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**Committee on Anti-Dumping Practices  
Informal Group on Anti-Circumvention**

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## PROCEDURES FOR INVESTIGATING ALLEGATIONS OF EVASION

*Paper from the United States*

The following communication, dated 15 March 2016, is being circulated at the request of the Delegation of the United States.

### Background

Under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (ADA), Members may apply anti-dumping duties after an investigation when the administering authority finds that dumped imports have caused material injury or threat of material injury to a domestic industry. However, exporters, resellers, or importers may try to evade the application of those duties, rendering the measure ineffective and allowing the injurious dumping to continue. Furthermore, such evasion of anti-dumping duties can undermine the effectiveness of the ADA and erode confidence in the rules-based multilateral trading system.

In our previous paper<sup>1</sup>, the United States discussed the dramatic increase in activities expressly designed to evade the application of anti-dumping duties. The paper also mentioned that while participants in such activities can face substantial civil and criminal penalties from domestic customs authorities, the effectiveness of such penalties may be limited.

### Further Action to Combat Evasion

In February 2016, President Barack Obama signed the Trade Facilitation and Trade Enforcement Act of 2015, which puts in place a new mechanism to combat anti-dumping duty evasion<sup>2</sup> and sets deadlines for the investigation of such allegations.<sup>3</sup> More specifically, the Act provides for procedures for investigating allegations of evasion of anti-dumping duty orders, after an allegation is received by the Commissioner of U.S. Customs and Border Protection (Commissioner) and provided the allegation is accompanied by information reasonably available to the party that filed the allegation.

Once a proper allegation is received, the Commissioner shall initiate an investigation if the Commissioner determines that the information provided reasonably suggests that evasion has taken place. During the investigation, the Commissioner may collect such additional information as is necessary to make a determination, including by issuing questionnaires and conducting verifications. If a party subject to the investigation has failed to cooperate by not acting to the best of the party or person's ability to comply with a request for information, the Commissioner may, as part of the determination, use an inference that is adverse to the interests of that party or person in selecting from among the facts available to make the determination.

<sup>1</sup> Antidumping Duty "Evasion Services", G/ADP/IG/W/54 (dated 17 March 2015).

<sup>2</sup> The new law's provisions would also apply to combatting countervailing duty evasion.

<sup>3</sup> The evasion investigation process described in this paper is separate and distinct from any other civil, criminal, or administrative proceedings conducted by the United States.

As an interim measure, if the Commissioner makes a determination based on the investigation that there is a reasonable suspicion that covered merchandise<sup>4</sup> was entered through evasion, the Commissioner must suspend the liquidation of each unliquidated entry of the covered merchandise that entered on or after the date of initiation of the investigation, extend the liquidation for each unliquidated entry that entered before the date of initiation, and take additional measures that are necessary to protect the revenue.

If, following the investigation, the Commissioner makes a determination that covered merchandise was entered through evasion, the Commissioner shall suspend the liquidation of unliquidated entries that are subject to the investigation and that have entered on or after the date of initiation of the investigation, continue the suspension of liquidation made pursuant to the reasonable suspicion determination, and extend the period for liquidating unliquidated entries for covered merchandise entered before the date of initiation.

A person determined to have entered covered merchandise through evasion, or the interested party that filed the allegation that resulted in the initiation of the investigation under the Act, may file an administrative appeal with the Commissioner and, subsequently, seek judicial review of the determination.

The provisions of this new law take effect 180 days after enactment (i.e. on 22 August 2016).

### **One Way to Address an Ongoing Problem**

The United States seeks to highlight one potential solution to address the growing problem of evasion, but it is up to each Member to decide what methods and procedures are right for it, consistent with the WTO agreements. There are a number of issues that each Member must address in coming up with an appropriate approach, such as process for investigating evasion, appropriate notifications to be made to parties, effects of the determination, role of the administering authority, possibility for interim measures, options for administrative or judicial review, and how the results of the investigations are to be publicly disclosed. While these are not all of the issues, they are some of the major issues that were considered in drafting the U.S. law that ultimately was enacted.

The United States believes that it is useful for Members to share and discuss their individual experiences in designing similar processes to address the issue of evasion, whether enacted or being contemplated. Such exchanges will shed light on the challenges of putting such a system in place, as well as what can and is being done. We look forward to hearing the reactions and input from other Members.

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<sup>4</sup> The term "covered merchandise" means merchandise that is subject to an anti-dumping or countervailing duty order.