



Legislative Bulletin.....March 6, 2012

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H.R. 4105 - To apply the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economy countries, and for other purposes.

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(Camp, R-MI)**

Order of Business: H.R. 4105 is expected to come to the floor on, March 6, 2012, under a motion to suspend the rules and pass the legislation.

Summary: H.R. 4105 would allow for countervailing duties (CVD) to be charged on certain imports from a nonmarket economy (NME) country.

Section 1: The legislation amends the Tariff Act of 1930 (19 U.S.C. 1671) to clarify that CVD may be imposed on U.S. imports from a NME. The legislation does not require the imposition of a CVD on imports from nonmarket economies **if** the Department of Commerce is unable to identify and measure the amount of the subsidy provided by the government of the nonmarket economy.

Section 2: The legislation amends the Tariff Act of 1930 (19 U.S.C. 1677f-1) to alter the amount of the antidumping duty on certain imports where there is also a countervailing duty. In cases where an antidumping duty is being applied to an import, and the nonmarket economy country is found to have provided a countervailing subsidy on the same import, the Department of Commerce shall reduce the amount of the antidumping duty by the amount of increase in the weight average dumping margin caused by the countervailable subsidy. This is aimed at addressing the World Trade Organization’s (WTO) finding that there may be cases of double counting.¹

¹ According to the Ways and Means Committee: “Last year, the WTO Appellate Body found that there may be a ‘double remedy’ in situations where countervailing duties are applied to NME exports at the same time that antidumping duties, calculated using the so-called ‘surrogate value’ methodology, are applied to the exports.”

Definitions/Terms:

Countervailing Duty (CVD) laws are intended to assist domestic industries that have been materially injured, or are threatened with material injury, by imported goods that have been subsidized by a foreign government. Specifically, the “assistance” to the domestic industry takes the form of an additional import duty on the subsidized imports.²

Antidumping Duties are applied to imports when the Department of Commerce “determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value.”³

Nonmarket Economy (NME): According to the Omnibus Trade and Competitiveness Act of 1988: a “nonmarket economy country” is a country that DOC determines “does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.”⁴

Additional Information:

On December 19, 2011, the U.S. Court of Appeals for the Federal Circuit (CAFC) upheld a U.S. Court of International Trade (CIT) ruling on *GPX Int’l Tire Corp. v. United States*. The Court found the Department of Commerce did not have the statutory authority to apply the countervailing duty law to non-market economies, therefore, the Department of Commerce’s method of applying countervailing and anti-dumping duties on certain imports from “non-market economies”, specifically China and Vietnam, was illegal because it led to “double counting.”

The Court inferred that because the Department of Commerce had declined to apply the CVD law to certain Soviet-style economies in the 1980s, and Congress had subsequently amended Title VII of the Tariff Act of 1930, that Congress implicitly “endorsed” Commerce’s decision.

CVD laws had not been traditionally applied to nonmarket economies. According to CRS, this is largely the result of a 1984 determination by DOC that there was no adequate way to measure market distortions caused by subsidies in an economy that is not based on market principles.

The CAFC ruling found that the Bush Administration should have obtained legislation from Congress to make the policy change because the previous practice of not applying countervailing duties to non-market economies had become embedded in U.S. law.

² <http://www.crs.gov/pages/Reports.aspx?PRODCODE=RL33976&Source=search#fn17>

³ 19 U.S.C. §1673 (2006)

⁴ 19 U.S.C. §1677(18)(A) (2006)

Essentially, the Obama Administration has three choices when dealing with the CAFC decision. They are explained briefly as follows:

1. Abide by the CAFC decision. This would mean the Administration would revoke existing CVD measures and drop new pending cases.
2. Work with Congress to pass new legislation that would allow CVDs to be imposed on certain imports from NMEs. H.R. 4105 seeks to make this change in U.S. law.
3. Graduate China to “market economy,” instead of waiting until 2016.⁵ This classification would subject China to market-economy methodology.

