

**ANTIDUMPING MANUAL
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LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
CS	THE COMMERCIAL SERVICE
CVD	COUNTERVAILING DUTY
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
FTZ	FOREIGN TRADE ZONE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
IA	IMPORT ADMINISTRATION
ITA	INTERNATIONAL TRADE ADMINISTRATION
ITC	INTERNATIONAL TRADE COMMISSION
MAC	MARKET ACCESS AND COMPLIANCE
NAFTA	NORTH AMERICAN FREE TRADE AGREEMENT
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
TD	TRADE DEVELOPMENT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED
TIC	TRADE INFORMATION CENTER
UNESCO	UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION
URAA	URUGUAY ROUND AGREEMENT ACT
USTR	UNITED STATES TRADE REPRESENTATIVE

INTRODUCTION

I. CONTENT AND DISCLAIMER STATEMENTS

This 1997 edition of the "Import Administration Antidumping Manual" incorporates changes to Title VII of the Tariff Act of 1930 (the Act) as a result of the passage of the Uruguay Round Agreements Act (URAA) on December 8, 1994. The manual also includes procedural and technical information from the Administration's Statement of Administrative Action (SAA), as well as 19 CFR 351, the Department of Commerce (DOC) antidumping regulations. Any terms defined in the glossary (chapter 21), are bolded on their first use in each chapter.

This manual is for the internal guidance of Import Administration (IA) personnel only, and the practices set out are subject to change without notice. This manual cannot be cited to establish DOC practice.

II. AN OVERVIEW OF THE INTERNATIONAL TRADE ADMINISTRATION

The mission of the International Trade Administration (ITA) is to 1) enable U.S. businesses to compete against unfairly traded imports and to safeguard jobs and the competitive strength of American industry by enforcing antidumping (AD) and countervailing duty (CVD) laws and agreements that provide remedies for unfair trade practices, 2) encourage, assist, and advocate U.S. exports by implementing a national export strategy, by focusing on the "Big Emerging Markets", by providing industry and country analysis for U.S. business, and by supporting new-to-export and new-to-market businesses through strategically located U.S. export assistance centers, domestic commercial service offices and overseas offices and commercial centers, and 3) ensure that U.S. business has equal access to foreign markets by advocating on behalf of U.S. exporters who are competing for major overseas contracts, and by implementing major trade agreements, such as the General Agreements on Tariffs and Trade (GATT), North American Free Trade Agreement (NAFTA), and the Japan "Framework."

ITA is headed by the Under Secretary for International Trade, who oversees the operations of four principal units:

- IA, which administers the Antidumping and Countervailing Duty Acts to maintain fair competition in the international market.
- The Commercial Service (CS), which provides business counseling to U.S. exporters in 73 domestic offices and 134 overseas offices in 69 countries;
- Trade Development (TD), whose industry sector specialists provide information and analysis to U.S. exporters, policy makers and all trade negotiators;
- Market Analysis and Compliance (MAC), whose country experts provide market analysis to U.S. business and monitor trade agreements to ensure compliance; and

ITA's Office of Public, Congressional and Intergovernmental Affairs maintains liaison with the news and trade media, providing press releases, copies of speeches, and information about ITA's programs.

Refer to the ITA home page to keep informed of current ITA events. (<http://ita.doc.gov>)

A. The Commercial Service

The mission of the CS is to support U.S. commercial interests in the United States and help companies increase sales and market share around the world. Its commitment is to: 1) promote the export of U.S. goods and services to strengthen the U.S. economy, maintain job security, and create jobs; 2) protect and advocate for U.S. business interests abroad; 3) assist U.S. firms in realizing their export potential by providing expert counseling and advice, information on overseas markets, international contacts, and trade promotion vehicles; and 4) support the export promotion efforts of other public and private organizations, creating, through partnership, a full-service export development infrastructure.

The CS recognizes that exporting is a critical part of ensuring a healthy future for the U.S. economy and American jobs. To that end, it champions the interests of U.S. business around the world, particularly small and medium-sized enterprises.

B. Trade Development

TD experts monitor, analyze, and provide information on hundreds of industries from basic industries to new emerging high-technology industries. Without this information and analysis, the United States would be far less successful in efforts to break foreign barriers, to protect property rights, and to further the interests of American businesses internationally.

The heart of the national export strategy is a coordinated, government-wide advocacy program. To counter the practices of foreign governments, the United States puts its full weight behind the efforts of U.S. businesses, both small and large, to compete effectively in foreign countries. Through its Advocacy Center, TD leads the government-wide advocacy network in fighting for an international level playing field by 1) marshaling the full resources of the U.S. Government to support U.S. companies' bids abroad, from the White House to U.S. embassies to the regulatory agencies and beyond, 2) competing for projects from multibillion-dollar infrastructure initiatives to small strategic contracts where the deals would otherwise fall prey to lobbying from other governments, particularly in the Big Emerging Markets, and 3) providing essential advocacy in foreign government procurement where there are no adequate mechanisms to ensure American companies have a fair chance.

TD also provides much of the background information for the President, USTR, State, Treasury, and the Secretary of Commerce to conduct trade negotiations. USTR relies on TD's industry experts in negotiations from GATT to NAFTA [Mexico and Canada]. TD draws up retaliation lists which provide U.S. Government leverage to remove non-market barriers to U.S. exports. It uses bilateral trade committees in Russia, China, and elsewhere to seek equity for American businesses, large and small. In addition, TD helps administer key trade agreements like The World Trade Organization (WTO) Agreement on Textiles and Clothing, which prevents disruption of the U.S. textile and apparel market, the United States-Europe Agreement on Trade in Large Civil Aircraft, the Japan Semiconductor Agreement, and numerous other such agreements.

TD experts work with U.S. industry to develop and implement sectoral, market-opening missions throughout the world where trade missions and sectoral events cannot be privatized or governments have important influence over industry decisions.

TD houses the nerve center for information for small and mid-sized businesses exporting abroad. The Trade Information Center (TIC) provides a single point of contact in the U.S. Government for export counseling and assistance.

C. Market Analysis and Compliance

MAC works to expand access to overseas markets for U.S. goods and services, increase U.S. exports, enhance worldwide protection of intellectual property rights and U.S. investment, and promote U.S. commercial policy. To remove international commercial barriers, MAC develops policy positions to benefit United States business interests in multilateral and bilateral consultations.

MAC assists American businesses by 1) maintaining comprehensive, up-to-the-minute information, profiles and analyses on commercial markets worldwide to benefit American businesses and policy makers, 2) providing export counseling, 3) developing international trade and investment policies to reduce trade barriers, 4) monitoring foreign compliance with U.S. trade agreements and intellectual property rights and international agreements, and 5) seeking prompt, aggressive action when foreign violations occur.

MAC desk officers collect information on their assigned country's regulations, tariffs, business practices, economic and political developments, trade data, and market size and growth. MAC desk officers are organized into the following regional areas:

- Western Hemisphere - 482-5324
- Europe - 482-5638
- Africa, the Near East, and South Asia - 482-4925
- East Asia and the Pacific - 482-5251
- Japan - 482-4527.

MAC also implements and monitors multilateral trade negotiations; monitors, investigates, and evaluates foreign compliance with multinational trade agreements; coordinates and supplements agreement monitoring efforts of ITA sectoral and country organizations for bilateral, regional, and country-specific trade agreements; provides U.S. companies a focal point to obtain information and advice on their rights and market opportunities resulting from bilateral, regional and multilateral agreements; and administers a permanent panel review system for resolving disputes under the North American Free Trade Agreement.

D. Import Administration

1. Antidumping and Countervailing Duty Enforcement

The primary responsibility of IA is to administer the antidumping (AD) and countervailing duty (CVD) laws to ensure that domestic industries are not injured by unfair foreign competition in the U.S. market. This introduction provides a brief description of the AD and CVD laws, and an overview of the methodologies and procedures used by IA in the implementation of AD and CVD trade remedies. A brief summary of the types of data collected by IA is presented as an illustration of the functions of IA in a trade remedy proceeding.

U.S. AD and CVD trade remedies are designed to offset the amount of unfair competitive advantage attributable to foreign price discrimination or subsidization. These actions are in full accordance with the internationally agreed upon rules and principles which are embodied in the Antidumping and Subsidies Agreements. These Agreements were developed during the Uruguay Round of Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade (GATT). These Agreements are intended to ensure that the AD and CVD laws of member countries are implemented in a fair, transparent, and expeditious manner.

The U.S. AD and CVD laws are comprised of the following: Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671-1671h)(CVD); (19 U.S.C. 1673-1673h)(AD); the legislative history to amendments of the Tariff Act including the Statement of Administrative Action to the Uruguay Round Agreements Act (URAA) which amended the law to conform with the Antidumping and Subsidies Agreements; and IA's regulations (19 CFR § 351). In May, 1997, IA published the final revisions of the AD regulations to reflect the changes made by the URAA. The CVD regulations are currently being revised. IA's AD and CVD determinations are reviewable by two federal courts of special jurisdiction, the U.S. Court of International Trade and the Court of Appeals for the Federal Circuit. Determinations involving Canada and Mexico are subject to review by NAFTA panels. The statute, legislative history, regulations, and court opinions provide detailed guidance on how to administer the AD and CVD laws.

a. The Antidumping Law

The U.S. AD law is designed to counter international price discrimination, commonly referred to as "dumping." Generally, dumping occurs when a foreign firm sells merchandise in the U.S. market at a price lower than the price it charges for a comparable product sold in its domestic market. Under certain circumstances, dumping may also be identified by comparing the foreign firm's U.S. sales price to the price it charges in other export markets or to the firm's cost of producing the merchandise, taking into account the firm's selling, general, and administrative expenses, and profit. Finally, where the producer is located in a non-market-economy country (NME), a comparison is made between U.S. prices and a "surrogate" country. The difference between a company's U.S. sales price and the comparison market price or cost is called the dumping "margin" which is often expressed as a percentage of the U.S. sales price.

b. The Countervailing Duty Law

Under the CVD law, IA investigates complaints that foreign governments are unfairly subsidizing their industries that export to the United States. Examples of unfair subsidies are tax benefits related to exporting or government-provided low-cost loans targeted to specific companies or industries. While governments can take many actions which could be said to confer benefits on their producers, not all of these actions are viewed as countervailable subsidies. Generally, the benefit must be limited to a specific group of firms or industries or to a firm's export activities in order to be covered under this law.

c. AD and CVD Investigation Procedures

AD and CVD investigations are almost always initiated in response to petitions filed by an affected U.S. industry, although IA may also self-initiate a case. Under the statute, petitions may be filed by a domestic interested party, including a manufacturer or a union within the domestic industry producing the "domestic like product" which competes with the imports to be investigated. Petitions may be several hundred pages long, as the statute requires that the petitioner submit reasonably available data in support of the dumping or subsidization allegations. Based upon the information submitted in the petition and any supplements to the petition, IA has 20 days to evaluate the petition and to determine whether it will initiate an investigation. A timeline of an AD investigation is included in section III.B of this introduction.

While IA determines whether and to what extent dumping or unfair subsidization is occurring, the United States International Trade Commission (ITC) conducts a parallel investigation to determine whether a U.S. industry competing with the allegedly dumped or subsidized product has been materially injured by such imports. For instance, injury may result when unfairly low-priced foreign competition reduces the domestic industry's profits and market share. If the final determinations of both IA and the ITC are affirmative (that is, dumping and/or subsidization and injury are confirmed), an AD or CVD order is issued.

In an AD or CVD order, IA instructs the U.S. Customs Service to collect cash deposits of AD or CVD duties on merchandise which enters the United States or is withdrawn from a bonded warehouse. The cash deposit represents an estimate of the actual duties owed. The final amount of duties collected will be either the cash deposit or, if an administrative review is requested, the duty established by an administrative review.

d. Administrative Reviews

Each year, an administrative review may be requested to determine whether the extent of dumping or subsidization has changed since the order went into effect. Depending on its findings in an administrative review, IA will adjust the AD or CVD rates so they reflect the actual amount of dumping or subsidization that occurred for the reviewed period. The U.S. Customs Service is then notified of the change and appropriate refunds of prior duty deposits or additional duty

collections are made. The new rates found in the review will serve as the cash deposit rates for future entries. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time the merchandise was entered.

e. The Information Collected in an Antidumping Case

In an investigation or an annual review, IA issues questionnaires to foreign producers and their affiliated importers regarding sales made during a 12 month period of investigation (POI) for market-economy cases and a 6 month POI in NME cases. In an antidumping investigation, the initial questionnaire requests information on, among other things, the investigated company's corporate structure and business practices, the merchandise under investigation or review that it sells, and the quantity and value of sales of the merchandise in all markets. Using these data, the case analysts determine what type of additional information is needed and issue questionnaires which collect data on sales volume and value information for sales in U.S. and foreign markets, and, under certain conditions, production costs. The sales listings are submitted on computer tape with complete sales details, including product and customer code numbers, sale dates, quantities, prices, and adjustments to be made to the prices. The data on the computer tape are supplemented by narrative descriptions of the product, the terms of sale, discounts and rebates, freight charges and other information. To establish that the responses are complete and reliable, Commerce conducts verifications at facilities of foreign producers and U.S. importers shortly after the preliminary determination.

If the responding firms fail to provide requested data, IA uses other factors available in place of the missing information. Under the statute, if the respondent has not acted to the best of his ability in supplying information, IA can make an adverse inference in choosing which facts to use. The potential use of adverse factors available gives respondents incentive to cooperate fully with IA in proceedings.

In addition to the standard sets of questionnaires issued by IA, the record in an investigation or annual review contains numerous documents submitted by the domestic and foreign interested parties to the proceeding. Domestic parties are generally known as "petitioners" and foreign firms are known as "respondents." The types of documents submitted by petitioners and respondents include: submissions of factual information, comments on IA's methodology, legal arguments, case briefs and rebuttal briefs. Throughout the proceedings, counsel to the parties frequently request meetings with the analysts and the managers in IA to discuss issues as they develop. Prior to the final determination, interested parties may request that hearings be held on the arguments addressed in the briefs submitted by the parties. Copies of all written communication, and records of all telephone calls and meetings with parties to the investigation are placed upon the record of the proceeding.

The substantial amount of information collected allows IA to make a price comparison between the prices of imports and "Normal value" (NV). Adjustments are made to account for physical differences in merchandise and differences in levels of trade between the NV and the imports to ensure that it is an "apples to apples" comparison. Therefore, to make certain that its comparisons are not distorted by factors extraneous to the central issue of price discrimination between markets, IA adjusts the "starting" prices to account for any differences in prices resulting from verified differences in physical characteristics, quantities sold, levels of trade, circumstances of sale, applicable taxes and duties, and packing and delivery costs.

The comparisons between NV and the U.S. price are normally done by creating a computer program which compares model-specific weighted average prices. In simple terms, the differences in the two prices are the dumping margins which are calculated and applied on company-specific terms for all firms which participated in the investigation or review. In investigations, a weighted average "all others rate" is calculated and applied to firms which did not participate in the investigation. A company covered by the all others rate continues to receive that rate until a review is requested and completed for that company.

f. The Organization of Import Administration

Prior to July 1, 1996, a Deputy Assistant Secretary (DAS) for Investigations was responsible for conducting the initial investigations and a DAS for Compliance was responsible for administrative reviews. On July 1, 1996, IA was reorganized and these two DAS groups were reconfigured to form three DAS groups. Under this new structure, all offices work on investigations and administrative reviews. The same team follows the case from the investigation through the annual review process. Greater certainty ensures consistency in handling the various segments of the same case and takes advantage of the experience gained by the team during the course of a case.

Four other units in IA play an important role during the investigative phase of the AD and CVD process: 1) the Office of Policy formulates and disseminates policies which govern the administration of the AD and CVD laws, 2) the Office of the Chief Counsel for IA (a unit of the General Counsel's Office rather than ITA) provides comprehensive legal support and advice; 3) the IA Office of Accounting analyzes and verifies cost information and works closely with case analysts in the actual calculation of dumping margins and net subsidies; and 4) the IA Central Records Unit maintains all official and public reading files, receives and distributes all case-related computer tapes and written filings, and assists in the preparation of court records. An organizational chart of IA, and an IA phone directory may be found on ITA's internal computer network.

In addition to administering the AD and CVD laws, IA assists domestic industries, especially small business, to decide whether there is sufficient evidence to petition for AD and CVD investigations and participates in

negotiations to promote fair trade in specific sectors, such as steel, aircraft and shipbuilding.

IA also assists U.S. exporters by monitoring AD and CVD investigations & reviews by foreign authorities to ensure the rules of the WTO agreements are followed.

2. Foreign Trade Zones

Foreign trade zones (FTZ) are designated sites licensed by the FTZ Board at which special Customs procedures may be used. FTZ procedures allow domestic activity involving foreign items to take place as if it were outside U.S. Customs territory, thus offsetting Customs advantages available to overseas producers who export in competition with products made here. For example, FTZ procedures allow the deferral of customs duties and federal excise taxes on imports until such time as the merchandise leaves the FTZ and enters the customs territory of the United States. Subzones are special-purpose zones, usually at manufacturing plants. The FTZ Act of 1934 established the FTZ.

There are currently over 200 U.S. communities in 48 states with zones or subzones. Over \$110 billion of merchandise is handled within the zones with \$17 billion being exported. Zone activities account for over 250,000 jobs.

3. Statutory Import Programs

The Statutory Import Programs Staff administers the Florence Agreement Program and the Insular Watch Assembly Program. The Florence Agreement Program covers the duty-free import of scientific instruments and apparatus by qualified nonprofit institutions. The Insular Watch Assembly Program addresses the duty-free import of watches and watch movements assembled in the U.S. insular possessions.

a. The Florence Agreement Program

UNESCO experts meeting in Florence, Italy, in the early 1950s adopted the terms of an international agreement to promote international understanding and peace by lowering barriers to the exchange of cultural, scientific and educational materials, most importantly by waiving tariffs on such materials. The agreement covers diverse categories: books and other printed materials, art and museum pieces, tourism materials, audiovisual materials and the like. Annex D of the agreement covered scientific instruments and apparatus.

The United States became a full party to the agreement when it enacted implementing legislation in 1966. The legislation provides that Annex D scientific instruments may be entered free of duty into the United States only if the Secretary of Commerce first finds that a scientifically equivalent instrument is not being manufactured domestically. By delegation from the Secretary, the director of the Statutory Import Programs staff is responsible for making and publishing the required findings.

b. The Insular Watch Assembly Program

In the late 1950s a watch-assembly industry sprang up in the U.S. Virgin Islands in response to a tariff incentive permitting duty-free entry of U.S. insular products. By 1965 duty-free watch shipments from the Virgin Islands accounted for more than 10 percent of U.S. consumption of watches, prompting Congress to place a ceiling on insular watches at that level. Even under this restriction, the industry became an important contributor to the economic health of not only the Virgin Islands but Guam and American Samoa as well.

Changing economic circumstances brought bad times to the industry, however, by the early 1980s. Watch industry employment plummeted. Congress, recognizing the importance of the industry to the health of the insular economies, provided in 1983 an additional incentive which had the effect of reducing insular labor costs for the producers. The industry has rebounded, although employment levels remain below the level achieved in the 1970s. The Statutory Import Programs staff issues annual allocations (the number of units each producer is permitted to ship) and the production incentive certificates authorized by the 1983 legislation. This legislation was renewed in 1994 for an additional twelve years.

III. AIDS FOR THE NEW ANALYST

A. Things a New Analyst Should Do

As a new analyst, it would be helpful for you to do the following:

1. Visit the DOC's Trade Reference Room.
2. Familiarize yourself with the DOC's Law and Main Libraries.
3. Visit the IA home page at www.ita.doc.gov/import-admtn\records
4. Establish contact with people you know at other agencies which interface with IA, i.e., U.S. Customs, the ITC, and the U.S. Trade Representative. They may be able to provide you with other contacts in their agency who will be of assistance to you in your work here with Import Administration.
5. Become familiar with the source of AD and CVD law, including: the AD and CVD statute (Title VII of the Tariff Act of 1930, as amended); the DOC regulations for antidumping duties (19 CFR 351), the explanatory preamble to the proposed and final regulations, 61 FR 7308 (Feb. 27, 1996) and 62 FR 2796 (May 19, 1997), the Statement of Administrative Action (the legislative history of the URAA, printed in House Document 103-316, vol.1); the WTO Antidumping Agreement (reprinted in H. Doc 103-316, vol. 1 at page 1453)..
6. Attend as many IA and ITA training sessions as possible.
7. Attend a case hearing at the the DOC and the ITC.

8. Attend as many case-related meetings as possible.
9. Assist on as many different dumping proceeding actions as you can.
10. Maintain a case work file and index.
11. Prepare a court record.
12. Visit the IA Central Records Unit in Rooms B-099 and 1870 and the Administrative Protective Order Office in Room 1870.
13. Go on a product-familiarization trip to a production facility.
14. Go on a verification trip.
15. Visit a U.S. Customs field office in a city where you are verifying to see how Customs implements our directives for investigations and administrative reviews.

