



June 2013

ANTIDUMPING AND COUNTERVAILING DUTIES

Key Challenges to Small and Medium- Sized Enterprises' Pursuit of the Imposition of Trade Remedies

GAO Highlights

Highlights of [GAO-13-575](#), a report to congressional requesters

Why GAO Did This Study

The United States and many of its trading partners have enacted laws to remedy the unfair trade practices of other countries and foreign companies that cause or threaten to cause material injury to domestic producers and workers. U.S. laws authorize the imposition of AD duties on certain imports that were dumped (i.e., sold at less than fair market value) and CV duties on certain imports subsidized by foreign governments. Commerce and ITC conduct AD/CV duty investigations, most of which are initiated based on petitions filed on behalf of a domestic industry. According to the U.S. Census, in 2010, small and medium-sized enterprises accounted for 45 percent of employment in the manufacturing sector.

GAO was asked to review SME's pursuit of trade remedies. This report examines (1) the extent to which SMEs have petitioned for the imposition of AD/CV duties, (2) key challenges to SMEs' ability to pursue the imposition of AD/CV duties, and (3) assistance provided by Commerce and ITC to help SMEs address these challenges. GAO examined petition data from ITC and interviewed petitioners, trade lawyers, trade association officials, academics, trade experts from the Congressional Research Service, and Commerce and ITC officials. In addition, GAO reviewed AD/CV duty petitions and reports.

What GAO Recommends

GAO is not making any recommendations.

View [GAO-13-575](#). For more information, contact Lawrence Evans, Jr. at (202) 512-4802 or EvansL@gao.gov.

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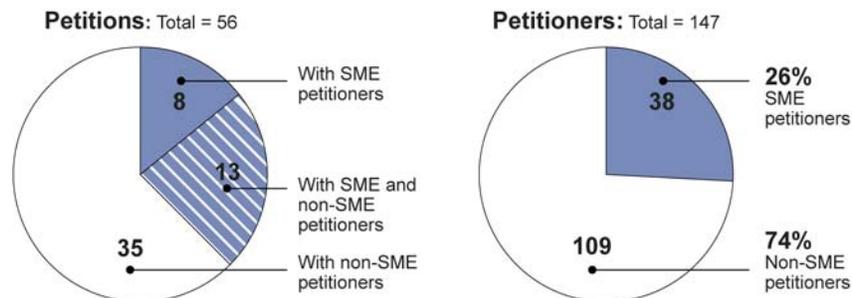
ANTIDUMPING AND COUNTERVAILING DUTIES

Key Challenges to Small and Medium-Sized Enterprises' Pursuit of the Imposition of Trade Remedies

What GAO Found

Some small and medium-sized enterprises (SME)—which are defined by the Small Business Administration's Office of Advocacy as independent businesses with fewer than 500 employees—have petitioned for the imposition of antidumping (AD) and countervailing (CV) duties to seek relief from unfair trade practices. Among the 56 petitions filed between 2007 and 2012, GAO found 21 that included at least 1 SME petitioner. In addition, the 56 petitions represented a total of 147 petitioners, of which 38 were SMEs. The majority of these SME petitioners had annual sales revenue of at least \$10 million. Close to half of the total SME petitioners were in the iron and steel industry. Since participation in the petitions is not mandatory, producers, including SMEs, may benefit from a successful petition even if they choose not to join as a petitioner.

Antidumping and Countervailing Duty Petitions and Petitioners, from 2007 through 2012



Source: GAO analysis of data from ITC, LexisNexis, and Dun & Bradstreet.

SMEs face three key challenges when pursuing the imposition of AD/CV duties: (1) high legal costs, (2) difficulty obtaining domestic and foreign pricing and production data, and (3) difficulty demonstrating industry support. Trade lawyers estimated that the cost of pursuing an AD or CV case during the petition and investigation phases can average between \$1 million and \$2 million and sometimes more, especially if the case involves multiple countries. It is often difficult for prospective petitioners to obtain domestic and foreign pricing and production data required by Department of Commerce (Commerce) and International Trade Commission (ITC) regulations and guidance. In addition, it can be difficult for prospective petitioners to demonstrate enough industry support to meet statutory requirements.

Commerce and ITC both have offices that provide information and assistance to SMEs to help them meet some of the administrative requirements and reduce costs. Commerce has the authority to self-initiate an AD/CV duty investigation without a petition and has used this authority only once since 1991. According to Commerce officials, the Department uses this authority only when it has significant participation from the industry. Self-initiation would likely have little impact on SMEs' overall costs since SMEs incur most costs during the investigation phase. Also, self-initiation could have adverse effects, including raising questions of whether the action was taken consistent with U.S. obligations under international trade agreements.

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Abbreviations

AD	antidumping
APO	Administrative Protective Order
CRS	Congressional Research Service
CV	countervailing
ITC	International Trade Commission
SME	small and medium-sized enterprise
WTO	World Trade Organization

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June 25, 2013

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
House of Representatives

The Honorable Michael H. Michaud
House of Representatives

The United States and many of its trading partners have enacted laws to remedy the unfair trade practices of other countries and foreign companies that cause or threaten to cause material injury to domestic producers and workers. U.S. laws authorize the imposition of antidumping (AD) duties on certain imports that were dumped (i.e., sold at less than fair market value) and countervailing (CV) duties on certain imports subsidized by foreign governments. AD/CV duties are among the most commonly applied U.S. trade remedies. The U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) conduct AD/CV duty investigations, most of which are initiated based on petitions filed on behalf of a domestic industry. According to the U.S. Census, in 2010, small and medium-sized enterprises (SME)—defined by the Small Business Administration’s (SBA) Office of Advocacy as independent businesses with fewer than 500 employees—accounted for 45 percent of employment in the manufacturing sector.¹ Advocates for trade remedies contend that these remedies help ensure a level playing field in a global economy and mitigate the adverse impact of unfair trade practices on domestic industries and workers.

You requested that we review SMEs’ use of trade remedies. This report examines (1) the extent to which SMEs have petitioned for the imposition of AD/CV duties, (2) key challenges to SMEs’ ability to pursue the imposition of AD/CV duties, and (3) assistance provided by Commerce and ITC to help SMEs address these challenges. We also inquired about the use of safeguards—trade remedies that provide temporary relief from injurious surges of imports. Most ITC safeguard investigations are

¹On its website, SBA’s Office of Advocacy defines an SME as an independent business with fewer than 500 employees.

conducted on the basis of a petition filed by a representative of a domestic industry. However, the ITC may be required to conduct investigations at the request of the President or U.S. Trade Representative, or upon resolution of the House Committee on Ways and Means or the Senate Committee on Finance. According to ITC officials, domestic industries may be less likely to seek imposition of safeguards than AD/CV duties because the imposition of safeguards requires Presidential approval and a consideration of the impact of relief on the national economic interest.² Therefore, we focus on AD/CV trade remedies in this report but include information on safeguards in appendix I. Other trade remedies, such as those providing direct assistance to harmed domestic parties or addressing infringement of intellectual property, were outside the scope of our review.

To examine the extent to which SMEs have petitioned for the imposition of AD/CV duties, we analyzed ITC data on AD/CV duty petitions from 2007 through 2012, which included information on companies that were petitioners and non-petitioners. To determine whether a company was an SME, we searched two databases of U.S. businesses—LexisNexis and Dun & Bradstreet—to determine the number of employees and whether a company was a subsidiary of a larger corporation.³ We designated a company as an SME if it had fewer than 500 employees and was not a subsidiary. We analyzed the ITC data to determine the number of SME petitioners and non-petitioners over the past 6 years. To identify key challenges to SMEs' ability to pursue the imposition of AD/CV duties, we interviewed Commerce and ITC officials, three academics, representatives from two industry associations, six trade lawyers, two Congressional Research Service (CRS) trade experts, and two SME petitioners. We selected the academics, industry association representatives, and trade lawyers on the basis of recommendations from CRS trade experts and Commerce and ITC officials. Three of the six trade law firms we spoke with represented 38 percent of the 21 petitions with SMEs filed from 2007 through 2012. We contacted 18 SMEs who filed petitions, but only 2 volunteered to participate in our interview. To

²If ITC makes an affirmative injury determination and the President decides to impose a safeguard, the safeguard may take a few different forms including an increase or imposition of a duty, a tariff-rate quota, or a quantitative restriction on the subject imports.

