

Lumber Duties: The Process of AD and CVD Investigations

On January 3, 2018, the U.S. Department of Commerce (Commerce) announced final antidumping (AD) and countervailing duties (CVD) on Canadian softwood lumber imports. These duties – the result of an extensive and technical investigation – make sure small businesses across America can compete on a level playing field and grow to meet U.S. demand. Here is a detailed process of how lumber duties are created:

Commerce: evaluates AD and CVD petitions, assesses standing, initiates investigations, determines the existence and amount of subsidies and dumping margins for Canadian imports of softwood lumber, and ultimately issues AD and CVD orders. The vast majority of Commerce’s AD/CVD staff is comprised of international trade analysts who, on a day-to-day basis, conduct investigations and administrative reviews. Commerce AD/CVD staff also includes government attorneys, policy analysts, accountants and other international trade experts. In conducting AD/CVD investigations, Commerce staff analyzes detailed information provided by foreign producers and exporters (and governments in CVD cases) in response to questionnaires issued to them, along with legal and policy arguments from interested parties. All of the collected information is used to determine the levels of dumping and/or unfair subsidization.

International Trade Commission (ITC): evaluates the state of the U.S. domestic industry and determines whether it is materially injured, or threatened with material injury, by reason of dumped and/or subsidized Canadian imports as found by Commerce. The ITC is an independent, quasi-judicial federal agency with broad investigative responsibilities on matters of trade. The ITC is headed by six Commissioners who are nominated by the President and confirmed by the U.S. Senate. No more than three Commissioners may be of any one political party.

Key Events	AD Investigation	CVD Investigation
File Petition (November 2016)	Day 1	Day 1
ITC Begins Its “Preliminary Phase” and Issues Preliminary Questionnaires	+2-4 days (approx.) U.S. companies, Canadian producers and U.S. importers provided information on a wide range of production and financial information (<i>e.g.</i> , capacity, production, inventories, commercial shipments, export shipments, mill closures, employment, hours worked, wages paid, purchases, financial data and capital investments).	
Commerce “Initiates” or Begins AD and CVD Investigations	+20 days	+20 days
ITC Preliminary Conference	+21 days (approx.) A public hearing before the ITC to consider testimony from parties in support of and in opposition to the petition. Both sides were given the same amount of time to present arguments and testimony, and were questioned by several different Commission staff members.	
ITC Preliminary Determination	+45 days Bipartisan ITC Commissioners unanimously voted that there was a reasonable indication that the U.S. industry was materially injured by reason of Canadian imports or the threat of such material injury.	

Commerce Preliminary Determination	<p>+210 days (AD prelim duties begin)</p> <p>Based on its analysis of questionnaires and other information submitted by Canadian producers, Commerce made a preliminary affirmative determination of sales made at less than fair value or “dumping” with a margin for most producers (“all-others”) of 6.87 percent.</p>	<p>+150 days (CVD prelim duties begin)</p> <p>Based on its analysis of questionnaires and other information submitted by Canadian producers and the Government of Canada, including its provincial governments, Commerce made a preliminary affirmative determination of subsidization with a rate for most producers (“all-others”) of 19.88 percent.</p>
ITC Begins Its Final Phase and Issues Final Questionnaires	<p>+200-250 days (approx.)</p> <p>U.S. companies, Canadian producers, U.S. importers and U.S. purchasers provide information on a wide range of production and financial information (<i>e.g.</i>, capacity, production, inventories, commercial shipments, export shipments, mill closures, employment, hours worked, wages paid, purchases, financial data and capital investments).</p>	
Commerce Hearings	<p>+265 days</p> <p>A public hearing before Commerce staff to consider legal and factual arguments from U.S. petitioners and Canadian producers. Both sides were given the same amount of time to present arguments, and were questioned by several different Commerce staff members.</p>	<p>+265 days</p> <p>A public hearing before Commerce staff to consider legal and factual arguments from U.S. petitioners and Canadian producers. Both sides were given the same amount of time to present arguments, and were questioned by several different Commerce staff members.</p>
ITC Hearing	<p>+290 days</p> <p>Following the parties’ submission of questionnaires and prehearing briefs, a public hearing was held before the ITC Commissioners and chaired by the ITC Chairman. Petitioner and Canadian interested parties were given the same amount of time to present arguments and testimony, and then were questioned by the Commissioners and their staff. These parties then had opportunities to submit post-hearing briefs and responses to the Commissioners’ questions.</p>	
Commerce Final Determination	<p>+345 days</p>	<p>+345 days</p>

	Following its consideration of legal arguments or briefs from the parties, the hearing and other information submitted to Commerce staff, Commerce made a final affirmative determination of sales made at less than fair value or “dumping” with a margin for most producers (“all-others”) of 6.04 percent.	Following its consideration of legal arguments or briefs from the parties, the hearing and other information submitted to Commerce staff, Commerce made a final affirmative determination of subsidization with a rate for most producers (“all-others”) of 14.19 percent.
ITC Final Determination	+390 days	
	On December 7, 2017, the bipartisan ITC Commissioners held a public meeting and voted unanimously that the U.S. industry had been materially injured by reason of unfairly traded Canadian softwood lumber imports, or the threat of such injury. On December 22, 2017, the ITC published its written “final views,” which explained the basis for the ITC’s determination and incorporated the previous staff reports, analysis and other record evidence gathered during the entirety of the investigations.	
Commerce AD/CVD Orders Published in <i>Federal Register</i>	+400 days	
	Following the unanimous affirmative vote of material injury by the ITC, Commerce published AD and CVD orders on January 3, 2018, which finalized the cash deposit rates on imports of softwood lumber from Canada.	
Commerce Administrative Reviews	Annually	
	Generally on an annual basis, Commerce reviews imports of Canadian softwood lumber to determine the exact dumping and subsidization rates for the past 12 to 18 months, and to establish new future cash deposit rates.	
Commerce and ITC Sunset Reviews	Every 5 Years (Generally)	
	Determinations made by Commerce and the ITC regarding whether the revocation of the AD and CVD orders would be likely to lead to continuation or recurrence of dumping or unfair subsidization and injury.	

It took more than a year for the United States to analyze, investigate and implement antidumping and countervailing duties. The U.S. legal standards and processes for AD and CVD proceedings are consistent with and subject to the World Trade Organization (WTO) trade rules applicable to all WTO member countries, including Canada. They are *not* randomly imposed, punitive measures. The duties serve to level the playing field against Canada’s unfair trade practice and give the U.S. industry a chance to compete fairly, and grow.