

# AD/CV DUTY INVESTIGATION ON PLASTIC DECORATIVE RIBBONS FROM CHINA

## SUMMARY AND BEST PRACTICES

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# NEW AD/CV CASE ON PLASTIC DECORATIVE RIBBONS FROM CHINA

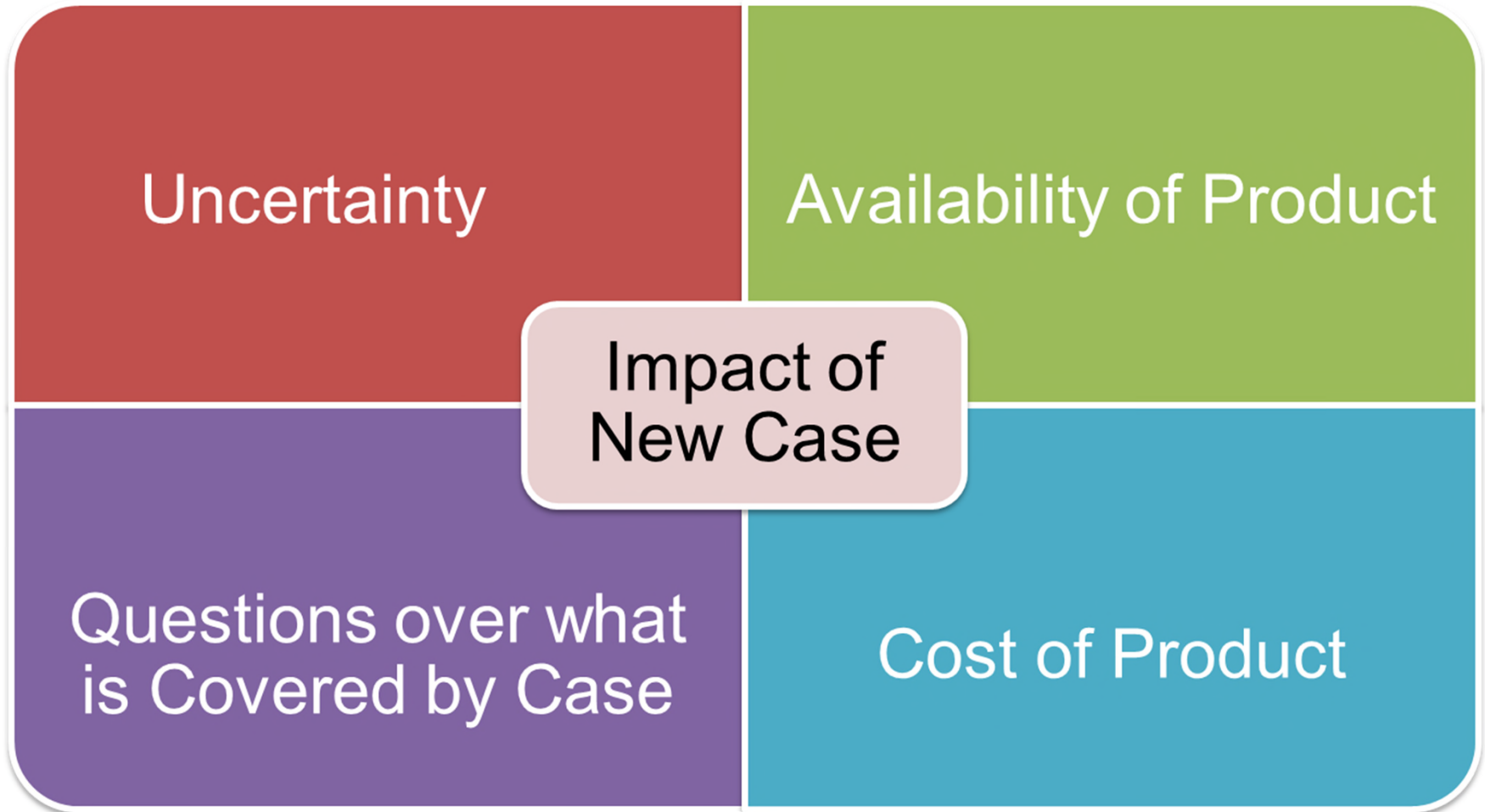
- Petition filed December 27, 2017 alleges that imports of plastic decorative ribbons from China are being sold at less than fair value (antidumping – AD); and is benefitting from countervailable subsidies (countervailing – CV).
- Petitioners: *Berwick Offray LLC*.