³LexisNexis is a subscription database that provides legal, government, business, and high-tech information sources. Dun & Bradstreet is a leading source of commercial information and insight on businesses.

examine assistance provided by Commerce and ITC to help SMEs address key challenges, we interviewed several of the same parties as for the prior objective. Finally, while conducting our work, we asked Commerce and ITC officials, CRS experts, and trade lawyers about the use of safeguards. See appendix II for further details of our objectives, scope, and methodology.

We conducted this performance audit from June 2012 to June 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

AD/CV Duty Laws

U.S. laws authorize the imposition of AD/CV duties to remedy unfair trade practices of other countries and foreign companies that cause material injury (or threat thereof) to domestic industries, namely dumping (i.e., sales at less than fair market value), and countervailable foreign government subsidies.⁴ The AD/CV duty laws implement U.S. international obligations under the World Trade Organization (WTO) Agreement on Antidumping, and the Agreement on Subsidies and Countervailing Measures.⁵ Should the United States impose AD/CV duties on a product, the government of the exporting country may institute dispute resolution proceedings against the United States pursuant to the

⁴19 U.S.C. §§ 1671-71h, 1673-73h.

⁵See 19 U.S.C. §§ 1671-71h, 1673-73h; Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201 (AD Agreement); and Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14 (CV Agreement).

WTO Understanding on Dispute Settlement if it believes that the United States has violated its obligations under the WTO agreements.⁶

- *Antidumping duty.*⁷ AD duty law provides relief to a domestic industry that is materially injured, threatened with material injury, or whose establishment is materially retarded by reason of imports sold in the United States at less than fair value. The law provides relief by authorizing the imposition of an additional import duty on the dumped imports. U.S. trade law permits the imposition of AD duties if (1) Commerce determines that the imported goods are or are likely to be sold in the United States at less than fair value; and if (2) ITC determines that a U.S. industry is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise.
- *Countervailing duty.*⁸ CV duty law provides a similar kind of relief to a domestic industry that is materially injured, threatened with material injury, or whose establishment is materially retarded by reason of imported goods that have received certain foreign government subsidies. The law provides relief by authorizing the imposition of an additional import duty on the subsidized imports. U.S. trade law provides that CV duties will be imposed if (1) Commerce determines that the foreign government or any public entity within the foreign country is providing, directly or indirectly, a countervailable subsidy with regard to the manufacture, production, or export of the subject merchandise that is imported or sold (or likely to be sold) for importation into the United States; and (2) if in the case of merchandise imported from a Subsidies Agreement country, ITC determines that a domestic industry is materially injured or threatened with material injury, or that the establishment of a domestic industry is materially retarded, by reason of imports or sales for imports of those goods.⁹

⁶Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

⁷Statutory authority for the imposition of AD duties is found at 19 U.S.C. §§ 1673-1673h.

⁸Statutory authority for the imposition of CV duties is found at 19 U.S.C. §§ 1671-1671h.

⁹A Subsidies Agreement country is defined at 19 U.S.C. § 1671(b).

Key Actors in the AD/CV Duty Process

The process for obtaining the imposition of an AD/CV duty generally involves petitioners and interested parties who support and oppose the petition, trade law firms, Commerce, and ITC. Petitioners and interested parties in support of the petition may include domestic manufacturers, producers or wholesalers, and certain unions and trade associations.¹⁰ Parties in opposition to the petition for the imposition of duties may include foreign exporters and producers, U.S. importers of the articles under investigation, and governments of the exporting countries.¹¹ Law firms that specialize in international trade frequently represent petitioners and the opposing parties before Commerce and/or ITC, the two agencies responsible for conducting AD/CV duty investigations. Commerce determines whether to initiate an AD or CV duty investigation after examining a petition filed on behalf of a domestic industry.¹² Commerce conducts an investigation of dumping and/or subsidies while ITC simultaneously conducts a separate investigation of material injury to a domestic industry. Both Commerce and ITC make preliminary and final determinations before Commerce imposes an AD or CV duty.

Phases of the AD/CV Duty Process

According to Commerce, the process for determining whether to impose an AD or CV duty consists of two key phases: (1) petition and (2) investigation.

Petition Phase

During the petition phase, a prospective petitioner gathers and presents information that might provide a reasonable basis for Commerce to believe that dumping or subsidization of a particular product might be occurring and causing or threatening material injury to a domestic industry, according to Commerce officials. Before deciding whether to petition for the imposition of AD/CV duties, the prospective petitioner considers the costs and benefits of doing so, including the time, administrative requirements, and legal costs associated with the process.

¹⁰U.S. law specifies that an AD or CV duty proceeding shall be initiated when an interested party files a petition. Specifically, sections 1671a and 1673a of Title 19 of the U.S. code state that a petition may be filed on behalf of an industry by an "interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Act (19 U.S.C. § 1677(9))".

¹¹Ibid.

¹²Commerce is also authorized by statute to self-initiate investigations. 19 U.S.C. §§ 1671a, 1673a.

U.S. law specifies that the petition allege the elements necessary for the imposition of the AD or CV duty.¹³ Commerce and ITC regulations require prospective petitioners seeking the imposition of AD/CV duties to provide detailed information, which is reasonably available to the petitioner, in their petition to Commerce and ITC.¹⁴ This information includes the composition of the domestic industry, identity of importers, volume and value of production of the domestic like product by the petitioner and each U.S. producer, and information concerning material injury.¹⁵ Prospective petitioners are also required to include information such as the proportion of total exports to the United States that the petitioners believe each producer is selling at less than fair value or benefiting from countervailable subsidies accounted for during the most recent 12-month period. For AD duty petitions, prospective petitioners should provide pricing and cost information relevant to calculating dumping margins. For CV duty petitions, prospective petitioners should provide factual information relevant to the alleged countervailable subsidy. In addition, prospective petitioners must demonstrate that they have sufficient support from the domestic industry.¹⁶

As prospective petitioners and their legal representatives contemplate whether or not to file a petition, they may request information or assistance from specialized offices within Commerce and ITC, described below:

- *Commerce Import Administration's Petition Counseling and Analysis Unit.* Staff in this unit of Commerce's International Trade Administration are available to help companies understand U.S. trade remedy laws dealing with dumping and countervailable foreign government subsidies and to provide technical assistance with

¹³19 U.S.C. §§ 1671a, 1673a.

¹⁴19 C.F.R. §§ 207.11, 351.202.

¹⁵19 C.F.R. § 351,202.

¹⁶19 U.S.C. §§ 1671a(c)(1)(A), 1673a(c)(1)(A). Regarding the determination of industry support, statutory language for initiating either an AD or CV investigation states that: "the administering authority shall determine that the petition has been filed by or on behalf of the industry if (i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and (ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition."

preparing and filing a petition. According to Commerce officials, the department budgeted about \$440,000 plus agency overhead for the Petition Counseling and Analysis Unit in fiscal year 2012.

- *ITC's Office of Investigations and Trade Remedy Assistance Office.* Office of Investigations staff are available to counsel all companies seeking assistance in understanding the injury phases of AD/CV duty investigations, and regularly provide technical assistance and prepetition counseling to all companies, including SMEs. According to ITC officials, the agency dedicated about \$59,500 plus agency overhead for prepetition counseling and assistance in 2012. The Trade Remedy Assistance Office was established to provide eligible small businesses, small trade and worker associations, and their representatives with additional information and support. According to ITC officials, the agency dedicated about \$74,000 plus agency overhead for the Trade Remedy Assistance Office in fiscal year 2012.

Once a petition is filed, Commerce has sole authority to initiate or not initiate an investigation based on its examination of the petition. In the 20 calendar days after a petition is filed, Commerce examines the proposed scope of the investigation, the domestic like product, industry support for the petition, the adequacy of the dumping or subsidy allegation(s), and the information provided to demonstrate injury, according to Commerce officials. If Commerce decides not to initiate an investigation at this point, the case is closed.

