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U.S.-CHINA TRADE

Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties

GAO Accountability·Integrity·Reliability

Highlights

Highlights of GAO-05-474, a report to congressional committees

Why GAO Did This Study

Some U.S. companies allege that unfair subsidies are a factor in Chinese success in U.S. markets. U.S. producers injured by subsidized imports may normally seek countervailing duties (CVD) to offset subsidies, but the United States does not apply CVDs against countries, including China, that the Department of Commerce classifies as "nonmarket economies" (NME). In this report, GAO (1) explains why the United States does not apply CVDs to China, (2) describes alternatives for changing this policy, (3) explores challenges that would arise in applying CVDs, and (4) examines the implications for duty rates on Chinese products.

What GAO Recommends

GAO recommends that Commerce clarify its ability to measure Chinese subsidies and the methodologies it might use in doing so. If (1) Commerce changes China's NME status or (2) Congress decides to authorize application of CVDs to China as an NME, Congress may wish to authorize Commerce to (1) implement China's WTO commitment on third-country information in CVD cases and (2) make corrections to avoid double counting.

Agency officials thought some of GAO's suggested actions unnecessary. GAO maintains they are prudent in light of Commerce's lack of explicit authority in this area and to prepare for potential CVD cases.

www.gao.gov/cgi-bin/getrpt?GAO-05-474.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

What GAO Found

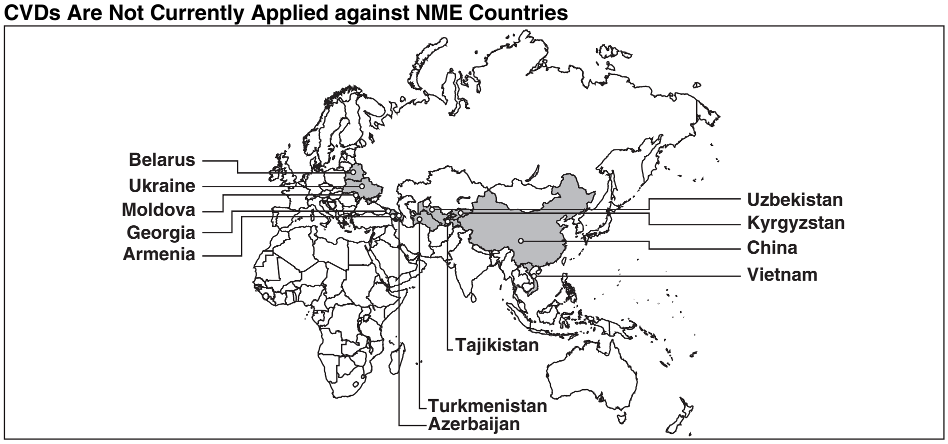
The current Commerce policy of not applying CVDs to NME countries (including China) rests on two principles advanced in 1984 and confirmed by a federal appeals court. These are that Commerce (1) lacks explicit authority to do so, and (2) cannot arrive at meaningful conclusions regarding subsidies in such countries due to government intervention in the economy.

Commerce could reclassify China as a market economy or individual Chinese industries as "market oriented" and apply CVDs against China as a market economy. Commerce has criteria for such determinations, but said that China is unlikely to satisfy them in the near term. It could also reverse its 1984 position and apply CVDs without any change in China's NME status. However, absent a congressional grant of authority, such a decision could be challenged in court, with uncertain results. World Trade Organization (WTO) rules do not explicitly preclude either alternative.

Commerce would face challenges, regardless of the alternative adopted. Chinese subsidies remain difficult to identify and measure. Employing third-country information or "facts available" may help, but would not eliminate these difficulties. Commerce lacks clear authority to fully implement China's WTO commitment on use of third-country information in CVD cases.

It is unclear whether, on a net basis, applying CVDs would provide greater protection than U.S. producers already obtain from antidumping duties. CVDs alone tend to be lower than antidumping duties. If Commerce grants China market economy status, both CVDs and antidumping duties could be applied simultaneously, but required methodological changes could well reduce antidumping duties. It is not clear whether CVDs would compensate for these reductions. Regardless of China's status, some duties might need to be reduced to avoid double counting of subsidies. Commerce lacks clear authority to make such corrections when domestic subsidies are involved.

CVDs Are Not Currently Applied against NME Countries



Sources: Department of Commerce and MapArt.