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Trade Remedy Legislation: Applying Countervailing Action to Nonmarket Economy Countries

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Trade Remedy Legislation: Applying Countervailing Action to Nonmarket Economy Countries

SUMMARY

Unlike antidumping (AD) legislation, which contains specific provisions for its applicability to imports from nonmarket economy (NME) countries, the countervailing duty (CVD) law — although its procedure generally parallels that of the AD law — contains no such provisions. While AD law provides for assessment of AD duties on imports sold in the United States at less than their fair value (as defined in the law), CVD is assessed on imports whose production and/or exportation is publicly subsidized in their country of origin.

Initial administrative attempts in 1983 to apply countervailing remedies to allegedly subsidized imports from several NME countries led to determinations by the International Trade Administration of the Department of Commerce, the U.S. agency charged with determining whether such subsidization in fact exists, that subsidization ("bounties" or "grants") within the meaning of the countervailing law, cannot be found in nonmarket economies.

These determinations were challenged in the U.S. Court of International Trade (CIT), which held that they were "not in accordance with the law," reversed them, and remanded the cases to the ITA. On appeal, the U.S. Court of Appeals for the Federal Circuit reversed, and reinstated the ITA's original determinations. Since this decision, the ITA has not initiated any countervailing investigations of allegedly subsidized imports as such from NME countries.

To prevent further exemption of NME economies from countervailing action (aimed particularly at China and Vietnam), legislation specifically making such action applicable to NME countries was introduced in several previous Congresses (without further action) and has been reintroduced in the 109th Congress.

MOST RECENT DEVELOPMENTS

Legislation to make CVD law applicable to nonmarket economy (NME) countries was introduced in the 103rd, 104th, and 106th through108th Congresses, but saw no further action; it was reintroduced in the 109th Congress as S. 593 and H.R. 1216. In order to assure its consideration in the Senate, Senator Evan Bayh, an original cosponsor, on April 12, 2005, placed a hold on the confirmation of then-Representative Rob Portman as the U.S. Trade Representative until Senate leadership would allow a vote on S. 593; on April 27, 2005, Senator Bayh proposed amendment S.Amdt. 568, identical with S. 593, to H.R. 3, but on April 28, 2005, withdrew the amendment and released the hold.

Administrative determinations had been made and, in effect, judicially affirmed in the mid-1980s that countervailing (CV) action cannot apply to imports from NME countries because, as a matter of law, subsidization within the meaning of countervailing law cannot be found in nonmarket economies.

BACKGROUND AND ANALYSIS

The issue of whether countervailing action, intended to result in the levying of countervailing duties (duties assessed on imports whose manufacture, production, or exporting has been subsidized in their country of origin), applies to imports from nonmarket economy (NME) countries arose in 1983-84 in connection with countervailing investigations of two cases of alleged subsidization, one dealing with carbon steel wire rod imported from Czechoslovakia and Poland, and the other with imports of potassium chloride (potash) from the German Democratic Republic (East Germany) and the Soviet Union, all of them at the time nonmarket economy countries. In a NME, prices of goods and services tend to be set by government authority rather than by market forces.

Countervailing Duty Legislation

At the time these investigations were initiated, the United States had in force two countervailing duty laws. Both provided for the imposition, on imports of already dutiable (but not duty-free) products that have been subsidized in their country of origin, of a countervailing duty in the amount of such subsidization. While both required a determination of the existence and amount of subsidization to be countervailed, they principally differed operationally in that one required also a finding that the subsidized imports have caused or threatened to cause injury to a U.S. domestic industry, and in that one, in actual practice, applied to imports from market economy countries and the other to nonmarket economy countries.

The earlier of the two laws (Section 303 of the Tariff Act of 1930, at the time codified at 19 U.S.C. 1303, but since repealed) was a minimally modified version of the countervailing law of general applicability, initially enacted by the Tariff Act of 1897, and at the time of the two cases applied only to products of countries other than countries "under the agreement." (See next page.) That statute — repealed effective January 1, 1995, by Section 261(a) of the Uruguay Round Agreements Act (URAA) (P.L. 103-465) — provided

for the levying of a countervailing duty (CVD), equal to the net amount of public or private subsidization (defined as "*any* bounty or grant, however the same be paid or bestowed") without any need for injury determination.