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## HISTORY OF CASE

- No prior U.S. trade remedy case has been filed on plastic decorative ribbons in the past.
- However, an AD/CV case on narrow woven ribbon with woven selvedge from China was filed by the same petitioner in 2009. Those AD/CV duty orders remain in place.

## WHAT DOES A NEW CASE MEAN?



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## PRODUCT USES AND DESCRIPTION

- Ribbons within the scope of this case are made primarily from polypropylene resin which is mixed with color pigment, melted, and pressed through an extruder.
- The Ribbons are used mainly for decorative purposes, such as gift wrapping, holiday decorations, and party crafting.

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## SCOPE OF THE PLASTIC DECORATIVE RIBBONS CASE

- The merchandise covered by this investigation is certain plastic decorative ribbon having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches in actual measurement, including but not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products.
- The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

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# SCOPE OF THE PLASTIC DECORATIVE RIBBONS CASE

- The ribbons subject to this investigation may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed ( or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.
- Subject merchandise includes "pull-bows" an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and "pre-notched" bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. Unless the context otherwise clearly indicates, the word "ribbon" used in the singular includes the plural and the plural "ribbons" includes the singular.

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# SCOPE OF THE PLASTIC DECORATIVE RIBBONS CASE

- Excluded from the scope of this investigation are the following: (1) ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) an outer layer that is either flocked or made of fabric, and (b) a flexible metal wire at the base that is suitable for attaching the bow to a Christmas tree or other object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing nonsubject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; and (9) ribbons in the form of bows having a diameter of less than seven-eighths (7 /8) of an inch, or having a diameter of more than 16 inches. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.



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## SCOPE OF THE PLASTIC DECORATIVE RIBBONS CASE

- Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by this investigation also may enter under subheadings 3920.10.0000; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0020; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9905; 3926.90.9910; 3926.90.9925; 3926.90.9930; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 9505.10.2500. These HTSUS statistical categories and subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

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## EXCLUSIONS FROM SCOPE

- The scope includes exclusions for certain products.
- Interested parties will shortly have an opportunity to comment on the scope and to seek further exclusions or clarifications.

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## AD/CV BACKGROUND

- Antidumping (AD) and countervailing (CV) cases are possibly the most powerful trade remedies available to U.S. companies and associations.
  
- AD duties are assessed if:
  - 1) the foreign exporter sells to U.S. customers at dumped prices; and
  - 2) the U.S. industry is found to be injured or threatened with injury as a result of the subject imports.
  
- CV duties are assessed if:
  - 1) unfair subsidies are provided to benefit the production, manufacture or exportation of the good (Subsidies may include direct cash payments, tax credits, and loans at terms that do not reflect market conditions); and
  - 2) the U.S. industry is found to be injured or threatened with injury as a result of the subject imports.

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## AD/CV BACKGROUND

- The power of AD and CV actions lies in the fact that duties levied by the U.S. government can range anywhere from single digits to as high as 400% or more, which can close foreign companies out of the U.S. market.
- AD and CV orders can last for 5 to 20 years or longer, effectively excluding most targeted products from the U.S. market.

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## TWO AGENCIES – PARALLEL INVESTIGATIONS

- International Trade Commission (ITC):
  - The ITC, a six-member independent federal agency, evaluates economic impact on petitioning U.S. industry and determines whether domestic industry is injured or threatened with injury as a result of “dumped” or subsidized imports.
- Department of Commerce (DOC):
  - The DOC performs company-specific analysis to quantify the degree of “dumping” or “countervailing” subsidies that exist.

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## WHAT IS DUMPING?

