

Client Advisory

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Customs to Distribute Antidumping and Countervailing Duties to U.S. Industry

On October 18, 2000, the U.S. Senate approved the “Continued Dumping and Subsidy Offset Act of 2000.” Nestled in Title X of an agricultural appropriations bill (H.R. 4461), the Act now heads to President Clinton for his expected signature.

This groundbreaking legislation will require Customs to distribute, on a pro rata basis, the antidumping duties it assesses each year, including interest, to those companies that participated in the original antidumping or countervailing duty investigation (provided those companies remain in operation). Distribution may only be made to a company for the purpose of offsetting the following types of expenses:

- manufacturing facilities
- equipment
- research and development
- personnel training
- acquisition of technology
- health care benefits to employees paid for by the employer
- pension benefits to employees paid for by the employer
- environmental equipment, training or technology
- acquisition of raw materials and other inputs
- working capital or other funds needed to maintain production

Prior to distributing any offset, the law requires Customs to publish notice in the Federal Register of its intent to distribute funds and a list of U.S. companies that are potentially eligible for a distribution. Domestic companies must then apply to Customs for an offset and certify that they qualify prior to receiving any money. Companies that are related to companies that opposed the antidumping or countervailing duty investigation are not eligible for an offset. For duties assessed from October 1, 2000 to September 30, 2001, offsets must be distributed no later than December 1, 2001, and so on for subsequent fiscal years. It is anticipated that Customs will issue regulations to implement the Continued Dumping and Subsidy Offset Act of 2000 shortly.

Prior to passage of this new law, antidumping and countervailing duties were deposited into the general account of the Treasury Department and used for government expenditures.

The new act raises many questions, including what qualifies as “participation” in the original antidumping duty investigation, the method of calculating each company’s “pro rata share” of the duties collected and whether the Court of International Trade or federal district courts will have jurisdiction over disputes related to the disbursements. In addition, it remains to be seen whether the act violates U.S. obligations under the World Trade Organization and whether the offsets themselves constitute subsidies.

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