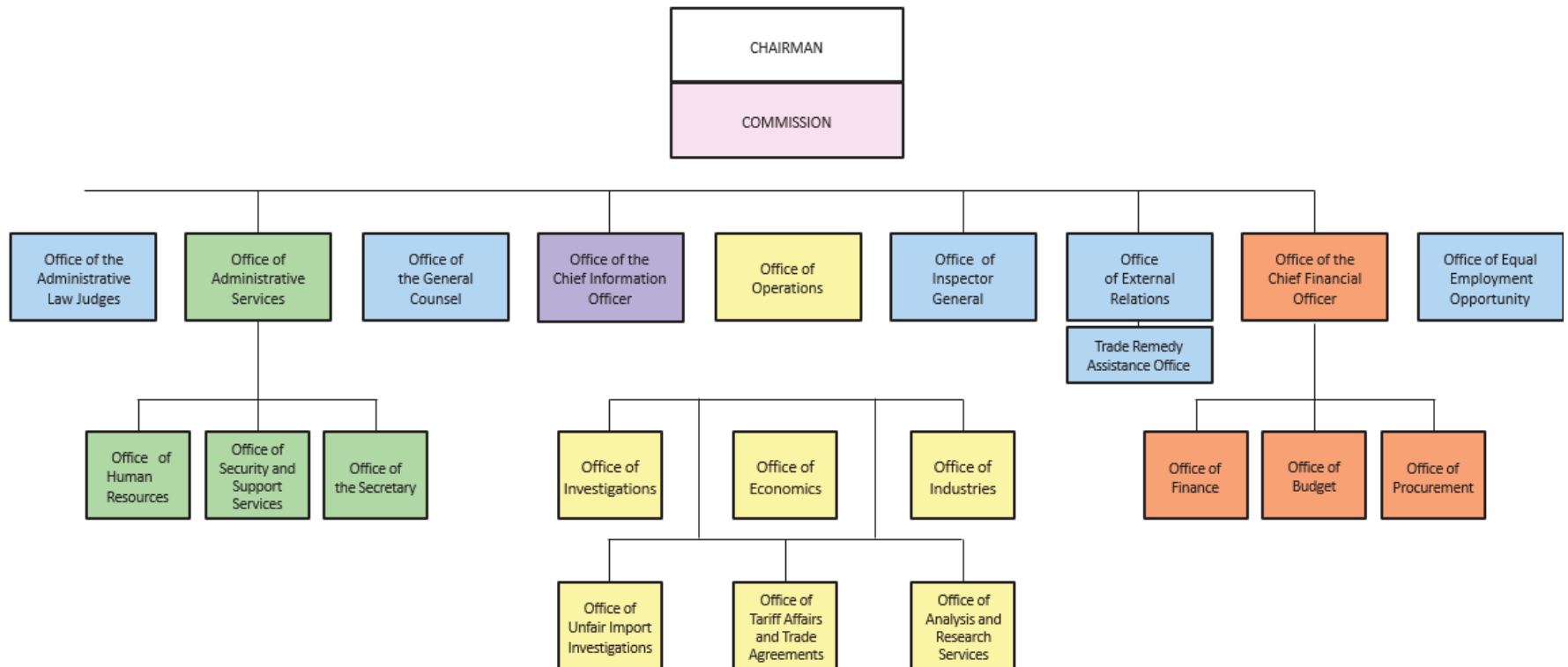
# **The Trade Remedy Counseling and Initiations office**

The **Trade Remedy Counseling and Initiations** office helps U.S. industries understand:

- The U.S. trade laws that address dumping and unfair foreign government subsidization; and
- How to get an investigation started to examine and address these unfair trade practices.

# Office-Level Organizational Chart

## UNITED STATES INTERNATIONAL TRADE COMMISSION



Revised December 2017

# What We Do – ITC

The **mission** of the Commission is to:

1. administer U.S. trade remedy laws within its mandate in a fair and objective manner;
2. provide the President, USTR, and Congress with independent analysis, information, and support on matters of tariffs, international trade, and U.S. competitiveness; and
3. maintain the Harmonized Tariff Schedule of the United States (HTS).