B. Time line Chart for AD Investigations

The AD time line chart shows all major activities for AD investigations. Note the effect of postponements of either the preliminary or final determination due dates on the overall length of the investigative process.

C. Chart of Deadlines for Parties in AD Investigations

This chart shows due dates for various significant activities and actions that effect requests for information or filings of allegations, questionnaire responses, and comments.

DEADLINES FOR PARTIES IN AD INVESTIGATIONS		
DAY	EVENT	REGULATION
day 0	Date of initiation ¹	
25 days	ITC preliminary injury determination	None
30 days	Questionnaire transmitted	351.301(c)(2)(i)
37 days	Application for an administrative protective order	351.305(b)(3)
37 days	Questionnaire received	351.301(c)(2)(iii)
50 days ²	Country-wide cost allegation	351.301(d)(2)(i)(A)
51 days	Extension request for responses to questionnaire	351.301(c)(2)(iv)
51 days	Section A response	None

¹ All of the following references to days are keyed to the date of initiation.

² This assumes that the DOC will send out the questionnaire within 5 days of the ITC votes.

DEADLINES FOR PARTIES IN AD INVESTIGATIONS		
DAY	EVENT	REGULATION
67 days	Section B, C, D, and E responses	351.301(c)(2)(ii) and (iii)
70 days	Viability arguments	351.301(d)(1)
87 days	Company-specific cost allegations	351.301(d)(2)(i)(B)
115 days	Request for Postponement by Petitioner	351.205(e)
120 days	Allegation of critical circumstances	351.206(c)(2)(i)
140 days (can be extended)	Preliminary Determination	351.205 (b)(1)
150 days	Ministerial error comments	351.224(c)(2)
155 days	Replies to ministerial error comments	351.224(c)(3)
155 days	Submission of proposed suspension agreement	351.208(f)(1)
161 days ³	Submission of information	351.301(b)(1)
177 days	Request for a hearing	351.310(c)
187 days	Submission of publicly available information to value factors (NME's)	351.301(c)(3)
194 days	Critical circumstance allegation	351.206(e)
197 days (can be changed)	Closed hearing sessions	351.310(f)
197 days (can be changed)	Submission of briefs	351.309(c)(i)
202 days	Submission of rebuttal briefs	351.309(d)
215 days	Request for postponement of the	351.210(e)

³ Assuming about 28 days between the signature date for the preliminary determination and the verification.

DEADLINES FOR PARTIES IN AD INVESTIGATIONS		
DAY	EVENT	REGULATION
	final determination	
215 days (can be extended)	Final Determination	351.210
225 days	Ministerial error comments	351.224(c)(2)
230 days	Replies to ministerial error comments	351.224(c)(3)
230 days	Request for exception from assessment of duties	351.211(d)(2)
267 days	Order issued	351.211(b)
282 days	Suspension agreement for regional industry	351.208(f)(1)(ii)

D. Chart of Deadlines for Parties in AD Administrative Reviews

This AD time line chart shows all major activities for an administrative review of an AD duty order or suspension agreement.

DEADLINES FOR PARTIES IN ANTIDUMPING ADMINISTRATIVE REVIEWS		
DAY	EVENT	REGULATION
0 days ¹	Last day of the anniversary month	Sec. 351.213(b)
30 days	Publication of initiation	None
37 days	Application for an administrative protective order	351.305(b)(3)
60 days	Request to examine absorption of duties (AD)	351.213(j)
66 days	Extension request for responses to questionnaire	351.301(c)(2)(iv)
66 days	Section A response	None
82 days	Section B and C response	351.301(c)(2)(iii)
82 days	Section D and E response	None
92 days	Viability arguments	351.301(d)(1)
102 days	Company-specific cost allegations	351.301(d)(2)(ii)
120 days	Withdrawal of request for review	351.213(d)(1)
170 days	Submission of information	351.301(b)(2)
245 days (can be extended)	Preliminary results	351.213(h)(1)

¹ This assumes that the DOC will send out the questionnaire within 45 days of the last day of the anniversary month.

DEADLINES FOR PARTIES IN ANTIDUMPING ADMINISTRATIVE REVIEWS		
DAY	EVENT	REGULATION
272 days	Submission of publicly available information to value factors (NME's)	351.301(c)(3)(ii)
282 days	Request for a hearing	351.310(c)
282 days (can be changed)	Closed hearing sessions	351.310(f)
282 days (can be changed)	Submission of briefs	351.309(c)(1)(ii)
287 days	Submission of rebuttal briefs	351.309(d)
365 days (can be extended)	Final results	351.213(h)(1)
375 days	Ministerial error comments	351.224(c)(2)
380 days	Replies to ministerial error comments	351.224(c)(3)

E. Chart Comparing Sections of Past and Present Regulations

This convenient reference chart allows you to compare past (19 CFR 355) and present (19 CFR 351) sections of the AD regulations.

COMPARISON OF PRIOR AND PRESENT REGULATIONS PART 353 -- ANTIDUMPING DUTIES SUBPART A -- SCOPE AND DEFINITIONS		
PRIOR	PRESENT	DESCRIPTION
353.1	351.101	Scope of regulations
353.2	351.102	Definitions
353.3	351.104	Records of proceedings
353.4	351.105	Public, proprietary, privileged & classified information
353.5	Removed	Trade and Tariff Act of 1984 amendments
353.6	351.106	De minimis weighted-average dumping margin
SUBPART B -- ANTIDUMPING DUTY PROCEDURES		
353.11	351.201	Self-initiation
353.12	353.202	Petition requirements
353.13	351.203	Determination of sufficiency of petition
353.14	351.204(e)	Exclusion from antidumping duty order

COMPARISON OF PRIOR AND PRESENT REGULATIONS PART 353 -- ANTIDUMPING DUTIES		
PRIOR	PRESENT	DESCRIPTION
353.15	351.205	Preliminary determination
353.16	351.206	Critical circumstances
353.17	351.207	Termination of investigation
353.18	351.208	Suspension of investigation
353.19	351.209	Violation of suspension agreement
353.20	351.210	Final determination
353.21	351.211	Antidumping duty order
353.21 (c)	351.204(e)	Exclusion from antidumping duty order
353.22(a) - (d)	351.213, 351.221	Administrative reviews under 751 (a) of the Act
353.22(e)	351.212(c)	Automatic assessment of duties
353.22(f)	351.216, 351.221(c)(3)	Changed circumstances reviews
353.22(g)	351.215, 351.221(c)(2)	Expedited antidumping reviews
353.23	351.212(d)	Provisional measures deposit cap

COMPARISON OF PRIOR AND PRESENT REGULATIONS PART 353 -- ANTIDUMPING DUTIES		
PRIOR	PRESENT	DESCRIPTION
353.24	351.212(e)	Interest on overpayments and under-payments
353.25	351.222	Revocation of orders; termination of suspended investigations
353.26	351.402(f)	Reimbursement of duties
353.27	351.223	Downstream product monitoring
353.28	351.224	Correction of ministerial errors
353.29	351.225	Scope rulings
SUBPART C -- INFORMATION AND ARGUMENT		
353.31(a)-(c)	351.301	Time limits for submission of factual information
353.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material
353.31(b)(3)	351.302(c)	Request for extension of time
353.31(d) -(i)	351.303	Filing, format, translation, service and certification
353.32	351.304	Request for proprietary treatment of information

COMPARISON OF PRIOR AND PRESENT REGULATIONS PART 353 -- ANTIDUMPING DUTIES		
PRIOR	PRESENT	DESCRIPTION
353.33	351.104, 351.304(a)(2)	Information exempt from disclosure
353.34	351.305, 351.306	Disclosure of information under protective order
353.35	Removed	Ex-parte meetings
353.36	351.307	Verifications
353.37	351.308	Determinations on the basis of the factors available
353.38(a) - (e)	351.309	Written arguments
353.38(f)	351.310	Hearings
SUBPART D -- CALCULATION OF EXPORT PRICE, CONSTRUCTED EXPORT PRICE, FAIR VALUE AND NORMAL VALUE		
353.41	351.402	Calculation of export price
353.42(a)	351.102	Fair value (definition)
353.42(b)	351.104(c)	Transactions and persons examined
353.43	351.403(b)	Sales used in calculating normal value
353.44	Removed	Sales at varying price

COMPARISON OF PRIOR AND PRESENT REGULATIONS PART 353 -- ANTIDUMPING DUTIES		
PRIOR	PRESENT	DESCRIPTION
353.45	351.403	Transactions between affiliated parties
353.46	351.404	Selection of home market as the basis for normal value
353.47	Removed	Intermediate countries
353.48	351.404	Basis for normal value if home market sales are inadequate
353.49	351.404	Sales to a third country
353.50	351.405, 351.407	Calculation of normal value based on constructed value
353.51	351.406, 351.407	Sales at less than the cost of production
353.52	351.408	Non-market-economy countries
353.53	Removed	Multinational corporations
353.54	351.401(b)	Claims for adjustments
353.55	351.409	Differences in quantities
353.56	351.410	Differences in circumstances of sales
353.57	351.411	Differences in physical characteristics
353.58	351.412	Levels of trade
353.59(a)	351.413	Insignificant adjustments

COMPARISON OF PRIOR AND PRESENT REGULATIONS PART 353 -- ANTIDUMPING DUTIES		
PRIOR	PRESENT	DESCRIPTION
353.59(b)	351.414	Use of averaging
353.60	351.415	Conversion of currency

F. Changes in Terminology for the Past and Present Law

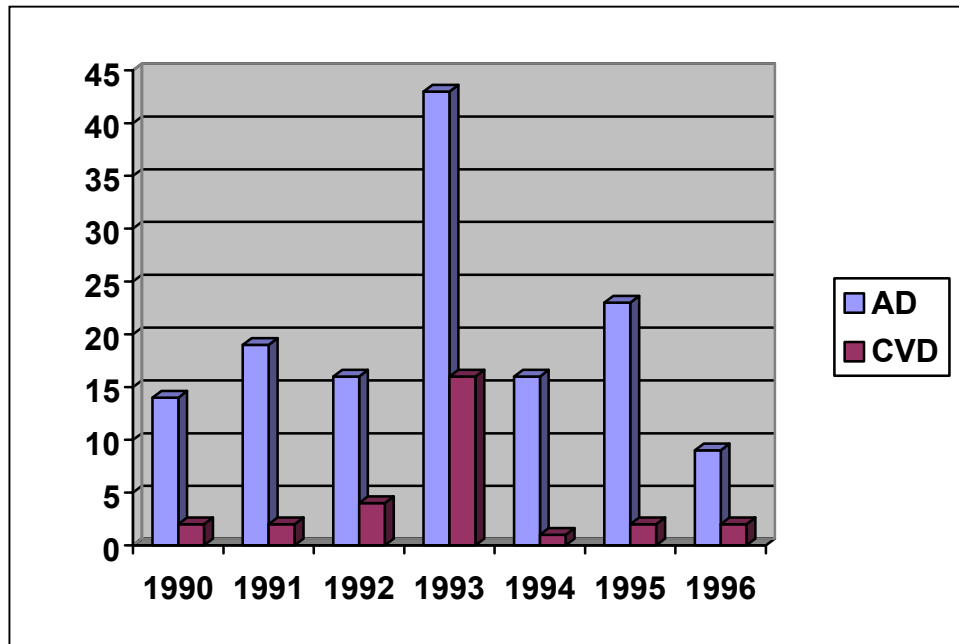
Many key AD phrases and terms changed as a result of the 1994 amendments to the Act. This chart allows you to compare old and new terminology.

Old Term	New Term
• BEST INFORMATION AVAILABLE	• FACTS OTHERWISE AVAILABLE
• CLASS OR KIND	• SUBJECT MERCHANDISE
• EXPORTER'S SALES PRICE	• CONSTRUCTED EXPORT PRICE
• FOREIGN MARKET VALUE	• NORMAL VALUE
• GROSS UNIT PRICE	• STARTING PRICE
• HOME MARKET	• EXPORTING COUNTRY
• PURCHASE PRICE	• EXPORT PRICE
• RELATED PARTY	• AFFILIATED PERSON
• SUCH OR SIMILAR MERCHANDISE	• LIKE PRODUCT (FOREIGN OR DOMESTIC)

IV. STATISTICS ON INVESTIGATIONS AND ADMINISTRATIVE REVIEWS

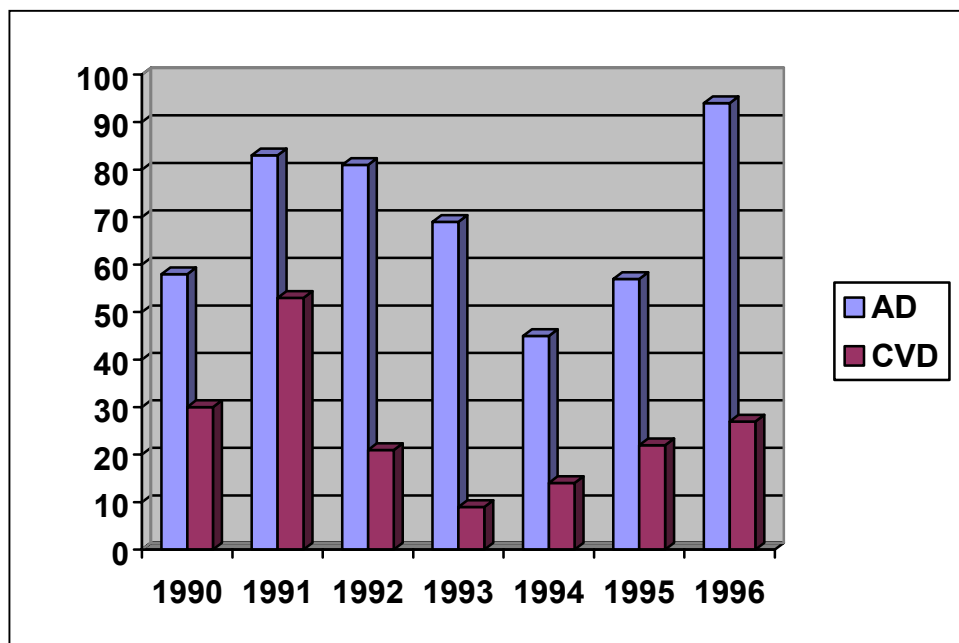
A. Investigations

The charts that follow show AD and CVD statistics for initiations of investigations and AD and CVD orders during the 1990s.



B. Administrative Reviews

The chart that follows shows AD and CVD statistics for administrative reviews completed during the 1990s.



V. ACRONYMS, ABBREVIATIONS, AND FEDERAL REGISTER CITATIONS

Each chapter of the AD manual is preceded by a list of acronyms and abbreviations used in that chapter. In addition, all acronyms are "set up" in each chapter. Because of the length of chapters 7 and 8, acronyms are set up in each section. Complete Federal Register and court case citations are given only once per chapter.

GLOSSARY OF TERMS

F. Glossary of AD Terms for Market and Non-Market Economy Cases

This glossary is intended to provide parties with a basic understanding of many antidumping technical terms. These explanations are not regulations or rules with the force of law. As difficult or detailed questions arise, the analyst should seek clarification from their program manager or supervisor, rather than attempting to derive precise guidance from these general explanations.

Administrative Protective Order

An administrative protective order is the legal mechanism that controls the limited disclosure of business proprietary information to representatives of interested parties. The Department authorizes the release of proprietary information under administrative protective order only when the representatives file a request in which they agree to the following four conditions: (a) to use the information only in the antidumping proceeding, (b) to secure the information and protect it from disclosure to any person not subject to an administrative protective order, (c) to report any violation of the terms of the protective order, and (d) to acknowledge that they may be subject to sanctions if they violate the terms of the order. (Section 777(c) of the Act. See also Proprietary Information and Proprietary Treatment.)

Affiliated Persons

Affiliated persons (affiliates) include (1) members of a family, (2) an officer or director of an organization and that organization, (3) partners, (4) employers and their employees, and (5) any person or organization directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and that organization. In addition, affiliates include (6) any person who controls any other person and that other person, and (7) any two or more persons who directly control, are controlled by, or are under common control with, any person. "Control" exists where one person or organization is legally or operationally in a position to exercise restraint or direction over the other person or organization. (Section 771(33) of the Act; section 351.102(b) and 351.401(f) of the regulations.)

Antidumping Law

The United States antidumping laws are set forth in Title VII of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673 et seq.).

Arms-length Transactions (between affiliates)

Generally, the Department may use transactions between affiliates as a basis for normal value, cost of production, and constructed value only if the transactions are at arms length. Arms-length transactions are those in which the selling price between the affiliated parties is comparable to the selling prices in transactions involving persons who are not affiliated. The Department accounts for terms of sale, conditions of delivery, and other circumstances related to the sales in deciding if the selling prices are comparable. Sales not made at arms-length are considered to be outside the ordinary course of trade.

Certification of Accuracy

Any person that submits factual information to the Department must include with the submission a certification of the completeness and accuracy of the factual information. Certifications must be made by a knowledgeable official responsible for presentation of the factual information and by the party's legal counsel or other representative, if any. A sample certification form is included as Appendix V to the questionnaire. (Section 782 (b) of the Act and section 351.303 (g) of the regulations).

Circumstances of Sale

In comparing normal value to export price or constructed export price for market economy cases, the Department makes adjustments for certain differences in circumstances of sale that exist because the conditions or terms of sale in the two markets differ. This adjustment normally is limited to differences in direct selling expenses (and assumptions of expenses on behalf of the buyer) that the Department does not adjust for under other more specific provisions. (Section 773(a)(6)(C)(iii) of the Act and 351.410 of the regulations; See also Direct vs. Indirect Expenses.) Note that these adjustments are also made for non-market economy cases involving constructed export price comparisons.

Comparison Market

The comparison market is the home or third-country market from which the Department selects the prices used to establish normal values for market economy cases. (See also Viability.)

Constructed Export Price

(See Export Price and Constructed Export Price.)

Constructed Export Price Offset

When it is not possible to base normal value and export price (CEP or CEP) on sales at the same level of trade, the law provides, subject to certain conditions, for an adjustment to normal value. However, where the Department establishes different functions at the different levels of trade, but the data available do not form an appropriate basis for determining a level of trade adjustment, the law provides for a limited adjustment in the form of the "constructed export price offset." This adjustment does not apply in export price comparisons, and the Department will make the adjustment only when normal value is established at a level of trade more remote from the factory than the level of trade of the constructed export price. The offset is a deduction from normal value in the amount of indirect selling expenses incurred in the comparison market. The amount of this deduction may not exceed (i.e., it is "capped" by) the amount of indirect selling expenses deducted in calculating constructed export price. (Section 773(a)(7)(B) of the Act and section 351.412(f) of the regulations; see also Level of Trade, Level of Trade Adjustment.)

Constructed Value

For market economy cases, when there are no sales of the foreign like product in the comparison market suitable for matching to the subject merchandise (including, for example, when the

Department disregards sales because they are below the cost of production), the Department uses constructed value as the basis for normal value. The constructed value is the sum of (1) the cost of materials and fabrication of the subject merchandise, (2) selling, general, and administrative expenses and profit of the foreign like product in the comparison market, and (3) the cost of packing for exportation to the United States. (Section 773(e) of the Act.)

Contemporaneous Sales

In investigations, the Department normally compares average export prices (or constructed export prices) to average normal values. The averages normally are based on sales made over the course of the period of investigation. In administrative reviews of existing antidumping orders, on the other hand, the Department normally compares the export price (or constructed export price) of an individual U.S. sale to an average normal value for a "contemporaneous month." The preferred month is the month in which the particular U.S. sale was made. If, during the preferred month, there are no sales in the comparison market of a foreign like product that is identical to the subject merchandise, the Department will then employ a six-month window for the selection of contemporaneous sales. For each U.S. sale, the Department will calculate an average price for sales of identical merchandise in the most recent of the three months prior to the month of the U.S. sale. If there are no such sales, the Department will use sales of identical merchandise in the earlier of the two months following the month of the U.S. sale. If there are no sales of identical merchandise in any of these months, the Department will apply the same progression to sales of similar merchandise.

Cost of Manufacture

The cost of manufacture is the sum of material, fabrication and other processing costs incurred to produce the products under investigation. (See also Cost of Production.)

Cost of Production

For market economy cases, cost of production means the cost of producing the foreign like product. The cost of production is the sum of (1) material, fabrication, and other processing costs, (2) selling, general, and administrative expenses, and (3) the cost of containers and other packing expenses. The Department may disregard comparison market sales in calculating normal value if they are made at prices which are less than the cost of production. The Department will disregard all sales below cost if made: (A) within an extended period of time (normally one year) in substantial quantities (at least 20 percent of the volume of the product examined is sold below cost or the weighted-average unit price is below the weighted-average cost for the period examined); and (B) at prices that do not permit recovery of costs within a reasonable period of time (i.e., the price is less than the weighted-average cost of production for the whole period examined). Although the Department initiates any cost of production inquiries for all sales of the foreign like product, this determination is made on a product-specific basis. (Section 773(b) of the Act, and sections 351.406 and 351.407 of the regulations.) Refer to IA Policy Bulletin 94.1 for initiation standards for COP inquiries.

