

Trade Litigation Outlook For 2010

In two 2009 trade remedies cases, the US Court of International Trade pushed back against the US Department of Commerce's methodology in closely-watched antidumping/countervailing duty (AD/CVD) cases, suggesting that the court will carefully examine any attempt by Commerce to "short-circuit" the AD/CVD statutory framework. In one, the court disallowed a methodology that would have resulted in a high risk of double counting of duties against a Chinese manufacturer; in the other, the court rejected Commerce's attempt to review only two producers of the subject merchandise. The ball is clearly in Commerce's court as to how to respond to the court's decisions, and Commerce's responses will have a significant impact on trade remedies cases in the coming year.

GPX International Tire Corp. v. United States

The US Court of International Trade affirmed that the Department of Commerce has the authority to apply the CVD law to products of non-market economy (NME) countries, such as the People's Republic of China, but rejected as unreasonable Commerce's methodology for applying that law to tires from China that were also subject to the NME AD law. The court began its analysis by explaining that "the NME AD statute was designed to remedy the inability to apply the CVD law to NME countries, so that subsidization of a foreign producer or exporter in an NME country was addressed through the NME AD methodology." The court stated it was unclear how the CVD and AD law could be applied to a non-market economy concurrently because the two statutes overlap. The court concluded that the dual imposition of AD and CVD duties in NME countries resulted in a significant potential of double counting of duties. The court remanded the case, instructing Commerce to apply methodologies that will reduce the risk of double counting when applying both statutes, or in the alternative, to not impose CVD duties on tires from China. The court will issue a further decision in this case once it reviews Commerce's revised methodology in response to the remand.

Carpenter Tech. Corp, et al. v. United States

The US Court of International Trade held that the Department of Commerce's decision to individually examine two out of eight respondents in an antidumping administrative review of steel bars from India was contrary to law. The court noted that the antidumping statute requires Commerce to "determine the individual weighted average dumping margin for each known exporter and producer" unless "the large number of exporters or producers involved" makes it impracticable for Commerce to calculate individual dumping margins for all producers and exporters. The court rejected Commerce's position "that any number of exporters/producers larger than two was a 'large number of exporters or producers' within the meaning of the statute." The court rejected the notion that Commerce did not have the resources to conduct a review for no more than two respondents. The court did not decide whether Commerce could limit its review to any fewer than all six of the non-examined respondents, but expressed its opinion that Commerce could not. Commerce is required to file an interim remand redetermination in which it will notify the court as to whether it will review all six non-examined respondents.

Should you have any questions, please contact the Arent Fox attorney with whom you work or a member of Arent Fox's International Trade Practice Group.