Countervailing legislation with much broader country applicability (i.e., to countries "under the Agreement") consisted of comprehensive provisions (including detailed procedural provisions) added by the Trade Agreements Act of 1979 (P.L. 96-39) as Subtitle A of Title VII to the Tariff Act of 1930 (19 U.S.C. 1671-1671h).That law implemented for the United States the provisions of the international Subsidies and Countervailing Code agreed to in multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) in Geneva in April 1979. Under this legislation, most of which is still in force in a somewhat amended language, the assessment of a countervailing duty required — in addition to a determination that a "country under the Agreement" or a private entity in such country was providing "directly or indirectly, a subsidy with respect to the manufacture, production, or exportation" of merchandise imported into the United States — a determination that such imports have caused, or threatened with, injury an industry in the United States, or that the establishment of an industry in the United States is thereby materially retarded.

A "country under the Agreement" meant a country to which the GATT Subsidies and Countervailing Code applied, or which has assumed Code-equivalent obligations with respect to the United States, or with respect to which the President has determined that there is an agreement with the United States containing certain relevant provisions specifically spelled out in the statute.

In addition to repealing Section 303 of the Tariff Act of 1930 (see previous page) and omitting subsidies from a private source as being countervailable, the Uruguay Round Agreements Act also amended the countervailing duty law of the 1979 Act by incorporating into it provisions comparable to those of Section 303, which do not require injury determination in countervailing investigations of subsidized imports from countries other than "Subsidies Agreement countries." The latter have been defined in the same way — with appropriate updating technical changes — as the countries under the Agreement under the Trade Agreements Act of 1979. This version is still in effect (19 U.S.C. 1671(b)).

Countervailing Duty Investigations of Imports from Nonmarket Economy Countries (1983-84; 1991)

1983-84. Parallel countervailing duty investigations of imports of carbon steel wire rod imports from Czechoslovakia *(Carbon steel wire rod from Czechoslovakia*; Investigation C-435-001; 48 F.R. 56419) and Poland *(Carbon steel wire rod from Poland*; Investigation C-455-003; 48 F.R. 56419) were initiated on December 13, 1983, pursuant to petitions filed with the International Trade Administration on November 23, 1983, by four U.S. steel manufacturers. The petitions alleged that manufacturers, producers, or exporters of the product in question in either country received public benefits within the meaning of the countervailing law. Specifically, the petitions for countervailing action alleged that "bounties or grants" were provided in both countries in the form of a multiple exchange rate system, and a partial hard-currency retention program for exporters firms. In addition, Czechoslovakia allegedly had in effect a system of industry-specific trade conversion coefficients for the official exchange rate, and tax exemption for foreign trade earnings,

while Poland provided price equalization payments for losses incurred due to foreign sales below domestic prices.

Both cases proceeded in parallel, and the determinations on issues they had in common were identical (except for a few minor, country-specific differences). Hence, page references to the *Federal Register* included in this issue brief will be only those dealing with the Czechoslovak case, unless an issue specific to one country is discussed.

In its notices of initiation of investigation, the International Trade Administration (ITA) found both countries to be "countries not under the Agreement," and conducted the countervailing procedure according to provisions of Section 303, hence, without the need for determining injury. In addition, the ITA considered both of them nonmarket economy (NME) countries, but specifically pointed out that it had not yet resolved the question "whether the countervailing duty law [either Section 303 or the countervailing duty provision of Title VII] applies to nonmarket economy countries [as such]."

Although this issue had arisen almost a year earlier in connection with a CVD investigation of textile imports from China (48 F.R. 46600), it was not resolved then because the petition for that investigation was withdrawn by the petitioners after the initiation of the investigation and the investigation itself was terminated (48 F.R. 55492). The issue, however, was addressed in the **preliminary determinations** in the two carbon steel wire rod cases (Czechoslovakia: 49 F.R. 6773; Poland: 49 F.R.6768). In both cases, the ITA found that "nonmarket economy countries are not exempted *per se* from the countervailing duty law," since Section 303, by its statutory terms as well as based on its legislative history, applied to "*any* country ..."

