

AFCJF Alliance for Free Choice and Jobs in Flooring

June 2, 2011

An Open Letter to the Importing Industry:

This is not over! While everyone is pleased and relieved that the DOC was able to sift through many of the absurd claims that the Petitioners made, we cannot afford to sit back and relax. If low rates stay in place and the case goes affirmative, we still have to deal with retroactive liability.

With retroactive liability hanging over our heads, it doesn't matter if the rates are 2%, 20%, or 200%. **With retroactive liability, you may not learn the actual rate for a container of imports for over a year and half after you imported it.**

As an example, for material imported between Nov 2011 and Nov 2012, you will not have a final duty rate assigned until April 2013 or later. The rate at that time will become your actual liability, typically long after you have sold most of your merchandise. Can you wait that long?

In many cases, low rates at a Final were completely reversed in a review, as companies under review chose not to cooperate or changed their business conditions or as surrogate values changed. You might bring a container in with a deposit of 10% and find yourself owing a 100% on it a year later—plus interest.

The preliminary rates were low, but there is no guarantee they'll remain low. In the Wooden Bedroom Furniture case, in the initial investigation dumping margins ranged from 0 to 16%. In every single subsequent administrative review, dumping margins ranged from 18 to over 30% with some dumping margins going to over 200%. Importers assumed that low rates are normal, and much to their pain they learned in the review investigation that is not the norm. Dozens of firms were bankrupted by retroactive liability.

The AFCJF along with other respondents with standing at the ITC have fought hard to get a good result for the preliminary rate. However, the fight continues until the ITC Final Hearing in October.

The AFCJF will host an industry-wide conference call in June. We will have numerous guest speakers, including importers from the Bedroom Furniture case to discuss their experiences. If you are interested in participating in this call, please contact secretary@choiceandjobs.com.

We hope you will join us in the continued battle to ensure the case is dismissed completely in November (the ITC will deliberate for over a month after their hearing before announcing their decision). Only through complete dismissal by the ITC can we continue our business with any type of control over our own destiny. Don't let the Petitioners control your fate—join the Alliance now in going for No in November!

Jonathan Train

President
Alliance for Free Choice and Jobs in Flooring

Did You Know - For Importers

Beyond the tremendous risk inherent in retroactive liability, did you know that:

- **Did you know that that an annual review can be requested by the Petitioners for basically the cost of a stamp?** One reason so many rates go up in later years is that the manufacturers become tired of legal bills and questionnaires and simply stop participating. Their failure to cooperate can mean a huge increase in **your** rates—old and new. Your fate is in their hands and their willingness to continue the battle.
- **Did you know that the DOC is currently holding hearings to make it more difficult for foreign manufacturers to serve as Importers of Record?**
- **Did you know that the ITC does not actually have to find that the domestic industry has been injured by imports to enact an order?** Even if all three Mandatories get a zero, the ITC can still go affirmative on the basis of “threat.”
- **Did you know that if you develop a new product that is outside the current scope, the Petitioners can ask to put it into scope, again, basically for the price of a stamp?** An antidumping case actively discourages innovation in an industry as creating a new design can actually open you to charges of circumvention of scope.
- **Did you know that that the DOC and Customs can completely disagree on the origin of a product and both will win?** This could leave you paying the all country-dumping rate for China on product that you thought was from Malaysia.
- **Did you know that trade lawyers have a phrase about these cases?** They say “first you kill the giant and then you clean up.” China is their first target. Who’s next?
- **Did you know that if all three Mandatories get zeros at the Final, that does NOT result in an automatic dismissal?** In fact, it means that the DOC is completely free to use any “reasonable method” to arrive at a margin from 0 to several hundred percent.
- **Did you know that if a manufacturer changes ownership structure, that can completely invalidate their rate—even if it was zero? And that rates on containers you’ve already imported can be revised?** Recently, in the Tapered Roller Bearings case, the DOC discovered that a Chinese producer with a 0% dumping margin had changed its ownership structure and its name, although it was the same factory. Commerce revoked the 0% dumping rate and started requiring the importers to post the highest dumping margin, 92%, on all past unliquidated entries from that company, creating millions of dollars in liability. As the ownership change happened in 2001, they could theoretically go all the way back to 2001 and collect 92% on those imported containers, creating 10s of millions of dollars in liability for US importers.
- **Did you know that if there is an accusation of fraud in a duty case, the importer can be liable for triple duties, court costs, and interest?**
- **Did you know that a competitor or a disgruntled employee, anyone, can file a case in Federal District Court under the False Claims Act alleging that an importer has fraudulently concealed the true country of origin?** If the court finds against the importer, the accuser receives a percentage of the outstanding duties and fines—potentially millions of dollars.

These are just a few of the facts we think you should know about these cases.