- A product is dumped if the United States' price of the subject merchandise is less than the normal value (usually, the home market price) or cost of production for the product.
- For a non-market economy, the normal value is based on surrogate values, taken from a third country (e.g., India, Philippines, Thailand) for factors of production, factory overhead, SG&A and profit, which are added together to obtain a form of constructed value. In this matter, the petitioners have alleged Thailand.
- Merchandise is “dumped” when it is sold by foreign producers to the U.S. at prices lower than which they sell the same merchandise in their foreign home market. For example, the same Japanese TV sold in Tokyo for \$100 and in New York for \$90 is dumped by \$10.
- This pricing, below “fair value” and/or the selling of goods below the cost of production, often leads to the U.S. imposing a dumping duty to offset the effect of this pricing (In fact, the DOC has found dumping in nearly 90% of cases).
- Non-market economy countries, such as this matter involving China, are unique and often produce high dumping margins due to special rules applied by the DOC. Since China is considered a NME, in which the government controls most of its industries, the DOC treats all exporters as a single enterprise for dumping purposes unless the exporters can establish a right to a separate rate.

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## WHAT IS A COUNTERVAILING DUTY?

- Countervailing duty is a form of relief used to remedy the adverse price impact of imports that receive foreign government subsidies.
- Subsidies can take many forms, such as direct cash payments, credits against taxes, and loans at terms that do not reflect market conditions.
- The amount of subsidies the foreign producer receives from the government is the basis for the subsidy rate by which the subsidy is offset, or "countervailed," through higher import duties.

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## WHEN IS DUMPING ACTIONABLE?

- Under U.S. law, sales at less than normal value alone will not trigger the imposition of antidumping duties. An antidumping duty order cannot be issued in the U.S. unless:
  - DOC determines that the subject merchandise is being dumped in the U.S.; and
  - The ITC determines that a U.S. industry is materially injured, or threatened with material injury, by reason of dumped imports.



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## WHAT REMEDIES CAN BE IMPOSED?

- An antidumping order cannot include quotas or any remedy other than a duty designed to offset the amount by which the normal value of the subject merchandise exceeds the U.S. price.
- Antidumping duties are stated as a percentage of the value of the merchandise entering the United States. If, for example, the antidumping duty is ten percent and the value of a particular entry is \$100,000, the amount of the antidumping duty for that entry will be \$10,000.

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# WHAT IS THE EARLIEST DATE OF POTENTIAL LIABILITY?

- AD and CV duties are not intended to be punitive and will not, as a general rule, be imposed retroactively in the investigation.
- Normally, the earliest date that subject merchandise may be liable for AD and CV duties is the date that an affirmative DOC preliminary determination, which is published in the Federal Register (In the CV investigation, this date is generally 85 days from the date the petition is filed; in the AD investigation, it is 160 days from the petition filing).
- If “critical circumstances” exist, antidumping duties may be retroactively imposed up to 90 days before the date of publication of the DOC preliminary determination.
- “Critical circumstances” refer to a surge in imports designed to enter the maximum amount of subject merchandise from the date the petition is filed up to the date of the DOC preliminary determination, in order to build up U.S. inventories before potential antidumping duty liability exists.

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## US IMPORTERS ARE RESPONSIBLE FOR DUTIES

- U.S. importers of merchandise from countries covered by an AD/CV order — the importers of record — must post estimated AD/CV duties at the time of entry into the US equal to the value by which the goods have been found to be undersold (in the case of an AD order) or subsidized (in the case of a CV order). Hence, it is the US importer who bears the burden of these duties.

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# US IMPORTERS ARE RESPONSIBLE FOR DUTIES

- By being proactive, and by making the most of the available legal and administrative options once a case is filed, importers place themselves in the best possible position to minimize the impact of dumping duties on their operations.
- Importers that are proactive – that is, those who take an active role in the process – and who coordinate with their foreign suppliers to aggressively participate in the process, can end up in the most competitive position – even if others are faced with bad margins or subsidy rates.
- The key to success is for companies to be actively involved in the process and fully take advantage of those options.

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## CHALLENGING PETITIONERS' STANDING

- Domestic Industry has standing if they collectively account for 25% of the total production of the domestic like product. The domestic producers or workers must also account for more than 50% of the production of the domestic-like product, produced by companies taking a position on the petition.
- Timing: 20 days from the date that the petition is filed.