Weighing its own tentative initial literal interpretation of the country applicability of the provision and the arguments introduced earlier in the consideration of the China textiles case — focusing on the difference in the effects of government intervention in a market and nonmarket economy — the ITA, however, was "dispose[d] to not exclude nonmarket ... economies from its application without further review in each particular case." The ITA, consequently, had its "first opportunity to determine preliminarily whether practices by a government of a so-called nonmarket economy country confer countervailable benefits."

Focusing on prices as the key elements of subsidization, the ITA, in the ensuing detailed analysis of the situation in both countries, pointed out that

> [i]n nonmarket economies, central planners typically set the prices without any regard to their economic value. As such, these prices do not reflect scarcity or abundance. For example, when a product is scarce in a market economy, its price will increase. In a nonmarket economy, however, the price of a scarce good will not go up unless the central planners mandate a new, higher price. Even if we can identify an internally set price, that price does not have the same meaning as a price in a market economy (49 F.R. 6770).

The ITA then analyzed in detail the alleged subsidization programs by determining first whether they would confer a subsidy in a market economy and, then, whether the conclusion would be different for a NME country. The ITA concluded preliminarily that multiple exchange rates, currency retention schemes, trade conversion coefficients, and price equalization payments do not confer a bounty or grant either in market or in nonmarket

economies; that the Polish adjustment coefficient program did not constitute a bounty or grant within the meaning of the law; and that the agency had not received sufficient timely information on the Czechoslovak tax exemption program to make a determination. On the basis of these findings, the ITA preliminarily determined that, while Congress did not exempt NME countries as such from the CVD law, the alleged Czechoslovak and Polish practices were not providing bounties or grants within the meaning of the CVD law. As the CVD law required, the ITA continued both investigations in their final phase.

In the final phase of these two investigations, the ITA focused on the unresolved issue of the application of the CVD law to nonmarket economy countries. In its detailed and comprehensive **final determinations** in the two carbon steel wire rod cases (Czechoslovakia: 49 F.R. 19370; Poland: 49 F.R. 19374), the ITA first concluded "that Congress never has confronted directly the question of whether the countervailing duty law applies to NME countries." It pointed out that Congress did not even debate, much less legislate on this issue, either in 1974 (when the concept of nonmarket economy countries was introduced into trade legislation and remedies were provided specifically with respect to imports from them, and Congress also amended the CVD law) or in 1979 (when the CVD law was thoroughly restructured, and the application of unfair-pricing remedial legislation was dealt with in detail, but only with respect to dumping by NME countries).

The ITA found it significant that, in the Trade Act of 1974, Congress enacted remedial provisions dealing specifically with injurious imports from "State-controlled-economy' '' or "Communist"' countries — both terms functionally equivalent to that of "nonmarket economy" countries used in another part of the same Act — in the context of antidumping and "market disruption" (NME-specific import-relief action) but not with respect to countervailing action. In this, pointed out the ITA, citing the Senate report on the 1974 Act (Senate Report No. 93-1298), Congress recognized the need for special remedial legislation applicable to State-controlled-economy countries because traditional fair- or unfair-trade remedies were insufficient or have proven inappropriate or ineffective because in "State-controlled-economy countries ... supply and demand forces do not operate to produce prices" and "because of the difficulty of [the] application [of such remedies] to products from State-controlled economies" (cited at 49 F.R. 19373).

Likewise, in the legislative history of the thorough restructuring of the CVD law by the Trade Agreements Act of 1979, there was nothing regarding any aspect of the application of the CVD law to NME countries, although the Subsidies and Countervailing Code of the General Agreement on Tariffs and Trade, implemented for the United States by that Act, in Article 15 "explicitly permits [GATT] signatories to regulate unfairly priced imports from NME countries under either antidumping or countervailing duty legislation" (49 F.R. 19373).

The ITA also consulted with other U.S. government and academic sources, which, briefly, concluded that "it is ... only 'remotely possible' to identify and quantify subsidies in NMEs;" "most of the analysis used thus far for ... subsidies, is entirely inapplicable. ... Theoretically, any given sale may be subsidized or not, but since there is no market reference point, it is idle to speak in such terms." To one author, the countervailing duty law appears to require identification and measurement of a resource transfer from the state to the producer, but "this is simply not a measurable event in the typical nonmarket economy;" and "The extent to which a nonmarket system ... can be said to be subsidising will always be unclear" (all cited at 49 F.R. 19374).

