Buchanan

Introduction to AD & CVD Trade Investigations and Opportunities for Relief from Unfair Trade

Daniel B. Pickard

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Introduction

- Trade Remedy Investigations provide relief against unfairly priced imports.
- Florida Strawberry Growers Association, in conjunction with others, filed a trade remedy investigation on December 31, 2025, before the U.S. Department of Commerce and the U.S. International Trade Commission.
- On March 12, 2026, the Commission reached an affirmative preliminary determination, concluding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of strawberries from Mexico.
- This presentation will provide an overview of trade remedy investigations – what they are, how they work, and the relief they can provide.
- We will use the ongoing strawberries case as an example of the timeline for such investigations.

What Are Trade Remedies?

- Trade remedies are U.S. trade laws that provide relief to companies that have been injured by low priced import competition.
- There are several types of trade remedy laws

Today's presentation will focus on **antidumping** and **countervailing duty** investigations.

Antidumping Law

Members of a domestic industry can utilize the antidumping statute to petition the U.S. government to investigate imports of similar foreign goods and impose compensating duties, if:

(1) Imports are being, or are likely to be, sold in the U.S. at **less than fair value**

&

(2) The domestic industry is either **materially injured** or **threatened with material injury** due to the dumped imports or materially retarded from growing into an established industry due to the dumped imports

Process for AD/CVD Relief from Unfair Trade

- A U.S. industry can file a petition for relief with the U.S. International Trade Commission and Department of Commerce under the Tariff Act of 1930, as amended.
- ITC Preliminary Decision is made within 45 days.
- Then investigation goes to the Department of Commerce.
- Final determination is made no later than 13-months.

The U.S. International Trade Commission

- Independent, Quasi-Judicial Agency
- 6 Commissioners – 3R/3D
- 9 Year Terms
- The ITC is responsible for determining whether the imports are a cause of, or a threat to, material injury to the domestic industry.

Current ITC Commissioners

The current Commissioners of the USITC are:

Amy A. Karpel
Chair

Amy A. Karpel, a Democrat of the state of Washington, is Chair of the U.S. International Trade Commission (USITC). President Joseph R. Biden…

David S. Johanson
Commissioner

David S. Johanson, a Republican from Texas, was nominated to the USITC by President Barack Obama on April 8, 2011, and confirmed by the U.S. Senate…

Jason E. Kearns
Commissioner

Jason E. Kearns, a Democrat of Colorado, was nominated to the USITC by President Barack Obama on January 17, 2017; renominated by President Donald…

What is “Material Injury”

- The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”

Statutory Material Injury Factors

VOLUME

PRICE EFFECTS

ADVERSE IMPACT

Causation

- Although the statute requires the Commission to determine whether the domestic industry is "materially injured or threatened with material injury by reason of" unfairly traded imports, it does not define the phrase "by reason of."
- This evaluation under the "by reason of" standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.

Relief Provided

- If the investigation results in positive determinations from both the DOC and ITC → compensating duties are imposed.
- If there are final affirmative in both antidumping and countervailing investigations → the duties are essentially additive.
- Order is issued as a matter of law for a period of 5 years.
- Can be renewed in 5-year increments thereafter.

Case Study: Strawberries from Mexico

- After the case is filed, Commerce must make a decision to "initiate" the investigation.
- In the vast majority of cases, Commerce initiates.
- Interestingly, in the Strawberries case Commerce found that there was standing to bring the case on a regional basis and a national basis
  - Related parties is an important concept

Case Study: Strawberries from Mexico (Cont.)

- Within 45 days after filing, the Commission must make a preliminary determination as to injury or threat of injury
- Here there was an extra 20 days added to the schedule due to “polling”
- The Commission determined that there was a significant volume of Mexican imports in both absolute terms and relative to U.S. consumption.
- As to price effects:
  - There was underselling of grown strawberries nationwide in 14 of 51 monthly comparisons;
  - Lost sales reported by one of the two responding purchasers in lost sales / lost revenue surveys;
  - On a unit basis, between 2022 and 2024, the increase in unit COGS exceeded the increase in the net sales AUV.
- The Commission made an affirmative determination of injury.

Case Study: Strawberries from Mexico (Cont.)

- Commerce's preliminary determination is expected on June 29, 2026.
- But this deadline will likely be extended by 50 days.
  - June 29, 2026 → **August 18, 2026**
- Commerce selected Driscoll's Operaciones, S.A. de C.V. and Mainland Farms S.A. de C.V. as mandatory respondents.
- There is strong evidence of "dumping" by Mexican imports

Case Study: Strawberries from Mexico (Cont.)

- After Commerce’s preliminary determination:
  - Verification
  - Briefing/Hearing
  - Final determination
- Final ITC determination is expected by January 2027.

Questions?

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Thank You