Credit Expense

Credit expense is a type of expense for which the Department frequently makes circumstances-of-sale adjustments. It is the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer. The Department normally imputes the expense by applying a firm's annual short-term borrowing rate in the currency of the transaction, prorated by the number of days between shipment and payment, to the unit price. If actual payment dates are not kept in a way that makes them accessible, the calculation may be based on the average of the number of days that accounts receivable remain outstanding. (See also Imputed Expenses.)

Date of Sale

Because the Department attempts to compare sales made at the same time, establishing the date of sale is an important part of the dumping analysis. The Department normally uses the date of invoice as recorded in the seller's records kept in the ordinary course of business. However, the Department may use another date if it better reflects the date on which the material terms of the sale were established. This is normal for long term contracts. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be rebutted. Where invoices do not exist, the Department will examine the respondent's records to identify the appropriate date of sale. (Section 351.401 of the regulations).

Difference in Merchandise Adjustments

For market economy cases, when normal value is based on sales in the comparison market of a product which is similar, but not identical, to the product sold in the United States, the Department may adjust normal value to account for differences in the variable costs of producing the two products. Generally, the adjustment is limited to differences in the costs of materials, labor and variable production costs that are attributable to physical differences in the merchandise. The Department will not adjust for differences in fixed overhead administrative expenses, or profit. (Section 351.411 of the regulations).

Direct vs. Indirect Expenses

In calculating and adjusting normal value, the Department treats selling expenses differently depending on whether they are direct expenses or indirect expenses. For instance, circumstances-of-sale adjustments normally involve only direct expenses (and assumptions of expenses on behalf of the buyer, see below) while the constructed export price offset involves indirect expenses.

Direct expenses generally must be (1) variable and (2) traceable in a company's financial records to sales of the merchandise under investigation.

1. Variable vs. fixed expenses: Direct expenses are typically variable expenses that are incurred as a direct and unavoidable consequence of the sale (i.e., in the absence of the sale these expenses would not be incurred). Indirect expenses are fixed expenses that are incurred whether or not a sale is made. The same expense may be classified as fixed or variable depending on how the expense is incurred. For example, if an exporter pays an unaffiliated contractor to perform a service, this fee would normally be considered variable and treated as a direct expense (provided that condition 2, below, is also

satisfied). However, if the exporter provides the service through a salaried employee, the fixed salary expense will be treated as an indirect expense.

2. Tying of the expense to sales of the merchandise under investigation: Selling expenses must be reasonably traceable to sales of the merchandise under investigation to qualify as direct selling expenses. However, a fixed expense remains indirect even if allocable to the merchandise under investigation

Common examples of direct selling expenses include credit expenses, commissions, and the variable portions of guarantees, warranty, technical assistance, and servicing expenses. Common examples of indirect selling expenses include inventory carrying costs, salesmen's salaries, and product liability insurance. The Department also classifies the fixed portion of expenses, such as salaries for employees who perform technical services or warranty repairs, as indirect expenses.

The Department treats assumptions of a customer's expenses as if they were direct expenses, provided they are attributable to a later sale of the merchandise by the customer. For example, the Department considers expenses incurred for advertising aimed at retailers to be assumptions when the exporter is selling to wholesalers. (Section 351.404(d) of the regulations).

Discounts

A discount is a reduction to the gross price that a buyer is charged for goods. Although the discount need not be stated on the invoice, the buyer remits to the seller the face amount of the invoice, less discounts. Common types of discounts include early payment discounts, quantity discounts, and loyalty discounts.

Dumping

Dumping occurs when imported merchandise is sold in, or for export to, the United States at less than the normal value of the merchandise. The dumping margin is the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise. The weighted-average dumping margin is the sum of the dumping margins divided by the sum of the export prices and constructed export prices.

Export Price and Constructed Export Price

Export price and constructed export price refer to the two methods of calculating prices for merchandise imported into the United States. The Department compares these prices to normal values to determine whether goods are dumped. Both export price and constructed export price are calculated using the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter (the "starting price").

Generally, a U.S. sale is calculated as an export price sale when the first sale to an unaffiliated person occurs *before* the goods are imported into the United States. Generally, a U.S. sale is calculated as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale

occurs *before* importation, unless the U.S. affiliate performs only clerical functions in connection with the sale.

The Department makes adjustments to the price to the first unaffiliated customer in calculating the export price or constructed export price. For both export price and constructed export price the Department adds packing charges, if not already included in the price, rebated import duties, and, if applicable, certain countervailing duties (not applicable for non-market economy cases). Also for both, the Department deducts transportation costs and export taxes or duties (not applicable for non-market economy cases). No other adjustments are made in calculating export price. However, in calculating the constructed export price, the Department also deducts selling commissions and other expenses incurred in selling the subject merchandise in the United States, the cost of any further manufacture or assembly performed in the United States, and a profit attributable to the U.S. sale. (Section 772 of the Act. and section 351.401 and 351.402 (b) of the regulations)

Factors of Production

For nonmarket economy countries, the normal methodology for calculating normal value is not appropriate. Instead, the Department constructs a normal value using the nonmarket economy producer's factors of production. The factors of production include, but are not limited to, (1) the hours of labor required to produce the merchandise, (2) the quantities of raw materials employed, (3) the amounts of energy and other utilities consumed, and (4) representative capital costs, including depreciation. These factors of production are then valued in a market economy country that is at a level of economic development comparable to that of the nonmarket economy country and is a significant producer of the subject merchandise or comparable merchandise. (Section 773(c)(3) of the Act.)

Facts Available

The Department seeks to make its antidumping determinations on the basis of responses to its antidumping questionnaires. However, for a variety of reasons, the data needed to make such determinations may be unavailable or unusable on the record of the case. In such instances, the law requires the Department to make its determinations on the basis of "the facts otherwise available" (more commonly referred to as "the facts available"). The Department also must use the facts available where an interested party or any other person: (1) withholds information requested by the Department; (2) fails to provide requested information by the requested date or in the form and manner requested; (3) significantly impedes an antidumping proceeding; or (4) provides information that cannot be verified.

In selecting the information to use as the facts available, the law authorizes the Department to make an inference which is adverse to an interested party if the Department finds that party failed to cooperate by not acting to the best of its ability to comply with a request for information. However, the law also provides that when the Department relies on secondary information (information derived from the petition, or the dumping rate determined in a prior segment of a proceeding rather than on information obtained in the course of an antidumping proceeding the Department must, to the extent practicable, corroborate that information from independent sources that are reasonably at the Department's disposal. Corroborated information

is information considered reliable and relevant. Final calculated rates from prior segments need not be corroborated as their reliability and relevance has already been established in the prior segment.

The Department will consider using submitted information that does not meet all of the Department's requirements if: (1) the information is submitted within applicable deadlines; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for a determination; (4) the party establishes that it acted to the best of its ability; and (5) the Department can use the information without undue difficulties. Finally, if an interested party promptly informs the Department of difficulties it is having in responding to a request for information, the Department will consider modifying its request to the extent necessary to avoid imposing an unreasonable burden on the party. (Sections 776 and 782(c)-(e) of the Act. and section 351.308 of the regulations.)

Foreign Like Product

The term "foreign like product" refers to merchandise sold in the comparison market that is identical or similar to the subject merchandise. When used in the questionnaire, foreign like product means all merchandise that is sold in the comparison market and that fits within the description of merchandise provided in Appendix III to the questionnaire. (Section 771(16) of the Act. See also Identical Merchandise and Similar Merchandise.) There are no foreign like products for nonmarket economy cases. Factors of production analysis is used to determine normal values. (See Factors of Production.).

Further Manufacturing Adjustment

In calculating a constructed export price, the Department normally deducts from the price of the merchandise sold in the United States the cost of any further manufacture or assembly performed in the United States by, or for, the exporter or an affiliate. However, if the value of the further processing is likely to exceed substantially the value of the subject merchandise in its imported condition, the Department may use an alternative basis for the constructed export price. If possible, the Department would use the price of subject merchandise sold to an unaffiliated customer by the producer, exporter, or affiliated seller. If there is an insufficient quantity of such sales, the Department may rely on any other reasonable basis. (Sections 772(d)(2) and 772(e) of the Act, and Section 351.404 of the regulations.)

Home Market

The home market refers to the market for sales of the foreign like product in the country in which the merchandise under investigation is produced. Home market sales are the preferred basis for normal value. (See also Third-Country Market and Viability.)(Section 351.404 of the regulation)

Identical Merchandise

The Department prefers to compare U.S. sales to sales of foreign sales of identical merchandise. Identical merchandise is merchandise that is produced by the same manufacturer in the same country as the subject merchandise, and which the Department determines is identical or

virtually identical in physical characteristics with the subject merchandise, as imported into the United States. (See also Similar Merchandise and Foreign Like Product.)

Imputed Expenses

Imputed expenses generally are opportunity costs (rather than actual costs) that are not reflected in the financial records of the company being investigated, but which must be estimated and reported for purposes of an antidumping inquiry. Common examples of imputed expenses include credit expenses and inventory carrying costs.

Indirect Expenses

See **Direct vs. Indirect Expenses**.

Inventory Carrying Costs

Inventory carrying costs are the interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer. The Department normally calculates these costs by applying the firm's annual short-term borrowing rate in the currency of the country where the merchandise is held, prorated by the number of days between leaving the production line and shipment to the customer, to the unit cost or price. (See also Imputed Expenses.)

Level of Trade

In order to establish whether difference in levels of trade exist, the Department reviews distribution systems, including categories of customers, selling activities, and levels of selling expenses for each type of sale. Different levels of trade are typically characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively and/or quantitatively different selling activities. Different levels of trade necessarily involve difference in selling activities, although differences in selling activities alone are not sufficient to establish differences in levels of trade. Similarly, customer categories such as "distributor," "wholesaler," "retailer," and "end-user" are often useful in identifying levels of trade, although they, too, are insufficient in themselves to establish differences in levels of trade. Rather, the Department evaluates differences in levels of trade based on a seller's entire market process. (Section 351.412(a)-(c) of the Department's regulations.)

Level of Trade Adjustment

To the extent practicable, the Department calculates normal values based on sales at the same level of trade. When the U.S. sale is an export price sale, the level of trade of the U.S. sale is that of the starting price. When the U.S. sale is a constructed export price sale, the level of trade of the U.S. sale is determined for the constructed export price, not the starting price. When the Department is unable to find sales in the comparison market at that same level of trade as the U.S. sale, the Department may adjust the normal value to account for differences in levels of trade between the two markets.

The Department will make these adjustments only when there is a difference in the levels of trade (i.e., there is a difference between the place of the customers in the marketing process, and actual functions performed by the sellers and that difference affects price comparability. The Department will measure the effect on price comparability by determining whether there is a consistent pattern of price differences between sales at the different levels of trade in the comparison market. The Department normally will calculate any adjustment for level of trade based on the percentage difference between averages of the prices at the different levels of trade in the comparison market, less any expenses adjusted for elsewhere in the normal value calculation. (Sections 773(a)(1) and (7) of the Act.)

Market-Oriented Industry

For nonmarket economy (NME) cases, the Department may find a market-oriented industry exists when it finds that in an entire industry: (1) there is virtually no government involvement in setting prices or amounts produced; (2) it is privately or collectively owned; or (3) market-determined prices are paid for all significant inputs. (Normally, imports of merchandise from an NME are not subject to countervailing duty.)

Such a decision is based on information provided by the nonmarket economy exporters and producers. If an industry is found to be a market-oriented industry, the normal value will be calculated on the basis of home market or third country prices or costs. That industry would also be subject to a countervailing duty investigation should one be petitioned and initiated.

Movement Expenses

Movement expenses are expenses directly attributable to bringing the merchandise from the original place of shipment to the place of delivery of the U.S. or foreign market sale. These expenses may include freight and freight insurance charges, brokerage and handling fees, export taxes, and warehousing expenses incurred after the merchandise leaves the original place of shipment.

Normally, the product facility is considered to be the original place of shipment. However, where export price, constructed export price, or normal value is based on a sale made by a reseller unaffiliated with the producer, the Department may treat the place from which the reseller shipped the merchandise as the original place of shipment. Sections 772(c)(2)(A) and 773(a)(6)(B)(ii) of the Act; section 351.401(e) of the regulations.)

Nonmarket Economy

A nonmarket economy country is any foreign country that the Department determines does not operate on market principles of cost and pricing structures. The Department considers the following factors about a foreign country in making these decisions: (1) the extent to which the currency is convertible; (2) the extent to which wage rates are determined by free bargaining between labor and management; (3) the extent to which joint ventures or foreign investment are permitted; (4) the extent of government ownership or control of means of production; (5) the extent of government control over allocation of resources and over price and output decisions of enterprises; and (6) other factors the Department considers appropriate. (Section 771(18)(B) of the Act.)

Normal Value

Normal value is the term applied to the adjusted price of the foreign like product in the home or third-country (comparison) market, or to the constructed value of the subject merchandise. The Department compares the normal value to the export price or constructed export price to determine the margin of dumping, if any.

The Department initially seeks to calculate normal values based on price. If there are adequate sales in the home market (see Viability), the Department calculates normal value based on the price at which the foreign like product is first sold (generally, to unaffiliated parties) in that market. In the absence of a usable home market, and if there are adequate sales in a third-country market, the Department calculates normal value based on the price at which the foreign like product is first sold (generally, to unaffiliated parties) in the third-country market. If there are no appropriate home or third-country market sales, the Department determines normal value by calculating the constructed value.

To ensure that a fair comparison with the export price or constructed export price is made, the Department makes adjustments to the price used to calculate the normal value. The Department adds U.S. packing charges and deducts any of the following expenses included in the comparison market price: packing charges, transportation costs, and any internal tax that was rebated or not collected on the subject merchandise. The Department may make additional adjustments to account for differences in the conditions under which sales are made in the United States and the comparison market. Thus, the Department may increase or decrease the normal value to account for differences in quantities, physical characteristics of the merchandise, levels of trade, and other circumstances of sale. (Section 773(a) of the Act.)

Normal value for nonmarket economy cases is determined by factors of production analysis. (See Factors of Production.)

Ordinary Course of Trade

In calculating normal value, the Department will consider only those sales in the comparison market that are in the ordinary course of trade. Generally, sales are in the ordinary course of trade if made under conditions and practices that, for a reasonable period of time prior to the date of sale of the subject merchandise, have been normal for sales of the foreign like product. (Section 771(15) of the Act and section 351.102(b) of the regulations. See also Arms-length Transactions.)

Proprietary Information

Proprietary information is sensitive business data that would cause substantial harm to the submitter if disclosed publicly. Examples of information that the Department normally treats as proprietary, if requested and not already in the public domain, include trade secrets concerning the production process, production and distribution costs, terms of sale, individual prices, and the names of customers and suppliers.

Proprietary Treatment

If a party requests proprietary treatment of information, and if the Department agrees that the information is proprietary, the Department will protect the information from public disclosure. If the Department does not agree that the information is proprietary, it will return the information and not rely on it in the proceeding, unless the submitter agrees that it may be made public. When requested, Department will disclose proprietary information only to United States International Trade Commission and United States Customs Service officials and, under limited administrative protective orders, representatives of interested parties. (Section 777(b) of the Act. See also Administrative Protective Order.)

Rebates

Similar to discounts, rebates are reductions in the gross price that a buyer is charged for goods. Unlike discounts, rebates do not result in a reduction in the remittance from the buyer to the seller for the particular merchandise with which the rebate is associated. Rather, a rebate is a refund of monies paid, a credit against monies due on future purchases, or the conveyance of some other item of value by the seller to the buyer after the buyer has paid for the merchandise. When the seller establishes the terms and conditions under which the rebate will be granted at or before the time of sale, the Department reduces the gross selling price by the amount of the rebate. (See also Discounts and Direct vs. Indirect Expenses.)

Separate Rates

For nonmarket economy cases, the Department normally calculates one rate for all exporting companies. However, if an exporter demonstrates that its export activities are independent of government control, it can receive an individually calculated antidumping duty rate. This separate rate is calculated using the U.S. price the exporter set and the inputs of the manufacturer that supplied the goods to the exporter, valued in a surrogate country. All companies that do not submit a response to the antidumping questionnaire or do not adequately establish that their export activities are independent of government control are subject to the single economy-wide rate.

Similar Merchandise

For market economy cases, in deciding which sales of the foreign like product to compare to sales of the subject merchandise, the Department first seeks to compare sales of identical merchandise. If there are no sales of the identical foreign like product, the Department will compare sales of the foreign like product similar to the subject merchandise. The similar foreign like product is merchandise that is produced by the same manufacturer in the same country as the subject merchandise, and which, in order of preference, is either (1) similar to the subject merchandise in component materials, use, and value, or (2) similar in use to, and reasonably comparable to, the subject merchandise. (Section 771 (16) of the Act.) See also Identical Merchandise and Foreign Like Product.

Subject Merchandise

Subject merchandise is the merchandise under investigation, i.e., the merchandise described in Appendix III to the questionnaire, and sold in, or to, the United States. (Section 771(25) of the Act.)

Surrogate Country

For nonmarket economy cases, the Department values factors of production in a surrogate country. The surrogate is a market economy country that is at a level of economic development comparable to that of the nonmarket economy country and is a significant producer of the subject merchandise or comparable merchandise nonmarket economy country. The Department cannot use price or costs inside a NME, except in the case of a Market Oriented Industry. (Section 773(c)).

Technical Service Expenses

Technical service expenses are typically incurred when a producer provides technical advice to customers which are industrial users of the product. Generally, the Department considers travel expenses and contract services performed by unaffiliated technicians to be direct expenses. The Department treats salaries paid to the seller's employees who provide technical services as indirect expenses.

Third-Country Market

When the Department cannot use home market sales as the basis for determining normal value, one of the alternative methods authorized by the antidumping law is the use of sales to a third-country market, i.e., export sales of the foreign like product to a country other than the United States. Generally, in selecting a third-country market to be used as the comparison market, the Department will choose one of the three third-country markets with the largest aggregate quantity of sales of the foreign like product. In selecting which country, the Department will consider product similarity, the similarity of the third-country and U.S. markets, and whether the sales to the third country are representative. (See also Home Market and Viability and section 773(a)(1) of the Act and section 351.404 at the regulations.)

Verification

To establish the adequacy and accuracy of information submitted in response to questionnaires and other requests for information, the Department examines the records of the party that provided the information and interviews company personnel who prepared the questionnaire response and are familiar with the sources of the data in the response. This process is called verification. The Department must verify information relied upon in making a final determination in an investigation, or in an administrative review when revocation of an antidumping order is properly requested. The Department also must verify information submitted in an administrative review if an interested party so requests and no verification of the producer or exporter had been conducted during the two immediately proceeding reviews of that producer or exporter, or if good cause for verification is shown. (Section 782(i) of the Act.) Also section 351.307 of the regulations.

Viability

For market economy cases, to calculate normal value based on sales in the home market, the Department must determine that the volume of sales is adequate in that market and that a "particular market situation" does not make their use inappropriate. To calculate normal value

based on sales in a third-country market, the Department must make the same determinations with respect to sales to the third country, and the sales must be "representative." These determinations establish whether a market is viable.

The Department normally finds sales to be adequate if the quantity of the foreign like product sold in the market is 5 percent or more of the quantity sold to the United States. In unusual situations, the Department may find that sales below the 5-percent threshold are adequate, or that sales above the threshold are not. Also in unusual situations, the Department may apply the 5-percent test on the basis of value, rather than quantity. The terms "particular market situation" and "representative" are undefined in the statute of regulations. A particular market situation might exist, for example, where there was a single sale in the comparison market that constituted 5 percent or more of the quantity sold to the United States, or where government control of pricing is such that prices cannot be competitively set, or where there are differing patterns of demand in the United States and comparison market. (Section 773(a)(1) of the Act and section 351.404(b)(2) of the regulations.)