# Agenda

1. Dumping and Countervailable Subsidies
2. Filing a Petition
3. AD/CVD Investigations
4. AD/CVD Investigation Results
5. Other ITC Import-Related Investigations
6. Resources
7. Q&As

# Definition of terms

- Dumping
- Countervailable Subsidies

# What is dumping?

- When a foreign producer or exporter sells a product in the U.S. market at a price that is below that producer's sales price in the home market.
- When a foreign producer or exporter sells a product in the U.S. market at a price that is lower than that producer's cost of production.



# What is dumping? – continued

- It is *not*:
  - when a foreign producer has a lower cost because, for example, wages are lower in the foreign country
  - or
  - when a foreign producer sells a product in the U.S. market at a price that is lower than U.S. producers' cost of production.

# Example of dumping

- Example: A German producer sells kegs in the U.S. market for \$50/keg but sells the same keg in Germany for \$100/keg.
- The difference between those prices is the dumping margin. Example:  
 $(\$100 - \$50)/\$50 = 100\%$

# What is a countervailable subsidy?

- Foreign governments subsidize industries when they provide financial assistance to benefit the production, manufacture, or exportation of goods.
- The amount of subsidies a foreign producer receives from the government is the basis for the subsidy rate by which a subsidy is offset, or “countervailed,” through higher import duties.

# What is a countervailable subsidy? continued

- financial contribution by a government or public body
- conferring a benefit to the recipient
- that is specific to an industry or enterprise that produces or exports the goods that are under investigation

Not **all** subsidies are countervailable under the law.

# Unfair Foreign Subsidies Take Many Forms:

- Export loans or loan guarantees at preferential rates
- Tax exemptions for exporters or favored companies or industries
- Assistance conditioned on the purchase of domestic goods
- R&D grants for the development and commercialization of new technologies
- Grant programs

# Agricultural Products – Subsidies

- Subsidies *generally available to the agriculture sector* are not considered to be specific (and, therefore, are not countervailable),
- ...but subsidies specific to subsets of the agricultural industry, e.g. specialty crops, fruits and vegetables, etc., while excluding other agricultural products, may potentially be countervailable.

# **Filing a Petition**

# Antidumping (AD)/Countervailing Duty (CVD) Petitions

Commerce has the sole authority to initiate an AD/CVD investigation.

## Fundamental Initiation Requirements:

1. Evidence that **dumping and/or unfair subsidization** are occurring
2. Evidence that there is **injury and/or threat of injury** to the U.S. industry

➤ *Reasonably available* information



# Six Parts of an AD/CVD Petition

1. *Scope*: Defines the product being imported
2. *Industry Support*: There are specific requirements for domestic industry support for the petition
3. *Domestic Like Product*: The U.S. product which is identical or comparable to the product being imported
4. *Injury*: How the U.S. industry is hurt or is threatened to be hurt by imported merchandise
5. *Dumping Allegation(s)*
6. *Subsidy Allegation(s)*

# Definition of “Domestic Industry”

- Producers as a whole of a domestic like product (*i.e.*, the product that is like, or most similar in characteristics and uses with, the product that is subject to investigation) **or** those producers whose collective output of a domestic like product constitutes a major proportion of the total U.S. production of the product.
- Commerce and the ITC must each define the “domestic like product” and identify the relevant U.S. producers, but do so for different purposes and under different timelines.
- As a result, the definition of “domestic like product” and the U.S. producers identified in the domestic industry may differ between the agencies.

# Defining the Domestic Industry – Commerce vs. ITC

- Commerce identifies the domestic industry for industry support purposes:
  - Whether a petition was filed on behalf of the domestic industry; and
  - Whether a petition has the support of the domestic industry.
- The ITC defines the domestic industry for injury purposes:
  - Whether the domestic industry consists of all U.S. producers of the domestic like product; and
  - Whether the domestic industry has been harmed or is threatened to be harmed by the unfair imports.

# **AD/CVD Investigations**

# Commerce's Role – Dumping/Subsidies

- Commerce determines whether dumping and/or unfair subsidization is occurring, and if so, how much.
- Commerce collects sales and cost information from foreign companies, or information on subsidy programs from foreign companies and governments.