Investigation Phase

During the investigation, Commerce sends a questionnaire to selected foreign producers and exporters (and the foreign government, in the case of a CV duty investigation), to collect information for its determination of whether imports are being dumped or subsidized. Commerce issues supplemental questionnaires as needed, to clarify certain information or obtain additional information. To establish the adequacy and accuracy of information submitted in response to questionnaires and other requests for information, Commerce conducts an on-site examination of the records of the party that provided the information and interviews company personnel who prepared the questionnaire responses and are familiar with the sources of the data in the responses. Commerce uses the information obtained to determine the appropriate amount of duty. According to Commerce, the agency may hold a hearing, upon request, to provide parties with an opportunity to express positions and respond to agency questions about factual and legal issues in the case.

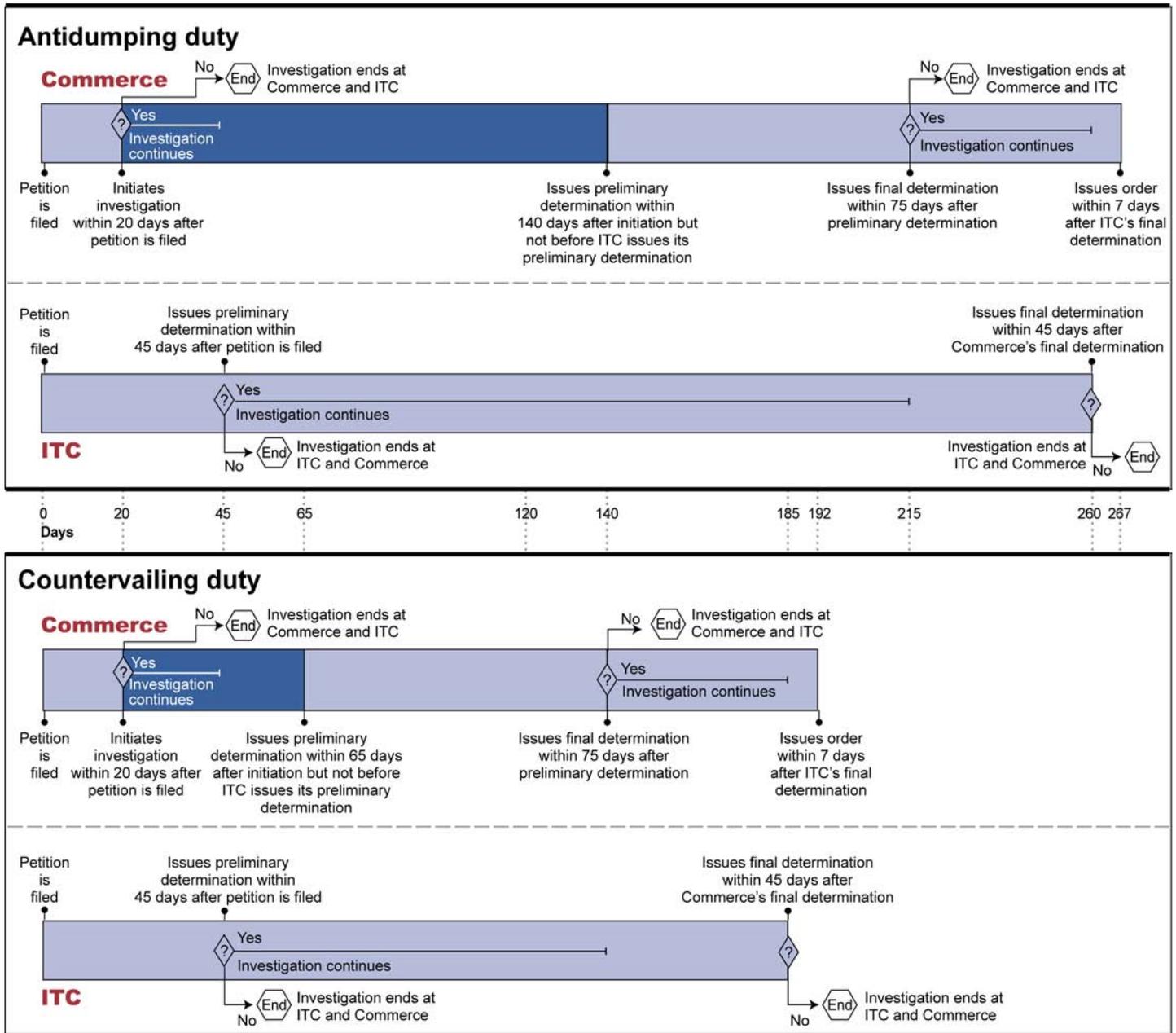
During its simultaneous investigation, ITC sends out separate, detailed questionnaires to collect trade, pricing, and market data from all U.S. producers, U.S. importers, and foreign producers of the product under investigation to determine whether these imported goods are causing material injury to the domestic industry. These questionnaires ask responding U.S. producers to indicate whether they support, oppose, or take no position on the petition. According to ITC officials, all data submitted by firms in questionnaires are treated as business proprietary, and thus, individual producer responses with regard to support of the petition are confidential. During the investigation, ITC holds a hearing that allows petitioners, other domestic producers, and opposing parties, who are typically represented by legal counsel, to express their position on the case and respond to questions that ITC Commissioners may have about factual information or legal issues in the case. Some parties within an industry may not support a petition for an AD/CV duty or at least not publically support a petition for a variety of reasons. For example, the product under investigation may be an input used by a domestic manufacturer or the distributor may represent domestic and foreign producers.

Once a petition is filed, the length of time for completing an AD/CV duty investigation can range from 205 to 420 days, depending on whether it is an AD, CV, or joint AD/CV duty investigation, and the number of extensions applied as permitted under U.S. law. Generally, ITC makes a preliminary decision regarding material injury within 45 days after a petition is filed. If the ITC preliminary decision is negative, the investigation is terminated. If the ITC determination is affirmative, Commerce generally makes a preliminary decision regarding whether imports are being dumped or subsidized within 140 days after initiation for an AD duty case and 65 days for a CV duty case. Even if Commerce makes a negative preliminary decision, the investigation continues until Commerce makes its final decision, generally within 75 days of its preliminary decision. If Commerce's final decision is negative, then the investigation is terminated and no further investigative action is taken by either agency. If Commerce's final decision is affirmative, ITC generally makes a final injury decision within 45 days. If ITC's final decision is affirmative, Commerce issues an AD/CV duty order within 7 days.

Figure 1 shows the petition and investigation phases of the AD/CV duty process and the associated time frames.¹⁷

¹⁷Once an order has been issued both petitioners and opposing parties have the ability to appeal the findings of the agencies and request administrative reviews. According to trade lawyers and an SME petitioner, continued use of trade lawyers during this period may contribute to additional legal costs.

Figure 1: Phases of the Antidumping and Countervailing Duty Process



? Is the determination affirmative? End Investigation ends ITC International Trade Commission

Source: GAO from Commerce and ITC data.

Note: This figure shows generalized time frames for the investigation process, which may be extended or expedited under certain circumstances. See 19 U.S.C. §§ 1671a-71e, 1673a-73e.