Claiming broad discretion in this matter earlier recognized by the judiciary the ITA concluded (49 F.R. 19374) that a 'bounty or grant," within the meaning of the countervailing duty law, cannot be found in an NME. The ITA also determined that Czechoslovakia and Poland were NMEs, since they operated "on principles of nonmarket cost or pricing structures so that sales or offers for sale of merchandise ... do not reflect the value of the merchandise." Accordingly, the ITA determined that manufacturers, producers, or exporters in Czechoslovakia and Poland did not receive bounties or grants, and issued, effective May 7, 1984, final negative countervailing duty determinations (49 F.R. 19374 and 19378).

Shortly before the completion of the countervailing duty investigations of carbon steel wire rod, two U.S. chemical manufacturers filed (on March 30, 1984) petitions alleging subsidization of potassium (potash) imported from the German Democratic Republic and the Soviet Union, whereupon the respective investigations were initiated as of' April 26, 1984 *(Potassium chloride from the German Democratic Republic;* Investigation C-429-401; and *Potassium Chloride from the Soviet Union;* Investigation C-461-401) (49 F.R. 18000 and 18002). Because of the subsequent determination in the carbon steel wire rod cases that bounties or grants within the meaning of the countervailing duty law cannot be found in a NME (and both countries were determined to be NMEs), the ITA on June 6,1984, rescinded the two potassium chloride (potash) investigations and dismissed the relevant petitions (49 F.R. 23428).

1991. Since the conclusion of the wire rod and potash countervailing duty cases (see next section) the ITA has not initiated any countervailing investigations of allegedly subsidized imports from NME countries, with one specialized exception. Based on a petition filed on October 1, 1991, the ITA, on November 13, 1991, initiated a countervailing duty investigation of *ceiling and oscillating fans imported from China* (Investigation C-578-816; 56 F.R. 57616). The petitioner claimed that, while China was an NME country, "the PRC fans sector operates substantially pursuant to market principles and that the CVD law should apply."

The petition was apparently based on the fact that ITA had, meanwhile, procedurally introduced into antidumping investigations of imports from NME countries the concept of market-oriented industry (MOI) as a means of determining whether an industry in an NME country is sufficiently market-oriented (i.e., free from state control) to enable the ITA to use the economic data provided by the industry itself (rather than those of a surrogate market-economy country) in determining fair market value of the imported product subject to the investigation.

The petitioners in the Chinese fan countervailing duty case claimed that the Chinese fan industry was an MOI with dependable self-provided data (including those relating to subsidization) and, hence, could objectively be subjected to a countervailing investigation. In its preliminary investigation (57 F.R. 10011), the ITA concluded that the prices of several inputs are not market-determined and, hence, the industry cannot be considered an MOI, but believed that the information used as the basis for the determination should be verified and did not rescind the investigation. In its final, more comprehensive phase of the investigation (57 F.R. 24018), the ITA concluded that "the prices of several significant inputs are not market-determined" and therefore "the PC fans industry is not an MOI."... "As a result ... the CVD law cannot be applied to the PRC fan industry" and the ITA issued final negative determination in the case.

Court Decisions Regarding Applicability of Countervailing to NME Countries

*Although this issue brief presents the relevant courts' views in a highly summarized form, it strives not to omit any of their salient points, but is also far from being a legal analysis of such views. If the detail or a legal analysis of the judicial opinions is required, their actual texts, identified in this brief by page references to, respectively, **614 Federal Supplement**, or **801 Federal Reporter 2d**, should be consulted; requests for their legal analysis should be addressed to the American Law Division of the Congressional Research Service.*

U.S. Court of International Trade (614 F. Supp. 548-557). Following the ITA's negative determinations in the carbon steel wire rod cases and the dismissal of the potassium chloride cases, the petitioners challenged those actions in the U.S. Court of International Trade (CIT). The court consolidated both suits and, on July 30, 1985, held that "countervailing duty law covers countries with nonmarket economies in light of fact that governmental subsidies that are target of law may be found in nonmarket economies as well as in market economies" (p. 548). The CIT reversed the carbon steel wire rod cases and remanded them to the ITA for determinations consistent with the court's opinion, and set aside the rescissions of the potash cases and ordered that their investigations be resumed (p. 557).

