
❖ SPC & B Update ❖

A Newsletter for Clients of Sharretts, Paley, Carter & Blauvelt, P.C.

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CAFC Holds CVDs Not Applicable to Non-Market Economies



In a recent decision involving tires from China, the U.S. Court of Appeals for the Federal Circuit (CAFC) ruled that the U.S. countervailing duty (CVD) law is inapplicable to non-market economies (NMEs), such as China and Vietnam. This decision ultimately could result in a number of CVD cases involving certain Chinese industries being overturned, although immediate action is unlikely. Nevertheless, importers of Chinese products subject to pending CVD cases should consider what steps they should take to protect their interests in the event that the cases are rescinded.

Although several bases for challenging the application of the CVD laws to NMEs were raised in the court case, the CAFC decided the case based on only one of the grounds. The CAFC found that when Congress amended the trade laws in 1988 and 1994, the legislature did so knowing the Commerce Department's position at the time that the CVD laws did not apply to NME countries. Because Commerce's previous position was incorporated into the statute, any change in that position would have to be made by Congress, not by Commerce.

While the Government may appeal this decision to the Supreme Court and/or Congress may enact legislation in an effort to void or limit the impact of the decision, it could have a significant impact on the CVD cases pending against China and Vietnam. The products include the following from China:

- laminated woven sacks
- raw flexible magnets
- certain lightweight thermal paper
- sodium nitrite
- citric acid and citrate salts
- kitchen appliance shelving and racks
- certain narrow woven ribbons
- magnesia carbon bricks

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- certain coated paper for high-quality print graphics
- sodium and potassium phosphate salts
- aluminum extrusions
- multilayered wood flooring
- various steel products, including circular welded pipe, light-walled rectangular pipe and tube, circular welded steel line pipe, oil country tubular goods, prestressed concrete wire strand, grating, seamless carbon and alloy steel standard line and pressure pipe, drill pipe

In addition, certain retail carrier bags from Vietnam are the subject of an existing CVD case.

Accordingly, importers should review all liquidated entries of products from China and Vietnam and, for any subject to CVDs, consider filing protests against the imposition of the additional duties, to protect their interests in the event that the trade cases are overturned.

For additional information on CVDs or other trade remedies imposed on imports, please contact Gail Cumins at gcumins@spcblaw.com, Alli Baron at abaron@spcblaw.com, or Donna Shira at dshira@spcblaw.com, or call us at 212-425-0055.
