



CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Douglas W. Elmendorf, Director

March 5, 2012

Honorable Dave Camp
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

At the request of your staff, the Congressional Budget Office has prepared a cost estimate for H.R. 4105, a bill to apply the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economy countries and for other purposes, as introduced on February 29, 2012.

CBO estimates that enacting the bill would not affect revenues in fiscal year 2012, and would increase revenues, net of income and payroll tax offsets, by approximately \$160 million over the 2013–2022 period, relative to receipts under current law.

BACKGROUND

On December 19, 2011, the United States Court of Appeals for the Federal Circuit decided that certain countervailing duties levied by the Department of Commerce on tires imported from China should not have been assessed because countervailing duty law does not apply in the context of a non-market economy such as China's. The Federal Circuit affirmed the holding of the Court of International Trade that such countervailing duties could not be collected but did so on different grounds. As a result of the Federal Circuit's decision, CBO updated its projection of revenues under current law to reflect the expectation that the Department of Commerce will stop imposing countervailing duties on goods imported from nonmarket economies.

CBO's long-standing practice has been to update its projections to reflect changes in law announced by the courts of appeals, but not to reflect decisions of lower courts. This approach reflects the Congress's twin needs

for projections to be as accurate as possible, while generally remaining stable and predictable during a legislative session. It also avoids having CBO substitute its judgment for that of the courts about the merits of particular cases. Finally, it accords with CBO's standard practice to update its projections to reflect non-legislative events when those events are known and definite. In particular, CBO updates estimates to reflect new "facts" such as an administrative action (for example, an agency issuing a final rule), an announced legal settlement between the federal government and private-sector entities, or a judicial decision that affects federal budgetary cash flows (as in the countervailing duties case).

Federal appeals generally are decided by panels of three judges. In the vast majority of cases, decisions by three-judge panels are controlling, but the parties to the lawsuit can seek further appeals in the form of (1) rehearing before the same panel, (2) review before the full appeals court (called an *en banc* session), or (3) review in the U.S. Supreme Court. Federal courts of appeals issue tens of thousands of decisions each year. Only a small fraction of those decisions are the subject of further appeal. For example, one analysis found that during the 1998-2009 period, *en banc* opinions accounted for only about 0.2 percent of all opinions issued by the Federal Circuit (28 out of 15,319).¹ Because further appeals are very rare, CBO does not wait to update its projections until all appeals have been exhausted. However, CBO immediately updates its projections again whenever an appeal is successful.

The Court of International Trade permitted the Department of Commerce to impose countervailing duties while appeals are pending. In this case, appeals are likely to last for many more months. Therefore, CBO's projections of revenues reflect the expectation that the Department of Commerce will continue to impose such duties through fiscal year 2012 and then stop imposing such duties early in 2013 in accordance with current law as announced in the Federal Circuit's decision.

¹ Christopher A. Cotropia, *Determining Uniformity within the Federal Circuit by Measuring Dissent and En Banc Review*, 43 Loy. L.A. L. Rev. 801 (2010). Available at: <http://digitalcommons.lmu.edu/llr/vol43/iss3/19>

ESTIMATED IMPACT ON THE FEDERAL BUDGET


H.R. 4105 would provide authority to the Department of Commerce to impose countervailing duties on government-subsidized goods imported from nonmarket economies (except in certain cases involving those economies under complete government control), in a manner that accords with the agency's practice prior to the Federal Circuit decision, and would extend that authority to all cases that the agency initiated on or after October 1, 2006. Thus, the legislation would grant the Department of Commerce authority that the Court of Appeals for the Federal Circuit held it does not have under current law. CBO estimates that, net of income and payroll tax offsets, enacting the bill would increase revenues by \$160 million over the 2013–2022 period, relative to receipts under current law.

Estimated Budgetary Effects of H.R. 4105

	By Fiscal Year, in Millions of Dollars												2012– 2012-	
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2017	2022	
Estimated Revenues	0	16	16	16	16	16	16	16	16	16	16	80	160	

If you wish further details on this estimate, we will be pleased to provide them. The staff contact is Kalyani Parthasarathy.

Sincerely,


for Douglas W. Elmendorf
Director

cc: Honorable Sander M. Levin
Ranking Member