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# CHALLENGING THE SCOPE

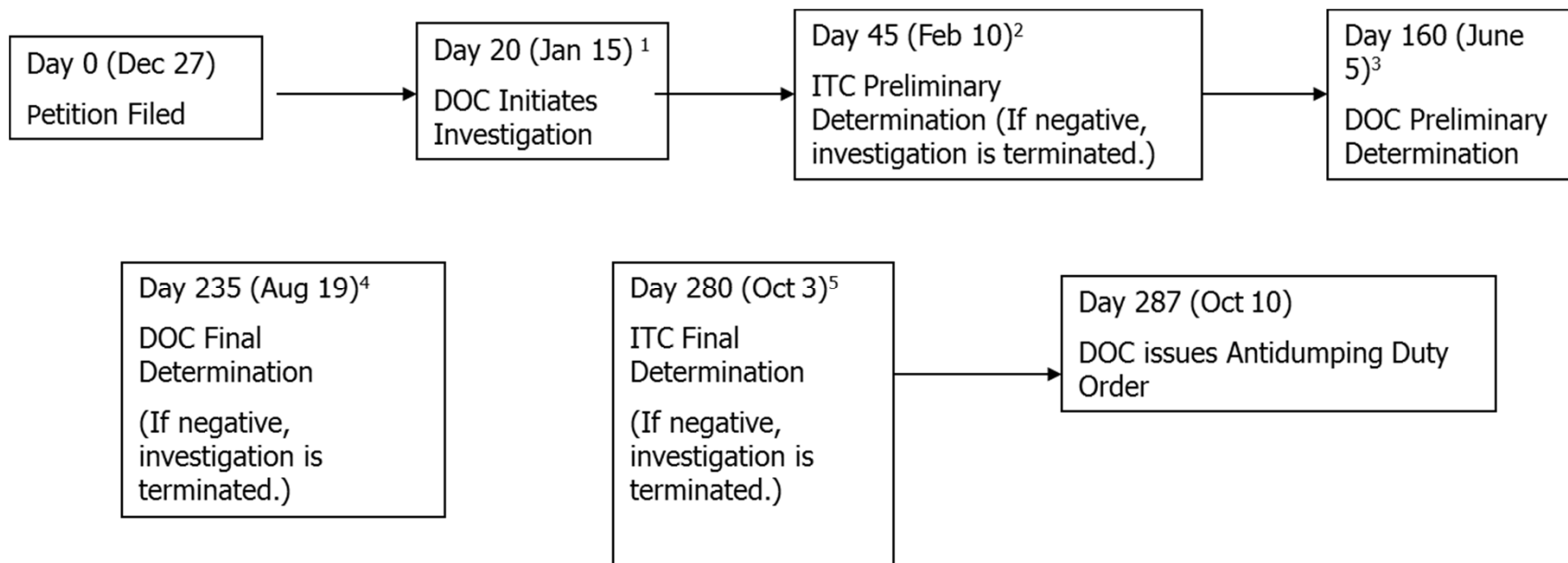
- Comments to Limit the Scope of Merchandise Subject to the Investigation:
  - Commerce allows parties to comment on the scope of the subject merchandise.
  - It is much easier to address scope issues before initiation than after the case is initiated or an order is imposed.
  - Importers and producers of potential subject merchandise should look at the products they import and produce. If the scope is not clear as to whether the product falls within or outside the scope of the investigation, now is the time to ask for clarification in the scope language. This will prevent unexpected AD/CV duty liability if an order is imposed.

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## HOW ARE AD/CV DUTIES ASSIGNED?

- If an AD/CV order is issued, the order applies to all subject merchandise exported to the United States from the country under investigation. Each company investigated will be assigned a company-specific AD and CV duty margin.
- Other exporters in a market economy country that were not individually investigated by DOC will be assigned an AD or CV duty based on an “all others” rate, which is a weighted average of the rates assigned to the investigated companies.
- There are separate rates for market economy cases.
- If your producer obtains a rate of under 2.0%, they are excluded from any order issued in the investigation.

