U.S. TRADE REMEDIES

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Stacy J. Ettinger, Partner, K&L Gates LLP

Stephen J. Claeys, Partner, Wiley Rein LLP

TRADE REMEDIES

- Unfair foreign pricing and government subsidies distort the free flow of goods and adversely affect competing businesses in the global marketplace.

- **Antidumping (AD) and countervailing (CVD) duty measures** may be used to remedy the artificial advantage created by **unfair foreign pricing and government subsidies**.

- **Safeguard actions** may be used to provide relief for domestic industries seriously injured or threatened with serious injury by **increased imports**.

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  - The basics
  - The process
  - The players
  - The disputes

ANTIDUMPING MEASURES

- Dumping involves the actions of companies (in contrast to subsidy cases which involve the actions of governments).
- Dumping investigations and determinations are country, product, and company-specific.
- If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be "dumping" the product.
- The difference between the price (or cost) in the home market and the price in the export market is called the dumping margin.
- The WTO Agreement does not regulate the actions of companies engaged in dumping. Its focus is on how governments can or cannot react to dumping.

ANTIDUMPING MEASURES, cont'd

- Under the U.S. system, the Commerce Department determines whether dumping is occurring, and if so, the margin of dumping.

- The International Trade Commission (ITC) determines whether the U.S. industry is materially injured or threatened with material injury by reason of the imports under investigation.

- If both Commerce and the ITC reach affirmative final determinations, Commerce will instructs Customs and Border Protection (CBP) to assess duties against imports of that product into the United States.

- The duties are assessed as a percentage of the value of the imports and are equivalent to the dumping margin.

COUNTERVAILING DUTY MEASURES

- Foreign governments subsidize industries when they provide financial assistance to benefit the production, manufacture or exportation of goods.
- Subsidies can take many forms, such as direct cash payments, credits against taxes, and loans at terms that do not reflect market conditions.
- The WTO Agreement disciplines the use of subsidies, and regulates the actions countries can take to counter the effects of subsidies.
- Under the Agreement, a country can use the WTO's dispute-settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects.
- Or the country can initiate a countervailing duty investigation. The amount of subsidies the foreign producer receives from the government is the basis for the subsidy rate by which the subsidy is offset, or "countervailed," through higher import duties.

COUNTERVAILING DUTY MEASURES, cont'd

- Not all subsidies are countervailable. Injurious subsidies may be countervailed if –
  - The **government or a public body** provides, directly or indirectly, a **financial contribution**;
  - Which confers a **benefit** to the recipient; **and**
  - The subsidy is **specific** to an enterprise or industry or group of enterprises or industries. (Prohibited subsidies (such as export subsidies) are deemed to be "specific.")
- Examples of "**government or public body**" include a government agency, government bank, or state-owned enterprise.
- **Financial contribution** includes a direct transfer of funds, government revenue otherwise due that is foregone, government provision of goods or services (other than general infrastructure), and government purchase of goods.
- If both Commerce and the ITC reach affirmative final determinations of subsidization and injury, respectively, Commerce will instruct Customs and Border Protection (CBP) to assess countervailing duties against imports of that product into the United States.

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INJURY TO A DOMESTIC INDUSTRY

- Under the U.S. system, the ITC determines whether imports that have been found to be dumped or subsidized materially injure or threaten to materially injure a U.S. industry.

- "Material injury" is not defined in the WTO Agreements.

- U.S. law defines **material injury** as **harm which is not inconsequential, immaterial, or unimportant**.

- Determination of injury is based on consideration of the **volume of dumped or subsidized imports**, the **effect of such imports on domestic prices**, and the **consequent impact on the domestic industry**.

AD/CVD INVESTIGATIONS – THE PROCESS

- An **AD/CVD investigation** is started when a petition is filed by or on behalf of the domestic industry. Petitioners must represent at least 25% of domestic production.

- The petition sets the "scope of the investigation."

- Interested parties may participate in the investigation. U.S. law includes unions as interested parties.

- During the course of an investigation, the investigating authority/s will collect information, hold a public hearing/s, issue preliminary and final determinations, and audit information provided by certain interested parties.

- Interested parties have the right to review and comment on information collected during the course of an investigation, meet with the investigating authority/s, and participate in the public hearing/s.

SAFEGUARD ACTIONS

- **Safeguards** are temporary measures – emergency action – to limit imports when a surge in imports causes serious injury to a competing domestic industry.

- Elimination of trade barriers exposes domestic industries to increased competition. Safeguards provide breathing space for industries to adjust to import competition.

- Safeguards are applied to "fairly traded" imports – *i.e.*, there is no requirement of "unfair trade."

- Unlike AD/CVD measures, safeguard actions normally are not country specific. They apply to all imports from all countries. Countries with which the U.S. has an FTA may be excluded under certain circumstances.

- Types of relief generally include quotas and/or duties.

- Safeguard measures normally may not last more that 4 years.

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SAFEGUARD ACTIONS – THE PROCESS

- The ITC conducts safeguard investigations.

- If the ITC determines that a surge in imports is causing serious injury to a competing domestic industry, it may recommend relief to the President.

- The President makes the final decision with input from the United States Trade Representative.

- Relief can be in the form of quotas, tariffs, tariff-rate quotas, or Trade Adjustment Assistance.

TRADE REMEDIES - THE PLAYERS

- Investigating authorities
  - Commerce
  - International Trade Commission (ITC)
  - CBP
- Congress
- The Administration
- Interested parties

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TRADE REMEDIES – THE DISPUTES

- Domestic courts

- WTO dispute settlement

- Regional trade agreements

Stacy J. Ettinger | stacy.ettinger@klgates.com

Stephen J. Claeys | sclaeys@wileyrein.com