The CIT, in its detailed opinion, addressed each of the four grounds on which the ITA had based its determination of nonapplicability of countervailing procedure to NME countries: (1) the view that a subsidy cannot be conferred in an nonmarket economy "because a subsidy, *by definition*, means an act which distorts the operation of a [free] *market*" (both italics in the original); (2) congressional "silence" on the issue and the apparent preference for other trade remedial procedures; (3) consensus of academic opinion as to nonapplicability of CVD law to NME countries; and (4) the ITA's asserted broad discretion to determine the existence or nonexistence of subsidies.

The CIT held that the ITA had made a basic error in interpreting and administering the CVD law by concluding that, in its opinion, subsidies cannot be found in nonmarket economies. The court emphasized that, absent clear legislative intent to the contrary, the plain language of the CVD law must ordinarily be regarded as conclusive (p. 551). Hence, it applies to *any country* and, therefore, does not allow for any *per se* exemptions of any political entity, a fact that the ITA itself appears to have recognized in its determinations.

The ITA, in the court's view, "institute[d], by administrative fiat, a major exemption for countries with nonmarket economies" by redefining the term "subsidy" as "a distortion of the operation [solely] of a market economy," thereby attempting to amend the CVD law (p. 552). Although the ITA had recognized that the CVD law did not allow for *per se* exemptions (see p. 3), it claimed that *countries* with nonmarket economies (i.e., political entities of a certain *type*) were exempt because of' their NME status, illogically contradicting the meaning of the CVD statute. The difficulties of the CVD law, said the CIT, are not those of its *meaning*, but rather problems of *measurement*, which are precisely within the expertise of the agency." The ITA "has the authority and ability to detect patterns of regularity and investigate beneficial deviations from those pattern — and it must do so regardless of the form of the economy" (p. 554).

As to the ITA's argument that Congress' "silence" on the applicability of the CVD law to NME countries and its apparent preference for other remedial measures — among them antidumping law, which does contain specific provisions dealing with NME countries — the CIT pointed out that those measures have been established for remedying specific trade problems other than subsidization. Moreover, said the court, Article 15 of the GATT Subsidies and Countervailing Code, implemented for the United States by the Trade Agreements Act of 1979, "clearly gives a country the choice of using subsidy law or antidumping law for imports from a country with a state-controlled economy" (p. 556).

The court summarily dismissed the ITA's recourse to the views of "economic academia" "that the government of a country with a nonmarket economy cannot show what amounts to favoritism towards the manufacture, production, or export of particular merchandise. The idea violates common sense and conflicts with a rational construction of the law" (p. 554-555).

ITA's alleged assertion of its "broad discretion to determine the existence or nonexistence of subsidies" (p. 550) was not specifically addressed by the court; it was, however, irnplicitly challenged in the lengthy critique of administrative actions that, in the court's view, were contrary to law and, in effect, were attempts "to amend the countervailing law ... by administrative fiat." (p. 552).

U.S. Court of Appeals for the Federal Circuit (801 F. 2d 1308-1318). The U.S. government appealed the CIT decision to the U.S. Court of Appeals for the Federal District, which — focusing on the potash cases — reviewed in detail the legislative history and development of relevant trade remedy laws and concluded that the CVD statute under which these investigations were conducted (Section 303 of the Tariff Act of 1930) had remained "substantially unchanged from the first general countervailing duty statute the Congress enacted [in 1897] ...."

Since Congress had not "defined the terms 'bounty' and 'grant' as used in section 303," the appellate court concluded it could not "answer the question whether that section applies to nonmarket economies by reference to the language of the statute" nor could it, on the other hand, answer it by concluding that, on the basis of the statutory language, "Congress has not attempted to exclude nonmarket economies from what the court believed to be the sweeping reach of the section." Since "[a]t the time of the original enactment there were no nonmarket economies;(!) Congress ... had no occasion to address the issue ..." Hence, it remained for the court to "determine, as best [it could], whether when Congress enacted the countervailing duty law in 1897 it would have applied the statute to nonmarket economies, if they then had existed" (p. 1314).