# U.S. ANTIDUMPING INVESTIGATION TIMELINES



1 DOC may extend this deadline by an additional 20 days if it experiences difficulties in determining whether a petition has the requisite U.S. industry support.

2 If DOC extends the deadline for an initiation determination, the ITC must issue its preliminary determination no later than 25 days from the date the Commission receives notice of initiation from DOC.

3 The DOC preliminary determination must be issued within 140 days of the date the Department initiates the investigation. If DOC extends the date of initiation, the deadline for the preliminary DOC determination will be extended accordingly. In addition, if a petitioner requests an extension of the preliminary determination deadline or DOC determines a case is extraordinarily complicated, the DOC preliminary deadline may be extended to not later than the 190th day from the date of initiation of the investigation by DOC.

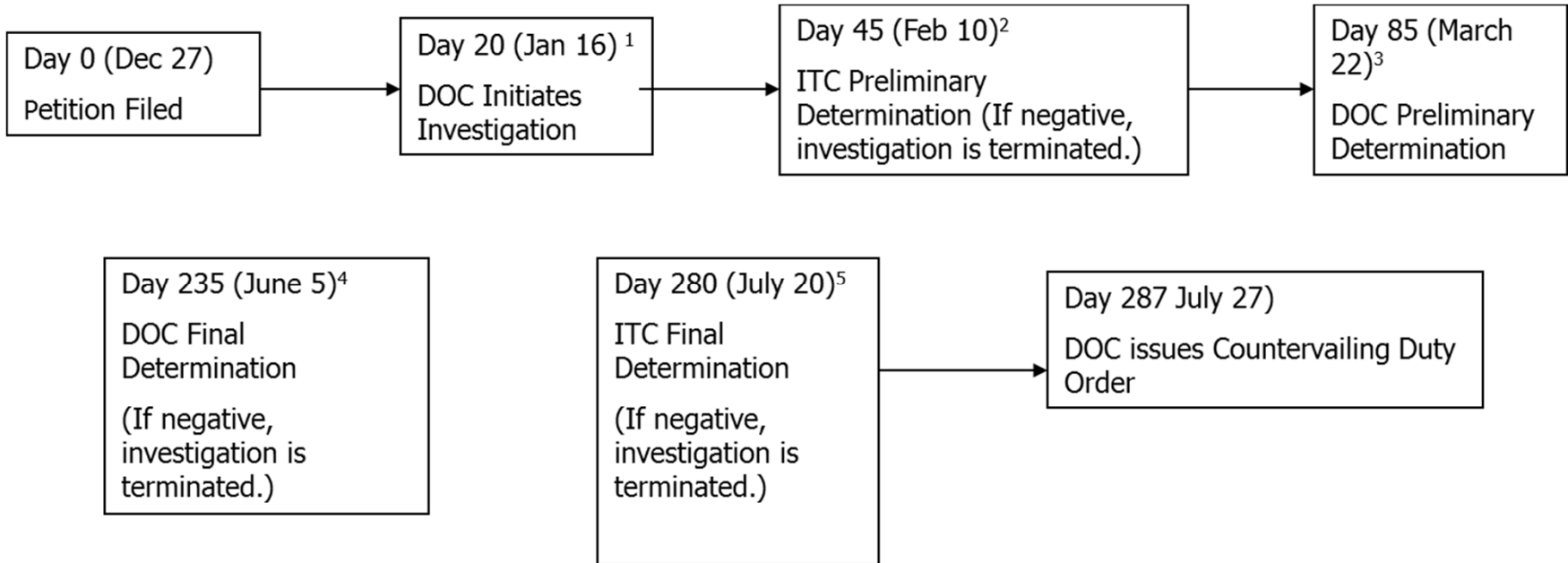
4 DOC may postpone the final determination by up to 135 days from the date of its preliminary determination if exporters accounting for a significant portion of exports of the subject merchandise, where DOC preliminary was affirmative, so request or a time extension is requested by a petitioner where the DOC preliminary determination was negative.

5 The ITC is required by statute to issue its final determination within 120 days of a DOC affirmative preliminary determination or within 45 days of a DOC affirmative final determination, whichever date is later. Usually, the ITC final determination occurs approximately 45 days after the date of an affirmative DOC determination.

