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Aluminium trade wars

As demand and production capacity for aluminium products continue to rapidly grow, so does the likelihood that competition will lead more manufacturers of specific aluminium products to seek international trade remedies, in the form of duties or quotas, to address unfairly low-priced or subsidised imports and surges of fairly-traded imports. **Benjamin Blase Caryl*** explains.

Various trade remedies already exist on imports of aluminium extrusions, aluminium foil, aluminium oxide, aluminium radiators, aluminium wheels, collapsible aluminium tubular containers, aluminium dish wear, and presensitised offset aluminium printing plates. These trade remedies exist in large developed economies (Australia, Canada, the European Union, and the USA) as well as in emerging and developing countries (Colombia, India, Indonesia, and Mexico). However, this may only be the tip of the iceberg. Imports of many other types of aluminium products are flooding into major markets, as demonstrated here using the U.S. market as an example.

Exports of these and other aluminium products will be susceptible to trade remedies if they begin to "injure" the competing domestic industry. Thus, everyone in the global aluminium supply chain - manufacturers, fabricators, importers, distributors, and end-use purchasers - should understand how trade remedies affect their ability to compete in the global economy. After first providing a basic overview of the indicia of injury required to obtain trade relief and the three main types of trade remedies, this article highlights the opportunities and challenges presented by trade remedies to the aluminium industry.

Import source	2013 YTD	2014 YTD	Percent change
Aluminium plates (rectangular, not clad, not alloyed) (HTSUS 7606.11.3030)			
China	12,866	33,668	162 %
Total Imports	13,557	34,975	158 %
Aluminium Sheet/Strip (rectangular, not alloyed) (HTSUS 7606.11.3060)			
China	4,003	6,558	63 %
Total Imports	28,367	27,162	-4.2 %
Aluminium Windows and Frames (HTSUS 7610.10.0010)			
Colombia	3,849	6,978	81 %
Mexico	1,705	6,080	257 %
Total Imports	18,008	29,044	61 %
Aluminium Alloy Bars and Rods (HTSUS 7604.29.30)			
Russia	1,666	5,603	236 %
Total Imports	10,281	16,203	58 %
Aluminium Powder (HTS 7603.10)			
Australia	3,939	6,093	55 %
China	1,188	1,742	47 %
Total Imports	9,258	13,625	47 %

Source: U.S. Department of Commerce and U.S. International Trade Commission.

U.S. Aluminium Imports: January-September 2013 and 2014 Quantity (1,000 kilograms)

*For further information about specific national trade remedy regimes or advice on possible or ongoing trade remedy proceedings, contact: bcaryl@kelleydrye.com

10 signs that your company may be injured by imports

The existence of the below factors may indicate that your company has been injured by imports and that your industry should consider pursuing possible trade relief:

1. Low-priced imports in your home market that compete with your products;
2. Increasing volumes of imports from one or more countries;
3. Decreases in your domestic sales, particularly lost sales that can be traced back to the imports;
4. Lost market share (even if sales volumes are not decreasing, they may not be increasing in line with any increase in home market demand);
5. Pricing pressure, either in the form of decreasing sales prices or sales prices that do not increase enough to cover any increased production costs;
6. Decreases in your domestic production and capacity utilisation;
7. Worker layoffs or reductions in the number of shifts, hours, or wages;
8. Closures or temporary shut-downs at your domestic manufacturing facilities;
9. Decreases in capital investments and research and development related to your domestic manufacturing facilities; or
10. Decreases in your profitability and return on investment related to your domestic manufacturing operations.

All of these factors are not necessary to pursue a trade remedy case, but the more that apply the better your case will be.

Types of Trade Remedies

There are three main types of trade remedies. The first two, antidumping and countervailing duties, address "unfairly-traded" imports, while the third remedy, safeguards, address fair but injurious imports. The rules of the World Trade Organisation (WTO) govern the general standards, requirements, and processes for each of these, as described below, although some important variations (beyond the scope of this article) in each national trade remedy regime exist.

Antidumping and Countervailing Duties

National antidumping (AD) laws address "dumping": When foreign producers or exporters from a particular country or countries sell a product in the target market (e.g., the U.S.) for less than the cost of production or less than it is sold in their home market or a third-country market. Countervailing duty (CVD) laws address subsidies - such as cash grants, discounted energy, free land, interest-free loans, and tax credits for exports - provided by foreign governments that enable their producers to export goods at unfairly low prices.

AD and CVD investigations begin with a petition filed by the "domestic industry" - manufacturers of the product that competes with the "subject imports" whose collective output constitutes a major proportion of the total domestic production of that product - to their government. If the petition meets all of the statutory requirements, the government initiates an investigation that typically takes about a year to (a) calculate the level of subject import dumping or subsidisation and (b) determine if the subject imports are injuring, or threatening to injure, the domestic industry. If dumping/subsidisation and injury are found to exist, the government issues an AD or CVD order that imposes duties designed to offset the unfair trade by creating a level playing field. The duties are not designed to completely block the subject imports, but to create fairly-priced imports. AD and CVD orders apply for five years, and are renewable in five-year increments if the domestic industry demonstrates that removal of the order would lead to a continuation or return of dumping/subsidisation and injury.

