Alan F. Holmer* and Judith Hippler Bello†

CURRENT DEVELOPMENTS

U.S. Import Law and Policy Series: Suspension and Settlement Agreements In Unfair Trade Cases

Editor's Note: This article is the first of a series of articles which will appear in THE INTERNATIONAL LAWYER *about the increasingly important U.S. trade laws. Since the antidumping and countervailing duty law was revised in 1979, one of the most rapidly developing and hotly debated issues has been suspension and settlement agreements. This article is the first comprehensive discussion of the Department of Commerce's experience with such agreements, and the positions it has formulated based on that experience.*

I. Legal and Regulatory Framework

In amending the antidumping (AD) and countervailing duty (CVD) law in the Trade Agreements Act of 1979,[1] Congress sought to limit the discretion that the Department of the Treasury had previously enjoyed in administering that law. For example, it established precise deadlines for investigations,[2] required annual reviews of AD/CVD orders,[3] provided greater transparency in proceedings,[4] and expanded judicial review opportunities.[5]

*Deputy Assistant Secretary of Commerce for Import Administration. The views expressed are those of the authors and not necessarily those of the Department of Commerce.
†O'Melveny & Myers; formerly Deputy (for Policy) to the Deputy Assistant Secretary of Commerce for Import Administration.

[1]93 Stat. 151, amending the Tariff Act of 1930, as amended, 19 U.S.C. § 1671 *et seq.*
[2]*See, e.g.*, sections 702(c), 703 and 705(a)(1) and (b)(2) for CVD cases; and 732(c), 733 and 735(a)(1) and (b)(2) for AD cases.
[3]Section 751 of the Act, 19 U.S.C. § 1675.
[4]*See, e.g.*, sections 774 (hearings) and 777 (access to information) of the Act, 19 U.S.C. §§ 1677c, 1677f.
[5]Title X of the Act, 19 U.S.C. § 1516a *et seq.*

Moreover, the responsibility for administering the AD/CVD law was transferred from Treasury to the Department of Commerce.[6] Yet in one significant respect, Congress broadened Commerce's[7] discretion: it authorized the Department to suspend AD and CVD investigations.[8]

A. Suspension Agreements

Section 704 of the Tariff Act of 1930, as amended (the Act),[9] provides for several kinds of suspension agreements in CVD investigations:[10] agreements to cease exports to the U.S.; agreements under which the foreign government eliminates subsidies, or exporters accounting for substantially all exports renounce subsidies; agreements under which the subsidies are completely offset (as through an export tax); and agreements eliminating injurious effect, including quota agreements with a foreign government (but not with exporters).

---

[6]*See* section 2(a) of Reorganization Plan No. 3 of 1979, 44 Fed. Reg. 69273 (1979), not disapproved by Congress under 5. U.S.C. § 906; and section 1-107 of Exec. Order No. 12188, 3 C.F.R., 1980 Comp., p.131; as amended by Exec. Order No. 12292, 3 C.F.R., 1981 Comp., p.134. Under section 1-101(a)(5) of the executive order, the U.S. Trade Representative ("USTR") is authorized to negotiate AD/CVD suspension agreements. Yet in view of Commerce's conduct of the investigations, it instead has negotiated all suspension agreements (in consultation with the office of the USTR). The Deputy USTR recently led discussions of an injurious effect suspension agreement with Brazil in steel CVD investigations, but the investigations were concluded rather than suspended. *See* note 28, *infra*.

[7]The AD/CVD law refers simply to the "administering authority." *See, e.g.*, section 701(a)(1) of the Act, 19 U.S.C. § 1671(a)(1). Reorganization Plan No. 3 of 1979 and Exec. Order No. 12188, *supra*, make Commerce the "administering authority."

[8]Prior to 1980, Treasury was expressly authorized to "discontinue" AD (but not CVD) investigations. Section 201(b)(1)(c) of the Antidumping Act, 1921, 19 U.S.C. § 160(b)(1)(c). Consequently, CVD investigations never were suspended or discontinued. Even AD investigations were discontinued only when the margin of dumping was minimal, price revisions to eliminate such margins were made, and assurances were made that eliminated any likelihood of future LTFV sales. Separate grounds for discontinuance were termination of sales to the United States and unspecified "other circumstances" that made discontinuance appropriate (19 C.F.R. § 153.33, (1977 ed.)). The requirement of "minimal" margins generally meant that the LTFV margins be no greater than a 1 percent weighted average on all sales by the exporter. This requirement severely limited the number of discontinuances. On the other hand, Treasury, unlike Commerce, could and would discontinue investigations as to particular exporters, while proceeding to a normal conclusion with other exporters not eligible for discontinuance or not offering the requisite price assurances (*see, e.g., Motorcycles from Japan*, 43 Fed. Reg. 48754 (1978)).