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# U.S. COUNTERVAILING DUTY INVESTIGATION TIMELINES



1 DOC may extend this deadline by an additional 20 days if it experiences difficulties in determining whether a petition has the requisite U.S. industry support.

2 If DOC extends the deadline for an initiation determination, the ITC must issue its preliminary determination no later than 25 days from the date the Commission receives notice of initiation from DOC.

3 The DOC preliminary determination must be issued within 65 days of the date the Department initiates the investigation. If DOC extends the date of initiation, the deadline for the preliminary DOC determination will be extended accordingly. In addition, if a petitioner requests an extension of the preliminary determination deadline or DOC determines a case is extraordinarily complicated, the DOC preliminary deadline may be extended to not later than the 130th day from the date of initiation of the investigation by DOC.

4 DOC normally aligns the date of the CVD final determination with that of the AD final determination. The Department may postpone the final AD determination by up to 135 days from the date of its preliminary determination if exporters accounting for a significant portion of exports of the subject merchandise, where DOC preliminary was affirmative, so request or a time extension is requested by a petitioner where the DOC preliminary determination was negative.

5 The ITC is required by statute to issue its final determination within 120 days of a DOC affirmative preliminary determination or within 45 days of a DOC affirmative final determination, whichever date is later. Usually, the ITC final determination occurs approximately 45 days after the date of an affirmative DOC determination.

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## HOW LONG DOES THE INVESTIGATION LAST?

- Preliminary and final determinations by both DOC and the ITC are subject to strict statutory deadlines. As a general rule, a CVD investigation concludes 212 days from the date the petition is filed.
- Some extensions are allowed by statute, and AD investigations can be extended up to 427 days, and CV investigations, up to 307 days.

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## PARTICIPATION AT THE DOC

- Goal is to achieve lowest possible AD/CV duty margins for suppliers.
  - Mandatory Respondent – This option is generally only available to the two or three largest exporters by volume/value. Commerce will calculate company-specific rate.
  - All Others Rate – Those exporters of subject merchandise not chosen as mandatory respondents will receive the average of all calculated rates.
  - Separate Rate Application – Those companies that complete a separate rate application will receive a separate rate that is the average of all calculated rates.
- Exporters that do not participate in the investigation will receive the country-wide dumping rate, which is typically high.

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## DOC INVESTIGATION: RESPONDENT SELECTION

- Mandatory Respondents -- available only to the largest two or three exporters by volume.
- Best chance to get a very low AD rate and only chance to be excluded from the order.
- More intensive participation in a full year proceeding.
- Have to complete at least four separate sections of the AD questionnaire, supplemental questionnaires, and legal briefs.
- Must participate in on-site verification audit by the DOC.

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## PARTICIPATION AT THE ITC

- The goal is to prove that there is no economic injury to U.S. industry due to imports.
- Both importers and exporters should complete ITC questionnaires to help terminate the case and shape arguments for the briefs and testimony.
- Three possible findings – Injury, Threat of Injury and No Injury.
  - No order if no injury.
  - Date of deposit of duties delayed if only threat of injury.

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# ITC PRELIMINARY PHASE TIMELINE

## Key dates

- Petition Filed/ITC Initiation: **December 27, 2017**
- Notice of Appearance Due: **TBD** (within a week of publication of the ITC initiation)
- Questionnaires Due: **January 10, 2018**
- Staff Conference: **January 17, 2018**
- Post-Conference Briefs: **January 22, 2018**
- ITC Preliminary Vote: **February 9, 2018**

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# ITC PRELIMINARY PHASE

## ITC Questionnaire

- ITC collects detailed information on import volumes, pricing and product characteristics.
- Questionnaires are due from:
  - Foreign producers
  - U.S. Importers
  - U.S. Producers
  - Lost Sales and Lost Revenue (LSRV) Survey

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## ITC PRELIMINARY PHASE

- Conference before Commission Staff
  - 9:30 AM – TBD
  - Parties are able to appear and provide testimony directly to the Commission staff, regarding the alleged injury to the domestic industry.
  - Must notify ITC several days in advance if you intend to appear at the Conference.