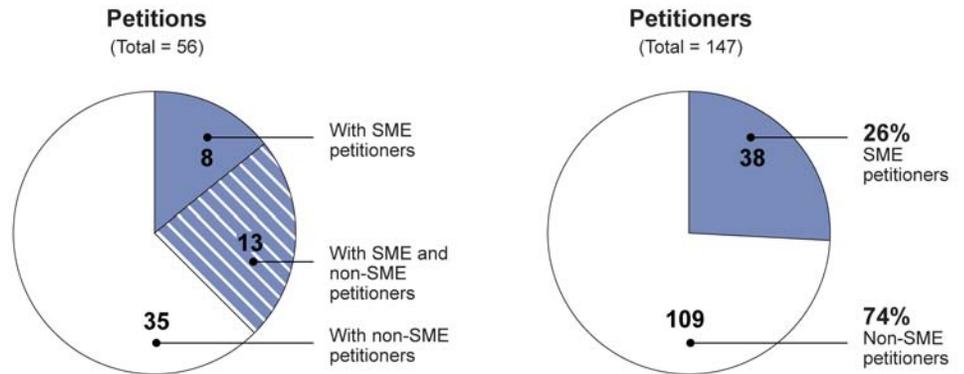
Some SMEs Have Petitioned for the Imposition of AD/CV Duties and Most SME Petitioners Had Annual Sales Revenue of at Least \$10 Million

SMEs Were Listed on a Third of the Petitions for AD/CV Duties and Represented a Quarter of Petitioners over the Past 6 Years

Our analysis showed that some SMEs petitioned for the imposition of AD/CV duties to seek relief from unfair trade practices; over the past 6 years, about one-third of the petitions for AD/CV duties listed SME petitioners and about a quarter of the total number of petitioners were SMEs.¹⁸ As figure 2 (left) shows, from 2007 through 2012, a total of 56 petitions were filed for the imposition of AD/CV duties. Of these, 21 petitions (38 percent) listed at least one SME petitioner, with 8 petitions listing only SME petitioners, and 13 petitions listing both SME and non-SME petitioners. The majority of the petitions (36 petitions, or 63 percent of the 56 total) represented non-SME petitioners. As figure 2 (right) shows, SMEs represented about a quarter of the 147 petitioners named in the 56 petitions filed for the imposition of AD/CV duties from 2007 through 2012. Of these 147 petitioners, 38 (26 percent) were SMEs.

¹⁸In response to our request, ITC gathered the investigation numbers and case names of all AD/CV duty petitions filed during the time period of January 2007 through June 2012 from a publicly available ITC website. ITC then collected the names and locations of the U.S. producers, the harmonized tariff schedule (HTS) codes for the products, and information on whether a producer was a petitioner based on the corresponding public ITC report for each petition. We obtained employment and sales revenue data from business databases, not from ITC questionnaires or reports. Since AD and CV duty petitions may be filed in a single document, we counted an AD and a CV duty petition filed at the same time for one product as one petition. Of the 56 petitions, approximately 66 percent included AD and CV duty petitions filed together, while the remaining 34 percent were either an AD or a CV duty petition filed separately. Once a petition is filed, it can lead to an affirmative or negative decision, it can be withdrawn such as in circumstances where a settlement is reached between the relevant parties, or the investigation can be suspended by Commerce. We did not include any petitions that were filed during this time period but were later withdrawn.

Figure 2: Antidumping and Countervailing Duty Petitions and Petitioners, from 2007 through 2012



Source: GAO analysis of data from ITC, LexisNexis, and Dun & Bradstreet.

The Majority of SME Petitioners Had Annual Sales Revenue of at Least \$10 Million and Close to Half Were in the Iron and Steel Industry

The majority (21) of the 37 SME petitioners, for whom we had data on annual sales revenue, had annual sales revenue of at least \$10 million. Two of the 21 SME petitioners had annual sales revenue of at least \$50 million.¹⁹ In contrast, 3 SME petitioners had annual sales revenue of under \$1 million.

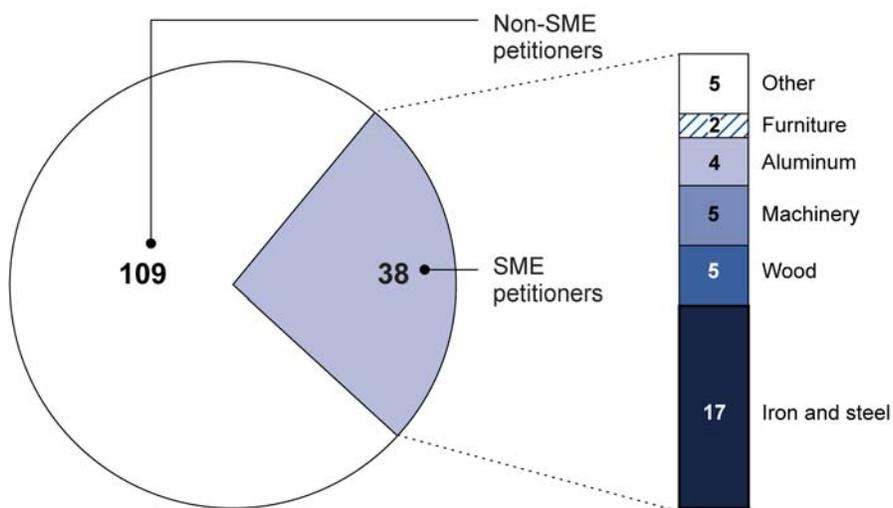
Close to half (17) of the 38 SME petitioners were in the iron and steel industry (see fig. 3). Similarly, close to half (54) of the 109 non-SME petitioners (i.e., those petitioners that did not meet the SBA criteria) were also in the iron and steel industry.²⁰ SME petitioners in the iron and steel

¹⁹We were able to obtain annual sales revenue data for 37 of the 38 SME petitioners from the LexisNexis and/or Dun & Bradstreet business databases. When sales revenue numbers were available in both LexisNexis and Dun & Bradstreet, but did not match, we designated the petitioners to a category (at least \$10 million, at least \$50 million, and under \$1 million) only when the sales revenues fell in the same category according to both databases. This methodology helped us avoid over-counting the number of petitioners in a category because we counted petitioners only if both sources supported the categorization. For example, we did not count 5 petitioners with sales revenue of below \$10 million according to one database but at least \$10 million according to the other database. When sales revenue numbers were available in either LexisNexis or Dun & Bradstreet but not in both, we used that database to designate the petitioners to a category (at least \$10 million, at least \$50 million, and under \$1 million).

²⁰We used the harmonized tariff schedule (HTS) codes in the database ITC provided in response to our request to group the products. Specifically, we aggregated the products at the 2-digit level. We combined HTS Chapter 72 (“Iron and Steel”) and HTS Chapter 73 (“Articles of Iron and Steel”) in one category that we called “iron and steel.”

industry included producers of steel garment hangers, steel nails, drill pipes, and welded stainless steel pressure pipes. Other SME AD/CV duty petitioners included producers of wood products, aluminum products, and machinery, among other things. Table 1 lists the products included in the petitions filed by SME petitioners from 2007 through 2012.

Figure 3: Distribution of Small and Medium-Sized Enterprise Petitioners by Product, from 2007 through 2012



Source: GAO analysis of data from ITC, LexisNexis, and Dun & Bradstreet.

Note: "Other" includes different types of products such as matchbooks, carrier bags, and woven sacks.

Table 1: Products Represented in the Petitions Filed by Small and Medium-Sized Enterprise Petitioners, from 2007 through 2012

Product group	Products	Number of SME petitioners
Other	Matchbooks from India	1
	Certain sodium and potassium phosphate salts from China	1
	1-Hydroxyethylidene-1,1-diphosphonic acid (HEDP) from China and India	1
	Polyethylene retail carrier bags from Indonesia, Taiwan, Vietnam	1
	Laminated woven sacks from China	1
	Subtotal (5)	
Iron and steel	Circular welded pipe from China	1
	Drill pipe from China	2
	Light-walled rectangular pipe and tube from China, Korea, Mexico, and Turkey	3
	Steel garment wire hangers from Taiwan and Vietnam	3
	Steel nails from the United Arab Emirates	1
	Steel nails from China	2
	Steel wire garment hangers from China	2
	Welded stainless steel pressure pipe from China	1
	Galvanized steel wire from China and Mexico	2
		Subtotal (17)
Wood	Multilayered wood flooring from China	5
		Subtotal (5)
Machinery	Large power transformers from Korea	2
	Raw flexible magnets from China and Taiwan	1
	Ni-Resist piston inserts from Argentina and Korea	1
	Tow-behind lawn groomers from China	1
	Subtotal (5)	
Aluminum	Aluminum extrusions from China	4
		Subtotal (4)
Furniture	Wire decking from China	2
		Subtotal (2)
Total		38

Source: GAO analysis based on ITC data.