Under section 303(d) of the Act, 19 U.S.C. § 1303(d), Treasury was also authorized to waive countervailing duties for several years during multilateral trade negotiations that led to conclusion of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (usually referred to as the Subsidies Code).

[9]19 U.S.C. § 1671. Section 704 implements Article 4(5) of the Subsidies Code.

[10]Because of the use of the term "investigation," suspension agreements may not be accepted once an AD or CVD order is issued. Annual administrative reviews under section 751 of the Act are "proceedings" rather than "investigations." *See* 19 C.F.R. §§ 353.11(b) and 355.6(b), and S. Rep. No. 249, 96th Cong., 1st Sess. 46, 62 (1979).

Section 734[11] provides for fewer kinds of suspension agreements in AD investigations: agreements to cease exports to the U.S.; agreements to eliminate completely sales at less than fair value (LTFV); and agreements eliminating injurious effect (but not including quota agreements). Any CVD or AD suspension agreement is prohibited unless: Commerce is satisfied that suspending the investigation is in the public interest; effective monitoring of the agreement by the U.S. is practicable; and the agreement precludes surges of exports to the U.S. during the maximum six-month period allowed for eliminating or offsetting subsidies or for ceasing exports.[12] Additional requirements must be satisfied for injurious effect agreements.[13]

The procedures for suspension agreements are the same in AD and CVD investigations. Before suspending, Commerce must notify petitioner, other parties, and the International Trade Commission (ITC) not less than 30 days in advance; give petitioner a copy of the proposed agreement and explain how it will be enforced; and consider parties' comments on the proposed agreement. When Commerce does suspend, it must issue an affirmative preliminary determination if it has not already done so.[14] The suspension

[11]19 U.S.C. § 1673c. Section 734 implements Article 7 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (usually referred to as the Antidumping Code).

[12]Sections 704(d) and 734(d) of the Act. The six-month period does not apply to AD agreements to cease sales at LTFV, or to AD or CVD injurious effect agreements.

[13]An AD or CVD injurious effect suspension agreement is authorized only when the investigation is: (1) complex (involves many transactions or adjustments (AD) or a large number of complicated subsidies (CVD), novel issues (both AD and CVD), or a large number of firms (AD) or exporters (CVD)); *and* (2) suspension will be more beneficial to the domestic industry than continuation of the investigation. Some believe that the latter requirement comes close to giving petitioner veto power. As Senator Heinz remarked during floor debate on the Trade Agreements Act of 1979:

> I would find it very difficult to believe a judgment that the domestic industry would benefit more from a suspension than a completed investigation if that industry had expressed its opposition to such an action.

125 Cong. Rec. 20168 (1979).

[14]Sections 704(e) and 734(e) of the Act. Under sections 704(f) and 734(f) of the Act, once Commerce suspends an investigation (other than through an injurious effect agreement), any suspension of liquidation by virtue of an affirmative preliminary AD or CVD determination is terminated or does not go into effect. Commerce then refunds any cash deposit or releases any bond or other security. If Commerce concludes an injurious effect suspension agreement, liquidation continues to be or becomes suspended. Yet Commerce may adjust the security required to reflect the effect of the agreement.

Under sections 704(f)(3) and (g) and 734(f)(3) and (g), Commerce and the ITC must continue their investigations despite suspension if exporters (accounting for substantially all exports) or a U.S. interested party requests continuation within 20 days of the suspension. If the continued investigation results in a negative determination by either Commerce (because of no subsidies or no sales at LTFV) or the ITC (because of no injury or threat of injury to the domestic industry, or no material retardation of the establishment of such industry), then the agreement has no force and the investigation is terminated. If both decisions are affirmative, agreement provisions of the Act are implemented through regulations at 19 C.F.R. Parts 353 (for AD investigations) and 355 (for CVD investigations).[15]

The legislative history of the Act clearly indicates that Congress intended suspension agreements to be the exception rather than the rule:

> The suspension provision is intended to permit rapid and pragmatic resolutions of countervailing duty cases. *However, suspension is an unusual action which should not become the normal means of disposing of cases.* The Committee intends that investigations be suspended only when that action serves the interests of the public and the domestic industry affected. For this reason, the authority to suspend investigations is narrowly circumscribed.[16]

---

then the agreement continues in force so long as it remains in the public interest, may be effectively monitored, and the parties carry out their obligations.

See also sections 704(h) and 734(h), regarding reviews of injurious effect suspension agreements by the ITC to determine whether the injurious effect of imports concerned is completely eliminated by the suspension agreement.