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
APO	ADMINISTRATIVE PROTECTIVE ORDER
CCIA	CHIEF COUNSEL FOR IMPORT ADMINISTRATION
CEP	CONSTRUCTED EXPORT PRICE
COP	COST OF PRODUCTION
CS	THE COMMERCIAL SERVICE
CV	CONSTRUCTED VALUE
CRU	CENTRAL RECORDS UNIT
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
HRR	H.R. REP. No. 317, 96TH CONGRESS, 1ST SESSION 51 (1979)
HTSUS	HARMONIZED TARIFF SYSTEM OF THE UNITED STATES
IA	IMPORT ADMINISTRATION
ICA	IMPORT COMPLIANCE ASSISTANT
ITC	INTERNATIONAL TRADE COMMISSION
MAC	MARKET ANALYSIS AND COMPLIANCE
MNC	MULTINATIONAL CORPORATION
NV	NORMAL VALUE
OA	OFFICE OF ACCOUNTING
OD	OFFICE DIRECTOR
OP	OFFICE OF POLICY

PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 1

ANALYSIS OF PETITIONS AND INITIATIONS OF INVESTIGATIONS

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 339 - technical assistance to eligible small businesses
 - Section 732 - initiation
 - Section 733(e) - critical circumstances
 - Section 734(a) - withdrawal of petition
 - Section 771(9) - interested parties
 - Section 771 (10) - like product
 - Section 773(b) - sales at less than cost
 - Section 773(d) - multinational corporations
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.102 - domestic interested parties
 - 19 CFR 351.201 - self-initiated investigations
 - 19 CFR 351.202 - petition requirements
 - 19 CFR 351.203 - sufficiency of petition
 - 19 CFR 351.206 - critical circumstances
 - 19 CFR 351.207 - withdrawal of petition
- Statement of Administrative Action (SAA)
 - Section C.3 - initiation and subsequent investigation
- Antidumping Agreement
 - Article 2.2.1 - sales at less than cost
 - Article 4 - definition of domestic industry
 - Article 5 - initiation
 - Article 12 - public notice of initiation

INTRODUCTION

This chapter explains the initiation process for antidumping investigations. It includes detailed information on the following items: treatment of draft petitions; analysis of official filings; allegations for special situations such as less than cost sales and multinational corporations; and the preparation of initiation packages. For information on the initiation of antidumping duty order administrative reviews, see Chapter 18.

I. DRAFT PETITIONS

All contacts on the filing of draft petitions or requests for technical assistance in preparing an antidumping petition by small businesses, as defined in section 339 of the Act, should be referred to the Director for Policy and Analysis, Import Administration (IA), International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, D.C. 20230. The Director for Policy and Analysis will assign draft petitions and requests for assistance to one of the Deputy Assistant Secretaries in IA.

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When draft petitions are received, we usually require a minimum of five business days to review the draft and to give substantive comments to the potential petitioner or its counsel. Draft petitions are not discussed with anyone outside IA, the Office of the Chief Counsel for Import Administration (CCIA), and the International Trade Commission (ITC) other than the petitioner. Any inquiries concerning possible filings of petitions should be responded to with a statement that no petition has been filed on the product. Only when a petition has been filed officially can we indicate that the DOC is considering a petition on the product. At the time of filing the draft, it is appropriate to ask the petitioner what schedule, if any, it has for filing the official version of the petition. If you receive this information, it should be given to your supervisor or program manager (PM) and the director of IA's Office of Policy and Analysis immediately.

The petitioner should furnish four copies of the draft (five if cost of production (COP) or constructed value (CV) is involved) including all support documentation. Copies should be distributed to the Office of Policy (OP) and the CCIA's office. The Office of Accounting (OA), should receive a copy of the draft if it contains COP or CV data. Potential petitioners should be encouraged to file drafts of the non-proprietary version along with the proprietary version. When distributing a draft petition, indicate that it is a draft, who is reviewing it in your office, and that the team will meet to discuss its adequacy three business days later. After meeting with the team, a summary of the petition and the problems found should be prepared and a meeting should be scheduled with the Office Director (OD). All team members should be present at that meeting.

Draft petitions should be reviewed as thoroughly as an officially filed petition. One of the most important parts of any draft petition is the price or cost information used to establish alleged less than fair value sales. Current price information (usually no more than one- year old) is always necessary to support the U.S. sales side of the less than fair value allegation. A petitioner can obtain price information from sources such as price lists, actual invoices, written quotations, affidavits attesting to oral quotations or knowledge of actual prices, salespersons' "call reports," market research information supplied by a market research firm, or, in some instances, from average per-unit prices from the Harmonized Tariff System of the United States (HTSUS) statistics for products that are classified under very specific product categories. For the exporting country side of the sales at less than fair value allegation, the petitioner may supply price information. If prices are used, support documentation could be the same as for U.S. sales prices. If prices are not available, a cost based surrogate for prices that uses the petitioner's own factors of production, but incorporates values from the exporting country for such things as materials, labor rates, and energy costs, can be used. Cost information may also come from a market research report on the product in the exporting country prepared by a market research firm. Whether prices or costs are employed in an allegation, various adjustments are usually necessary to net prices back to the producers' or exporters' doors or to adjust prices or costs for differences in circumstances of sale (see Chapters 6, 7, and 8 for detailed information on the calculation of U.S. and exporting country prices or costs that form the bases for a sales at less than fair value comparison).

As you analyze the prices or costs used to support an allegation of sales at less than fair value, particular attention should be paid to the support documentation for the alleged prices or costs and any adjustments claimed as the petition must be "reasonably supported by the facts alleged,"

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H.R. Rep. No 317, 96th Congress, 1st Sess. 51 (1979) (HRR). This means that the mere furnishing of documentation is not necessarily sufficient and that the DOC should be able to seek additional data where support for a specific allegation is weak or the information appears aberrational. Support documentation should include the identification of sources and an explanation of how the information was obtained. For example, an affidavit from a company official describing call reports from sales representatives reporting lost sales in the United States may be used to support United States price data. Price lists used should include effective dates or be supported with a statement indicating the time period covered by the price lists. Price data should be as current as possible, usually within a year of the anticipated filing date. Prices used as the bases for normal value (NV) and export price (EP) and constructed export price (CEP) should reflect contemporaneous periods of time. Currency-conversion rates used should be included and the source of these rates should be given. See the antidumping (AD) initiation checklist in section VII of this chapter for a complete listing of all areas that need to be analyzed.

Statistical data on imports should be checked. The computer support team for your office should be asked to develop up-to-date import statistics from the country named in the petition. The products covered should be described clearly and HTSUS numbers should be included. You should check these numbers in order to ensure that they are correct.

Industry support is another very important part of a draft petition. Accordingly, the draft should identify the industry on behalf of which the petitioner is filing. It should also contain the names and addresses of other persons in the industry as well as information relating to the degree of industry support for the petition, including: (i) the total volume and value of U.S. production of the domestic like product, regardless of sales destination; and (ii) the volume and value of the domestic like product produced by the petitioner and each domestic producer identified, regardless of sales destination. This information should cover the last completed calendar year and, if available, the 12 months prior to the month of the filing of the draft (see section III of this chapter).

It is important that the scope be defined as accurately as possible to minimize future questions about product coverage. We also want to avoid unintentional product coverage. We wish to ensure that the scope of the investigation (and any order that may result) does not include products in which the petitioner has no interest. Attention should be given especially to whether the prospective petitioner has unintentionally included products that are not produced domestically.

The last very important part of a draft petition involves the product description or scope. You and your team members should carefully review the product description to ensure that it covers what the petitioner wants to cover and that it will be as easily understood as possible throughout the various segments of the antidumping proceeding (see section IV of this chapter).

The analyst should call the Office of Investigations at the ITC at 205-3160 to determine whether or not the draft was filed there. The draft should be discussed with the analyst at the ITC in order to determine whether the ITC has problems with it. The primary focus of this discussion should be on the scope language and the industry-support aspects of the filing (see sections III and IV of this chapter).

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After the team meeting with the OD, you should inform the petitioner of all problems found as result of our review. You should state that the listing of problem areas is advisory and that additional problems, if found after the petition is officially filed, will have to be corrected during the 20-day statutory initiation period. Remember that 19 CFR 351.202(b) specifies that information supplied in a petition must be “reasonably available” to the petitioner. There is no exact interpretation of this term, however, the size of the petitioning firm and the type of information in question should be considered when these types of judgements are made.

II. OFFICIAL FILINGS

When a petition is filed officially, a determination on whether or not to initiate an investigation is usually made within 20 days after the date of filing as specified in section 732(c) of the Act and 19 CFR 351.203. It should be noted that the day after the petition is filed begins the statutory 20 day period. During the 20-day pre-initiation period, we will not accept oral or written communication from interested parties regarding a petition except inquiries concerning the status of the proceeding and the issue of industry support. Notices of appearance (i.e., letters from law firms notifying us about whom they are representing in the investigation) are also acceptable. In situations involving polling of the domestic industry (see section IV of this chapter), a maximum of 40 days may be taken to make the initiation determination. The petition should be immediately distributed to the appropriate IA offices and the CCIA for review. It is the analyst's responsibility to see that this distribution occurs. A public version copy of the petition is delivered immediately to the embassy of the country in question by the IA Central Records Unit.

In reviewing the petition, the analyst should cover all areas indicated in the discussion of the review of draft petitions in section I of this chapter even if a draft of the petition has been checked previously. If a draft was filed previously, you should have a copy of the list of problem areas that were pointed out to the petitioner. This will assist you in your analysis of the officially filed document. Remember that under 19 CFR 351.202(b) the information required for an antidumping petition must be “reasonably available” to the petitioner and, under the HRR, the information furnished in support of the petition must be “reasonably supported by the facts alleged.” Be careful to ensure that all factual information is certified by an appropriate company official and the company's counsel. The analyst should also check whether there is a proper summary of any business proprietary information relating to the allegation of sales at less than fair value and whether there is a statement indicating the petitioner's position on administrative protective order (APO) release of the proprietary information relating to the allegation of sales at less than fair value to counsel for other interested parties under a properly filed request (see chapter 3 of this manual for more information on proprietary submissions and APO release).

Consultants are often used to perform market research in support of EP, CEP, or NV. In order to authenticate the validity of market research, the research document should be submitted for the record as part of the official petition. The petitioner should be contacted in order to receive clearance to communicate with the market-research preparers by telephone. The petitioner must provide the name, telephone number and address of the research preparers, however, this information may be omitted from the proprietary and non-proprietary versions of the petition if we receive appropriate justification. The petitioner should contact the research preparers and request that they cooperate with IA when called.

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The following information should be obtained from the research preparers and placed in the file in memo form:

- General information about the research company, e.g., how long it has been involved in this kind of work, whether work has been done for the petitioner or petitioner's counsel before, etc.
- Did they prepare the research submitted with the petition or contained in the petition in support of EP, CEP, or NV? If not, who did? What is their relationship to the preparer? Have they used this preparer in the past?
- What methodologies or procedures did the company employ to gather the data? How was the information verified?

When a valid request to exclude the name and address of the preparer is received, the following paragraph may be used to introduce the memorandum:

"Because of the extreme sensitivity of the name of the market research firm that gathered the petition information in this case, this memorandum constitutes confirmation of the source of the market research report."

The petitioner must file a copy of the petition and any amendments (see 19 CFR 351.202(c) and (e)) with the ITC and the DOC on the same day and so certify in submitting the petition. When a petition is filed with the respective agencies on different dates, the latter of the two dates is the official date of filing since the Act requires simultaneous filing of petitions with the respective agencies.

Next the analyst should coordinate with the ITC on the product description and the ITC's review of the petition. We should make every effort to reach agreement with the ITC on the product description. However, the analyst should keep in mind the fact that the DOC determines the scope of an investigation. It is important to document your contacts with the ITC on the record as we need to have a clear description of the domestic like product for determining industry support. Any areas of dispute with the ITC over the scope or product description must be immediately brought to the attention of the team and your supervisor or PM.

Every effort is made to have the same analyst review the draft and subsequently filed petition. However, when a different reviewer is involved, the new analyst should always coordinate with the analyst who handled the draft in order to determine whether problem areas have been corrected. If the analyst finds additional problems with the petition, these should not be discussed with the petitioner until they have been reviewed internally and a meeting has been held with the OD. This meeting should take place no later than seven days after the petition is filed.

After meeting with the OD to discuss petition problems, the petitioner should be notified of areas in the petition which need further support or information. Once the requested revisions are

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received, they should be analyzed immediately to determine if they are complete. If the revised petition still requires further support or information, see your supervisor or PM immediately.

The standard cable requesting statistical data about potential respondents should be prepared and the appropriate DOC officials in Market Analysis and Compliance (MAC) and the Commercial Service (CS) must initial the cable before it is sent. The cable must also be sent to the appropriate official at the State Department for clearance.

Check with your program import compliance assistant (ICA), supervisor, or PM for current information on cable clearance.

Required information should also be inserted into the Lotus Notes case tracking system. Lotus Notes is a windows-based software package that provides analysts and managers schedules for the timely completion of all IA proceedings including all antidumping and countervailing duty investigations reviews, remands, and suspension agreements. Lotus Notes will alert managers to schedule conflicts, and allow them to keep track of staff workload.

All cases are loaded into Lotus Notes as soon as they are officially received. Analysts or managers can access their case assignments and input the day each task is started and completed. Using that information, Lotus Notes will then produce case schedules and management reports.

III. INDUSTRY SUPPORT

A. General Information

Petitions must be filed by an interested party who has the support of the industry producing or selling, at other than retail, the domestic like product in the United States. Although the ITC is the agency which determines domestic like product for injury purposes, the DOC has to determine industry support on the basis of producers of the domestic like product. Since the domestic like product is the domestic product most like the imported one, it may be exactly the same. Sections 702(c)(4)(A) and 732(c)(4)(A) of the Act recognize that industry support for a petition may be expressed by either management or workers. If the management of a firm expresses a position in direct opposition to the views of the workers in that firm, the SAA directs us to treat the production of that firm as representing neither support for nor opposition to the petition. As under current practice, the views of workers may be submitted by unions, other employee organizations, or ad hoc groups of workers.

The petitioner must provide the volume and value of its own production of the domestic like product, as well as the production of that product by each member of the industry, to the extent that such information is reasonably available to the petitioner. In addition, the petitioner must provide information on the total volume and value of U.S. production of the domestic like product, to the extent that such information is reasonably available to the petitioner.

The information supporting the industry support submitted by the petitioner(s) must always be reviewed. We normally will determine the existence of industry support based on the volume or value of production. In most instances we base this determination on volume, as we did in

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Initiation of Antidumping Duty Investigations: Brake Drums and Certain Brake Rotors from the People's Republic of China, 61 FR 14740 (April 3, 1996). However, in some cases such as: Initiation of Antidumping Investigations: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, 60 FR 38546 (July 25, 1995), we based our determination on value. We used value in that case because of the difficulty in determining what constituted a unit of merchandise. Where information is unclear, you should ask for clarification by the petitioner. Sometimes, if it is necessary to corroborate the data, we look for independent information. We often ask the ITC for the production information for the industry. Sometimes we call non-petitioning, domestic producers to determine their production. If this type of call is necessary, consult with your supervisor or PM prior to making it.

We normally will review production figures over a twelve-month period. However, we recognize that there may be circumstances in which a twelve-month period may not be appropriate. In those instances, we would identify the appropriate review period on a case-by-case basis. See section 351.203(e)(1) of our regulations. If actual production data for the relevant period is not available, production levels may be established on the basis of alternative data that the DOC determines to be indicative of production levels. For example, for some industries or firms, shipment data may correspond directly with production data, and, thus, be a reliable alternative.

Section 702(c)(4)(A) of the Act requires the DOC to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry for the like product supports an antidumping duty petition. In making this determination, the DOC and the ITC must both apply section 771(10) of the Act which defines “domestic like product”, but they do so for different purposes and pursuant to separate and distinct authority. Furthermore, the DOC’s determination is subject to limitations of time and information. This may result in different definitions of the like product, but such differences do not render the decision of either agency contrary to law (see Initiation of Antidumping Duty Investigation: Collated Roofing Nails from the People's Republic of China, the Republic of Korea, and Taiwan, 61 FR 67306 (December 20, 1996)). We will not consider any arguments relating to industry support once an investigation has been initiated. A petition meets the minimum requirements 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 (see Initiation of Antidumping Duty Investigation: Beryllium Metal and High Beryllium Alloys from Kazakhstan, 61 FR 15770 (April 9, 1996)). Also note that in situations where the views of management and workers negate each other, the production of the company is included as part of the total production of the domestic like product for purposes of applying the 25-percent threshold. (See the “Comments” section of the preamble to the AD regulations, 62 FR 27296 (May 19, 1997)).

Please note that the methodologies used to determine industry support (e.g., production publications) may vary from industry to industry.

During the pre-initiation review period for a petition, interested parties other than the petitioners may only comment on the question of industry support (see Part B below). If we receive

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substantive information on any subject other than industry support, we would normally consider it to be inappropriately filed and we would return it to the party that filed it (see 19 CFR 351.202(i)).

B. Challenges to Industry Support

When a member of the domestic industry challenges the assertion of the petitioner that it has filed with support of the domestic industry, the burden is on the petitioner to establish that it meets the above requirements. Challenges to industry support should be brought to the immediate attention of the team members and your supervisor. If a petition does not have industry support, the investigation would be terminated, as provided in section 782(h) of the Act.

We may ignore the opposition of related domestic producers "unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected" (see section 19 CFR 351.203(e)(4)). This puts the burden of demonstrating such an effect on those producers. We consider related domestic producers to be either 1) a domestic producer related to a foreign exporter, or 2) a domestic producer related to a foreign producer. In addition, we may also disregard the views of domestic producers who are also importers of the subject merchandise and domestic producers who are related to such importers. In evaluating whether to disregard such producers, the DOC may consider the import levels and percentage of ownership common to other members of the domestic industry.

The expression of a position regarding a petition may be treated as business proprietary information under 19 CFR 351.105(c)(10).

Sections 702(c)(4)(E) and 732(c)(4)(E) of the Act state that interested parties may challenge the adequacy of the DOC's industry-support determination if the DOC dismisses the petition or initiates an investigation and subsequently issues an antidumping duty order.

C. Polling

If the requisite support is not established in the petition, we will poll or otherwise determine whether the industry supports the petition, pursuant to 19 CFR 351.203(b)(2) of our regulations. In appropriate circumstances, we may sample, from information contained in the petition or placed on the record by domestic interested parties, to determine whether the required support exists. We have yet to have a case where it was necessary to poll the domestic industry. We will normally initiate an investigation within twenty days of the filing of the petition. However, sections 702(c)(1)(B) and 732(c)(1)(B) of the Act provide for an extension of up to twenty additional days after the filing of a petition in exceptional circumstances where we cannot establish whether there is the requisite industry support within twenty days. We will only extend if we need to poll the industry. In conducting such a poll, the DOC will include in the poll unions, groups of workers, and trade and business associations. Note that the SAA (section C. 3. c) and the legislative history of the Uruguay Round Agreements Act are clear in stating that the DOC will not go beyond 20 days in considering the industry support element of a petition in the vast majority of cases.

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D. Regional Industry

Sections 702(c)(4)(C) and 732(c)(4)(C) of the Act establish a special rule for determining industry support if the petition is filed on behalf of a regional industry. In such situations, we apply the same 50-and 25-percent domestic-industry-support requirements on the basis of production in the alleged region. Thus, a petitioner need only show that domestic producers or workers in the relevant region, as opposed to the entire United States, support the petition (see Initiation of Antidumping Duty Investigation: Certain Steel Concrete Reinforcing Bars from Turkey, 61 FR 15039 (April 4, 1996)).

IV. SCOPE OF THE INVESTIGATION AND LIKE PRODUCT DETERMINATIONS

A. Scope of the Investigation Determinations

The DOC also determines the scope of an investigation. The scope of an investigation may also be referred to as the class or kind of merchandise under investigation or the merchandise subject to the investigation. A single investigation involves a class or kind of merchandise. Where we determine that a petition covers more than one class or kind of merchandise, we conduct separate investigations for each. In such instances, there must be evidence of sales at less than fair value and industry support for each class or kind of merchandise in order to support initiation of multiple investigations. An example of a petition covering more than one class or kind of merchandise is the March 1996 filing on certain brake drums and certain brake rotors from the People's Republic of China. Normally we will publish a combined initiation notice covering the separate classes or kinds of merchandise. In some cases we will use a generic case name, such as certain carbon steel products, and describe each product separately in the scope section of the notice. Note that splitting a class or kind of merchandise into two or more classes or kinds usually results in having to query different sets of respondents.

We normally limit the class or kind of merchandise in an investigation to the products that the petitioner specifically names in the petition. In many instances, the class or kind includes finished products as well as components or subassemblies (see Initiation of Investigations: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, 60 FR 38546 (July 27, 1995)).

In cases in which the Department has been asked to find more than one class or kind of merchandise subject to investigation, we have relied upon the four characteristics mentioned above from the Diversified Products case and a fifth characteristics, introduced by the CIT in the Kyowa Gas case:

1. The general characteristics of the merchandise;
2. The expectations of the ultimate purchaser;
3. The channel of trade in which the products are sold;
4. The ultimate use of the merchandise; and,
5. The manner in which the products are advertised and displayed.

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When examining the physical characteristics of groups of products, the Department does not rely on mere physical differences among products. There must be clear dividing lines between product groups for the Department to find difference classes or kinds.