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# ITC PRELIMINARY PHASE

- Post-Conference Brief
  - Parties may provide additional information or argument in post-conference briefs. The Commission Staff may also ask parties to address certain issues in their post-conference written submission.

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# ITC PRELIMINARY PHASE

- Preliminary Vote
  - The Commissioners will vote on **February 9, 2018** on whether there is there is a reasonable indication that an industry in the United States is materially injured by the subject imports. This is a low standard and an affirmative finding at the preliminary does not necessarily reflect the final determination.

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## ITC FINAL PHASE

- ITC Questionnaire (Final)
  - The Commission requests additional and often more detailed import, sales and product information for its final investigation. This data is intended to supplement the information obtained in the preliminary investigation.
- Pre-Hearing Briefs
  - Parties are able to present written briefs to the Commission regarding the alleged injury to the domestic industry.
- Hearing before Commissioners
  - Parties are able to appear and provide testimony directly to the Commissioners regarding the alleged injury to the domestic industry.
- Post-Hearing Brief
  - Parties may provide additional information or argument in post-hearing briefs. The Commissioners may also ask parties to address certain issues in their post-hearing written submission.

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# SAMPLE TRADE REMEDY CASES HANDLED BY CLARK HILL ATTORNEYS

## Some of our accomplishments include:

- Eliminating over \$100 million AD duty liability for an importer client resulting from a U.S. Customs and Border Protection Audit involving *Wooden Bedroom Furniture from China*. This result saved a major U.S. furniture conglomerate from shutting down operations.
- Securing in the 8th DOC annual review the lowest AD rate (4.54%) in the history of the case on *OTR Tires from China* for Chinese mandatory respondent client Weihai Zhongwei Rubber Co., Ltd.
- In *OTR Tires from Sri Lanka*, the first CVD investigation against that country in over 30 years, securing a nominal CVD margin of 2.18% (only .18% over de minimis) for the Government of Sri Lanka.
- Termination of the AD/CVD investigation on *Steel Wheels from China* at the ITC, eliminating millions of dollars in potential AD/CVD duties for US importer clients Blackstone/OTR LLC and OTR Wheel Engineering.
- Dismissal of petitioners' CIT appeal of the 4th DOC annual AD review in *Multilayered Wood Flooring from China*, securing over \$7 million in AD refunds for a large US importer client.
- Termination of the AD/CVD investigation of *53-Foot Domestic Dry Containers from China* at the ITC, eliminating millions of dollars in potential AD/CVD duties for US importer clients Crowley Maritime Corporation and Sea Star Line.

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# SAMPLE TRADE REMEDY CASES HANDLED BY CLARK HILL ATTORNEYS

## Some of our accomplishments include:

- Exclusion from the scope of the AD case on Hand Trucks from China of product imported by client Positec USA, Inc. This exclusion saved the client over \$1 million per month in AD duties and secured long-term contracts with US home improvement retail customers.
- Exclusion of product exported by client Hangzhou Foreign Economic Relations & Trade Service Co., Ltd., from the scope of the AD investigation on Artist Canvas from China.
- Exclusion from the scope of the AD/CVD case on Aluminum Extrusions from China of product imported by U.S. client manufacturer of displays and exhibits.
- Termination at the ITC preliminary phase of the AD investigations on Desktop Note Counters and Scanners from China, Korea and the UK on behalf of clients China Taly Aviation Technologies Corp., and Scan Coin Industries AB, Nanjing No. 5311 Factory.
- Through litigation at the CIT and CAFC, securing a 0% AD rate and exclusion from the AD order on Polyester Staple Fiber from Korea for client Geum Poong Corporation.
- Termination at the ITC preliminary phase of the AD investigation on Anhydrous Sodium Sulfate from Canada for importer client Procter & Gamble.
- Exclusion of the Latvian steel industry from the Section 201 Global Safeguards Investigation on Steel on behalf of the Government of Latvia.
- Successfully securing separate rates for numerous Chinese clients through Separate Rate Applications in AD cases.

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# QUESTIONS?

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# THANK YOU.

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