[15]The regulations are slightly more detailed than their statutory counterparts. For example, they define "exporters who account for substantially all of the imports" as those accounting for not less than 85 percent by volume of imports. 19 C.F.R. §§ 353.42(c), 355.31(c). And they define the representative period with which the level of imports should be compared during the maximum six-month phase-out period for export cessation, and for elimination/renunciation or offset of subsidies. 19 C.F.R. §§ 353.42(g), 355.31(g). In most respects the AD and CVD suspension agreement regulations are parallel. But *cf., e.g.*, sections 353.42(g) and 355.31(g), where the Secretary of Commerce is authorized to exclude surging imports in CVD suspensions, but not in AD suspensions.

[16]S. Rep. No. 249, 96th Cong., 1st Sess. 54 (1979)(emphasis added). *See* similar language regarding AD suspension agreements, *id.* at 71. But *cf.* United States Steel Corp. v. United States, 6 CIT ___, Slip Op. 83-53 (June 2, 1983), vacated by United States Steel Corp. v. United States, 7 CIT ___, Slip. Op. 84-639 (Feb. 24, 1984). In reviewing Commerce's Final Affirmative Determinations: Certain Steel Products from South Africa (47 Fed. Reg. 39379 (1982)), Judge Watson interpreted the above legislative history quite differently:

> The tight controls written into the law and the discretion given to the ITA were designed, not to diminish the use of section 704, but primarily to safeguard the interests of the domestic petitioners. . . .
>
> . . .
>
> If, at any time before the end of the investigation, the ITA finds that the foreign interests have (since the commencement of the investigation) acted to end or offered to end the practice alleged or preliminarily found to be a subsidy, then the ITA *must* suspend the investigation of that practice unless it can give a good reason for continuing the investigation. It has the discretion to continue the investigation if it can articulate reasons which are sanctioned by section 704. (emphasis in original) *Id.* at 13, 15-16.

In that case, Commerce made final affirmative determinations, but set a zero estimated duty deposit rate based on South Africa's elimination of all subsidies after the preliminary determinations on June 10 (47 Fed. Reg. 26340 (1982)), but retroactively effective to April 1, 1982. Preferring the protection of a suspension agreement to suspension of liquidation with a zero duty deposit rate, the U.S. industry argued that Commerce should instead have suspended its investigations.

See also Chi Mei Industrial Co., Ltd. v. United States, CIT Court No. 84-2-00250, in which respondent in the AD investigation of Acrylic Film, Strips and Sheets, at Least 0.030 Inches in Thickness from Taiwan, challenges Commerce's refusal to conclude a suspension agreement (*see* note 28, *infra*).

Suspension agreements were also intended to be "a means of achieving the remedial purposes of the law in as short a time as possible and with a minimum expenditure of resources by all parties involved."[17]

B. Settlement Agreements

In addition to suspension agreements, the Act also allows Commerce or the ITC to terminate an investigation after notice to all parties upon petitioner's withdrawal of the petition.[18] These provisions for settlement are similar to Treasury's prior practice in terminating investigations. The legislative history reveals Congress' expectation that investigations be terminated only when in the public interest.[19]

II. Commerce's Experience

A. 1980–Mid-1983

Confronted with the new option to suspend investigations, Commerce initially exercised it cautiously. In its first two years as the administering authority (1980–1981), Commerce suspended only two AD and four CVD investigations.[20]

On January 11, 1982, U.S. Steel Corporation, Bethlehem Steel Corporation and "the Five" (Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel, Inc., National Steel Corporation, and Cyclops Corporation), filed petitions on behalf of the U.S. steel industry, alleging subsidies and dumping on 9 steel products from 11 countries.[21] Further steel petitions were filed on May 7[22] and September 3.[23] These steel petitions inaugurated a new era at Commerce, quadrupling within a single year its caseload of new investigations.[24] In May 1982, Commerce began discussions

[17]H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

[18]Sections 704(a) and 734(a) of the Act.

[19]S. Rep. No. 249, *supra*, at 54, 67. Commerce's regulations permit termination of an investigation only when determined to be in the public interest. 19 C.F.R. §§ 353.41 and 355.30.

[20]All suspension agreements referred to, *supra* and *infra*, are identified and described in charts following this article.

[21]Commerce made preliminary and final CVD determinations in these cases on June 10 and August 24 (47 Fed. Reg. 26300, 39304 (1982)), and preliminary AD determinations on August 9 (47 Fed. Reg. 35646 (1982)). The products covered were: carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet and strip, cold-rolled carbon steel sheet and strip, galvanized carbon steel sheet, hot-rolled carbon steel bars, hot-rolled alloy steel bars, cold-formed carbon steel bars, and cold-formed alloy steel bars.

[22]Commerce issued preliminary CVD determinations on October 4 (47 Fed. Reg. 44818 (1982)). The products covered were carbon steel welded pipes and tubes.

[23]Commerce initiated AD and CVD investigations of steel rails on September 23 (47 Fed. Reg. 42744 (1982)).