Producers Can Benefit from Trade Remedies Even If They Do Not File a Petition

Producers of goods under investigation, including SMEs, can benefit from successful AD/CV duty petitions even if they are not petitioners. Producers may support the petition but choose not to join as petitioners to avoid bearing the cost, including petition preparation and representation throughout the proceeding.²¹ In some cases individual petitioners may cover all or most of the legal costs, thereby sparing co-petitioners from paying for any or much of the cost. Additionally, according to Commerce, it is possible that some non-petitioners may support the petition by assuming some of the cost. Trade remedy duties add to the price of foreign imports and can benefit domestic producers of the competing like products, regardless of whether or not they choose to be petitioners. When deciding whether to become a petitioner, a producer weighs the expected benefits against the cost, according to our literature review and interviews we conducted with experts. For a producer with a small share of the market, the expected benefits from a successful petition might be small, leading to a stronger incentive not to share the cost by becoming a petitioner. Petitioners also have to weigh the benefit against the cost of having additional producers join as petitioners.²² For example, more petitioners could help an industry obtain greater resources to use for advocacy and increase the likelihood of a successful petition, but having more petitioners would also require more effort and cost.

It is difficult to measure the extent to which non-petitioners, including SMEs, have benefited from successful AD/CV duty petitions without knowing either how producers allocated the cost among themselves or the specific reasons why certain producers chose not to be named on a petition. Those reasons could include the fear of retaliation from internationally active producers and not wanting to share the cost, as discussed earlier. Public ITC reports do not disclose the position of the non-petitioning domestic producers, unless a non-petitioning producer has publicly disclosed that information. However, we can estimate the maximum number of producers who may have benefited from a duty associated with a successful petition without becoming a petitioner, by calculating the share of non-petitioners within the industry and assuming

²¹While firms can choose whether to be named on a petition, ITC sends questionnaires to all U.S. producers of the goods under question. Completion of the questionnaire is mandatory so non-petitioners will incur some cost as company resources are needed to complete the questionnaire.

²²Olson, Kara M. "Free Riders Among the Rent-Seekers: A Model of Firm Participation in Antidumping Petitions." American University (2004).

that all non-petitioners benefit from successful petitions without having to share the cost. As discussed earlier, ITC typically sends questionnaires to all producers (petitioners and non-petitioners) in the industry during its material injury investigation. Of the 93 SMEs surveyed by ITC for the petitions filed from 2007 through 2012, 38 were petitioners and 55 were non-petitioners. These 55 non-petitioners represent the maximum number of producers that may have benefited from the duty without having to sign on as petitioners and share the cost.

Three Key Challenges Impede SMEs' Pursuit of the Imposition of AD/CV Duties

Knowledgeable parties we interviewed—including Commerce and ITC officials, three academics, representatives from two industry associations, six trade lawyers, two Congressional Research Service trade experts, and two SME petitioners—identified key challenges to SMEs' ability to pursue the imposition of AD/CV duties. The challenges most frequently cited were (1) high legal costs, (2) difficulty obtaining domestic and foreign pricing and production data, and (3) difficulty demonstrating industry support. Other challenges cited less frequently included fear of retaliation and lack of knowledge regarding AD/CV duties.²³

Legal Services Provided during the Petition and Investigation Phases Are Costly

Legal costs associated with pursuing an AD/CV duty case are a key challenge for SMEs. Agency officials and trade lawyers we spoke with stated that it is expensive for SMEs to pursue AD/CV duty cases because the process generally involves trade lawyers. Five of the six trade lawyers we interviewed roughly estimated that the average legal cost for pursuing an AD or CV duty case from petition through the investigation was between \$1 million and \$2 million, with approximately 70 to 75 percent of the cost incurred during the investigation phase.²⁴ One trade lawyer stated that the average cost for pursuing a case could be considerably more than \$2 million, depending on the complexity of the case or whether it involves multiple countries. According to agency officials, prospective

²³We selected knowledgeable parties to interview on the basis of their expertise and to represent the range of interested parties in the area of AD/CV duties; however, they did not constitute a representative sample developed through a comprehensive or systematic selection process.

²⁴To obtain information on legal costs, we asked representatives from each of the six trade law firms for a range of the approximate costs of pursuing AD/CV duties. One declined to respond and the remaining five offered estimates rather than examples of actual fees charged to clients.

petitioners are not required to hire a trade lawyer to file a petition, but legal representation is advantageous because trade lawyers can obtain confidential information from multiple domestic producers and foreign respondents and have the expertise to guide a case through the investigation phase. Trade lawyers or authorized representatives also have the ability to obtain confidential information collected by Commerce or ITC by entering that agency's Administrative Protective Order (APO) system.²⁵ A company would not be able to obtain this information because producers typically seek to protect their pricing and production data from disclosure to their competitors. In addition, trade lawyers or other representatives are able to provide advocacy and guidance through the often complicated proceedings before Commerce and ITC. For example, trade lawyers advocate for their clients and challenge those who oppose the case at public ITC hearings where ITC Commissioners ask witnesses numerous detailed questions to gather more information. Commerce officials were only aware of one instance where a petitioner did not hire a trade lawyer until the investigation phase. In this case, the officials said the petitioner was the sole producer in its industry.

Legal costs may be incurred during each phase of an AD/CV duty investigation, as well as after the investigation is completed. Representatives from all six trade law firms we spoke with told us that the overall legal cost of pursuing an AD/CV duty varies according to the nature of the case. Factors affecting the overall cost include the number of respondent countries and companies, the complexity of the case, the number of products involved, and how much data are available. In addition to the costs associated with pursuing a case through the petition and investigation phases, additional costs may be incurred after the completion of a case during appeals and administrative reviews. For example, SMEs may hire a trade lawyer to represent them if the final Commerce or ITC determination is appealed to the U.S. Court of

²⁵An APO is a legal mechanism that controls the limited disclosure of business proprietary information to interested parties. Since most foreign respondents in AD/CV duty investigations typically request (and receive) business proprietary treatment of their sensitive price, cost, and financial information, interested parties without access to proprietary information under an APO would only be able to review information that is on the public record of the proceeding. Only representatives of interested parties are permitted access to business proprietary information under an APO. The APO prevents companies from receiving each other's sensitive information during the course of AD/CV duty proceedings. Therefore, members of the U.S. industry could not obtain APO access themselves and would require legal counsel (or similar representation) to review this information and comment effectively on the industry's behalf.

International Trade, or further appealed from that court to the U.S. Court of Appeals for the Federal Circuit. SMEs may also use trade lawyers to assist with any requested yearly administrative reviews of a case, which determine the final amounts of duties owed on past imports and set new duty deposit rates for future imports. Trade attorneys look at a range of trade remedy options to potentially address a trade issue, and may advise potential petitioners that seeking the imposition of an AD/CV duty is not in their best interest.

