

ALERT

USTR Strengthens Subsidy Investigations by Removing Developing Country Designations

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On February 10, 2020, the U.S. Trade Representative (USTR) revised the list of developing countries that are entitled to relaxed thresholds in countervailing duty (CVD) investigations at the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC). USTR has not revised this list since 1998. The change makes it easier to file and win subsidy investigations against countries that previously were considered developing countries.

In most CVD investigations, Commerce must terminate a CVD investigation if the total countervailable subsidy margin is *de minimis*, or less than 1%. Similarly, the ITC must terminate an investigation if the imports from a specific country are negligible, meaning the imports account for less than 3% of total imports into the United States.

Developing countries receive preferential treatment: their *de minimis* and negligibility thresholds are 2% and 4%, respectively. With its changes this week, USTR eliminated the developing country status of about 20 countries that account for at least 0.5% of world trade, are members of the European Union, have applied to join the Organization for Economic Cooperation and Development (OECD), or did not declare itself as a developing country when joining the World Trade Organization (WTO). Therefore, Vietnam and China are both ineligible.

Several important economies are now subject to the general rule, making it easier for affected U.S. companies and industries to seek trade relief against subsidized imports from these economies, including: Argentina, Brazil, Chile, Colombia, India, Indonesia, Malaysia, South Africa, Slovenia, and Thailand.

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Moreover, certain least-developed countries were previously entitled to a 3% *de minimis* threshold. With the new designations, both developing and least-developed countries have a *de minimis* threshold of 2%. Economies that are now subject to the lower 2% threshold include Bangladesh, Egypt, and Pakistan.

For a complete list of countries entitled to the special *de minimis* and negligibility thresholds, please see the Federal Register notice, available [here](#).