[24]In 1981, Commerce conducted fewer than 50 AD/CVD investigations; in 1982, this number quadrupled to about 200.

with the European Communities[25] (EC) aimed at resolving these contentious unfair trade disputes over steel through some means other than through completion of investigations. Ultimately, the U.S. and the European Communities concluded two steel trade arrangements, one on carbon steel products and the other on pipe and tube products. The principal agreement on carbon steel restricts EC exports in 10 major carbon and alloy steel product categories through 1985. In return for this relief from injurious unfair trade, 15 U.S. steel producers withdrew their petitions in 44 AD and CVD cases then pending against imports of EC steel products covered by the arrangement.[26]

In view of its extraordinary settlement of the European steel AD/CVD cases, Commerce was more inclined to conclude suspension agreements with non-European trading partners whose steel was found to be unfairly traded, and who preferred an agreed solution to unilateral imposition by the U.S. of additional duties. In 1982 alone, Commerce entered into ten steel suspensions: three AD agreements, two company subsidy renunciation agreements, one government subsidy elimination agreement, and four government offsetting export tax agreements.[27] In 1982 Commerce also concluded two non-steel subsidy renunciation agreements with Mexico.

Continuing its experiment with suspensions in the first half of 1983, Commerce concluded four more steel suspensions (two offsetting export tax, and two company subsidy renunciations) and three non-steel suspensions (two renunciations and one offsetting export tax).

B. Mid-1983–Present

Since mid-1983, Commerce has concluded only three CVD suspension agreements: On an offsetting export tax; a company subsidy renunciation agreement, and an export cessation agreement. During this same time Commerce rejected requests for suspension agreements in several pending investigations,[28] as well as a request to convert an existing export tax suspen-

---

[25]The European Economic Community and the European Coal and Steel Community.

[26]47 Fed. Reg. 49058 (1982).

[27]In United States Steel Corp. v. United States, 6 CIT ___, Slip Op. 83–73, 569 F.Supp. 864 (1983), *vacated as moot*, 7 CIT ___, Slip Op. 84–12 (Feb. 12, 1984), Commerce successfully defended an attack on the offsetting export tax suspension agreement on carbon steel plate from Brazil, 47 Fed. Reg. 39394 (1982).

[28]Carbon Steel Wire Rod from Brazil: Final Determination of Sales at LTFV, 48 Fed. Reg. 43202 (1983); Final Determinations of Sales at LTFV: Certain Carton Closing Staples and Staple Machines from Sweden, 48 Fed. Reg. 49323 (1983); Final Determination of Sales at LTFV: Acrylic Film, Strips and Sheets, at Least 0.030 Inches in Thickness from Taiwan, 49 Fed. Reg. 10968 (1984) (*see* note 16, *supra*); Preliminary Affirmative Countervailing Duty Determinations and Notice of Terminations of Countervailing Duty Investigations: Certain Carbon Steel Products from Mexico, 49 Fed. Reg. 5142, 17790 (1984) (export tax suspension proposal); Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil, 49 Fed. Reg. 17988 (1984). (The Government of Brazil first proposed an injurious

sion agreement into an injurious effect agreement establishing quotas.[29]

Moreover, Commerce has recently proposed the first two terminations of suspension agreements to which the foreign government concerned has objected.[30] On March 22, Commerce signed notices of its intention to terminate offset suspension agreements with Brazil on carbon steel plate and carbon steel wire rod.[31] Commerce noted evidence that the government of Brazil had failed to comply with the terms of each agreement. Principally, the export tax that should have been collected on all carbon steel plate exports to the U.S. on and after October 1, 1982, and on all carbon steel wire rod exports to the U.S. on and after October 20, 1982, was not collected before May 16, 1983. Even taking into account a 45- to 75-day grace period for collection,[32] tax payments were up to five months late.

C. Present Commerce Attitudes

Based on over four years' experience with suspension agreements and settlements, Commerce has adopted a more stringent and definitive policy with respect to them. Briefly, Commerce takes very seriously the Congressional intent that suspension agreements be unusual actions, and not the normal means of resolving cases.[33]

---

effects agreement involving quotas, and then an export tax suspension agreement, after unilaterally imposing an export tax of 27.42 percent on March 14, 1984, retroactively effective to March 1.); and Galv. carbon steel sheet from Australia: Preliminary determination of sales at LTFV, 49 Fed. Reg. 29993 (1984).

[29]Carbon Steel Plate from Brazil, 47 Fed. Reg. 39394 (1982).

[30]A CVD suspension under which the government of Argentina agreed to eliminate subsidies on leather wearing apparel exported to the U.S. (46 Fed. Reg. 16697 (1981)) was first amended (47 Fed. Reg. 58333 (1982)), and then lapsed when an order was issued (48 Fed. Reg. 11480 (1983)). The Argentine government did not object to issuance of an order.