If Congress does not act, the CAFC ruling will take effect and the Department of Commerce will be prohibited from applying countervailing duties on U.S. imports from nonmarket economies.

The Department of Commerce first initiated an investigation for countervailing duties on a Chinese product on November 20, 2006.

As of January 9, 2012: The Department of Commerce has 23 existing CVD orders against products from China, 4 pending investigations, and 1 from CVD order against products from Vietnam, and 1 pending investigation.

| China CVD Orders as of January 9, 2012 |
|---|
| Aluminum Extrusions |
| Circular Welded Austenitic Stainless Pressure Pipe |
| Circular Welded Carbon Quality Steel Line Pipe |
| Circular Welded Carbon Quality Steel Pipe |
| Citric Acid and Citrate Salt |
| Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses |
| Drill Pipe |
| Kitchen Appliance Shelving and Racks |
| Laminated Woven Sacks |
| Light-Walled Rectangular Pipe and Tube |
| Lightweight Thermal Paper |
| Magnesia Carbon Bricks |
| Multilayered Wood Flooring |
| Narrow Woven Ribbons with Woven Selvedge |
| New Pneumatic Off-The-Road Tires |
| Oil Country Tubular Goods |
| Potassium Phosphate Salts |
| Prestressed Concrete Steel Wire Strand |

⁵ According to Article 15 of the WTO Accession Protocol of China, the U.S. must end the designation of China as a NME by December 11, 2016.

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| Raw Flexible Magnets |
| Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe |
| Sodium Nitrite |
| Steel Grating |
| Tow-Behind Lawn Groomers and Parts Thereof |
| China CVD Investigations as of January 9, 2012 |
| Certain Steel Wheels |
| Galvanized Steel Wire |
| High Pressure Steel Cylinders |
| Crystalline Silicon Photovoltaic Cells |
| Vietnam CVD Orders as of January 9, 2012 |
| Polyethylene Retail Carrier Bags |
| Vietnam CVD Investigations as of January 9, 2012 |
| Circular Welded Carbon-Quality Steel Pipe |

Supporting Views: A summary of the legislation and talking points, has been compiled by the House Committee on Ways and Means and can be [viewed here](#). Some talking points from their one-pager are copied below.

- **Legislation has bipartisan, bicameral support and is supported by the Administration** – “Identical legislation will be introduced in the House and Senate. The legislation was developed with, and is fully supported by, the Administration.”
- **Legislation is consistent with U.S. WTO obligations** – “It is also important to note that WTO rules do not preclude the application of CVD laws to NMEs like China. Therefore, the legislation is fully compatible with our WTO obligations.”
- **Legislation preserves the validity of existing countervailing duty orders** – “If the CAFC’s decision were allowed to stand, Commerce could likely be forced to terminate the 23 existing CVD orders against products from China (plus one from Vietnam) and the six ongoing investigations against Chinese and Vietnamese products, which could also result in the possible refund of already-collected duties. This would have an impact on over 80 American companies and tens of thousands of American workers in 38 states across this country. This legislation ensures that the 24 existing orders and six pending investigations against imports from China and Vietnam continue to be valid.”
- **Legislation addresses an adverse WTO finding on “double remedies”** – “Last year, the WTO Appellate Body found that there may be a “double remedy” in situations where countervailing duties are applied to NME exports at the same time that antidumping duties, calculated using the so-called “surrogate value” methodology, are applied to the exports. This legislation provides for Commerce to adjust antidumping duties to address any possible double remedy in these situations. Specifically, if a foreign exporter in a dumping case were able to demonstrate that

there was an increase to its export prices due to a countervailed domestic subsidy and the use of the surrogate value methodology, Commerce would determine whether it could make a reasonable estimate of the extent of the increase to the dumping margin, and if so, make a corresponding reduction to the dumping margin.”