Based on the relevant aspects of the potash case, the appellate court concluded that the economic incentives and benefits provided by the Soviet Union and East Germany to their exports of potash to the United States did not constitute bounties or grants under the applicable CVD law (p. 1314). The court also said it followed a precedent which "recognized that the agency administering the countervailing duty law [i.e., the ITA] has broad discretion in determining the existence of a 'bounty' or 'grant' under that law" and, further, that it could not "say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the exports of potash to the United States were

not bounties or grants under section 303 was unreasonable, not in accordance with the law or an abuse of discretion" (p. 1318).

In conclusion, the Court of Appeals on September 18, 1986, vacated the CIT order insofar it reversed the ITA's final CVD determinations in the two wire rod cases, and remanded them to the CIT with instructions to dismiss the complaint for lack of jurisdictions (because the complaint was not timely filed). It also reversed the CIT order insofar as it set aside the ITA's final actions in the potash cases (p. 1318).

Action in Congress

The decision of the U.S. Court of Appeals for the Federal Circuit in the wire rod and potash cases triggered immediate reaction in Congress. H.R. 3 (Trade and International Economic Policy Reform Act of 1987; introduced on January 6, 1987), as passed by the House, in Section 157 provided for the application of the countervailing duty law to nonmarket economy countries to the extent that a subsidy can reasonably be identified and measured by the administering authority (the ITA). The proposed statute also contained detailed procedural provisions, including a requirement of injury determination by the U.S. International Trade Commission, whenever international obligations of the United States required it (H.Rept. 100-40, Part 1, p. 389). A comparable provision, however, was not included in the Senate version, and the House-passed language was dropped in conference (H.Rept. 100-576, p. 628; April 20, 1988).

Bypassed in several successive Congresses, the issue of applying CVD law to NME countries was addressed again in the 103rd and 104th Congresses. In the 103rd Congress, Section 105 of S. 90 (Trade Enforcement Act of 1993, introduced on January 21, 1993) expanded the definition of "countervailable subsidy" in the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (P.L. 103-465), by applying it to NME countries and prescribing the determination of its amount by using a surrogate market-economy country method (as used in antidumping investigations). An identical provision was included in the 104th Congress as Section 103 in S. 1148 (Economic Revitalization Act), introduced on August 10, 1995 . Both bills died in committee.

In the 106th through 108th Congresses, identical bills (H.R. 3198 in the 106th Congress; H.R. 784 in the 107th Congress; and H.R. 3198 in the 108th Congress) were introduced, applying the CVD duty law to NME countries and applicable to investigations of *subsidies provided* on or after the date of the enactment of the respective act. Virtually identical bills, but applicable to CVD investigations pursuant to *petitions filed* on or after the date of the enactment of the respective act, were introduced in the 108th Congress (H.R. 3716 and S. 2212). All of these bills died in committee.

Two bills with identical operative provisions have been introduced in the 109th Congress on March 10, 2005: S. 593 (Stopping the Overseas Subsidies Act of 2005) and H.R. 1216, providing for application of CV duties to subsidized imports from NME countries, based on petitions filed on after the date of the enactment of the legislation. They are pending in the respective committees of jurisdiction.

In order to assure the consideration of the legislation in the Senate, Senator Evan Bayh, an original cosponsor of S. 593, on April 12, 2005, placed a hold on the confirmation of

then-Representative Rob Portman as the U.S. Trade Representative until Senate leadership would allow a vote on S. 593; on April 27, 2005, Senator Bayh proposed amendment S.Amdt. 568, identical with S. 593, to H.R. 3, but on April 28, 2005, withdrew the amendment and released the hold.

LEGISLATION

S. 593 (Collins); H.R. 1216 (English)

Require application of countervailing procedure to imports from nonmarket economy countries. Introduced March 10,2005; referred respectively to Committees on Finance, and Ways and Means.

CHRONOLOGY

04/28/05 — Senator Bayh withdrew the amendment and released the hold on nomination.

04/27/05 — Senator Bayh proposed amendment S.Amdt. 568 to H.R. 3, with language identical with S. 593.

04/12/05 — Senator Evan Bayh, an original cosponsor of S. 593, placed a hold on Rep. Rob Portman's nomination to be the U.S. Trade Representative, until Senate 1eaders allow a vote on S. 593.

03/10/03 — S. 593 and H.R. 1216, requiring application of countervailing procedure to imports from nonmarket economy countries, introduced and referred, respectively to Committees on Finance, and Ways and Means.