A CVD suspension under which the government of Uruguay agreed to offset (through an export tax) subsidies on leather wearing apparel exported to the U.S. (46 Fed. Reg. 16921 (1981)) lapsed and an order was issued when the government of Uruguay informed Commerce that it would be unable to eliminate subsidies completely, because of its legal inability to assess taxes retroactively and its practical inability to collect taxes from all companies concerned (47 Fed. Reg. 31032 (1982)). The Uruguayan government did not object to termination or issuance of an order.

[31]49 Fed. Reg. 11864, 11865 (1984). Commerce held hearings on April 17, and posthearing briefs were due April 27. At the time of this writing, Commerce has yet to decide whether to terminate the agreements and to issue CVD orders.

[32]This grace period—for 45 days following the end of the month in which the product was exported—was first expressed in Commerce's analysis of petitioner's comments on the proposed offset suspension agreement on Tool Steel from Brazil, 48 Fed. Reg. 11731 (1983).

[33]House Subcomm. on Trade, 98th Cong., 2d Sess., Report on H.R. 4784, Trade Remedies Reform Act of 1984, at 13 (1984), affirms the 1979 "Congressional intent that the primary remedy for subsidy or dumping practices be offsetting duties." "(I)n most cases, the investigation should be completed and duties imposed rather than permitting the foreign country to continue its unfair practice. . . ." *Id.* at 14.

As the attached chart of suspensions agreements indicates, petitioners' comments have

Commerce is also influenced by the Congressional intent that suspensions be used when they conserve resources of all parties involved, including Commerce. About half the time, Commerce and the ITC have been required to complete their investigations anyway.[34] Moreover, suspension

---

generally grown increasingly hostile, especially toward CVD offsetting export tax suspension agreements. This negativism was communicated to Congress. *See, e.g.*, the following statements at *Options to Improve the Trade Remedy Laws: Hearings before the Subcomm. on Trade, House Comm. on Ways and Means* 98th Cong., 1st Sess. (1983): Statement of Sol C. Chaikin on behalf of the Textile/ Apparel Import Steering Group, at 95,102; Statement of Jim H. Conner, Executive Vice President, American Yarn Spinners Association, on behalf of the Ad Hoc Labor-Industry Trade Coalition (Group of 33), at 254,261; Statement of Terence P. Stewart, Esq., Law Offices of Eugene L. Stewart, appearing as special counsel on behalf of American Spring Wire Corp., Carlisle Tire and Rubber Co., Florida Wire and Cable Co., PPG Industries, Inc. (Glass Division), Roses Inc., SCM Corp. (Consumer Products Division) and the Timken Co., at 739–42, 747–48. *See also* Proposed Reforms of U.S. Trade Laws: Recommendations of the Trade Reform Action Coalition, at 7–8, 10 (June 22, 1983).

As a result, legislation recently introduced in both the House of Representatives and the Senate would eliminate altogether Commerce's authority to suspend a CVD investigation based on an offsetting export tax. Section 121 of S. 2139, the Comprehensive Trade Law Reform Act of 1983, and section 102 of H.R. 4784, the Trade Remedies Reform Act of 1984, would prohibit export tax suspension agreements. The Report on H.R. 4784, *supra*, explains why (at 13):

> The (House Trade) Subcommittee has received many complaints from the private sector about the acceptance of agreements from foreign governments to offset the complete amount of net subsidies as a basis for suspending countervailing duty investigations under section 704(b). Normally, offsets take the form of the foreign government agreeing to impose an export tax equal to the amount of the net subsidy, theoretically equivalent to an import duty. However, there is no verification that the tax is actually being collected. In the case of State-owned enterprises there is no guarantee that the government is not funnelling funds into the enterprise through various indirect assists as a substitute for the subsidy in order to ensure export competitiveness. Any delays in calculation of an export tax will increase benefits to exporters if there are frequent and sharp devaluations of the currency.
>
> Consequently, the Subcommittee believes it necessary to eliminate the authority to accept agreements to impose offsets as a basis for suspending countervailing duty investigations in order to close the present loophole which permits foreign governments to continue their subsidy practices.

H.R. 4784, passed by the House on July 26, would limit Commerce's settlement and suspension authority regarding quota agreements. *See* proposed sections 704(a)(2), 734(a)(2), 761 and 764 of the Act 130 Cong. Rec. H 7938–39, 7942–43 (daily ed. July 26, 1984).