In interested parties ask the DOC to determine that there are two separate classes or kinds of merchandise under investigation. Where the DOC was called upon to determine the number of classes or kinds of merchandise under investigation, analysis has been based on the criteria set forth by the CIT in Diversified Products. Regarding four of the five Diversified Products criteria (ultimate use, expectations of the ultimate purchasers, channels of trade, and manner of advertising), the DOC found a significant overlap. When examining the physical characteristics of products in the context of class or kind analysis, the DOC looks for clear dividing lines between product groups, not merely the presence or absence of physical differences between certain products. Physical differences alone between the two product groups are not conclusive proof of different classes or kinds. Sulphur Dies is an example of this type of analysis and decision. (see Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes from the United Kingdom, 58 FR 7537 (February 8, 1993)). In that case, the DOC decided that the subject merchandise constituted only one class or kind.

In Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea, 54 FR 15467 (March 23, 1993), the DOC received submissions from interested parties asking that the DOC exclude the following from the scope: 1) future generations of semiconductors; 2) further-manufactured memory boards containing semiconductors; and 3) further-manufactured memory boards contained in downstream products. Regarding future generations of semiconductors and further-manufactured memory boards containing semiconductors, we determined that these products were within the scope of the investigation. Regarding further-manufactured memory boards contained in downstream products, we determined that the downstream products themselves were not in the same class or kind of merchandise and, therefore, could not be included in the scope. However, we determined that the further-manufactured memory boards were not so physically integrated into the downstream products as to constitute one inseparable amalgam. In order to avoid coverage under the order, we allowed the importer of the downstream products to certify with U.S. Customs that memory boards contained on those downstream products would not be removed from the downstream products after importation and sold separately.

In order to ensure that the scope of an investigation is defined as accurately as possible, the Department undertakes two procedures. The Department announced its implementation of these procedures in the preamble to the 1997 final regulations (62 FR 27296, 27323, May 19, 1997). First, we include in our pre-filing checklist of petition information a check that the proposed scope of the petition is an accurate reflection of the product for which the domestic industry is seeking relief. Pre-filing consultations with the prospective petitioner should seek to ensure that the scope of the petition is not unintentionally overinclusive. Second, we designate a period early in the investigation for parties to raise issues regarding product coverage. Petitioners then have an opportunity to reconsider product coverage and the Department can amend the scope of the investigation if warranted. You should include in the notice of initiation of the investigation an announcement of this comment period (see, e.g. Initiation of Antidumping Duty Investigation: Fresh Atlantic Salmon from Chile, 62 FR 37027 (July 10, 1997)).

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Subsequent to the filing of a petition, the analyst should send a letter to Customs containing the scope language from the petition. The letter requests that the National Import Specialist for the product review the scope definition and the HTSUS number(s) for accuracy. The standard format for the letter can be obtained from the your supervisor or PM.

The ITC makes domestic like-product determinations in determining whether or not there is material injury or threat of material injury to the domestic industry, i.e., it determines which product manufactured in the United States is most like the merchandise being imported. In some instances, the definition of a domestic like product will be narrower than that of class or kind. If the ITC determines that some domestic like products are not being injured by corresponding imports within the scope of the investigation, the investigation terminates on those imported products. This is the case at both the preliminary and final stages of the ITC's investigation. An example of a case where the ITC found narrower like-products categories than our class or kind of merchandise is found in Antidumping Duty Order: Certain Compact Ductile Iron Waterworks Fittings and Glands from the People's Republic of China, 58 FR 47117 (September 9, 1993).

B. Like Product Determinations

The DOC is also required to make a like product determination as part of its analysis of a petition. Section 771(10) of the Act defines a domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation." Thus, the reference point from which a like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined by the petition. In Initiation of Antidumping Duty Investigation: Collated Roofing Nails from the People's Republic of China, 61 FR 67306 (December 20, 1996) (Nails from the PRC), the DOC found no reason to find the petitioner's definition of the product "clearly inaccurate." Accordingly, the petitioner's representations that there are clear dividing lines between collated roofing nails and other collated and bulk roofing nails was accepted, and the like product definition (which was the same as the definition of the class or kind in the petition) as set forth in the petition was adopted.

V. SPECIAL ALLEGATIONS

A. Sales at Less Than Cost

By making a sales below cost allegation, a petitioner hopes to eliminate some or all low priced exporting country sales during the period of investigation as the basis for NV. For petition purposes, there must be a showing that sales of a popular model or type (one that involves a substantial number of sales) of merchandise are made at prices that do not allow for the recovery of the producer's or exporter's costs (see Chapter 8). When a sales below cost allegation is contained in the petition, the standard for initiating an investigation into that allegation is the same as the standard for initiating a less than fair value investigation (see sections I and II of this chapter). Usually, petitioners construct a cost allegation using their own factors of production with adjustments for differences in significant inputs in the potential respondents' country. However, in the event the petitioner files a cost allegation subsequent to the initiation of an investigation, all available data on the record must be considered and used, if appropriate. For

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example, once a respondent submits its questionnaire response, there may be cost data on the record that petitioner would have access to and could use in a cost allegation. Sales below cost allegations can be made either on a company-specific or a country-wide basis (see section 773(b)(2)(A) of the Act). The allegations always consist of a comparison of the home market or third-country prices (depending on the basis for NV) with the estimated cost of production.

The time limits for an allegation of sales at prices below the cost of production made by the petitioner or other domestic interested party are generally 1) on a country-wide basis, 20 days after the date on which the initial questionnaire was sent to the respondents; and 2) on a company-specific basis, 20 days after a respondent files the response to the relevant section of the questionnaire (i.e. section B). In some cases, these dates can be extended. If you receive a request for extension, you should discuss it with your supervisor or PM (see 19 CFR 351.301(2)(i)).

You are responsible for ensuring that all facets of the analysis of a less than cost allegation are performed in a timely and correct fashion. Accordingly, you should review the allegation in conjunction with the OA accountant or financial analyst assigned to the case. If necessary and if the allegation deadlines have not passed, you can send the petitioner a supplemental questionnaire. Once you and the OA accountant or financial analyst have analyzed the cost data and made any necessary adjustments to it, it will be used in performing the less than cost analysis. As part of this analysis, you will run a cost test. The test involves comparing the home market or third-country prices to the COP data provided by the OA accountant or financial analyst to determine what percentage of sales (based on quantity of merchandise sold) are below cost, i.e., whether there are "reasonable grounds to believe or suspect" that the sales, based upon alleged prices in the petition or actual prices contained in a section-B antidumping questionnaire response that are under consideration for the determination of NV, have been made at prices which represent less than the COP of the product (see section 773(b)(2)(A) of the Act). A memorandum containing an analysis of this information is then prepared for the Deputy Assistant Secretary (DAS) with a recommendation as to whether or not a COP investigation should be prepared. If we decide to initiate a cost investigation, you will issue a cost questionnaire which will be prepared in collaboration with the OA accountant or financial analyst. Always consult with your supervisor or PM if you are involved in a less than COP allegation. You should also check the most recently completed less than COP allegation analysis to ensure that you are following current procedure.

B. Critical Circumstances

Critical circumstances are alleged if a petitioner thinks that an exporter or producer has started to export abnormally high volumes of merchandise as soon as it is known that an antidumping petition has been filed or an investigation is underway. An exporter or producer could be doing this to blunt the effects of a preliminary affirmative determination of sales at less than fair value and the potential for dumping duty liabilities on entries filed after that date (see Chapter 10). If the petition contains a critical circumstances allegation, we must make a determination relative to this allegation either before or in the preliminary determination. If the petition is amended to include an allegation that critical circumstances exist, our required action will depend on the timing of the amendment. If the allegation is filed more than 20 days prior to the due date for the

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preliminary determination, we must make a determination relative to this allegation either before or in the preliminary determination.

If the allegation is filed less than 21 days prior to the due date for the preliminary determination or after the preliminary determination has been made but more than 30 days prior to the final determination, we must make a determination of whether critical circumstances exist within one month from the filing of the allegation.

If the allegation is filed not more than 30 days and not less than 20 days prior the due date for the final determination, we will not issue a preliminary determination regarding the existence of critical circumstances, but we must include a final determination on this matter in the final determination in the investigation.

C. Multinational Corporations

Section 773(d) of the Act specifies a method of calculating NV using the special rule for certain multinational corporations (MNC). The following three criteria must be met before the MNC provision is invoked:

1. Subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in one or more third countries,
2. The exporting country market, i.e., the market in the country from which the merchandise is exported to the United States, is not viable. That is: (a) the foreign like product is not sold for consumption in the exporting country; (b) the aggregate quantity (or value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States; or (c) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price, and
3. The NV of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the NV of the foreign like product produced in the facilities located in the exporting country,

Regarding criterion 2, the viability test is discussed in Chapter 8, section I of this manual.

Regarding criterion (3), if the products are not identical, the allegation must demonstrate that the products in each market are comparable, i.e., that any observed differences in value between the two markets are not solely the result of physical differences between the merchandise in each market. In addition, the petitioner must provide information indicating that the price differences do not result from different production costs existing between the two countries at issue, e.g., differences in labor rates, taxes, overhead.

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At this time, we are following the deadline for filing a company-specific, sales at less than COP allegation for the filing of a multinational corporation allegation, which is 20 days after a respondent files its response to the relevant sections of the antidumping questionnaire. For the most recent DOC positions on the acceptance of MNC allegations, see Preliminary Determination of Sales at Less Than Fair Value: Color Negative Photographic Paper and Chemical Components Thereof from the Netherlands, 59 FR 16181 (April 6, 1994), and Initiation of Antidumping Investigations: Melamine Institutional Dinnerware Products from Indonesia, the People's Republic of China, and Taiwan, 61 FR 8039 (March 1, 1996). Note that the first two cases cited used the old home market viability test (where home market sales had to meet the 5- percent of third-country sales standard). Always consult with your supervisor or PM if you are involved in an MNC allegation analysis.

VI. PREPARATION OF INITIATION PACKAGES

A. Pre-Initiation Requirements

The following is a list of activities that you will need to perform during the initiation/dismissal phase of your case. Before you start your analysis, always check with your team leader or supervisor to ensure that there are no other significant activities that you will have to address.

1. Insert appropriate information into the Lotus Notes case tracking system.
2. Check with the ITC analyst to determine that the petition was filed on the same date with both agencies.
3. Determine the names of your team members from OP, CCIA, and, if appropriate, OA. Ensure that they all have a copy of the petition, and advise them of the date for the team discussion of petition problems.
4. Analyze the petition using the "Antidumping Investigations Initiation Checklist" found in Section VII of this chapter. Also do a like product analysis as described in part B of section IV of this chapter. See the like product memo written for Nails from the PRC.
5. If a draft petition was previously filed and reviewed by another analyst, determine whether problems identified at the draft stage have been corrected.
6. Meet with your team members to discuss problem areas in the petition.
7. Arrange a meeting for the team with your supervisor or PM to review problem areas in the petition. Determine what issues need to be brought to the attention of the OD.
8. Set up a meeting with the OD to discuss significant problem areas.
9. Prepare a memo outlining the significant problem areas for the OD's meeting. Have the memo approved by your supervisor or PM, and submit it to the OD the day before the scheduled meeting.

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10. After the OD meeting, advise the petitioner of all deficiencies that need to be corrected. Set a due date for submission of supplemental information that will allow enough time for analysis and concurrence meetings with the OD and DAS.
11. Begin to prepare the initiation package as described below.
12. Give the initiation package to your team members for comments and then to your supervisor or PM once the team comments are incorporated.
13. Incorporate your supervisor's or PM's comments, and set up separate meetings with the OD and DAS. Sometimes the OD will combine his/her meeting with the DAS's meeting. Check with your supervisor to determine if this is appropriate.
14. Place the initiation package in the formal review chain (see Chapter 12, I.E. for review chain information).
15. If it is determined that the petition is not adequate and a dismissal is warranted, see section VIII of this chapter.

B. Contents of the Initiation Package

1. The Federal Register Notice (FR)

Always check the last several initiation notices that were published. In general, the FR should contain the following information:

- a. Identification of the petitioner.
 - b. A description of the basis for the calculation of the USPs and NVs contained in the petition.
 - c. Any adjustments the DOC makes to the submitted USPs and NVs.
 - d. If sales below cost or critical circumstances are alleged, this should be stated.
 - e. Range of estimated margins as presented or corrected.
 - f. A statement on industry support for the petition.
 - g. A detailed description of the scope of the merchandise under investigation, including the HTSUS numbers, and a statement regarding consultations with parties on the scope of the investigation (see, e.g., Initiation of Antidumping Duty Investigation: Fresh Atlantic Salmon from Chile, 62 FR 37027 (July 10, 1997)).
 - h. The due dates for ITC and DOC preliminary determinations.
- #### **2. Other Documents**

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In addition to the FR notice, make sure the following documents are prepared:

- a. The “Antidumping Investigations Initiation Checklist.”
- b. A like product analysis memo.
- c. A Customs e-mail message to announce the initiation.
- d. The ITC letter announcing the initiation of the investigation.
- e. Interested party letters announcing the initiation of the investigation.
- f. A letter to Customs requesting comments on the scope language contained in the FR.
- g. A memo to the OD in MAC for the country involved announcing the initiation and case schedule.

C. Post-Initiation Requirements

Post-initiation activities are as follows:

1. Take the original, signed FR notice and four copies to the Central Records Unit (CRU) in Room B-099 with a cover letter addressed to the FR and a diskette containing the FR. CRU will take care of publication of the document.
2. On the day of initiation, make phone calls to the petitioner or its counsel, counsel for potential respondents, if known, the MAC country desk officer, the State Department, the ITC, and the United States Trade Representative’s office.
3. Have a secretary or ICA distribute copies of the FR to all DASs and to the ODs who work for your DAS.
4. See Chapter 4, “Questionnaires,” for a description of the next activities you will have to undertake.

VII. ANTIDUMPING INVESTIGATIONS INITIATION CHECKLIST

The antidumping initiation checklist is used for analyzing all draft and formally filed petitions. It is the central document in the initiation process, and must be filled out to the extent possible. It usually forms the complete analytical record for this phase of the investigation. The only other document that must be prepared is a like product analysis memo. You may also have to prepare a memo documenting your contact with consultants if any supplied information for the petition (see section II of this chapter for information on contacts with consultants and section IV for information on like product analysis). There should be no other analytical documents prepared unless specifically authorized by your OD or DAS.

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The “Antidumping Investigations Initiation Checklist” is located on the “g” drive under g:\global\initchec.1st. You should copy this to your own drive. The checklist is a standard format. No changes should be made to the content of this document without the approval of your OD. A copy of the current check list follows:

**ANTIDUMPING INVESTIGATIONS
INITIATION CHECKLIST**

SUBJECT: (insert case name)

CASE NUMBER: (insert case number)

PETITIONER(S):

(insert name(s) - provide the locations of each plant and headquarters)

COUNSEL:

(insert name of law firm)

RESPONDENT(S):

(insert name(s))

SCOPE:

(insert the scope of the investigation)

IMPORT STATISTICS:

(insert the volume and value of imports for the most recently completed calendar year, year-to-date, and the corresponding prior period)

CASE CALENDAR:

Petition Filed:

Initiation Deadline:

ITC Preliminary Determination:

ITA Preliminary Determination:

ITA Final Determination:

ITC Final Determination:

Order:

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INDUSTRY SUPPORT: Does the petitioner(s) account for more than 50% of production of the domestic like product?

____ Yes (insert %) (petition page reference)

____ No (insert %)

If No, do those expressing support account for the majority of those expressing an opinion and at least 25% of domestic production?

____ Yes

____ No - do not initiate

Describe how industry support was established - specifically, describe the nature of any polling or other step undertaken to determine the level of domestic industry support.

Was there opposition to the petition?

____ Yes

____ (identify each party expressing opposition)

____ No

Are any of the parties who have expressed opposition to the petition either importers or domestic producers affiliated with foreign producers?

____ Yes

____ No

(explain how the views of these parties were treated in your determination of industry support)

INJURY ALLEGATION:

We have received a copy of the action request from the Director of the Office of Investigations, International Trade Commission. It indicates that the ITC finds that the petition contains adequate and accurate information with respect to material injury. (The relevant injury data can be found on page (insert #) of the petition.)

Does the petition contain evidence of causation? (answer Yes or No) (See page (insert #) of the petition.) Specifically, does the petition contain information relative to:

____ volume and value of imports (see page (insert #) of the petition)

____ U.S. market share (i.e., the ratio of imports to consumption) (see page (insert #) of the petition)

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___ actual pricing (i.e., evidence of decreased pricing) (see page (insert #) of the petition)

___ relative pricing (i.e., evidence of imports underselling U.S. products) (see page (insert #) of the petition)

PETITION REQUIREMENTS:

Does the petition contain the following:

___ the name and address of the petitioner

___ the names and addresses of all known domestic producers of the domestic like product

___ the volume and value of the domestic like product produced by the petitioner and each domestic producer identified for the most recently completed 12-month period for which data is available

Was the entire domestic industry identified in the petition?

___ Yes

___ No (% of producers identified)

Does the petition also contain the following:

___ a clear and detailed description of the merchandise to be investigated, including the appropriate Harmonized Tariff Schedule numbers.

___ the name of each country in which the merchandise originates or from which the merchandise is exported.

Was the petition filed simultaneously with the Department of Commerce and the ITC?

___ Yes

___ No

___ an adequate summary of the proprietary data was provided.

___ a statement regarding release under administrative protective order.

___ a certification of the facts contained in the petition by an official of the petitioning firm(s) and its legal representative (if applicable).

___ import volume and value information for the most recent two-year period.

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LESS THAN FAIR VALUE ALLEGATION:

Export Price/Constructed Export Price

Provide an explanation on how the export price and/or constructed export price was derived (include in your description the source of the pricing information and any adjustments necessary to calculate an ex-factory price; reference the pages in the petition that contain this information; if the information is based on a market research report or affidavit, explain why you believe that these sources are appropriate).

Does the petition contain the following:

- ☐ support documentation for the alleged prices or costs and claimed adjustments.
- ☐ any market research reports including an affidavits referring to sources and how information was obtained
- ☐ current and dated price data (no more than one-year old).
- ☐ price and cost data from contemporaneous time periods.
- ☐ correct currency rates used for all conversions to U.S. dollars (i.e., Federal Reserve Bank of New York).
- ☐ conversion factors for comparisons of differing units of measure.

Normal value

Provide an explanation on how the export price was derived (include in your description the source of the pricing information and any adjustments necessary to calculate an ex-factory price; reference the pages in the petition that contain this information; if the information is based on a market research report or affidavit, explain why you believe that these sources are appropriate).

- ☐ Does the petition contain the following:
- ☐ support documentation for the alleged prices or costs and claimed adjustments.
- ☐ any market research reports including an affidavits referring to sources and how information was obtained.
- ☐ current and dated price data (no more than one year old).
- ☐ price and cost data from contemporaneous time periods.
- ☐ correct currency rates used for all conversions to U.S. dollars (i.e., Federal Reserve Bank of New York).

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____ conversion factors for comparisons of differing units of measure.

ESTIMATED MARGINS:

(insert the range of estimated dumping margins)

OTHER ISSUES:

(e.g., COP allegation, regional industry, critical circumstances)

RECOMMENDATION:

Based on sources readily available to the Department, we have examined the accuracy and adequacy of the evidence provided in the petition, and recommend determining that the evidence is sufficient to justify the initiation of an antidumping investigation. We also recommend determining that the petition has been filed by or on behalf of the domestic industry.

VIII. DISMISSALS

If deficiencies in the petition cannot be corrected, the petitioner must be given an opportunity to withdraw the petition. If the petition is not withdrawn, a FR notice of dismissal is prepared instead of an initiation notice. That notice must contain a detailed statement of the reasons for dismissing the petition. The preparation and review process is the same as that for an initiation.

If a petition is withdrawn prior to initiation or dismissal, no action on the part of the DOC is necessary.

IX. POST-INITIATION WITHDRAWAL

If a petition is withdrawn after the initiation of an investigation, a public interest memorandum must be prepared indicating that the termination of the investigation is in the public interest. Additionally, the ITC must be consulted and all parties must be notified. A FR notice must be prepared and sent through the normal review channels. The notice should include the scope of the investigation, the reasons for the termination and instructions regarding the termination of the suspension of liquidation if the investigation has proceeded to that point.

After terminating an investigation, you should notify the interested parties and the embassy. You should also prepare e-mail instructions to Customs regarding the termination of suspension of liquidation.

Recent cases where we have terminated the investigation after initiation include: Termination of Investigation: Certain Carbon and Alloy Steel Wire Rod from Belgium, 59 FR 39324 (August 2,

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1994), and Termination of Investigation: Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan, 59 FR 40865 (August 10, 1994).

