

INJURY AND PROCEDURAL ISSUES

Captive production

The legislation potentially narrows the amount of domestic production that can be regarded as being part of the domestic market. This may result in an increase in the possibility of injury or threat of injury being found. However, the legislation places significant limitations on the use of the concept. These limitations include consideration of whether the product that is internally transferred does not enter the market, the product is the predominant input in the production of the downstream article, and the product sold in the market is not generally used in the production of the downstream article.

Sunset Reviews

As required by the agreement, the DOC will be obligated to terminate its anti-dumping/countervailing duty orders after five years unless it can demonstrate that there will be a recurrence of dumping/subsidy and injury. The legislation sets out the procedure for participation in the reviews. For example, if there is no response from the domestic parties, the DOC will revoke the order. In the case of countervailable subsidies, if a foreign government waives its participation in the review, the DOC will conclude the subsidies are likely to continue or recur.

Administrative Reviews

The DOC will be obligated to complete administrative reviews of dumping or countervailing duty within 12 to 18 months. Under current U.S. law and practice, there is no deadline for the completion of such reviews. This often results in delays of up to three years.

Sampling/Individual Rates

The DOC will now be required to investigate and assign individual margins of dumping or subsidy to as many exporters as is practicable. Currently, only exporters representing 60 percent of the exports are investigated. All others are given a rate based on the weighted average rate.

Best Information Available

The DOC will no longer base "best information available" on petitioners' allegations but will be required to seek independent sources of information in invoking the "best information available" option. "Best information available" is used when an exporter either does not cooperate or provides unverifiable or incomplete information.