Conservative Concerns: Some conservatives have expressed the following concerns:

Maintains the Artificially Inflated Cost of Imports: By allowing the Department of Commerce to continue issuing CVDs on NMEs, this continues to apply a tariff (tax) that increases the costs of imports and is passed down to the consumer in the form of higher prices. These tariffs are paid by U.S. importers, not China or Vietnam.

Imposes Anti-Free-Market Policies: Some conservatives may feel that it is unfair for American consumers to pay higher prices for certain imports due to certain domestic policies in China or Vietnam. China and Vietnam are using market-manipulating policies in their countries, and to counter that H.R. 4105 imposes market-manipulating policies here in the U.S. Should the CFAC’s ruling be allowed to take effect, the Department of Commerce would be prohibited from collecting additional taxes on certain Chinese or Vietnamese imports. These taxes are paid by U.S. importers and are ultimately passed down to the consumer in the form of higher prices.

Further Harms U.S. Importers: Should the CFAC’s ruling be allowed to take effect, the Department of Commerce would be prohibited from applying additional taxes on certain Chinese or Vietnamese imports. This would decrease the cost of those imports for U.S. businesses. Those businesses have paid duties (taxes) that the CFAC ruled the U.S. government had no authority to collect. Those businesses have a legitimate argument that they are owed compensation from the government for all the duties (taxes) they have paid in which CFAC ruled DOC should not have charged; however, this bill would prevent such relief from harm of certain U.S. importers.

Picking Winners and Losers: Proponents of CVDs argue they are a remedy to “unfair trade,” however the “free trade” argument recognizes that CVD law gives no consideration to the U.S. businesses that rely on low-price imports. Instead, the CVD law only focuses on the company or industry that is adversely affected by the low-priced import. This grants the government the power to pick winners and losers.

Further Escalates a Trade War with China: Conservatives may be concerned that this legislation will invite trade retaliation from Beijing. For example, in 2009 President Obama applied so-called “safeguard” emergency tariffs on Chinese tires. In response, China promptly struck back with tariffs on U.S. chicken products.⁶

Further Reading:

CRS: [U.S. Trade Remedy Laws and Nonmarket Economies: A Legal Overview](#)

⁶ http://money.cnn.com/2011/09/20/news/economy/china_trade/index.htm

Outside Groups:

The following outside groups/individuals are supporting H.R. 4105:

- U.S. Trade Representative Ron Kirk⁷
- Department of Commerce Secretary Bryson⁷
- American Iron and Steel Institute
- The National Association of Manufacturers⁸
- The U.S. Chamber of Commerce

The following outside groups are opposing H.R. 4105:

- The Club for Growth – *scoring as a key vote*⁹
- FreedomWorks – *scoring as a key vote*
- National Taxpayers Union - *scoring as a key vote*

Committee Action: H.R. 4105 was introduced on February 29, 2012, and was referred to the House Committee on Ways and Means, which took no public action.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: A CBO score was unavailable at press time.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. This legislation would allow for CVDs to be charged on certain imports from a NME. This legislation is in reaction to a December 19, 2011, ruling by the U.S. Court of Appeals for the Federal Circuit (CAFC). The Court found the Department of Commerce did not have the statutory authority to apply the countervailing duty law to non-market economies. This legislation grants the Department that authority to apply these duties (taxes) and therefore is an expansion of the size and scope of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation contains no earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: According the sponsor, “Congress has the power to enact this legislation pursuant to the following: Section 8 of Article I of the U.S. Constitution.” Rep. Camp’s statement can be [viewed here](#).

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⁷ <http://www.ustr.gov/about-us/press-office/press-releases/2012/february/us-trade-representative-ron-kirk-and-commerce-sec>

⁸ <http://shopfloor.org/2012/03/nam-welcomes-quick-fix-to-offset-chinas-subsidies/24178>

⁹ <http://www.clubforgrowth.org/perm/?postID=15783>