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
APO	ADMINISTRATIVE PROTECTIVE ORDER
AS	ASSISTANT SECRETARY
CFR	CODE OF FEDERAL REGULATIONS
CIT	COURT OF INTERNATIONAL TRADE
CRIMS	CENTRAL RECORDS INFORMATION MANAGEMENT SYSTEM
CRU	CENTRAL RECORDS UNIT
CVD	COUNTERVAILING DUTY
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
FR	FEDERAL REGISTER
FOUO	FOR OFFICIAL USE ONLY
IA	IMPORT ADMINISTRATION
ITC	INTERNATIONAL TRADE COMMISSION
LOU	LIMITED OFFICIAL USE
OF	FFICIAL FILE
PF	PUBLIC FILE
PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE	ACT THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 2

THE ADMINISTRATIVE RECORDS

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 516A - the record
 - Section 777 - access to information
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.104 - record of proceedings
 - 19 CFR 351.105 - public and business proprietary information
 - 19 CFR 351.303 - filing of documents
 - 19 CFR 351.304 - business proprietary treatment of information
- SAA
 - Section C.4 - evidentiary and procedural requirements
- Antidumping Agreement
 - Article 6.5 - public summaries
 - Article 17.5(b) - available facts

INTRODUCTION

These guidelines are designed to assist the analyst in the performance of his/her responsibility to keep the administrative record. Import Administration's (IA) Central Records Unit (CRU) has developed the Central Records Information Management System (CRIMS) to assist with this function. The system is designed for orderly management of case records.

The CRU is attached to the Office of the Director of Policy and Analysis and performs a number of information-management functions in support of the IA's activities. The basic mission of CRU is the receipt, distribution, abstracting, indexing, filing, photocopying, tracking and control of all the documents in antidumping (AD) and countervailing duty (CVD) proceedings. This includes receipt, internal distribution, and public release of information in electronic form. The Director of CRU is also the Federal Register Liaison for Import Administration, responsible for processing, certifying, and transmitting all IA Federal Register Notices. CRU is responsible for the CRIMS, a database management system that is used to create informative abstracts of all AD/CVD case-related documents

and to prepare indices of administrative records for presentation before the Court of International Trade (CIT).

CRU also operates IA's internet activity, and is responsible for timely release of electronic information on the IA Home Page and the suite of subordinate pages at internet address http://www.ita.doc/import_admin/records/ and the associated ftp site at <ftp://ftp.ita.doc.gov/dist/import/>.

I. JUDICIAL REVIEW

Soon after joining IA, the analyst will receive an orientation on the CRU from its staff. The information in this chapter depends on knowledge of the CRU and its function. The analyst

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should take advantage of the orientation to supplement this chapter and seek the assistance of the CRU staff when appropriate. In addition, the CRU staff will explain the CRIMS system and the CRIMS index. Prompt and proper submission to the file of all internally generated documents will greatly improve the accuracy of the record, and will make maintaining and certifying the record much easier for all involved.

As the result of changes in the law made by the Trade Agreements Act of 1979, judicial review of antidumping and countervailing duty determinations is a review of the record. Thus it is essential that the administrative record (i.e., the official file) be complete, as it constitutes the only evidence available to the courts (or, in cases involving Canada and Mexico, panel review under the North American Free Trade Agreement) by which agency action can be evaluated.

A plaintiff has the right to have the full record brought before the courts, and can challenge the completeness of the record. If it can be established that the record is incomplete, the DOC can be compelled under court order to turn over missing documents. The Justice Department attorneys who defend our determinations in court rely on the record for making our case. The only information on the determination available to the government attorneys and the judges is in the record. Any data relied on for a determination that is not included in the record will undermine our determination before the court since it cannot be adequately substantiated. In other words, if information is not in the CRU record, as far as a court is concerned that information does not exist, and cannot be used by the DOC to support any decision. In short, our determinations must stand or fall on the record compiled by the DOC during an investigation or review.

The regulations define the record of proceedings under 19 CFR 351.104(a). The official record is defined in more detail below in section III. For our purposes, the record is known as “the official file,” is kept in the CRU, and is not available to the public. Each investigation and each separate administrative review has its own separate record.

A companion to the official record is the public record, defined under 19 CFR 351.104(b). For our purposes, this record is known as the public file and is also kept by the CRU. This file is located in a public area of the CRU and any portion of the public record may be photocopied for any member of the public. This record provides the general public with the story of the proceeding without compromising proprietary or confidential information submitted in the course of it.

The record must be maintained from the beginning of the segment of the proceeding that is involved. This approach makes it more likely that the record will be complete. In this context, the analyst should keep in mind the "Certifying the Record" responsibilities described below and Court Record requirements of Chapter 19. The analyst will find it far easier to certify the completeness of a file when documents are placed in it on an on-going basis, rather than attempting to do so entirely after the final determination in an investigation or administrative review.

II. RESPONSIBILITY FOR KEEPING THE RECORD

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The case analyst, as the person most familiar with the investigation or administrative review, is primarily responsible for keeping the record. However, as investigations and reviews become more and more complex, with various personnel involved at various times, it becomes increasingly important that each person working on an investigation or review undertake responsibility to see that all appropriate documents are placed in the record.

A. Case Related Documents from Outside Parties

All case-related documents originated by parties outside the DOC must be filed directly with the CRU, as specified by 19 CFR 351.303(b). CRU will date-stamp, distribute copies to our office and other interested IA offices (policy, general counsel, and, if applicable, accounting), place copies in the official and public files (as appropriate), and enter the submission into the CRIMS database. If a document has the CRU date-stamp, the analyst can assume that the document has been placed appropriately into the official and public records by the CRU. (This assumption does not relieve the analyst from checking up on the inclusion of the document when certifying the file.)

Since the requirements for the submission of factual information by interested parties to the CRU are clearly stated in the regulations, case analysts must not accept official filings. Nevertheless, the analyst must insure that such documents are properly filed with CRU. If you do not receive a date-stamped version within two days, check with CRU to verify that the document was filed.

B. Documents Prepared by DOC

Documents prepared by the DOC must be placed in the record by the analyst, if they belong in the record. Review the criteria set forth below in section III. If a document should be included in the record, it must be sent to CRU marked and assembled in accordance with CRU procedures. Make sure that appropriate copies of the document for the official file (OF) and public file (PF) are sent to the CRU.

As a general rule, most documents that we (the DOC) create, apart from our notes, belong in the record. If you have any doubts as to whether or not a document should be part of the record, consult with your program manager or team attorney. When you draft a document that goes into the record, bear in mind that it will be part of the record and subject to review by the court if we are sued on our determination. In this regard, the analyst should ensure that the document is factually correct.

C. Certifying the Record

With the high rate of litigation involving our final determinations in investigations and reviews and the analyst's responsibility to prepare a Court Record (see Chapter 19), it is crucial that our case files be substantially complete on the date our final determinations and final results are due. Generally one to two weeks following the final determination due date for an investigation or review (sometimes longer in complex cases), the responsible analyst must certify in writing to the office director that the OF and PF are complete. Attached to each certificate should be the updated public and non-public CRIMS indices.

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For an investigation, a second certificate, under the same procedures, should be made following a final injury determination by the International Trade Commission (ITC). This certification will include a more recent update of the files, including documents related to any amended final determinations.

It is worth stating again how important it is to maintain the record on an ongoing basis throughout an investigation. The new analyst will soon find that a few extra moments invested in filing documents promptly with the CRU on a regular basis during an investigation or review will save hours of work later, attempting to piece together an official record after a final determination.

III. THE SCOPE OF THE RECORD

Since the official record is the "official history" of an investigation or administrative review and it must support completely all decisions made in a determination, the scope of the record is necessarily broad. The analyst should proceed from the assumption that every document prepared by the DOC or submitted from outside parties in regard to a particular investigation or administrative review is to be included in the official record. In practice, few documents are excluded from the record and rarely are any documents submitted by outside parties excluded.

A. Statutory and Regulatory Criteria

Section 516(A)(b)(2) of the Act defines the record as consisting of:

- (i) a copy of all information presented to or obtained by ... the administering authority ... during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by [statute]; and
- (ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

Similarly, 19CFR 351.104(a) defines the record as:

...all factual information, written argument, or other material developed by, presented to, or other material obtained by the Secretary during the course of the proceeding that pertains to the proceeding, government memoranda pertaining to the proceedings, memoranda of ex parte meetings, determinations, notices published in the Federal Register, and transcripts of hearings....

Sections V and VI of this chapter list documents that are usually part of the record.

B. Evaluating Documents for Inclusion in the Record

In case of doubt as to whether a document should be included in the record, you may find it helpful to check with your supervisor or program manager (PM) and to answer the following questions:

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1. Does the document consist of or contain information presented to or obtained by the DOC?
 - a. Any information submitted to or gained by any team member or anyone working on the investigation or administrative review is part of the record of the investigation or review. However, documents in the possession of other offices or agencies within the DOC that were never seen by anyone working on the investigation or administrative review are not part of the record. Also, no obligation is imposed on those working on an investigation to obtain information that may be in the hands of other departments or agencies.
 - b. Information submitted for other investigations or administrative reviews can not be part of the record unless it is expressly submitted for the instant investigation or administrative review.
 - c. Information is part of the record regardless of the form in which it is presented or obtained. Examples include:
 - petitions
 - questionnaire responses (including tapes, floppy discs and printouts)
 - information received in the course of verification (including exhibits)
 - telex, fax and cable communications
 - information gained from published surveys, articles, studies, statistical compilations or other analysis (if used, this information must be put in the record by the analyst)
 - correspondence from petitioners, respondents, interested parties and others (e.g., Congress)
 - in reviews, information from previous segments of the proceeding (e.g., the original investigation or a previous review) if used in the final results of the review
 - requests for administrative protective orders.

C. Government Memoranda Pertaining to the Case

1. Is it a “governmental memorandum?”

Any written correspondence or communication sent out by anyone working on an investigation or review is part of the record, regardless of the specific form of that document. For example, the record would include:

- questionnaires, instructions
- telex and cable communications
- requests for documents or information
- responses to requests for information
- administrative protective orders
- written records of telephone conferences or calls.

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Any document prepared by anyone working on an investigation or administrative review that is to be used or is used by others involved in the investigation or administrative review is part of the record, regardless of the specific form of that document. Documents cannot be excluded from the record on the basis that they record or reflect a preliminary position or analysis that is not adopted or made final.

A "Memorandum" could take the form of:

- formal written communications of case analysts
- formal memos, reports, or analysis of information
- computer printouts or tapes. (Only our final printouts of the calculations for preliminary and final determinations for investigations or reviews are part of the record. Printouts of calculation programs which were corrected should be thrown out, as any draft worksheet would be.) Documents prepared to reflect or record the decisions involved in the case are part of the record. For example:
 - memorandum listing reasons for rejecting a submission as deficient
 - memorandum listing reasons for denying an adjustment because the respondent failed to prove entitlement
 - memorandum stating where the analyst derived the numbers used in calculations and explaining why numbers were changed from those submitted by a respondent
 - memorandum explaining why "facts otherwise available" was used and the source of that information.

2. Does the document pertain to the case?

A memorandum pertains to a case if it is prepared in the context of that case and addresses or is relevant to the specific facts or issues in that case.

A discussion of a general policy issue unrelated to and not prepared in the context of a particular case is not part of the record. However, to the extent that documentation of a general policy issue relates to and is actually considered in the context of a particular case, documents reflecting or recording such policy are part of the record. For example, a memo discussing DOC policy regarding release of information under administrative protective order (APO) would not be part of the record of every case in which an APO is issued unless that memo provided the basis for a decision on an APO issue in that case.

A document prepared in the context of one investigation or administrative review that addresses issues arising in another case is not part of the record in that other case or administrative review unless the document is specifically used or considered in the

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context of that other case. The analyst must physically incorporate such documents considered or used in the record of that case or administrative review.

3. Is the document a record of an "ex-parte" meeting, for which the statute requires a memorandum for the record?

Section 777(a)(3) of the Act requires that a memorandum be made of any meeting involving the decision maker or recommender (generally the AS for IA or an IA DAS, respectively), that includes interested parties in the investigation or administrative review and where factual information is presented.

4. Was the information presented or obtained, was the governmental memorandum prepared or utilized, or did the ex-parte meeting take place, during the course of the investigation or administrative review?

For investigations, the record of the administrative proceeding ordinarily opens when the petition is filed or an investigation is self-initiated and closes upon the signing of the Federal Register (FR) determination (i.e., notice of final determination or notice of suspension of investigation). For administrative reviews, the record opens with initiation and closes upon issuance of the FR notice of final results.

If the FR notice of the final determination for an investigation or results of review is amended, the record remains open up to the signing of the amended FR notice.

The analyst should insure that all appropriate documents generated within these time limitations are placed in the record

5. What happens to post final determination documents?

Government memoranda that are put in final form after the signing of a FR notice of a final determination for an investigation or review are not part of the official record for judicial review, even though it may memorialize information or decisions made prior to the determination. Consequently, it is important to remember the closing date for the record when documenting reasons for a determination. The analyst should have any such memorandum finalized by the date of the final determination. While a memorandum dated after the final determination cannot be part of the record to support our decision, it may prove helpful to government attorneys preparing a case to understand our reasoning. You should consult with the supervisor or case attorney with regard to a memorandum not finalized until after the closing of the record.

The analyst should carefully consider the completeness of the record in light of this section. As explained above, the official record must be complete and fully support all decisions made in the case or administrative review. If no other documents exist to support a decision, such as those examples listed above, the analyst should, in consultation with the supervisor or PM, prepare a memorandum for the file, with support documentation attached, to explain why a decision was

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made. Always consult with your supervisor to determine the most up-to-date policy on completeness of the record.

D. Documents Ordinarily Not Included in the Record

1. Documents prepared by individuals involved in a case or administrative review for their own personal use that are in fact only used by that individual are not part of the record. This category of documents includes the draft or preliminary work products of analysts and others that would ordinarily be discarded in the normal course of business, such as:
 - personal notes
 - preliminary or draft calculations or worksheets
 - preliminary drafts of analysis
 - sample or preliminary computer runs
 - copies of memos with personal handwritten notes (the analyst must, however, insure that a "clean" copy of the memo is in the record)
2. Documents prepared in the context of an investigation or administrative review that do not relate to or address the issues involved in a determination but are directed to a ministerial (support) function of the agency are not part of the record. For example, the record need not include documents relating to:
 - travel arrangements for verification trips
 - logistics for team meetings and concurrence meetings
 - personnel issues
3. Information conveyed only orally is not part of the record. Keep in mind again the need for completeness of the record. You must remember that when information is transmitted by telephone call or other conversation, nothing exists to be placed on the record and consequently, the information cannot be used. Remind the party you are speaking to of this, and urge that person to submit the information in writing. The analyst should prepare a written memorandum describing the oral information if no other written record will be made.

E. Irrelevant Criteria

As the statute expressly sets forth the standards for determining what is in the record, certain criteria are irrelevant to an evaluation as to whether a document should be included in the record. These criteria include:

1. Whether or not it consists of or contains information that is relied upon by the decision maker. By statute, the record is more than those documents actually relied upon by the ultimate decision-maker.

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2. Whether or not it consists of or contains information that supports the determination in an investigation or review. The DOC is charged with keeping the entire record of the investigation, not with editing the record in order to support its determination.
3. Whether or not it can be disclosed to the public, is under APO, or is subject to protection from disclosure as privileged. This issue is separate from the scope of the record.

IV. CLASSIFICATION OF DOCUMENTS IN THE RECORD

In addition to making sure that documents in the record are filed with CRU, the analyst may also classify, at least provisionally, the document. As described below, the documents we deal with fall into one of four categories, which are generally treated under 19 CFR 351.105. Final determinations as to the appropriate classification of documents will be made when the record is prepared for judicial review. Consult with your program manager or the case attorney if you are unsure about the classification of any document.

The classification categories we use are:

- A - Public
- B - Proprietary
- C - Privileged or Internal
- D - Government Classified

A. Public Documents

1. All information presented to or obtained by ITA from outside the DOC that is submitted without a request for business proprietary treatment is public, such as:
 - public versions of petitions, responses and supporting documentation
 - information gained from public sources, including studies, statistical compilations, articles and other analysis
 - communications from outside counsel, interested parties and other persons (e.g., Congress).
2. All documents transmitted by the ITA to petitioners, respondents, interested parties, outside counsel or other members of the public which do not contain proprietary or government-classified information are public, including:
 - questionnaires
 - correspondence
 - press releases
 - Federal Register notices.
3. Documents which are not classified under any other classification are public.

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Note that under 19 CFR 351.303(c)(2)(iii) any proprietary data submitted for the record by outside parties must be accompanied by a public summary, as defined under that section. A party cannot submit only a proprietary version for the record. When checking the completeness of the file, the analyst must insure that all proprietary submissions are matched to an accompanying public version. The DOC has a similar responsibility for preparing public versions of memoranda and other documents which contain proprietary information and are relied upon in making our determination in an investigation or review.

B. Proprietary Documents

In order to properly conduct an antidumping duty investigation or administrative review, we require certain information from businesses that is generally not released to the public. Understandably, parties to the investigation or administrative review do not want to release this information unless we provide safeguards that the data will be protected from public disclosure. Proprietary classification means that the information is not available to the public, is used under controlled circumstances in our proceeding, and is available to counsel for an opposing party only under an APO (see Chapter 3). Under 19 CFR 351.304, the following types of information are examples of information eligible for proprietary classification:

- business or trade secrets concerning the nature of a product or production process
- production costs
- distribution costs (but not channels of distribution)
- terms of sale (but not terms to the public)
- prices of individual sales, likely sales, or offers
- names and other specific identifiers of particular customers, suppliers, or distributors
- names of particular persons from whom proprietary information was obtained.

Proprietary classification must be requested by the business entity submitting the information, and cannot be extended to information that is publicly available.

The analyst should understand the difference between proprietary and government classified information. As described below, government classified information with “CONFIDENTIAL”, “SECRET” or “TOP SECRET” classifications has national security implications and special regulations for handling. “Proprietary” information, while sensitive, is not covered by these same regulations. To prevent confusion and misapplication of security regulations, we avoid the terms “CONFIDENTIAL”, “BUSINESS CONFIDENTIAL”, “BUSINESS SECRETS”, etc. and instead use “BUSINESS PROPRIETARY” on our own documents. Documents from outside parties may be stamped “CONFIDENTIAL” or “BUSINESS CONFIDENTIAL” but are treated as “BUSINESS PROPRIETARY.”

An import compliance specialist or a financial analyst receives a “critical sensitive” security clearance when he or she reaches the GS-11 level. This clearance allows these individuals to view “CONFIDENTIAL” and “SECRET” government classified information. If you are a GS-7 or GS-9 import compliance specialist or financial analyst, you do not have an appropriate clearance to view “CONFIDENTIAL” or “SECRET” information. If you are offered classified

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information for review, you must immediately inform the person trying to give it to you that you do not have clearance to see it. If you are a GS-11 and you are not absolutely certain that your "critical sensitive" security clearance is in place, you must check with your PM before you accept government classified information.

At the same time, the analyst must respect the highly sensitive nature of the business proprietary information he or she uses. Accidental release or misuse of it is a serious matter and will discourage respondent companies from cooperating in investigations or administrative reviews. Use proprietary information sparingly in documents you prepare and only when necessary to state or prove the issue. Even within the office or DOC, release of information to authorized individuals should be made only on a "need to know" basis.

C. Privileged or Internal Documents

This classification should be used with documents for which the DOC intends to assert the governmental deliberative process privilege. That is:

1. they are internal, intra-agency or inter-agency communications containing pre-decisional comments, legal or policy opinions (such as those under attorney-client privilege), viewpoints, or advice, and
2. their disclosure would stifle or impair the free and uninhibited flow of advice, recommendations and opinions within the agency.

This classification is to be used sparingly. Nevertheless, there will be occasions when its use may be appropriate. If you believe a document falls within this category, consult with your program manager or the case attorney. Most documents which fall into this category are placed in the public file after the final determination is made.

D. Government Classified Documents

This classification should be extended only to documents that contain information which has been classified, or is classifiable, as national security information pursuant to Executive Order 12356 (E.O. 12356), or its successor, which defines the classification, declassification, and treatment of classified information. This type of information is designated as "CONFIDENTIAL", "SECRET" or "TOP SECRET", depending on the expected damage to national security if released.

The analyst will be briefed by the ITA Office of Security on classified material and its proper handling. Both ITA and DOC Security Offices have published manuals outlining the procedures under E.O. 12356 and the analyst should review them for a detailed treatment of this topic.

In practice, we rarely deal with government classified information and it is unlikely that an analyst will need to make a request to classify a document on that basis. (Should that event occur, the analyst must consult with the program manager and the designated classifying officer prescribed by E.O. 12356.) Nevertheless, it is possible that the analyst may have to handle

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classified documents at some point, most likely from U.S. Embassy or foreign government sources. Foreign government classifications must be respected and handled as the equivalent U.S. classification (e.g., a "CONFIDENTIAL" French government document must be treated the same way a "CONFIDENTIAL" U.S. document would).

