



# **ANTIDUMPING AND CVD INVESTIGATIONS OF FASTENERS FROM TAIWAN AND CHINA**

---

**Matthew T. McGrath**  
**Barnes, Richardson & Colburn**

[mmcgrath@barnesrichardson.com](mailto:mmcgrath@barnesrichardson.com)

202-628-4700

**November, 2009**

## Nucor AD and CVD Petition

---

- > Filed September 23, 2009
- > Initiated by ITC September 23, 2009
- > Initiated by DOC October 22, 2009
- > Preliminary Negative ITC Determination  
November 6, 2009, report November 17
- > Terminated by DOC and ITC

## Nucor Petitions

---

- > Scope of covered merchandise
  - > Version 1: most low, medium, and high carbon commercial standard nuts, bolts, and capscrews, including standard J429 grade 2, A307A, A194, and specials made to OEM blueprints. Exclusionary suggestions were included in text – cold formed nuts, non structural bolts, modified standards -- but not spelled out in “scope” language.

## Nucor Petitions

- > Scope of covered merchandise
  - > Version 2: Same coverage for all low, medium and high carbon fasteners made to consensus standard, with specific exclusions for carriage bolts, track bolts, socket screws, bent bolts, parts made to an automotive or aerospace manufacturer part number. Further non-scope exclusionary text for proprietary or patented fasteners, but not if they called for a consensus standard.

## Nucor Petitions

---

- > Scope of covered merchandise
  - > Version 3: same consensus standards, simplified exclusion language,

## Initial Issues

---

- > Can a petitioner cover merchandise it does not manufacture?
- > Must other manufacturers join the petition?
- > Can a petitioner revise the scope and details of a petition after filing?
- > What is the schedule of an investigation and how can it change?

## Initial Issues

---

- > What period of sales can be covered?
- > Who is liable for AD duties, and is liability retroactive?
- > Should I ship more immediately, or should I stop, and when?
- > What if the scope is unclear for my products?

## Antidumping 101

- > Dumping = export sales of class or kind of merchandise at prices below “fair” or “normal” value
  - > In a market economy (i.e., Taiwan), normal value is home market price or third country market price of the foreign like product.



## Antidumping 101 (cont)

- > In a non market economy (i.e., China), normal value is based on factors of production, applied to surrogate values of such products in a market economy which is at the same level of development as the NME, and is a “significant producer” of comparable merchandise.
- > China NME surrogate is usually India

## Antidumping 101 (cont)

- > “Export Price” is used for sales to an unrelated purchaser, adjusted by packing, movement costs, export taxes, and rebated foreign import taxes
- > “Constructed Export Price” is used for sales in the US by a party related to the exporter, with additional deductions for US cost and profit

## Antidumping 101 (cont)

- > Allegedly dumped imports must be a cause of “material injury” or “threat” to a domestic industry producing a like product
  - > Preliminary standard is “reasonable indication”
    - essentially a *prima facie* showing
  - > “harm which is not inconsequential, immaterial, or unimportant”

## Antidumping 101 (cont)

---

- > Domestic industry may consist of single or multiple industries, depending on the number of “like products”
- > ITC usually looks for “clear dividing lines” between products, based on production, consumer perception, distribution, etc.

## Antidumping 101 (cont)

---

- > Elements of injury evaluation
  - > Cumulation
  - > Related parties
  - > Import volume and trend
  - > Underselling
  - > Market shares
  - > Non-subject (third country) sales impact

## Antidumping 101 (cont)

---

- > Elements of threat evaluation
  - > Foreign production capacity
  - > Rate of growth in market share
  - > Alternative markets
  - > Foreign product shifting

## Countervailing Duties 101

---

- > Export subsidies
- > Import substitution subsidies
- > Grants, loans, equity infusions, loan guarantees, tax credits or deductions, free or cheap goods

## Countervailing Duties 101 (cont)

- > Benefit of infusion or loan: inconsistent with usual investment or lending practice; goods obtained for “less than adequate remuneration”
- > Benefit of goods: measured by prevailing market conditions, including price, quality, availability, marketability, transportation



## Countervailing Duties 101 (cont)

---

- > Specificity required
  - > Limited to an enterprise or industry
  - > If neutral objective qualification criteria exist, specificity not met
  - > Performance can demonstrate specificity on facts, despite objective criteria

## Countervailing Duties 101 (cont)

---

- > Non countervailable subsidies
  - > Research
  - > Disadvantaged regions
  - > Adaptation to environmental requirements
  - > WTO notified program
  - > Certain agricultural subsidies

## How are AD margins determined?

---

- > Respondent selection
- > Mandatory vs. voluntary responses
- > Separate rates applications for Chinese producers
- > Verification
- > All others rate for Taiwan
- > China-wide rate

## Scheduling and Contingencies

---

- > Suspension and deposit date – 160 days
- > Extensions
- > Critical circumstances – deposits can be imposed 90 days retroactively from preliminary determination
- > Adverse Facts Available can affect everyone

## Consequences of an investigation/order

---

- > Cash deposit
- > Annual review and assessment
- > Refunds vs. additional assessment (plus interest); consequence of reimbursement
- > Modification of scope
- > Suspension agreements

## What do I do to prepare?

---

### > Importers

- > Coordination with manufacturers and trading companies
- > Review pricing policies
- > Contract clauses on AD/CVD liability – manufacturers, trading companies, customers
- > Evaluate third country and domestic suppliers

## What do I do to prepare?

---

- > Foreign manufacturers
  - > Review pricing and costs, adjusting for scope & POI
  - > Prepare audit trail in accordance with DOC verification requirements
  - > Prepare for SRAs
  - > Review contract clauses with trading companies and importers
  - > Consider becoming importer of record

## What do I do to prepare?

---

### > Trading companies

- > Evaluate best position for respondent selection, based on
  - > suppliers,
  - > alternative scope coverage,
  - > moving POI
- > Coordinate with manufacturers
- > Prepare for SRA's if necessary



## What do I do to prepare?

- > All participants
  - > **Stay informed**
  - > The factual case changes with passage of time; be aware of different POIs for China and Taiwan
  - > Update India surrogate values
  - > Prepare for ITC questionnaires
  - > Transshipment creates new liabilities

## Questions?

---

- > **Matthew T. McGrath**
- > **Barnes, Richardson & Colburn**
  - > **Washington, DC**
  - > [mmcgrath@barnesrichardson.com](mailto:mmcgrath@barnesrichardson.com)
    - > **202-628-4700**