Petitioners are generally responsible for paying their legal costs, and the amount each entity pays depends on the particular circumstances of the case. Two trade lawyers we spoke with stated that in some instances, petitioners may agree to allocate costs according to each petitioner's share of production in the given industry. Another trade lawyer explained that a petitioner with higher revenue may assume most or all the costs. One SME petitioner we spoke with said that his company covered the majority of costs associated with its case because it was the largest producer in a small industry composed of relatively few other companies. In some instances, outside sources such as trade associations may cover some of the costs. For example, a trade association representative shared an example of a case where the association financed legal costs using Continued Dumping and Subsidy Offset Act distributions from a previous case.²⁶

Pricing and Production Data Required during the Petition and Investigation Phases Are Difficult to Obtain

During the petition and investigation phases, it is often difficult for prospective petitioners to obtain domestic and foreign pricing and production data required by Commerce and ITC regulations and guidance. Both Commerce and ITC post guidance on their websites to help prospective petitioners understand the types of data required for a petition and the manner in which it should be presented and organized. Petitioners are required to provide general data such as their name,

²⁶Between fiscal years 2001 and 2004, the Continued Dumping and Subsidy Offset Act (CDSOA) provided over \$1 billion funded from AD/CV duties to U.S. companies deemed injured by unfair trade. Some supporters of the act asserted that CDSOA helped U.S. companies compete in the face of continuing unfair trade. Some opponents, however, asserted that CDSOA recipients received a large, unjustified windfall from the U.S. Department of the Treasury. Eleven WTO members initiated dispute resolution procedures concerning CDSOA. The WTO Dispute Settlement Body (DSB) concluded that CDSOA was not consistent with the WTO agreements, and Congress subsequently repealed the act.

address, and some background information describing the extent of their involvement in the industry. In addition, they must state whether they have filed within the past 12 months, are now filing, or are planning to file for other forms of import relief involving the good in question. Several types of pricing, production, and injury data are also required for the submission of a petition, as follows:

- *Pricing data:* For a CV duty case, prospective petitioners must provide reasonably available information regarding the law, regulation, or decree under which the alleged countervailable subsidy is provided along with the value of the subsidy to the exporters or producers of the subject merchandise. For an AD duty case, prospective petitioners must provide reasonably available data relevant to the calculation of the U.S. price of the merchandise and the normal value of the foreign like product.
- *Production data:* Prospective petitioners must provide a detailed description of the imported merchandise, which should include the classification of the merchandise in the Harmonized Tariff Schedule of the United States. In addition, to the extent reasonably available to them, prospective petitioners should provide the names, addresses, and telephone numbers of the foreign producer(s) and exporter(s) believed to be selling the good at less than fair value or benefiting from a countervailable subsidy. These data must also include the volume and value of each firm's exports of the merchandise to the United States. The same data are required of the firms believed to be importing the merchandise into the United States, to the extent that it is reasonably available. Prospective petitioners should also provide data on domestic production of the merchandise in question and information relating to the degree of industry support for the petition.
- *Injury data:* The petition should contain data to support the allegation that a domestic industry has been materially injured, or threatened with material injury, as a result of the alleged unfair imports. As a part of the injury data, each prospective petitioner should list all sales and revenues lost resulting from the alleged unfair imports during the 3 years preceding the filing of the petition.

Collecting and reviewing detailed pricing and production data during the petition and investigation phases places an administrative burden on SMEs. SMEs have fewer employees than larger firms and generally lack the expertise needed to take on the additional tasks of data collection, according to agency officials. Representatives from all six law firms and agency officials we spoke with agreed that SMEs face challenges when

collecting the pricing and production data for a petition because the data required are extensive and difficult to obtain. An SME petitioner explained that his company employed legal counsel because his company lacked the resources and expertise required to research and gather the data required to file a petition. The SME petitioner further explained that it is particularly difficult to collect and review domestic and foreign pricing data, which are composed of several inputs—such as electricity, water, and raw materials—whose price varies based on geographic location. One trade lawyer we spoke with hired Chinese nationals to assist with data collection for AD/CV duty cases involving China.

Petitioners also face an administrative burden during AD/CV duty investigations. For example, they are required to respond to detailed ITC questionnaires that collect the trade, pricing, and financial data ITC uses in making its determination of whether a domestic industry is materially injured by reason of the imports under investigation. According to ITC officials, the questionnaire is comprehensive and takes approximately 50 hours to complete, which may place a strain on SMEs' limited resources. Two trade lawyers noted that during the investigation phase they review data collected by Commerce from foreign respondents. For example, a trade lawyer may conduct research leading to a discovery that data reported by a foreign producer may not be accurate. In such an instance, the trade lawyer may ask Commerce to send a supplemental questionnaire to collect additional data from the foreign producer. According to Commerce officials, this information is important because Commerce uses data in the questionnaire to calculate whether there is dumping or countervailable subsidization and at what level. Trade lawyers also help petitioners determine the precise description of the imported goods, which according to Commerce, it uses to ascertain the scope of an investigation. For example, a 2010 AD order on seamless refined copper pipe and tube from China and Mexico defined the product very narrowly as "seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter..." The scope definition went on to define the product with even greater specificity.²⁷

²⁷See "Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value from Mexico," 75 Fed. Reg. 71070 (Nov. 22, 2010).

Demonstrating Industry Support for a Petition to Commerce Can Be Difficult

It can be difficult for prospective petitioners to garner sufficient support from other producers to demonstrate to Commerce that the petition will meet the statutory requirement of industry support. A petition meets this requirement if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.²⁸ According to four trade lawyers and agency officials, it can be difficult for SMEs in an industry with numerous producers to organize themselves in order to meet the statutory requirement for industry support. For example, SMEs in geographically dispersed industries with numerous producers—such as aquaculture and agriculture—may need to coordinate with hundreds of domestic producers to obtain the support required for their petition. SMEs may form an industry association to help them coordinate and establish support for a petition. For example, several hundred shrimp producers formed the Coalition of Gulf Shrimp Industries to file a petition on behalf of their industry.²⁹ These producers would have had more difficulty undertaking the necessary steps to file a petition if they had remained an unorganized, geographically dispersed collection of individual companies, according to an SME petitioner from the coalition.

Commerce and ITC Assistance Can Help SMEs Address Key Challenges

Commerce and ITC Staff Help SMEs Obtain Data Required to File a Petition and Review Draft Petitions

Both Commerce and ITC have staff that respond to inquiries and provide information and assistance to SMEs to relieve some of the administrative challenges and costs of filing a petition. Commerce and ITC officials stated that much of the assistance they provide involves helping SMEs obtain the data needed to file a petition and reviewing draft petitions. If a

²⁸19 U.S.C. §§ 1671a, 1673a.

²⁹The domestic producers supporting the petitions accounted for the vast majority of domestic production; they represented the industry across the coastal states of Alabama, Florida, Georgia, Louisiana, North Carolina, Mississippi, South Carolina, and Texas.

petition does not establish that it has the support of domestic producers or workers accounting for more than 50 percent of total domestic production, after a petition is filed Commerce staff will send a polling questionnaire to domestic producers tailored to the product and industry in question, or rely on other information, to determine if the original support criterion is met.³⁰ According to Commerce officials, in cases where the industry is dispersed, they can provide assistance to petitioners in their efforts to form a coalition. For example, after discussing options with Commerce, the numerous shrimp fishing companies and processors formed an association that enabled them to file six AD petitions in 2004, according to Commerce officials and a representative for shrimp producers.³¹ Officials from both Commerce and ITC also stated that staff are on hand to help SMEs obtain publically available data. For example, if prospective petitioners do preliminary work and data gathering with the assistance of Commerce staff in advance of hiring law firms, this may reduce legal costs, according to Commerce officials. In addition, officials from both agencies stated that they frequently review draft petitions and comment on how the petitions can be improved to ensure that they include all the required detailed data to support initiation of an AD/CV duty investigation. According to officials from both Commerce and ITC, the assistance they provide during pre-petition counseling can help reduce the amount of time that trade lawyers would otherwise bill to the client.

³⁰Commerce will poll the domestic industry to determine if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. 19 U.S.C. §§ 1671a(c), 1673a(c).

³¹According to Commerce officials, the agency counts each petition filed against each country as an individual, separate petition. While certain general information (scope, industry support, and injury) will be the same, the allegation of dumping and/or subsidization must be specific to the pricing and evidence of subsidization in that country.