Business proprietary or publicly available information cannot be classified as national security information even if submitted by a foreign government with a request for confidentiality. However, never publicly disclose information for which a foreign government or other person claims national security classification. Because such information cannot be released, even under APO, it is difficult to base a decision on it. Consult with your PM or case attorney should this situation arise.

"FOR OFFICIAL USE ONLY" ("FOUO") is a government classification but not a national security one. Documents that carry these designations are administratively controlled. See ITA Security's Manual of Administrative Instructions, Section 5, for more detailed information. In some instances, "LOU" or similarly classified material (e.g. "EYES ONLY" cables with no other classification) may be classified as proprietary information for our purposes. For example, company-specific import and export statistics provided to the DOC by the Japanese government and transmitted to us via State Department cable with "EYES ONLY" captions can be classified as proprietary. Check with your PM before making such classifications.

V. LIST OF DOCUMENTS FOR THE ADMINISTRATIVE RECORD FOR AN INVESTIGATION

The document lists shown in sections V, VI, and VII below are not all-inclusive. You should always consult with your supervisor, PM, or team attorney if you are in doubt about the need to place a document in the administrative record for your investigation, administrative review, or scope determination.

A. Documents that Are Always Part of the Record of an Investigation

1. The petition
2. Antidumping petition checklist recommending initiation with a copy of the signed FR notice
3. The published FR initiation notice
4. Cable to U.S. Embassy abroad notifying it of initiation
5. The preliminary ITC injury determination
6. Questionnaires and supplemental questionnaires
7. Questionnaire responses and supplemental responses (public and business proprietary versions)

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8. Applications for disclosure under APO and the approved protective orders
9. Decision memo recommending preliminary determination with a copy of the signed FR notice including the concurrence record
10. The published FR preliminary determination notice
11. E-mail and “module” information sent to Customs advising of the preliminary determination and requesting suspension of liquidation (affirmative determination) or no action (negative determination)
12. Records of any ex-parte meetings
13. Ministerial error claims and decision memos, if appropriate
14. Verification documents, including outlines, reports and exhibits
15. Requests for hearings, pre-hearing briefs, rebuttal briefs and hearing transcripts
16. Supplemental submissions containing factual information
17. Decision memo recommending final determination, termination of investigation, or suspension of investigation, with signed FR notice attached (including the concurrence record)
18. Any changes to electronic data bases and computer programs for calculating margins
19. Published FR notice of final determination, termination of investigation, or suspension of investigation E-mail and “module” information sent to Customs advising of the final determination
20. Ministerial error claims and decision memos, if appropriate

B. Documents that Are Part of the Record of an Investigation if They Exist

1. All incoming and outgoing correspondence relating to the proceeding
2. Memos to the file regarding telephone conversations and meetings
3. Inter- and intra-agency memoranda relating to the proceeding
4. Interested party, party to the proceeding, and service lists
5. Publications, analysis, or other outside reports used in determinations
6. Cables and faxes containing information obtained domestically or from overseas
7. Signed suspension agreement

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8. All decision memos and FR notices relating to the investigation that were not mentioned in Part A of this section (postponements, critical circumstances, etc.).

C. Miscellaneous Documents that May be Included in a Record of an Investigation

1. Letter notifying the DOC of the ITC final injury determination
2. Decision memo recommending an antidumping duty order with a copy of the signed FR notice for the order attached including the concurrence record
3. Published FR notice of antidumping duty order

VI. LIST OF DOCUMENTS FOR THE ADMINISTRATIVE RECORD FOR ADMINISTRATIVE REVIEWS

A. Documents that Are Always Part of the Record of a Review

1. Signed FR notice of opportunity to request a review
2. Letters requesting a review
3. Notice of initiation of review
4. The questionnaires and supplemental questionnaires used to collect information for the review
5. Responses to questionnaires (public and business proprietary versions)
6. Any applications for disclosure under APO and the protective orders.
7. Decision memo recommending preliminary results of administrative review, with a copy of the signed FR notice
8. Published FR notice of preliminary results
9. Any requests for hearings, pre-hearing briefs, rebuttal briefs, or transcripts of hearings
10. Records of any ex-parte meetings
11. Decision memo (if one is necessary) recommending final results of administrative review, with a copy of the signed FR notice attached (including the concurrence record)
12. Any changes to electronic data bases and computer programs for calculating margins
13. Published FR notice of final results
14. All e-mail instructions to Customs

THE ADMINISTRATIVE RECORDS**B. Documents that Are Part of the Record of Review if They Exist**

1. All incoming and outgoing correspondence relating to the proceeding
2. Memos to the file regarding telephone conversations and meetings
3. Inter and intra-agency memorandum relating to the proceeding
4. Interested party and party-to-the-proceeding lists
5. Excerpts from publications relied upon
6. Cables containing information obtained overseas
7. Verification documents (exhibits and reports)
8. Application for revocation and signed assurance letter

VII. LIST OF DOCUMENTS FOR THE ADMINISTRATIVE RECORD FOR A SCOPE DETERMINATION

In addition to the types of documents generally found in administrative reviews, the administrative record for a scope proceeding must include:

1. The petition
2. The ITC report
3. Any documents from the investigation that were submitted by a party or that were reviewed and relied on by the DOC in its scope determination.

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
APO	ADMINISTRATIVE PROTECTIVE ORDER
CFR	CODE OF FEDERAL REGULATIONS
CIT	COURT OF INTERNATIONAL TRADE
CVD	COUNTERVAILING DUTY
DOC	DEPARTMENT OF COMMERCE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
JPO	JUDICIAL PROTECTIVE ORDER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED
THE SECRETARY	THE SECRETARY OF COMMERCE
TRO	TEMPORARY RESTRAINING ORDER
URAA	URUGUAY ROUND AGREEMENTS ACT

CHAPTER 3

ACCESS TO INFORMATION

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 777 - access to information
- The Customs and Trade Act of 1990
 - Section 135(b) - prohibition on release of customer names
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.105 - categories of information
 - 19 CFR 351.303 - filing requirements
 - 19 CFR 351.304(b) - identification of business proprietary information
 - 19 CFR 351.304(c) - public versions of business proprietary information
 - 19 CFR 351.304(d) - nonconforming submissions
- SAA
 - Section A.4 - procedural rules for proceedings
 - Section C.4.a.(4) - public and proprietary records
- Antidumping Agreement
 - Article 6.1.2 - availability of information
 - Article 6.1.3 - protection of confidential information
 - Articles 6.2 - 6.5.2 - confidentiality and public summaries of information

I. CATEGORIES OF INFORMATION

Section 351.105 of the DOC's regulations sets forth the categories of information in an antidumping (AD) or countervailing duty (CVD) proceeding: public, business proprietary, privileged, and classified.

A. Public Information

All information submitted by parties in an AD or CVD proceeding is treated as publicly available information unless it is accompanied by a request for business proprietary treatment. The types of information which are normally regarded as public information are set forth in paragraph (b) of section 351.105. This paragraph describes public information as 1) factual information of a type that has been published or otherwise made available to the public by the person submitting it such as in advertisements, product brochures or marketing displays, 2) factual information that is not designated as business proprietary by the person submitting it, 3) factual information which, although designated as business proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person, or which the Secretary determines is not properly designated as business proprietary, 4) publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations, and 5) written argument relating to the proceeding that is not designated as business proprietary.

B. Business Proprietary Information

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The description of business proprietary information is addressed in paragraph (c) of section 351.105 of the DOC's regulations. The regulation states that the following factual information will generally be regarded as business proprietary information, if it is so designated by the submitter: (1) business or trade secrets, (2) production costs, (3) distribution costs, (4) terms of sale, (5) prices of individual sales, likely sales, or other offers, (6) names of particular customers, distributors, or suppliers, (7) in a AD proceeding, the exact amount of the dumping margin on individual sales; (8) in a CVD proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review, (9) the names of particular persons from whom business proprietary information was obtained, (10) the position of a domestic producer or workers regarding a petition, and (11) any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

C. Privileged Information

The description of what the DOC considers to be privileged information for the purpose of an AD or CVD proceeding is set forth in 19 CFR 351.105(d). This section explains that the DOC will consider information privileged if, based on principles of law concerning privileged information, it decides that the information should not be released to the public or to parties to the proceeding. Only the U.S. Government can assert privilege. Generally, an example of a type of information that would be considered privileged is the name of an informer in a fraud investigation. Privileged information is exempt from disclosure to the public or to representatives of interested parties, even under the terms of an administrative protective order (APO). Privileged information, however, is put on the record in a privileged index, and released to parties under judicial protective order (JPO) unless the court agrees not to release it. Privilege also applies to attorney-client privilege or pre-decisional material.

D. Classified Information

Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982, or successor executive order, if applicable. An example of this type of information is national security information. Classified information is exempt from disclosure to the public or to representatives of interested parties under the terms of an APO. Generally, this type of information would not be presented to the DOC in the context of an AD or CVD proceeding.

II. PLACEMENT OF INFORMATION ON THE RECORD

Business proprietary, and public information is placed in the official record file and the working file for an investigation or administrative review (see Chapter 2 for more information about the administrative record). Privileged or classified information is placed on separate official records. Only public information is placed in the public files. All documents prepared internally, which contain business proprietary information, are to be placed only in official and working files. Public versions of business proprietary documents must be prepared for the public file with the proprietary data deleted. It is our general practice to provide respondent's counsel with advance copies of verification reports, and other sensitive case documents, in order to confirm the

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bracketing of business proprietary information prior to the release of the document under APO and prior to the creation of the public version for inclusion in the public file. These are not draft documents. Privileged, pre-decisional memoranda are not placed in the public files.

III. TREATMENT OF BUSINESS PROPRIETARY INFORMATION

A. Establishing Business Proprietary treatment of Information

Section 351.304 sets forth rules concerning the treatment of business proprietary information in general. Paragraph (a) is a general provision. Paragraph (a)(1) provides persons with the right to request (i) that certain information be considered business proprietary, and (ii) that certain business proprietary information be exempt from disclosure under APO. Consistent with section 777(c)(1)(A) of the Tariff Act of 1930 (the Act), paragraph (a)(2) provides that, as a general matter, the DOC will require that all business proprietary information be disclosed to authorized applicants, with the exception of (i) customer names in an investigation; (ii) information for which the DOC finds there is a clear and compelling need to withhold from disclosure; and (iii) classified or privileged information.

All business proprietary information must be stored in file cabinets, desk drawers or boxes to the extent possible. When business proprietary data is left in offices which are not occupied by an analyst at the time, the office door should be locked.

B. Identification of Business Proprietary Information

The identification of business proprietary information in submissions to the DOC is addressed in 19 CFR 351.304(b). 19 CFR 351.304(b)(1) deals with the bracketing and labeling of business proprietary information in general, and is consistent with the DOC's past practice that requires that a person claiming business proprietary status for information place single brackets ("[]") around the information. This paragraph also requires that a person claiming business proprietary status for information must explain why the information in question is entitled to that status. The paragraph further explains that the submitting person must include an agreement to permit disclosure under APO, unless the submitter claims that there is a clear and compelling need to withhold the information from disclosure under APO. A new provision, under paragraph (b)(2), provides for the double bracketing ("[[]]") of business proprietary information for which the submitting party claims a clear and compelling need to withhold from disclosure under APO; and customer names submitted in an investigation. For a discussion of claims for clear and compelling need to withhold, see item B below.

Section 135(b) of the Customs and Trade Act of 1990 ("The 1990 Mini Trade Bill") specifically amended Section 777 of the Act to prohibit the release of customer names by the DOC during any investigation which requires a determination under section 705(b) or 735(b) until either an order is published under section 706(a) or 736(a) as a result of the investigation or the investigation is suspended or terminated (in other words, this prohibition does not apply in administrative reviews or in any other segment of a proceeding than the investigation). The specific language reads as follows: "Customer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the

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administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 774."

This means that the DOC may not release business proprietary customer names during an investigation - not orally, not in verification reports, and not in any other document it generates. Analysts must be aware that, when we give a party the opportunity to confirm our bracketing in verification reports and other documents in the investigation "segment" of the proceeding, the party may not double bracket customer names and assume the analyst will delete the customer names in an APO version of the document. In order to prevent improper handling of customer names during an investigation, analysts may choose to avoid the use of customer names if at all possible. Most importantly, analysts must bracket business proprietary information as they work in order to assure the accurate and proper treatment of all business proprietary information.

C. DOC Procedures for Working with Business Proprietary Information

1. When referring to proprietary information in writing, BRACKET ALL proprietary information (text, charts, etc.) as you work. Do not wait until the document is in final form. If unsure of the proprietary nature of certain information, [bracket it] and then refer to the source document to confirm its proprietary nature or discuss its status with the submitter of the information.
2. Mark all internally generated documents containing proprietary information with the notation "Business Proprietary". This notation should be on the cover page and any pages on which proprietary information appears. (Working notes, charts or drafts of documents should also be properly marked. Obsolete drafts should be quickly destroyed. "Business Proprietary"- stamps can be used to reduce the time needed to mark each page.
3. Mark all public versions of internally generated documents from which all proprietary information has been deleted with the notation "Public Version". The public version of a proprietary document, with the exception of the [bracketed] proprietary information that has been deleted, should be exactly the same as the business proprietary version.
4. Mark all APO versions of business proprietary documents with the notation "Business Proprietary - APO Version". The APO version of a proprietary document should be identical to the proprietary document, with certain limited exceptions. The limited exceptions may include customer names or identifiers in an investigation only and certain information for which it has been determined that there is a clear and compelling need to withhold from disclosure under APO. This type of information might include sources of information, and trade secret information. Note the different treatment of [[customer]] names/identifiers in investigations and other proceeding segments.

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5. Never divulge proprietary information, either orally or in written form, to anyone not authorized to have access to the information. (Always assume that someone is authorized to have access unless you know that the individual is a Department colleague officially working on the case, the submitter of the information, or is specifically authorized by the Department's APO for that segment of the proceeding.)
6. Never use proprietary information for any purpose other than for the purpose of the specific segment of the proceeding in which it was obtained or in which it is authorized for use.
7. All business proprietary information must be stored in file cabinets, desk drawers or boxes to the extent possible. When business proprietary data is left in offices which are not occupied by an analyst at the time, the office door should be locked*. Floppy disks containing proprietary data should not be left unattended in a word processor.

Note that there are security visits during office hours and not properly securing proprietary data is a security violation

8. In the event that a party is acting pro se be very aware of the information available to a party for whom you are preparing a party specific version of a proprietary document.
9. Avoid the use of proprietary data in footnotes. Proprietary information in footnotes may often be overlooked when preparing the public and APO versions of a proprietary document.
10. Do not summarize proprietary information in a public document. This includes paraphrasing or discussing in general terms a party's proprietary information.

IV. PUBLIC VERSIONS OF DOCUMENTS AND PUBLIC SUMMARIES OF BUSINESS PROPRIETARY INFORMATION

19 CFR 351.304(c) deals with the public version of a business proprietary submission. Paragraph (c)(1) requires a party to file the final business proprietary version of the document containing business proprietary information one business day after the due date of the business proprietary version of the document. This practice is known as the "one day lag" rule. The submission of the final business proprietary version of the entire document must be accompanied by the public version of the document. Specific filing requirements are contained in 19 CFR 351.303. The purpose of this requirement is to ensure that the DOC is reviewing the correct business proprietary version.

As noted above, public versions of documents containing public summaries or an explanation of why business proprietary information cannot be summarized are required to be filed one business day after the due date of the business proprietary version of the document with the final business proprietary version of the document. As explained below, failure to submit a proper public version of the business proprietary document will result in the rejection of the business proprietary document. The summaries must be sufficiently detailed to allow a reasonable

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understanding of the business proprietary information contained in the submission. 19 CFR 351.304(c)(1) permits a party to claim that summarization is not possible. However, the regulations also state that the DOC will vigorously enforce the requirement for public summaries, and will grant claims that summarization is impossible only in exceptional circumstances. Parties may only publicly summarize their own business proprietary information.

No party should publicly summarize another party's business proprietary information because it may lead to the improper disclosure of the information which would be a violation of the APO.

Public versions of business proprietary documents must include all text contained in the submission that has not been otherwise claimed as business proprietary. Parties may choose to either range or index numerical data. If parties choose to range numerical data, the data must be presented in terms of figures within 10 percent of the actual number. Where the number is so small that a range of 10 percent would be impractical, a range of 20 percent may be used upon receipt of approval from the DOC. Voluminous data, such as computer printouts, may be summarized by ranging at least one percent of the data included. Check with your supervisor or program manager (PM) if you receive a request for an exception to the 10-percent-ranging rule.

V. NONCONFORMING SUBMISSIONS

19 CFR 351.304(d) deals with submissions that do not meet the requirements of section 777(b) of the Act or the DOC's regulations. This paragraph provides for the DOC's return of documents to the submitter if they do not conform. It also gives the submitter the opportunity to take any of the following actions within two business days after receiving the DOC's explanation for the return of the document: (1) correct the problems and resubmit the information; (2) agree to have the information in question treated as public information if the DOC denied a request for business proprietary treatment; (3) agree to the disclosure of the information under APO if the DOC granted business proprietary treatment but denied a claim that there was a clear and compelling need to withhold the information from APO release; or (4) submit other material concerning the subject matter of the returned information. If the submitting person does not take any of these actions, the DOC will not consider the returned submission.

19 CFR 351.304(d)(2) provides for the DOC to determine the status of information normally within 30 days after the day on which the information is submitted. The deadline is intended to avoid situations in which the DOC inadvertently accepts nonconforming submissions or only recognizes the problem too late to request replacements. Analysts should review documents as soon as possible after they are submitted, and should promptly address any complaint of an alleged nonconforming submission.

VI. SUPPLEMENTAL INFORMATION

Supplemental information, such as a supplemental questionnaire response or an amendment to a petition, is treated in the same manner as an original submission. Supplemental information must be filed on a timely basis. All supplements to responses must be received in time to be reviewed prior to verification. If an attempt is made to submit a minor amount of additional information at verification, a copy of the data may be accepted for verification purposes, but the

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party must be advised to file the information officially with the DOC in Washington. Where verification uncovers errors which require overall correction of portions of a response, the corrections must also be filed officially. All information must be filed on the record with appropriate public summaries and APO release statements.

VII. ACCESS TO BUSINESS PROPRIETARY INFORMATION UNDER ADMINISTRATIVE PROTECTIVE ORDER ("APO")

An APO is the legal mechanism by which the DOC controls the limited disclosure of business proprietary information to representatives of interested parties. The DOC authorizes the release of business proprietary information under APO when the representatives file an application for APO access (FORM ITA-367) in which they agree to be bound by the terms of the APO.

Applicants must:

- use the information only in the segment of the proceeding in which it was submitted or in which it is authorized for use,
- protect the information from unauthorized disclosure,
- report any violation of the terms of the APO, and
- acknowledge the sanctions that may be imposed should there be a violation of the terms of the APO.

Recently, the DOC adopted two new terms that are contained in the APO itself and are defined in 19 CFR 351.102 of the regulations. The first term "applicant" is defined as an individual representative of an interested party that has applied for access to business proprietary information under an APO. The second term, "authorized applicant," is defined as an applicant that the Secretary of Commerce ("the Secretary") has authorized to receive business proprietary information under an APO; it is a term borrowed from the practice of the U.S. International Trade Commission ("ITC").

The term "representative" is also defined in the context of APO administration to refer to an individual, enterprise or entity acting on behalf of an interested party. The distinction is necessary because the term has broader application than in the context of APO administration.

19 CFR 351.305 deals with procedures for obtaining business proprietary information under APO. Paragraph (a) sets forth a new procedure based on the use of a single APO for each segment of a proceeding. It also establishes the requirements an authorized applicant must meet if they have APO access. Paragraph (b) establishes the APO application process. Paragraph (c) concerns approval of an APO application.

The DOC has centralized the APO function for IA under the Director for Antidumping and Countervailing Duty Policy and Analysis in the APO office. The APO office is responsible for directing IA's handling of business proprietary information, and provides guidance and instructions for protecting and working with business proprietary information. The APO office,

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staff is responsible for the entire APO process in all antidumping proceedings including protective orders for all Binational Panel Proceedings pursuant to the North American Free Trade Agreement. The APO office needs your assistance in performing its functions. See section X of this chapter for a complete description of the APO office internal processing procedures.

A. The New APO

19 CFR 351.305(a) sets forth a new APO procedure for the DOC. A single APO is placed on the record for each segment of an AD or CVD proceeding within two days after a petition is filed or an investigation is self-initiated, or five days after the initiation of any other segment. ("segment of the proceeding" is defined in section 19 CFR 351.102 as a portion of the proceeding that is reviewable under section 516A of the Act.) All authorized applicants are subject to the terms of this single APO.

B. APO Requirements

19 CFR 351.305(a) also sets forth the requirements that are included in the APO and to which all authorized applicants must adhere. The DOC has eliminated from the APO detailed internal procedures that firms were required to follow to protect APO information from unauthorized disclosure. In paragraph (a)(1), the DOC requires each applicant to establish its own internal procedures.