# ITC's Role – Injury

- The ITC determines whether the U.S. industry is *injured* by reason of the dumped or subsidized imports.

# ITC's Role – Relevant Injury Factors

- The ITC is required to analyze the volume of imports, the effect of imports on U.S. prices of merchandise, and the effects that imports have on U.S. producers, taking into account many factors, including lost sales, market share, profits, productivity, return on investment, and utilization of production capacity.
- Also relevant are the effects on employment, inventories, wages, the ability to raise capital, and negative effects on the development and production activities of the U.S. industry.

# ITC AD/CVD Phases – Preliminary

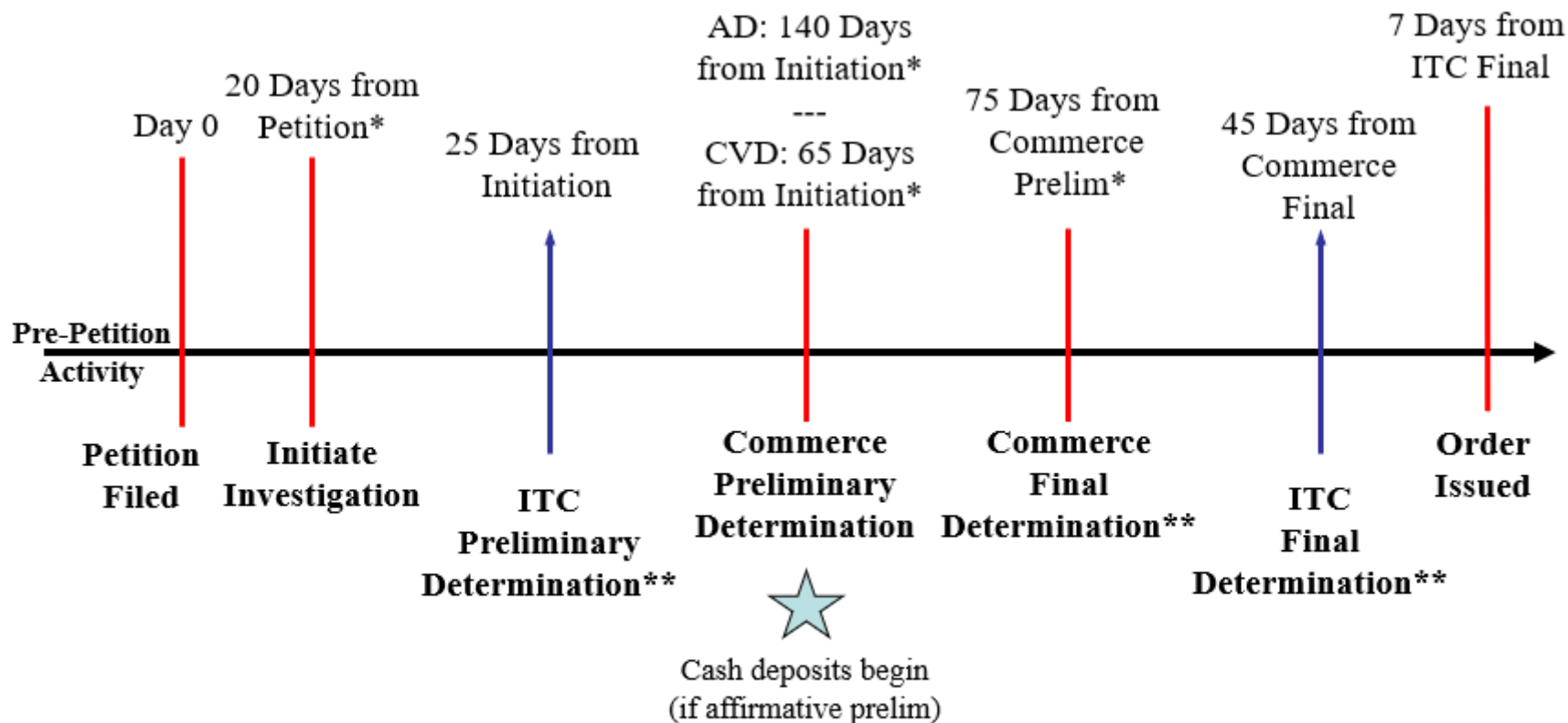
- 45 days from the filing of the petition to conduct preliminary injury investigation
- “Reasonable Indication” standard: Allows negative preliminary determination if:
  - (1) record as a whole contains **clear and convincing evidence** that there is no material injury or threat of material injury by reason of the subject imports, AND
  - (2) no likelihood exists that contrary evidence will arise in a final investigation.
- ITC negative preliminary determination terminates the entire investigation.