Self-Initiation of AD/CV Duty Investigations May Reduce Some Initial Costs but Could Also Have Adverse Effects

Commerce Reserves Use of its
Authority to Self-Initiate
Investigations to Special
Circumstances

U.S. law authorizes Commerce to initiate an AD/CV duty investigation without a petition, but according to Commerce officials, the department reserves the use of this authority to special circumstances consistent with international trade agreements.³² Commerce has used this authority once since 1991, under special circumstances. In 1991, when Canada unilaterally terminated a 1986 trade agreement with the United States, Commerce self-initiated a softwood lumber investigation.³³ The United States and Canada had entered into an agreement in 1986 regarding the importation of softwood lumber that required the U.S. industry to withdraw its CV duty petition and Commerce to terminate its ongoing CV duty investigation. According to Commerce officials, because the initiation of the softwood lumber case followed a bilateral dispute between the two governments, it is an example of how Commerce applies special circumstances as criteria for using its self-initiation authority.³⁴

Self-Initiation Could Help SMEs
Reduce Some Initial Costs but
Could Also Have Adverse
Effects

Because self-initiation opens an investigation without a petition, it could reduce some initial costs to SMEs but could also have adverse effects, including raising questions of whether the action was taken consistent with U.S. obligations under international trade agreements. Opening an investigation without a petition could reduce the costs that SMEs incur during the petition phase, but would likely have little impact on overall costs because most legal costs are incurred during the investigation phase. For example, one trade lawyer and an official representing a coalition of SMEs suggested that self-initiation could lead to decreased legal costs because less time would be billed and lawyers' involvement

³²See 19 U.S.C. §§ 1671a, 1673a and The Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. Rep. No. 103-826(I) (1994), reprinted in 1994 U.S.C.C.A.N. 3773, 4182. See also Articles 5.1 and 5.6 of the AD Agreement and Articles 11.1 and 11.6 of the CVD Agreement.

³³Self-Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada, 56 Fed. Reg. 56055 (Oct. 31, 1991).

³⁴The United States and Canada have been involved in a longstanding dispute regarding the softwood lumber trade. Canada is the primary exporter of softwood lumber to the United States.

could start at the investigation phase. However, according to Commerce officials, changing the department's practice to permit increased use of its self-initiation authority could be vulnerable in U.S. courts. In addition, Commerce officials stated that the limited use of self-initiation is consistent with language in the World Trade Organization (WTO) Antidumping Agreement, the Subsidies and Countervailing Measures Agreement, and the General Agreement on Tariffs and Trade, which limits the ability to self-initiate investigations to instances in which there are "special circumstances." According to Commerce, the department has limited resources to self-initiate investigations, and self-initiation without significant participation of the industry is unlikely to result in the imposition of duties. Finally, Commerce noted that when it initiates an investigation based on a petition or by self-initiation, its decision is based on information available to it that indicates that a formal investigation is warranted. Therefore, when Commerce initiates an investigation by petition or by self-initiation, it needs the cooperation of the affected industry to help gather information that is generally the same as that required in a petition. According to Commerce officials, the data needed to show that a domestic industry is experiencing injury as a result of dumping or subsidization are most readily available to that same industry. Therefore, Commerce would need significant cooperation and data from domestic producers to meet the requirements to initiate an investigation.

Commerce officials also stated that the United States tries to serve as a role model for other WTO signatory countries, so any increased use of self-initiation could lead to additional adverse effects. For example, other countries might open investigations without the data supporting allegations of unfair trade practices, which are normally included in a petition. In addition, both Commerce and ITC officials expressed concerns that without support and direct participation from domestic producers affected by unfair trade practices, it would be difficult for ITC to obtain the detailed, company-specific information in the 45 days available to it to make a preliminary determination. According to ITC officials, the questionnaires they send to domestic producers to obtain the data that support allegations of material injury are based on product definitions usually included in the petitions. Therefore, if an investigation is initiated without a petition, ITC would lack key information it needs to develop its questionnaires.

Concluding Observations

U.S. AD/CV duty laws implement U.S. international obligations under the World Trade Organization (WTO). If the United States imposes AD/CV duties on a product, a foreign government may institute dispute resolution proceedings against the United States pursuant to the WTO Understanding on Dispute Settlement if it believes that the United States has violated its obligations under the WTO agreements. Commerce and ITC require detailed information to generate sufficient evidence to substantiate a case. High legal costs, difficulty obtaining pricing and production data, and garnering industry support may prove too much of a challenge for many SMEs to overcome. However, these challenges are part of a process designed to ensure that the imposition of AD/CV duties on foreign exports is backed by sufficient evidence of unfair trade practices and is consistent with U.S. law and internationally agreed-upon standards.

Whether or not a U.S. industry ultimately files an AD/CV duty petition is a complex decision made after considering the resources required for the petition and investigation process, whether there is sufficient industry support, and the probable outcome. While both Commerce and ITC provide some assistance to SMEs, in the absence of additional public resources to help SMEs address the challenges of high legal costs and difficulty obtaining pricing and production data, limited options exist to address challenges to pursuing the imposition of AD/CV duties. While increased use of Commerce's authority to self-initiate AD/CV duty investigations could lower some initial costs, its impact would be limited and could strain resources and have other adverse effects, such as foreign governments initiating investigations without data to support allegations of unfair trade practices.

Agency Comments

We provided a draft of this report to the International Trade Commission (ITC) and the Department of Commerce (Commerce) and requested comments, but none were provided. ITC and Commerce both provided technical edits that were incorporated, as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Department of Commerce, the International Trade Commission, the Office of the United States Trade Representative, and the United States Small Business Administration. In addition, this report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact Lawrance Evans at (202) 512-4802 or evansl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Lawrance L. Evans, Jr." in a cursive script.

Lawrance Evans, Jr.
Director, Financial Markets and Community Investment

Appendix I: Safeguards

Safeguard laws give domestic producers relief from surges of imported goods. The principal safeguard laws that the International Trade Commission (ITC) administers include the global safeguards law, the China safeguards law, and various safeguards laws implementing free trade agreements to which the United States is a party, according to ITC officials. Most ITC safeguard investigations are conducted on the basis of a petition filed by a representative of a domestic industry. However, ITC may be required to conduct investigations at the request of the President or U.S. Trade Representative, or upon resolution of the House Committee on Ways and Means or the Senate Committee on Finance. Safeguard laws require action by the President to put relief into effect.

In contrast to the antidumping (AD) and countervailing (CV) duty laws, safeguard laws do not require the finding of an unfair trade practice. Instead, ITC must first find that increased imports are a substantial cause of serious injury (or threat thereof) to a domestic industry producing an article like or directly competitive with the imported article.¹ If ITC makes an affirmative injury determination, it recommends a remedy to the President. The President makes the final decision on whether to apply a remedy measure, and if so, the type, amount, and duration of the remedy. The President may accept or modify ITC's remedy recommendation, or may elect not to impose a safeguard.

According to ITC and Department of Commerce (Commerce) officials, trade experts, and trade lawyers, requests for safeguard investigations have been far less frequent than for AD/CV duty investigations in recent years because of the political uncertainty of whether relief will be granted. Since 2001, safeguard measures have been imposed twice. In 2002, safeguard measures were imposed on imports of certain steel products under the global safeguards provisions following an affirmative ITC injury determination and remedy recommendations in response to a request for investigation made by the U.S. Trade Representative and a subsequent resolution by the Senate Committee on Finance. These measures were in effect from March 2002 until December 2003, when they were terminated by the President following an adverse report by the World Trade Organization Dispute Settlement Body. In 2009 the President imposed higher tariffs on imports of certain passenger vehicle and light truck tires from China under the China safeguard provision following an affirmative

¹19 U.S.C. § 2251.

ITC injury determination and remedy recommendation in response to a petition from a labor union representing U.S. workers producing tires. The safeguard measure on tires from China was in effect between September 2009 and September 2012. China challenged the safeguard measure before the World Trade Organization Dispute Settlement Body, which upheld the measure. Table 2 below shows the final determinations of both ITC and the President for all safeguard cases investigated by ITC from 2000 through 2012.

Table 2: International Trade Commission Determinations and Presidential Determinations on Global and Chinese Safeguard Cases, from 2000 through 2012

Product	Year	ITC disposition	Presidential disposition
Global safeguards			
Crabmeat from swimming crabs	2000	Negative	NA
Extruded rubber tread	2000	Negative	NA
Steel ^a	2001	Affirmative	Affirmative
Chinese safeguards			
Pedestal actuators	2002	Affirmative	Negative
Steel wire garment hangers	2002	Affirmative	Negative
Brake drums and rotors	2003	Negative	NA
Ductile iron waterworks fittings	2003	Affirmative	Negative
Innersprings	2004	Negative	NA
Circular welded non-alloy steel pipe	2005	Affirmative	Negative
Passenger vehicle and light truck tires	2009	Affirmative	Affirmative
Total affirmative decisions		6	2

Source: ITC report on import injury investigations.