[34]An AD export cessation suspension agreement on Carbon Steel Wire Rod from Venezuela (47 Fed. Reg. 44362 (1982)), and a CVD export tax suspension agreement on Prestressed Concrete Steel Wire Strand from Brazil (47 Fed. Reg. 47048 (1982)), lapsed when, in the continued investigations, the ITC made negative final injury determinations. 48 Fed. Reg. 7821, 17126 (1983). Of 14 investigations continued—13 CVD and 1 AD—Carbon Steel Wire Rod from Venezuela and Prestressed Concrete Steel Wire Strand from Brazil are the only instances in which suspension agreements lapsed because of negative Commerce or ITC final determinations. The other 12 continued investigations were: Leather Wearing Apparel from Argentina, Leather Wearing Apparel from Uruguay, Prestressed Concrete Steel Wire Strand from South Africa, Carbon Steel Plate from Brazil, Pectin from Mexico, Polypropylene Film from Mexico, Certain Stainless Steel Products from Brazil, Yarns of Polypropylene Fibers from Mexico, Frozen Concentrated Orange Juice from Brazil, Tool Steel from Brazil, Steel Pipe and Tube Products from South Africa, and Unprocessed Float Glass from Mexico. Petitioner is

agreements are more difficult to review than AD or CVD orders, because of the necessity to review quarterly monitoring reports and to determine, on a continuing basis, that the agreement remains in the public interest, is capable of being effectively monitored, and is being implemented by the other parties. Consequently, Commerce currently approaches any proposed suspension agreement negatively. Any foreign government or company interested in an agreement should be prepared to present compelling reasons why a suspension is preferable to final Commerce and ITC determinations, despite the greater administrative burden it entails.

The Department generally views AD suspension agreements more negatively than CVD agreements.[35] One reason for this predisposition is that other governments often prefer them to additional unilateral duties. Yet governments are generally far less involved in AD than in CVD matters. In AD cases, then, Commerce lacks a foreign relations motive to suspend investigations.[36] Another reason is that almost all AD suspensions are essentially price undertaking agreements.[37] If the remedy is price-oriented, the issuance of an order imposing potential duties seems more appropriate. Under an order, the domestic industry is better assured that no entries will be liquidated without assessment of appropriate duties.

Commerce is generally less negative about CVD suspension proposals. Most likely to be favorably considered are proposed agreements under which the government concerned eliminates a subsidy program entirely, regardless of the destination of the product (home market, U.S. or elsewhere) and regardless of product coverage. To date, this has not occurred. Less likely to be favorably considered are suspensions under which the companies concerned renounce all subsidies. This has frequently occurred. Of the present 20 CVD suspension agreements, 11 are based on subsidy renunciation. The more widely a benefit is renounced, the more likely Commerce will consider the agreement in the public interest.[38]

---

most likely to request continuation when an export tax is involved, or when the country involved is not, but may become, a "country under the Agreement (Subsidies Code)" under section 701(b) of the Act (and thus become entitled to an injury test). Respondent is most likely to request continuation when it believes the ITC will not find injury.

[35]In fact, Commerce is so negative toward AD suspensions that its current policy is generally to investigate exporters accounting for as little as 60 percent of all exports to the U.S. Suspension agreements require participation by exporters accounting for at least 85 percent of all exports to the U.S.

[36]Although Commerce may not take into account foreign policy considerations in making subsidy or dumping determinations, it believes such factors are relevant to public interest determinations under sections 704(d) and 734(d) of the Act.

[37]Alternatively, exporters can agree to cease exports to the U.S., but that usually isn't an attractive option to them. But *cf.* Carbon Steel Wire Rod from Venezuela, 47 Fed. Reg. 44362 (1982), which involved only one exporter with very small shipments to the U.S.

[38]Foreign companies understandably wish to renounce as few subsidies as possible. They may agree to give up export subsidies on exports to the U.S., but are unlikely to relinquish subsidies

Commerce is decidedly negative about export tax suspension agreements, in view of clear Congressional and industry objections to them. However, it does not absolutely preclude export tax suspension agreements, as evidenced by its conclusion of one in October 1983, based upon petitioner's preference for an export tax suspension and the nature of certain tax subsidies involved.

Of CVD suspensions, Commerce is most negative to agreements based on quotas. It has never concluded one and does not aim to cartelize world trade in any product that happens to come under AD or CVD investigation. Consumers—whose views are relevant to the required determination whether a quota suspension agreement is in the public interest—are seldom as mobilized as the domestic industry.[39]

With settlement agreements, as opposed to suspension agreements, Commerce has a clear statutory option to terminate an investigation if a domestic industry chooses to withdraw its petition.[40] The Administration recently opposed amendments to H.R. 4784 (the Trade Remedies Reform Act of 1984) that would have significantly curtailed its authority to settle cases based on quotas.[41] Yet Commerce has only once negotiated government-to-government quotas leading to termination of AD/CVD investigations based on petition withdrawals.[42] It intends to continue this reserved, cautious approach.

