

“Layering Explained”

The US Commerce Department has proposed changing the way in which it calculates anti-dumping (AD) duties for imports that have also been subject to section 201 tariffs.

Dumping margins are calculated by taking the transaction price of sales to the first unrelated party in the US, netting back to an ex works basis and comparing that with the price at which similar sales are made in the UK market. Traditionally, in netting back to an ex works basis, the Commerce Department has deducted normal import duties (soon to be zero for steel products) from the US sales price, but has not deducted other special duties such as s. 201 or countervailing duties.

The Commerce Department has now proposed changing this practice, and to start also deducting special duties from the US sales price. This will have the effect of substantially increasing the dumping margins for imports that are currently subject to both AD and s. 201 duties. This is illustrated in the following simplified illustrative examples¹.

Examples:

1. Current situation

	Calculation	\$ per tonne
US sales price		100
Carriage, insurance & freight		10
Transaction costs in USA		2
Normal US duty	= 1% of FOB ² value (approx \$90)	0.9
US sales price netted back to ex works basis	= 100 - 10 - 2 - 0.9	87.1
UK sales price ex works		95
Dumping margin	= 95 - 87.1	7.9
AD duty	= (7.9/87.1) x 100	9.1%
Total AD duty paid	= 9.1% of FOB value (approx \$90)	\$8.2
Section 201 duty	= 30% of FOB value	27
Total duties paid	= 0.9 + 7.9 + 27	\$36.1

¹ These examples are based on a situation where a UK company imports into the US through a related company, which then sells the product on to the end-customer. This is typical of how UK steel companies operate. In such cases, it is the price charged by the US subsidiary to the unrelated end-customer that is used as the starting point for calculating dumping margins. These examples are not relevant where exports to the USA are sold FOB to an unrelated party.

² Customs duties in the USA are levied on the “entered value” of the product, which is roughly equivalent to FOB.

2. After “layering”

	Calculation	\$ per tonne
US sales price		100
Carriage, insurance & freight		10
Transaction costs in USA		2
Normal US duty	= 1% of FOB value (approx \$90)	0.9
S. 201 duty	= 30% of FOB value	27
US sales price netted back to ex works basis	= 100 - 10 - 2 - 0.9 - 27	60.1
UK sales price ex works		95
Dumping margin	= 95 - 60.1	34.9
AD duty	= (34.9/60.1) x 100	58.1%
Total AD duty paid	= 58.1% of FOB value	\$52.3
Section 201 duty	= 30% of FOB value	27
Total duties paid	= 0.9 + 34.9 + 27	\$80.2

Retroactive impact

AD duties in the USA are levied retroactively. When an AD order is first imposed, importers are required to make cash deposits equivalent to the AD margin found during the original investigation. After 12 to 18 months an “administrative review” is conducted, whereby actual dumping margins on sales during the period under review are calculated. Duties are then levied on the basis of the actual dumping margins found in the review. The new dumping margin calculated during the administrative review becomes the basis of future cash deposits until the next administrative review is completed. This process continues until the AD order is eventually terminated.

Companies subject to AD orders often continue to sell into the USA by carefully pricing their products in order to minimise AD liabilities. UK companies subject to AD duties on stainless bars have for example been doing this. Companies selling into the USA in this way during the period of s.201 measures will have a legitimate expectation that the actual dumping duties they eventually pay should reflect these careful sales practices (as has always been the case in the past). If layering is introduced they will suddenly be faced with huge, unexpected increases in their AD duties relating to these past sales. These extra cash requirements could be punitive.

Continuing future impact

Once administrative reviews have been completed, future cash deposit rates would be based on these unfairly inflated dumping margins. This would have a serious cash flow implication – large cash deposits would be collected and would only be refunded after the next administrative review that related to a period not covered by the s. 201 tariffs. Thus layering would continue to impact even after the s. 201 measures are terminated.

Impact on UK companies

There are currently two AD measures in place on UK products that are also subject to s. 201 tariffs: stainless bars and carbon plate. The former affects Corus and several smaller British companies in the Sheffield area. The latter has such a large

AD duty in place (because its case was never contested by the British companies affected) that exports are no longer made to the USA.

Instigation to file new complaints

If any new AD cases were filed now or in the near future, the Period of Investigation would include the period during which s. 201 tariffs applied. Thus layering would also inflate the AD margins found in new cases – in fact, it would virtually guarantee that any steel sold into the USA and subject to the s. 201 tariffs would automatically be found to have been “dumped”. This would act as an instigation to the US industry to file new anti-dumping complaints – even after the s. 201 tariffs are ended these cases would give the US steel industry a further two years of protection.

“Byrd amendment”

Finally, to add insult to injury, these inflated AD duties would be paid into the coffers of the US steel producers themselves, thus giving them an unfair and trade distortive subsidy. This change in US legislation was enacted by the so-called “Byrd amendment”, which has already been ruled to be against WTO rules by the Appellate Body, but despite this has not been repealed.

Conclusion

The layering proposal would fundamentally move the goalposts and penalise EU steel companies. It would most probably be WTO-inconsistent, but this has rarely been a deterrent to the Commerce Department. It would guarantee US steel producers at least another two years of protection after the s. 201 tariffs end.

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