# ITC AD/CVD Phases – Final

- Determination follows Commerce's final affirmative determination
- Possible ITC determinations:
  - Affirmative present material injury
  - Affirmative threat of material injury
  - Affirmative material retardation of establishment of an industry
  - Negative determination

# Statutory AD/CVD Investigation Timeline



# **AD/CVD Investigation Results**

# AD/CVD Investigations – The Results

- IF Commerce finds that imports were dumped or benefited from unfair subsidies, AND
- The ITC finds that the U.S. industry has been harmed by the dumped and/or subsidized imports,
- THEN Commerce issues an AD/CVD order to offset the amount of dumping or the subsidy, instructs U.S. Customs and Border Protection (CBP) to assess duties, AND
- CBP collects cash deposits from importers for the estimated duties.

# CBP's Role – Enforcement

- CBP enforces AD/CVD duties on imports, per Commerce's instructions.
- CBP collects cash deposits from importers, administers AD/CVD entries, assesses and collects final AD/CVD duties, and enforces AD/CVD duties on imports that evade AD/CVD orders.

# Investigation Results - Example

- **EXAMPLE:** If Commerce calculates a 30% dumping margin and a 10% subsidy rate, importers must post cash deposits for the estimated duties of 40%.
- In this example, imported kegs with a value of \$200 would be subject to cash deposits of \$80 ( $\$200 \times 40\%$ ).

# **Other ITC Import Injury-Related Investigations**

# Safeguard Investigation

- No requirement that imports be unfairly traded
- Only ITC and President (Commerce not involved)
- Global (not country-specific)
- Injury and, possibly, Remedy Phase
- For affirmative injury determination, ITC makes remedy recommendation to President, who decides what action to take
- Remedies can include tariffs, tariff-rate quotas, trade adjustment assistance, etc.



# Monitoring

- General factfinding investigations, at the request of the President/USTR, the Senate Finance Committee, or the House Ways and Means Committee
- The Commission monitors trade-related data for specific industries, sometimes including report to requesting entity
- The Commission does not make any injury or remedy determinations

# Resources

# Links

- [Enforcement and Compliance website](#)
- [Trade Remedy Counseling and Initiations website](#)
- [USITC Antidumping and Countervailing Duty Handbook](#)
- [USITC website](#) (including U.S. Harmonized Tariff Schedule and DataWeb import statistics)
- [Enforcement and Compliance's Subsidies Enforcement Office](#)
- [Report Unfair Subsidies or Other Unfair Trade Practices](#)

# Data and Information for Agricultural Products

- Past AD/CVD cases relevant to the industry and country
- [National Agricultural Statistics Service \(NASS\)](#)
- [Agricultural Marketing Service](#)
- Foreign government websites
  - [Mexican prices](#)
- [World Bank Doing Business Reports](#)

# Past AD/CVD Cases Involving Agricultural Products

- Sugar
- Frozen Warmwater Shrimp
- Orange Juice
- Frozen Fish Filets
- Cooked & Peeled Coldwater Shrimp
- Lemon Juice
- Live Swine
- Hazelnuts
- Durum Wheat
- Hard Red Spring Wheat
- Rice
- Olives
- Garlic
- Honey
- Non-Frozen Apple Juice Concentrate
- Red Raspberries
- Spring Table Grapes
- Softwood Lumber
- Greenhouse Tomatoes
- Live Cultivated Blue Mussels
- Oleoresin Paprika
- Processed Gum Arabic and Gum Acacia

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