III. Conclusion

While suspension agreements and settlements are useful tools, Commerce today regards them as the exception rather than the rule, and expects

---

on exports to third countries. Many domestic industries think that is not enough. Their view is that money is fungible; as long as export subsidies are still pouring into a company's coffers, renouncing U.S. export subsidies merely reduces rather than eliminates the amount of subsidies benefiting U.S. exports. *See, e.g.*, letter of February 2, 1984, from Eugene L. Stewart, Esq., to Alan F. Holmer, *re* Float Glass from Mexico: Comments on Proposed Suspension Agreement at 6 *et seq*.

[39]An exception to this rule was the countervailing duty investigations of textiles, apparel and related products from the People's Republic of China. In a related public conference held November 3–4, 1983, Commerce heard from many importers, such as K Mart Corp., Zayre Corp., J.C. Penney Purchasing Corp., and the Textile and Apparel Group of the American Association of Exporters and Importers. However, these cases were terminated on December 6, 1983, based on petitioners' withdrawal of their complaint. 48 Fed. Reg. 55492 (1983).

[40]*See, e.g.*, notices terminating investigations of Railcars from Canada (CVD), 48 Fed. Reg. 6793 (1983); Textiles, Apparel and Related Products from the PRC (CVD), *supra*; Lightweight Polyester Filament Fabrics from Japan (AD), 49 Fed. Reg. 4021 (1984); and Certain Carbon Steel Products from Mexico (CVD), 49 Fed. Reg. 17790 (1984).

[41]Letter from Secretary Malcolm Baldrige and Ambassador William Brock to Dan Rostenkowski, Chairman, House Ways and Means Committee, dated April 3, 1984.

[42]On the basis of the U.S.-EC steel arrangements described *supra*, petitioners withdrew petitions and Commerce terminated 44 AD and CVD investigations. 47 Fed. Reg. 49058 (1982).

to conclude relatively few. Parties proposing them should therefore articulate clearly the compelling reasons why Commerce should suspend an AD or CVD investigation.

COUNTERVAILING DUTY SUSPENSION AGREEMENTS

Countervailing Duty Suspension Agreement	Effective Date	Federal Register Cite	Type of Agreement
Leather Wearing Apparel from Argentina[1]	3/13/81	45 Fed. Reg. 16697	Government agreed to eliminate subsidies export tax.
Leather Wearing Apparel from Uruguay[2]	3/16/81	45 Fed. Reg. 16921	Government imposed export tax.
Leather Wearing Apparel from Colombia[3]	4/2/81	46 Fed. Reg. 19963	Company renounced subsidies.
Sodium Gluconate from the European Economic Community[4]	11/30/81 6/1/83	46 Fed. Reg. 58132 48 Fed. Reg. 24411	Company renounced subsidies. Under supplemental agreement, another company renounced subsidies.
Prestressed Concrete Steel Wire Strand from South Africa[5]	5/21/82	47 Fed. Reg. 22137	Company renounced subsidies.
Carbon Steel Plate from Brazil[6]	9/7/82	47 Fed. Reg. 39394	Government imposed export tax.
Carbon Steel Wire Rod from Brazil[7]	9/27/82	47 Fed. Reg. 42399	Government imposed export tax.
Carbon Steel Wire Rod from Argentina[8]	9/27/82	47 Fed. Reg. 42393	Government agreed to eliminate subsidies.
Prestressed Concrete Steel Wire Strand from Brazil[9]	10/22/82	47 Fed. Reg. 47048	Government imposed export tax.
Steel Wire Rope from South Africa	12/1/82	47 Fed. Reg. 54130	Company renounced subsidies.
Pectin from Mexico[10]	12/7/82	47 Fed. Reg. 54987	Company renounced subsidies.
Polypropylene Film from Mexico[11]	2/7/83	47 Fed. Reg. 54992	Company renounced subsidies.

Small Diameter Welded Carbon Steel Pipes and Tubes from Brazil	12/27/82	47 Fed. Reg. 57551	Government imposed export tax.
Roses and Other Cut Flowers from Colombia[12]	1/18/83	48 Fed. Reg. 2158	Ninety-three companies renounced subsidies.
Certain Stainless Steel Products from Brazil[13]	2/2/83	48 Fed. Reg. 4703	Government imposed export tax.
Yarns of Polypropylene Fibers from Mexico[14]	2/8/83	48 Fed. Reg. 5581	Company renounced subsidies.
Frozen Concentrated Orange Juice from Brazil[15]	3/2/83	48 Fed. Reg. 8839	Government imposed export tax.
Tool Steel from Brazil[16]	3/21/83	48 Fed. Reg. 11731	Government imposed export tax.
Galvanized Steel Wire Strand from South Africa[17]	4/29/83	48 Fed. Reg. 19451	Company renounced subsidies.
Steel Pipe and Tube Products from South Africa	6/1/83	48 Fed. Reg. 24408	Two companies renounced subsidies.
Certain Refrigeration Compressors from Singapore[18]	10/31/83	48 Fed. Reg. 51167	Government imposed export tax.
Unprocessed Float Glass from Mexico[19]	2/28/84	49 Fed. Reg. 7264	Two companies renounced subsidies.
Cotton Shop Towels from Peru	9/ /84	49 Fed. Reg.	Two companies agreed to cease exports of the merchandise to the U.S.

