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ADD/CVD: Guess Your Rate

Amazing as it may seem, there is no readily accessible repository of Anti-Dumping Margins or Countervailing Duty Rates for use by the Trade or by the Government itself. There are plenty of haystacks, and very few needles in any of them.

Anti-Dumping Duties (ADD): duties imposed by the U.S. Department of Commerce (DOC) and collected by U.S. Customs (CBP) to offset sales of foreign produced goods at less than fair value that harm or threaten to harm a U.S. industry.

Countervailing Duties (CVD): duties imposed by the U.S. Department of Commerce (DOC) and collected by U.S. Customs (CBP) to offset sales of foreign produced goods that benefit from foreign subsidies that harm or threaten to harm a U.S. industry.

ADD and CVD are designed to protect the U.S. production of the affected products by placing a penalty on imports of the foreign products that are found after investigations by the U.S. International Trade Commission AND the DOC to threaten or actually produce harm to a specific U.S. industry.

That should seem simple enough. Too simple.

In practice, there are multiple administrative proceedings and court proceedings that are pursued in these areas simultaneously. As with virtually all duties, ADD and CVD are collected as ESTIMATES at the time of importation, to be finalized in the liquidation process at some time in the future. There are rates for producers and there are rates for manufacturers. There are country-wide rates and company-specific rates. There are liquidation instructions that DOC issues to CBP that are sometimes premature or incorrectly applied. There is a six month window during which CBP is supposed to liquidate entries that had been suspended under an ADD or CVD case. There are "deemed" liquidated arguments that can be used for OR against the importer.

And the estimate is likely NOT the rate that will be assessed at time of liquidation if there is a full administrative review.

Add the refusal of CBP to make scope determinations, bowing to DOC in that regard, unless CBP *wants* to make a classification or origin decision that amounts to a scope determination...

The instructions that DOC gives to CBP that CBP publishes are akin to trying to figure out how to order and figure out what you're going to get in a Bento box in a Japanese restaurant.

In my imagination there is a huge spreadsheet scoreboard with all of the information an importer would need to know about the products, the countries, the estimates, the final rates, the manufacturers, the exporters, the scope decisions and the time periods involved. But that's just in my imagination.

Better not to import any product that is or could be subject to ADD or CVD. THAT is what it's really all about anyway.

SIMON GLUCK & KANE LLP

A handwritten signature in black ink, appearing to read "Christopher M. Kane". The signature is fluid and cursive, with a large initial "C" and "K".

Christopher M. Kane