Safeguards

Safeguard law addresses fair, but excessive or disruptive, import competition from all sources. The standards for safeguards are more stringent and the duration of the relief is shorter than that for AD or CVD orders because the potential relief is universal. Specifically, imports must be increasing and be a "substantial cause" of "serious injury" or pose an imminent threat of injury to the domestic industry.

Safeguard investigations also begin with a petition filed by the affected domestic industry to their government. If the domestic industry demonstrates that it has been seriously injured by the relevant imports, then the government may impose safeguard measures, which can include increased duties, tariff rate quotas (the application of a higher duty rate on imported goods after exceeding a specified volume), and/or quotas (quantitative

limits on subject imports). The import relief initially granted may not exceed four years and may be extended only for an additional four years (developing countries may extend the relief for up to 10 years total). Also, because safeguards are intended to merely provide an adjustment period for the domestic industry to restructure itself to better compete with fairly-traded imports, the import relief must be progressively liberalised (e.g., the safeguard duties progressively decrease, or the safeguard quota increases, each year in effect). For that same reason, countries subject to the safeguard having a substantial interest as exporters of the covered product may suspend a similar level of trade concessions or obligations (i.e., tariffs or market access for a similar value of imports) to the country imposing the safeguard.

Safeguard proceeding determinations are frequently much more political (both domestically and geopolitically) than AD and CVD determinations. For example, in the U.S., while the President is not involved in AD and CVD determinations, the President has broad discretion to decide whether imposing a safeguard measure is in the "national economic interest" of the U.S., and if so what form, amount, and duration that measure should take. Given the discretionary and political nature of safeguards, many developing and emerging countries prefer using safeguards over AD or CVD investigations. Indonesia is currently the most frequent user of safeguards.

Opportunities and challenges presented by trade remedies

Trade remedies generally cause import prices to rise, import volumes to decrease, or both. The resulting benefits to the domestic manufacturers of the competing product may include reversing many of the ten signs of injury noted above, such as regaining customer accounts lost to foreign producers, increasing prices that had been depressed by low-priced imports, reopening shuttered factories, rehiring workers who had been laid off, increasing capital investments, and improving the industry's financial performance.

On the other hand, trade remedies create significant challenges for companies that import the subject product as part of a global supply chain, including manufacturers and fabricators of downstream products. Importers are liable for any applicable AD, CVD or safeguard duties and cannot be reimbursed by foreign producers or others. These duties can range from a few percent to well over 100% of the product's value. Importers also have substantial uncertainty and lack of control over the

trade remedy investigations and reviews. The government does not determine the amount of AD/CVD liability until the final assessment, well after the importer posts a cash deposit estimate of duties. Importers must rely on their foreign supplier to cooperate with the government's investigation or review to determine their duty liability. Moreover, importers could lose access to a foreign supplier altogether for covered products due to safeguard quotas or tariff rate quotas, regardless of the price one is willing to pay. As a result, many companies may restructure their supply chains to avoid suppliers covered by a trade remedy.

Bottom line for the aluminium industry

Aluminium product manufacturers and fabricators should monitor the 10 signs of injury laid out above. If you believe your company or industry may be injured by imports, independent experts (trade attorneys and economists) should assess the merits of your case and develop a strategy. Timing and data trends are absolutely critical to a successful trade remedy case, as the government assesses

injury and import data during the relevant "period of investigation" (typically the three most recent years). An effective trade remedy strikes the right balance in defining the product as broadly as possible to avoid circumvention of the order, but narrowly enough to ensure that the product definition is clear and enforceable by customs officials. For example, the U.S. trade remedy order on aluminum extrusions from China has been subject to 56 separate "scope rulings" to determine if particular products - ranging from water heater anodes to shower door kits to boat and dock ladders to solar panel mounting systems - are covered by the order, indicating a significant degree of uncertainty about what is covered. The product definition also determines what companies will comprise the "domestic industry" in the case, which in turn determines the dataset for the injury determination. Use of independent experts is often essential for a coalition of domestic producers to avoid antitrust or competition law liability resulting from individual companies sharing confidential data or pricing information. Independent experts are also able to determine if

dumping or subsidisation exists.

Manufacturers that export should be aware of any trade remedies covering their products and understand their domestic and export pricing to ensure that they export at fair prices to avoid being subject to trade remedies in their export markets. If your exports are targeted for trade remedies, you should cooperate in the investigation to avoid losing access to important export markets (or vital supplies if you are exporting to affiliates).

Importers should conduct due diligence on their suppliers and products, multi-source, and monitor national publications (such as the Federal Register in the U.S. and the Official Journal of the European Union) that announce the initiation, opportunities to participate, and final results of trade remedy orders. Importers may also participate in trade remedy investigations, primarily in the injury phase of the proceedings, to obtain the most favourable result. ■

References

See Kathleen W. Cannon & Benjamin Blase Caryl, *Relief from Unfairly Traded Imports*, ExecSense eBook (2013).

EIRICH Carbon Technology

EIRICH Mixing Cascade (EMC®) for continuous anode paste preparation 15-72 t/h

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HTM
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Hot mixer



Remixer-cooler



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Electric
coke heater



Mixer/
cooler



Table feeder



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