[1]This agreement lapsed and an order was issued March 18, 1983. *See* text note 30, *supra*.

[2]This agreement lapsed and an order was issued July 16, 1982. *See* text note 30, *supra*.

[3]Only known exporter to U.S. voluntarily renounced subsidy on January 6, 1981, prior to Commerce's preliminary affirmative determination on January 14.

[4]First (and to date only) agreement requiring modification because the company that renounced subsidies was found no longer to account for "substantially all" exports to U.S.

[5]Up to 3½ month phase-in period to renounce subsidies.

COUNTERVAILING DUTY SUSPENSION AGREEMENTS (*Continued*)

[6]Commerce has proposed to terminate this agreement because of apparent violations by Brazil. 49 Fed. Reg. 11864 (1984).

[7]Petitioners argued that agreement was not in public interest; Commerce decided that an export tax "*a fortiori* eliminates any injury caused by the net subsidy, without the added expenses to U.S. taxpayers, petitioners, and respondents of completing the investigation." Commerce has proposed to terminate this agreement because of apparent violations by Brazil. 49 Fed. Reg. 11865 (1984).

[8]Same public interest comment by petitioners as in 7 above.

[9]This agreement lapsed when, in the continued investigation, the ITC found no injury. 48 Fed. Reg. 17126 (1983).

[10]Up to 5-month phase-in period to renounce subsidies.

[11]First renunciation suspension to require that company notify Commerce in advance of applying for any new governmental benefits.

[12]Involves record number of manufacturers/exporters in a suspension agreement. Petitioner opposed agreement and argued that Commerce shouldn't implement it absent compelling reasons. Provides that failure of the Central Bank of Colombia to provide timely quarterly monitoring reports will constitute a violation.

[13]Provides that if quantitative restraints affecting U.S. imports are implemented on the subject products, the parties will consult concerning the possibility of modifying or amending the suspension agreement. Quantitative restraints were imposed under section 201 of the Trade Act of 1974, as amended, 19 U.S.C. § 2251 *et seq.*, through Presidential Proclamation 5074 of July 19, 1983, 48 Fed. Reg. 33233 (1983). However, the government of Brazil has not sought to modify or amend the suspension agreement.

[14]Petitioners objected to agreement in absence of establishment and enforcement of a strict, on-going monitoring system.

[15]Brazil wanted an offset to gross subsidy for government-imposed minimum price for oranges paid by exporters of frozen orange juice concentrate.

[16]Petitioners preferred a section 704(c) injurious effects agreement involving quotas; opposed delay in collecting export tax in a hyper-inflationary economy; objected to comparison period for judging surges; wanted Commerce to verify each quarterly monitoring report. First Brazilian export tax agreement expressly to reflect 45- to 75-day grace period for collection of export tax.

[17]Petitioner said Commerce should monitor prices under section 704(c); complained that under other suspensions, same company had renounced subsidies, yet reduced prices to U.S.; argued that company should have to renounce *all* export subsidies, not just subsidies on U.S. exports.

[18]Commerce originally rejected a proposed export tax suspension, and initialed *ad referendum* instead a renunciation agreement. Based on petitioner's preference for an export tax arrangement and the nature of certain tax subsidies received, Commerce ultimately concluded an export tax suspension agreement.

[19]Commerce rejected the Mexican government's proposal for an export tax suspension agreement.

ANTIDUMPING SUSPENSION AGREEMENTS

Antidumping Suspension Agreement	Effective Date	Federal Register Cite	Type of Agreement
Certain Small Electric Motors from Japan	11/6/80	45 Fed. Reg. 73723	Agreement to eliminate completely sales at less than fair value.
Truck Trailer Axle-and-Brake Assemblies and Parts Thereof from Hungary	1/4/82 (signed 12/18/81)	47 Fed. Reg. 66	Agreement to eliminate completely sales at less than fair value.
Sheet Pilings from Canada	9/15/82	47 Fed. Red. 40683	Agreement to eliminate completely sales at less than fair value.
Carbon Steel Wire Rod from Venezuela[1]	10/7/82	47 Fed. Reg. 44362	Company agreed to cease exports of the merchandise to the United States.
Carbon Steel Plate from Romania	1/4/83 (signed 12/27/82)	48 Fed. Reg. 317	Agreement to eliminate completely sales at less than fair value.

[1]This agreement lapsed when, in the continued investigation, the ITC found no injury. 48 Fed. Reg. 7821 (1983).