Notes:

NA = Not applicable

^aThe safeguard measures encompassed 10 different product categories: (1) certain carbon and alloy flat-rolled steel, (2) tin mill products, (3) hot-rolled bar and light shapes, (4) cold-finished bars, (5) rebars, (6) certain welded pipes and tubes, (7) fittings and flanges, (8) stainless steel bars, (9) stainless steel rods, and (10) stainless steel wires.

Appendix II: Objectives, Scope, and Methodology

Our objectives were to examine (1) the extent to which small and medium-sized enterprises (SME) have petitioned for the imposition of antidumping (AD) and countervailing (CV) duties, (2) key challenges to SMEs' ability to pursue the imposition of AD/CV duties, and (3) assistance provided by Commerce and ITC to help SMEs address these challenges.

To examine the extent to which SMEs have petitioned for the imposition of AD/CV duties, we obtained data from ITC public reports on a total of 406 companies.¹ The ITC data included certain characteristics of petitioners and non-petitioners, which ITC identified as part of the industry, for AD/CV duty petitions filed from 2007 through 2012. These data contained the names and locations of the companies, and the products in question in the petitions. To identify which companies were SMEs, we used a combination of both LexisNexis and Dun & Bradstreet databases to search for the number of employees and affiliation information. Our method for collecting and assessing the information on company employment size and their affiliation to determine whether a company was an SME was as follows:

- We first searched the LexisNexis database for the number of employees and affiliation information of each of the 406 companies.
- If LexisNexis did not contain the company or the number of employees, we then searched Dun & Bradstreet. We were able to find the number of employees for 386 of the 406 companies.
- Based on the information obtained from these two databases, we determined whether the company was an SME using the following criteria: (1) the Small Business Administration (SBA) Office of Advocacy's definition of SME based on the number of employees (i.e. fewer than 500 employees), and (2) the company affiliation information. In other words, we designated companies that were not subsidiaries of a larger company and had fewer than 500 employees as SMEs. If we were unable to determine whether a company was a subsidiary, we did not designate it as an SME. This methodology reflects the overall conservative approach we developed to avoid

¹ITC provided us with a list of 389 companies. Subsequently, we checked their public website and added 17 more companies from a petition filed in 2007 which was missing from ITC's initial list.

over-counting the number of SMEs. We identified 46 SME petitioners at the end of this step.

- As a check on the reliability of the data, for the 46 SME petitioners we identified in the prior step, we conducted a second search in Dun & Bradstreet for the number of employees and affiliation information. For the companies where the number of employees differed, we used the larger employment number to make the final determination as to whether a company was an SME. After this check, we concluded that 38 petitioners were SMEs.² Information on the number of employees for 7 of the 38 SME petitioners came from one database, which we determined to be adequate because there was a high level of correspondence between the two databases. For the 42 companies for which we had employment numbers from both data sources, the employment numbers were largely consistent. There were only two companies for which one source showed under 500 employees and the other showed 500 and over.

To assess the characteristics of the SME petitioners, we analyzed the annual sales revenue and the industry distribution of the 38 SME petitioners. We collected sales revenue data from LexisNexis and Dun & Bradstreet on SME petitioners to determine whether they had annual revenues of \$10 million or more and, whether they had annual revenues of \$50 million or more, or less than \$1 million. Our method for collecting and assessing the information on company sales revenue was as follows:

- We first used LexisNexis and Dun & Bradstreet to find the annual sales revenue for the 38 SME petitioners and were able to find it for 37 companies. Annual sales revenue data for 30 of the 37 companies were in both databases, for 7 in either LexisNexis or Dun & Bradstreet, for 33 in LexisNexis, and for 34 in Dun & Bradstreet.
- For the 30 companies for which we had revenues from both sources, if both the Lexis and Dun & Bradstreet values fell into the same category, we assigned the company to that category. For the category \$10 million and above, 19 companies fell in the same category according to both databases. For the category \$50 million and above, 2 companies fell in the same category according to both databases.

²We only counted the company as an SME if both databases showed that they had fewer than 500 employees.

For the category below \$1 million, 1 company fell in the same category according to both databases. This way of counting the number of companies reflects the overall conservative approach we developed to avoid over-counting the number of SMEs—in this case, those with sales revenues of \$10 million and above or \$50 million and above. As a check on the reliability of the revenue data, we compared the categorization of whether the company had sales revenues of at least \$10 million for the 30 companies for which we had data from both sources. Overall, the level of correspondence in this categorization was 25 out of 30 companies—i.e., the two sources showed 5 companies belonging to different categories and 25 belonging to the same category.

- For the 7 companies for which we had annual sales revenue data from only one database, we used the value obtained from that source. We determined this to be a valid decision based on the relatively high level of concurrence between the two data sources when assessing SME sales revenue. We found 2 companies with annual sales revenue of \$10 million and above, 2 companies with annual sales revenue of less than \$1 million, and no company with annual sales revenue of \$50 million or above.
- We then summed up the number of companies in each category based on the counts we obtained in the two steps described above.

We assessed the reliability of the ITC data on petitions filed from 2007 through 2012 by interviewing agency officials who were knowledgeable about the data. We assessed the reliability of the information obtained from LexisNexis and Dun & Bradstreet by reviewing ITC data to ensure that the company names and locations were consistent. We also reviewed existing information about the databases. When we found inconsistencies between the two databases, we applied a methodology as described above to ensure that we were conservative in our count of SMEs and their revenues. On the basis of these steps we determined that the data were sufficiently reliable for our purposes.

To identify key challenges to SMEs' ability to pursue the imposition of AD/CV duties, we interviewed Commerce officials in the Import Administration Office, Petition Counseling and Analysis Unit, and Office of General Counsel and ITC officials in the Trade Remedy Assistance Office, Office of the Inspector General, and Office of Investigations. In addition, we interviewed three academics, representatives from two industry associations, six trade lawyers, two Congressional Research

Service trade experts, and two SME petitioners. We selected the academics, industry association representatives, and trade lawyers on the basis of recommendations from CRS trade experts and Commerce and ITC officials. We selected a sample of SMEs to interview based on a range of different products represented on petitions. We contacted 18 SMEs who filed petitions, but only 2 volunteered to participate in our interview. The trade lawyers we spoke with represented 38 percent of the 21 petitions with SMEs filed from 2007 through 2012. We administered a set of standard questions to all six trade lawyers we interviewed. To obtain information on legal costs, we asked representatives from each of the six trade law firms for a range of the approximate costs of pursuing AD/CV duties. One declined to respond and the remaining five offered estimates rather than examples of actual fees charged to clients. To identify the data requirements for filing a petition, we reviewed relevant requirements and guidance, including ITC's 2008 *Antidumping and Countervailing Duty Handbook* and applicable statutes and federal code. We also reviewed a sample of petitions submitted by prospective petitioners and ITC reports.

To examine assistance provided by Commerce and ITC to help SMEs address these challenges, we interviewed the same parties as for the prior objective. To obtain information on self-initiation, we reviewed applicable U.S. statutes and international agreements. We analyzed Commerce documents to determine the extent to which self-initiation had been used recently. In addition, we gave Commerce a set of written questions regarding increased use of self-initiation and we examined the department's written responses. Afterwards, we discussed the issue further with trade lawyers, and with Commerce and ITC officials.

We conducted this performance audit from June 2012 to June 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix III: GAO Contacts and Staff Acknowledgments

GAO Contact

Lawrance Evans, Jr., (202) 512-4802 or evansl@gao.gov

Staff Acknowledgments

In addition to the contact named above, Christine Broderick (Assistant Director), Tom Zingale, Ming Chen, and Heather Hampton made key contributions to this report. Vida Awumey, Debbie Chung, David Dornisch, Etana Finkler, Alfredo Gomez, Grace Lui, and Erin McLaughlin provided additional assistance.

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