

COUNTERVAILING MEASURES

Countervailing Duties (CVDs) are applicable when a government in the exporting country provides subsidies or assistance to a local industry. This can be in the form of subsidized loans, tax exemptions, indirect payments, etc. The assistance provided enables these foreign suppliers and manufacturers to potentially export and sell the goods for a price less than that at which domestic companies of the target member country can reasonably sell. Countervailing Duties are meant to neutralize the adverse effects of the subsidies allowed for a particular product in exporting member country.

CVD Investigations can be initiated, if there is sufficient evidence to the effect that; there is subsidy, there is injury to the domestic industry; and there is a causal link between the subsidized imports and the injury, that is to say, that the subsidized imports have caused the alleged injury. In CVD cases, a pre-initiation consultation is granted to the government of the subject country(ies) for defending their respective interest.

The stages of countervailing investigation process:

A. Pre-initiation scrutiny and consultation:

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation. Pre-initiation consultation is then held with the respective Governments as per the obligations under the ASCM provisions.

B. Initiation:

The Authority determines that the application has been made by or on behalf of the Domestic Industry. It also examines the accuracy and adequacy of the

evidence provided in the application and when satisfied that there is sufficient evidence regarding subsidies, injury and causal link, a notification is issued initiating an investigation.

C. Public Notice & Inspection Folder:

A public Notice is issued inviting all concerned parties to file response. The Authority provides access to all the interested parties for the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection on request after receipt of the responses.

D. Preliminary Findings:

The Authority will proceed expeditiously with the conduct of the investigation and may, in appropriate cases, make a preliminary finding containing the detailed information behind the determination.

E. Provisional Duty:

A provisional duty may be imposed by the Central Government on the basis of the preliminary finding recorded by the Authority. The provisional duty can be imposed only after the expiry of 60 days from the date of initiation of investigation. The provisional duty will remain in force only for a period not exceeding 4 months.

F. Oral Evidence & Oral Hearing:

Interested parties who participate in the hearing may present the relevant information orally. However, such oral information shall be taken into consideration only when it is subsequently reproduced in writing. The Authority may grant oral hearing anytime during the course of the investigation.

G. Disclosure of Facts:

Based on these submissions and evidence gathered during the investigation and verification thereof, the Authority will determine the basis of its final

findings. However, the Authority will inform all interested parties of the essential facts, before the final finding is made.

H. Final Determination:

The interested parties submit their response to the disclosure statement issued by the Authority. The Authority examines all submissions of the interested parties and comes out with final findings.

I. Duty Notification

A copy of the Final Findings is sent to the Tax Research Unit in Department of Revenue which, in turn, notifies the duty within a period of 90 days from the date of Final Finding after obtaining approval of the competent authority.

J. Time-limit for Investigation Process

Normal time allowed by the statute for conclusion of investigation and submission of final findings is one year from the date of initiation of the investigation. The above period may be extended up to period of 6 months, in exceptional circumstances, by the Central Government.

Review mechanisms under Countervailing Investigation:

The SCM Agreement recognizes the following three types of reviews of CVD measures:

- (i) The investigating Authority is required to carry out promptly and in accelerated manner reviews requested by exporters which are subject to a definitive countervailing duty, but which were not actually investigated for reasons other than for refusal to cooperate;
- (ii) Definitive countervailing duties shall normally expire after five years from their imposition (or the period of notification), unless the domestic industry asks for a review within a reasonable period of time preceding the expiry, requesting that the expiry of the duty would likely to lead to

continuation or recurrence of subsidization and injury. During the period of duty as notified interested parties may request the authorities to examine whether the continued imposition of the duty is necessary to offset subsidization or whether the injury would be likely to continue or recur if the duty were removed or varied, or both. The duty may remain in force pending the outcome of such a review;

(iii) The Members to who adopt countervailing duty legislation, are obligated to maintain independent procedures for the purpose of prompt review of final and determinations. The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in India is the independent judicial forum to consider the appeals against the final findings issued by DGTR.

Q.53. Can the CVD investigations, once initiated, be terminated? If so, under what are the circumstances?

Ans. The CVD investigation shall be terminated

- If the domestic industry at whose instance the investigation was initiated requests the Authority to do so;
- If in the course of investigation the Authority is satisfied that there is no sufficient evidence either of subsidisation or applicable injury to the domestic industry;
- If the amount of subsidy is less than one percent ad valorem or in the case of a product originating from a developing country, the amount of subsidy is less than two per cent;
- It determines that the volume of the subsidized imports, actual or potential or injury where applicable, is negligible or in the case of a product originating in a developing country, the volume of the subsidized imports represent less than 4 % of the total imports of the like product into India, unless imports from developing countries

whose individual shares of total imports represent less than 4% collectively account for more than 9% of the total imports of the like product into India.

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