19 CFR 351.305(b) deals with the APO application process itself. Paragraph (b)(1) permits the use of two independent representatives, with one representative being designated as the lead representative. Generally, APO applicants are attorneys admitted to a U.S. bar or trade consultants. APO access is granted to non-legal representatives only if the applicants have a significant practice before the DOC. Paragraph (b)(2) provides procedures for applying for an APO and establishes a "short form" application that applicants can generate from their own word-processing equipment. An applicant must acknowledge that any discrepancies between the application and the DOC's APO placed on the record will be interpreted in a manner consistent with the DOC's APO. Paragraph (b)(2) also provides that an applicant must apply to receive all business proprietary information on the record of the particular segment of the proceeding in question. The purposes of this requirement are to eliminate the need for parties to prepare separate APO versions of submissions for each of the different parties involved in a proceeding and to reduce the number of APO violations that occur through the inadvertent service of a document containing business proprietary information to parties not authorized to receive it. In order to avoid forcing parties to receive a submission in which they have no interest, however, a party may waive service of business proprietary information it does not wish to have served on it by another party.

19 CFR 351.305(b)(3) establishes the deadline for applying for an APO, and is a significant change from past practice. Paragraph (b)(3) encourages parties to submit APO applications before the first questionnaire response is filed, but permits parties to submit applications up to the date on which case briefs are due. Under the deadline set forth in this section, the burden on parties required to serve APO information may increase. Parties are now provided with five days

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in which to serve APO information on late APO applicants. Additionally, late applicants are required to pay the costs associated with the additional production and service of business proprietary submissions that were served on other parties earlier in the segment of the proceeding. An APO application filed later in the course of a proceeding segment will not serve as the basis for extending any administrative deadline, such as a briefing or hearing schedule.

C. Approval of the APO Application and the APO Service List

19 CFR 351.305(c) deals with the approval of an APO application. The APO office will approve an application within five days of its receipt unless there is a question concerning the eligibility of an applicant to receive access under APO. In that case, the DOC will decide whether to grant the application within 30 days of receipt of the application.

When an application is approved, the name of the authorized applicant will be placed on an APO service list that the DOC maintains for each segment of a proceeding. Paragraph (c) provides that the DOC will use the most expeditious means available to provide parties with the APO service list on the day the list is issued or amended. The DOC will fax every change in the APO service list directly to each party on the APO service list and public service list for each proceeding. (The APO team will obtain information concerning the public service list from the analysts assigned to the case.) APO service lists will also be available to the public on the ITA's home page of the Internet.

VIII. USE OF BUSINESS PROPRIETARY INFORMATION

Rules concerning the use of business proprietary information are contained in 19 CFR 351.306. Paragraph (a) addresses the use of business proprietary information by the Secretary. Paragraph (b) concerns the use of business proprietary information from one segment of a proceeding in another. Paragraph (c) addresses the identification in submissions of business proprietary information from multiple persons. Paragraph (d) concerns disclosures to parties not authorized to receive business proprietary information.

A. Use of Business Proprietary information by the Secretary

The use of business proprietary information by the Secretary is addressed in 19 CFR 351.306(a). The Secretary may disclose business proprietary information only to

1. An authorized applicant,
2. An employee of the DOC or the ITC directly involved in the proceeding in which the information is submitted,
3. An employee of the Customs Service directly involved in conducting a fraud investigation relating to an AD or CVD duty proceeding,
4. The U.S. Trade Representative as provided by 19 U.S.C. § 3571(i),

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5. Any person to whom the submitting person specifically authorizes disclosure in writing, and
6. A charged party or counsel for the charged party under 19 CFR part 354.

The URAA amended section 777(b)(1)(A)(i) of the Act to clarify that the DOC may use business proprietary information for the duration of an entire proceeding (from initiation to termination or revocation) as opposed to merely the particular segment of a proceeding for which information was submitted.

The URAA identifies three specific instances in which the DOC would be expected to use information from different segments of proceedings or different proceedings as follows: (1) information from prior segments may be used in a sunset or changed circumstances review of the same proceeding (section 777(b)(1) of the Act); (2) business proprietary information from a sunset or changed circumstances review resulting in revocation may be used in an investigation on the same merchandise from the same country initiated within two years of revocation (section 777(b)(3) of the Act); and (3) information from a terminated investigation may be used in a new investigation on the subject merchandise from the same and another country within three months of termination of the prior investigation (sections 704 and 734 of the Act).

B. Use of Business Proprietary Information by the Parties

As stated above, section 777 of the Act permits the DOC to use business proprietary information for the duration of an entire proceeding, from initiation to termination or revocation. Although IA may have access to business proprietary information from another segment of the proceeding, IA may not base a decision on business proprietary information that is not on the record of the particular segment of the proceeding. 19 CFR 351.306(b) deals with the use of business proprietary information by parties from one segment of a proceeding to another. Generally, the APO authorizes parties to retain business proprietary information for two additional segments after the segment in which the business proprietary information was submitted (i.e., two subsequent consecutive administrative reviews, or in any other segment initiated during those two administrative reviews). An authorized applicant may place business proprietary information received in one segment of a proceeding on the record of additional segments as classified but only if the information is relevant to an issue in the subsequent segment. Once business proprietary information is placed on the record of a subsequent proceeding, it remains a permanent addition to the later record.

In certain instances, the DOC retains the services of hearing reporters, product experts, or translators. The reporters and translators are retained under specific contractual agreements. Generally, the reporters record our public hearings and provide transcripts to the parties. On occasion, reporters are called upon to record “closed” portions of hearings where proprietary information may be discussed. Product experts are sometimes retained by the DOC in cases that involve highly technical products, and must have access to proprietary information to complete their assignments. Arrangements for specific proprietary agreements for reporters who will be recording a “closed” portion of a hearing or product experts must be made with the APO office.

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Translators who are needed for verification purposes are generally retained by the U.S. Embassy in the relevant country. The analyst is responsible for getting the translator to sign an “Interpreter’s Agreement,” a copy of which is provided as Attachment 1 to this chapter. In addition to the “Interpreters Agreement”, translator must sign a “Certification of Compliance” when the verification is completed. A sample of the “Interpreter’s Certification of Compliance” is provided as Attachment 3 to this chapter.

C. Identifying Parties’ Business Proprietary Information

The identification in submissions of business proprietary information from multiple persons is covered in 19 CFR 351.306(c). The DOC requires that APO applicants request access to all business proprietary information submitted in a particular segment of a proceeding. In addition, in the case of submissions, such as briefs, that include business proprietary information of different parties, the submission must identify each piece of business proprietary information included and the party to which the information pertains. (For example, Information Item #1 came from Respondent A, Information Item #2 came from Respondent B, etc.) The purpose of this proposal is to enable parties to submit a single APO version of a submission that may be served on all parties represented by authorized applicants instead of forcing parties to submit and serve different APO versions for each of the parties involved in a proceeding. In the case of a submission served on a party not represented by an authorized applicant (a relatively rare event), the submitter must prepare and serve a separate submission containing only that party's business proprietary information. Any business proprietary information that is bracketed in a submission is assumed to be business proprietary information belonging to the party submitting the document unless otherwise identified as business proprietary information of another party.

D. Disclosures to Parties Not Authorized to Receive Business Proprietary Information

19 CFR 351.306(d) clarifies that no person, including an authorized applicant, may disclose the business proprietary information of another party to any other person except another authorized applicant or a DOC official described in 19 CFR 351.306(a)(2). Any person who is not an authorized applicant and who is served with business proprietary information of another party must return that information immediately to the sender without reading it, to the extent possible, and must notify the DOC so that it can investigate the disclosure under 19 CFR 354. The purpose of this requirement is to minimize the damage caused by the unauthorized disclosure of business proprietary information, disclosures that typically are inadvertent.

IX. NOTIFICATION OF DESTRUCTION OF BUSINESS PROPRIETARY INFORMATION

Paragraph (a)(3) of 19 CFR 351.305 requires the destruction of business proprietary information when a party is no longer entitled to it, as well as certification that destruction has been completed. As described above, parties may now retain business proprietary information after the completion of the segment of the proceeding in which the information was submitted. The certification requirements will be triggered at a much later date, which will be at the end of the last segment of the proceeding for which information may be used. Because this will vary from

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case to case, the specific time at which a party must destroy business proprietary information is described in the APO.

X. DOC PROCESSING PROCEDURES

A. Placement on the APO Service List

The DOC will grant APO access to qualified applicants by including the name of the applicant on the APO service list. Normally access will be granted within five days of receipt of the application. All applications that are filed in the DOC's Central Record Unit are forwarded to the APO Office for immediate processing. It is possible however, that an application may be attached to other correspondence, such as a letter of appearance, and might be misdirected and delivered to an analyst in error. Analysts should immediately forward any APO applications that they may receive to the APO office. Analysts should keep track of all APO requests in their cases in order to ensure that the applications are processed in a timely fashion. The APO Office will provide an electronic copy of the APO service list to the analyst as soon as the list is issued or amended.

The APO Office will consult with the analyst assigned to the case to confirm the eligibility of the representative, the party represented, and to obtain additional information concerning other parties to the proceeding and the public service list for the case. Analysts must keep the APO Office informed about any changes to the public service list as the APO Office has no way of knowing this information other than from the analyst. Without accurate information, the APO Office will not be able to inform all parties properly as required about the existence of the APO service list and any amendments to the APO service list as they occur.

B. Claims for "Clear and Compelling Need to Withhold"

Analysts must also be vigilant to note any argument made by a party concerning an applicant or a clear and compelling need to withhold certain extremely sensitive business proprietary information from APO release. Generally, the claim of a clear and compelling need to withhold information from APO release is made in the cover letter of a submission. The APO office would be unaware of such a claim unless it is brought to their attention. It is the responsibility of the APO office to address all claims concerning a clear and compelling need to withhold business proprietary information from release subject under the DOC's APO. Analysts should never assume that correspondence concerning an APO matter in their case is automatically forwarded to the APO office, and should always insure that a date stamped copy of the correspondence is provided to the APO office as quickly as possible. A member of the APO office will meet with the analyst(s), team attorney, and other team members, if necessary, to discuss the matter.

A decision memorandum is then prepared by the APO office citing the arguments raised by the parties concerning the possible release of the disputed data. The decision memorandum is prepared for approval by the appropriate office director. Concurrence is obtained from the program manager, team attorney, and APO attorney, as well as from the team of analysts assigned to the case. If we deny the release of information, the requester is informed in writing

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and is provided with a copy of the decision memorandum. If we determine that the information should be released subject to the APO, the submitter of the information is notified in writing of the determination in accordance with 19 CFR 351.304(d)(1)(iii), and provided with two business days to serve the contested information on the parties subject to the APO. If the party does not serve the information on the parties subject to the APO as directed, the DOC will return the information to the submitter and not consider it further. That information may not be resubmitted and used in the same segment of the proceeding at a later date. The DOC's APO determinations can be immediately challenged before the Court of International Trade (CIT) within two business days of the APO determination. If the DOC determines that there is a clear and compelling need to withhold certain business proprietary information from disclosure under APO, the information is placed on the official file. If the DOC is sued on its final determination/results, the documents containing the "clear and compelling" information are not included in the microfiche record for the CIT. The paper copy of the documents and a separate index are sent to the CIT.

To maintain strict control, all proprietary information being released subject to the APO (except that served directly between parties) must be released through the APO Office. This ensures that the material is properly regulated and is only provided to a party who is authorized to receive the information. **NO INDIVIDUAL ANALYST MAY EVER RELEASE APO MATERIALS DIRECTLY TO A PARTY SUBJECT TO AN APO.**

C. Release of APO Materials

In order to release business proprietary documents generated by the DOC, analysts must provide the complete proprietary document, or the APO version of the document, along with a copy of the front page and the "APO Cover Sheet" (copy attached at the end of this chapter) to the APO Office. The APO Office will not accept documents for APO release unless an "APO Cover Sheet" is attached. No other preparation is necessary. Same day releases must be submitted to the APO Office no later than 3:00 p.m., unless previous arrangements have been made for a later release. Failure to provide the required information or to properly mark the case number and the segment of proceeding on the document, or to identify the document as "Business Proprietary - Releasable Under APO" will result in the delay of the release of the information. The APO office will also quickly review the document for bracketing. Improperly marked documents will not be released until the matter is resolved. (NOTE - Only business proprietary information is released under APO. Public information is not released under APO.) As a courtesy, the APO Office will simultaneously provide any public information to a party receiving APO information if the analyst has placed the public information in an envelope labeled "PUBLIC."

All APO releases are given priority treatment. The APO office immediately attends to an APO release. Some releases have a higher priority than others, however, and it is up to the analyst to speak with a member of the APO office if there is a critical deadline or an unusual circumstance that requires instant attention. If a document will not be available for release until the end of the day and it is critical that it be released as soon as it is available, the analyst should provide all of the necessary information to the APO office in advance. The APO office will attend to its APO release work in advance, and will notify parties of the APO pick-up for the end of the day. Similarly, analysts should also notify the APO office of disclosure meetings a day in advance of

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the disclosure so that the APO office can be prepared and serve the analysts in a more efficient manner.

XI. APO SANCTIONS FOR VIOLATIONS OF APOs

The regulations governing the imposition of sanctions for APO violations are set forth at 19 CFR 354. The regulations articulate a standard for issuance of a warning of an APO violation and address other situations described below. The regulations simplify the procedures for investigating alleged violations and the imposition of sanctions, establish criteria for abbreviating the investigation of an alleged violation, and set a policy for determining when the DOC issues warnings instead of sanctions. The regulations revise the provisions dealing with settlement to make them consistent with practice. The procedures for withdrawing charging letters are also simplified. A sunset provision provides for the rescission of charging letters.

The DOC vigorously enforces its APOs in order to maintain the integrity of the APO process. It is imperative that we promptly respond to an allegation of an APO violation, and take quick action to protect the information that may have been compromised. If a party reports an apparent APO violation, the analyst must bring it to the immediate attention of the APO office. If we determine that a problem may exist, the document in question must be immediately removed from the public and official files. The APO office will contact the parties involved immediately, and give instruction concerning the retrieval and refile of the document. Any reference to an alleged APO violation may not appear on the record of the case in which it occurred. Once the matter has been referred to the APO office, and the program manager advised, the analyst may not speak with anyone about the incident. Any questions must be referred to the APO office.

XII. APO CHECK LIST

- Confirm with the APO office that copies of APO applications have been received.
- Provide the APO office with copies of all APO related correspondence.
- Check all submissions including proprietary data for the statement regarding consent to release under APO and immediately notify the APO office if consent is limited or not given.
- Provide the APO office with copies of all internally generated documents to release to all parties subject to APO. **ALL PARTIES WHO ARE SUBJECT TO APO ARE ENTITLED TO ALL INFORMATION. THE INITIAL APPLICATION IS THE REQUEST FOR ALL INFORMATION - PARTIES ARE NOT REQUIRED TO ASK FOR SPECIFIC INFORMATION AS IT IS GENERATED.**
- Concur on and return to the APO specialist all APO decision memoranda as soon as possible. Do not pass the APO package to the next person on the concurrence sheet.
- Keep a copy of the APO service list prominently in you case files.

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- Keep track of all outstanding APO requests and issues in your cases to ensure that they are processed promptly.
- If you receive any information on a possible APO violation, **IMMEDIATELY** notify the APO office and provide all known details.
- All business proprietary information subject to APO may be released through the APO office only. This includes decision memoranda, calculations and printouts for disclosure and verification reports. **NO INDIVIDUAL ANALYST MAY EVER RELEASE APO MATERIALS DIRECTLY TO A PARTY SUBJECT TO APO.**

ACCESS TO INFORMATIONAGREEMENT REGARDING LIMITED DISCLOSURE OF BUSINESS
PROPRIETARY INFORMATION IN THE ANTIDUMPING/COUNTERVAILING DUTY
PROCEEDING:

(Case Name/Case Number/Segment of Proceeding)

I hereby swear (or inform) that I will:

- A. not divulge any business proprietary information obtained in this proceeding, or information created by the Commerce Department which contains business proprietary information, to any person other than:
 - 1. personnel of agencies of the United States Government directly responsible for conducting this proceeding or who are involved in this proceeding;
 - 2. the person from whom the information was obtained;
- B. use such information solely for the purpose of this proceeding by the persons described in paragraphs 1 and 2 above;
- C. not consult with any person other than a person described in paragraph A 1 or 2 of this agreement concerning such business proprietary information without obtaining the approval of the Commerce Department and the party (or the attorney for the party) from whom such business proprietary information was obtained;
- D. take adequate precautions to ensure the security of the business proprietary materials and the information contained therein subject to this agreement;
- E. promptly report any breach of such agreement to the Commerce Department;
- F. Upon completion of this proceeding, or at such earlier date as may be determined appropriated for particular data, the security of business proprietary information will be protected by the return of all copies of materials released to me pursuant to this agreement and the destruction of all other materials containing the businesss proprietary information (such as notes or charts based on such information received under this agreement). The return of the proprietary documents will be accompanied by a certificate from me attesting to my personal, good faith efforts to determine that no other copies of such materials have been made available to or retained by any other party to whom disclosure was not specifically authorized by the Commerce Department.

I acknowledge that the breach of the condition delineated in this agreement may subject me to administrative sanctions determined to be appropriate by the Commerce Department.

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(Signature

(Name - Print/Type

(Agency/Business Address

(Telephone Number)

Date)

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CERTIFICATION REGARDING LIMITED DISCLOSURE OF BUSINESS
PROPRIETARY INFORMATION IN THE ANTIDUMPING/COUNTERVAILING DUTY
INVESTIGATION:

(Case Name/Case Number/Segment of Proceeding)

Regarding the attached Agreement dated _____, I hereby certify that I have abided by the
terms of the agreement.

Signature

(Name - Print/Type)

(Agency/Business Address)

(Telephone Number)

(Date)

Revised 11/96

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
COP	COST OF PRODUCTION
CV	CONSTRUCTED VALUE
DOC	DEPARTMENT OF COMMERCE
EC	EXPORTING COUNTRY
EP	EXPORT PRICE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
GNP	GROSS NATIONAL PRODUCT
IA	IMPORT ADMINISTRATION
NME	NON-MARKET ECONOMY
NV	NORMAL VALUE
OA	OFFICE OF ACCOUNTING
OP	OFFICE OF POLICY
PIERS	PORT IMPORT EXPORT REPORTING SERVICE
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON THE INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 4

QUESTIONNAIRES

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 777A - sampling for the selection of exporters and producers
 - Section 782 - treatment of voluntary responses; difficulties in meeting reporting requirements
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.204 - period of investigation (POI) and appropriate recipients
 - 19 CFR 351.213 - requests for administrative reviews
 - 19 CFR 351.301 - time limits for responses
 - 19 CFR 351.302 - extension of response dates
- SAA
 - Section C.4 - evidentiary and procedural requirements for antidumping proceedings
- Antidumping Agreement
 - Article 6.1 - questionnaires
 - Article 6.1.1 - questionnaire response time and extensions
 - Article 6.10 - limiting the number of respondents

I. PREPARATION

Following the initiation of an antidumping duty investigation or administrative review, the analyst's next major project is the preparation of an antidumping duty questionnaire. If time permits during the initiation of an investigation, the analyst may be able to get started on it. For administrative reviews, the analyst should refer to the questionnaire used during the investigation or the last review, as appropriate, as a starting point in tailoring the standard questionnaire for the review in question. The questionnaire should describe all the essential information necessary to conduct the investigation or review for the individual respondent that is involved. Consequently, it is vital that we identify all the relevant information we will need.

A. The Questionnaire Format

We have four different basic questionnaires, two for investigations and two for administrative reviews. For both investigations and administrative reviews, we have one questionnaire for market-economy cases, and one for non-market-economy (NME) cases. The POI for a market-economy investigation normally covers the four most recently completed fiscal quarters as of the month preceding the month in which the petition is filed. For non-market-economy investigations, the POI normally covers the two most recently completed fiscal quarters. The DOC may, however, examine any additional or alternate period deemed appropriate. See 19 CFR 351.204(b).

The period of review (POR) for an administrative review is usually 16-17 months for a first review (because it normally includes the investigative time period between the suspension of liquidation of entries of the merchandise (preliminary determination) and the antidumping duty

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order as well as the 12 months following the antidumping duty order) and 12 months for all subsequent reviews. Alternative PORs are extremely rare.

Generally, all antidumping questionnaires follow the format outlined below.

1. Section A

This section requests general information concerning the investigated company's corporate structure and business practices, the merchandise under investigation or review that it sells, and the quantity and value of sales of the merchandise in all markets. More specifically, the type of information requested in this section of the questionnaire should enable us to:

- establish the size of the various markets to determine the best measure of normal value (NV) - exporting-country (EC) market prices, third-country prices, or constructed value (CV) (see Chapter 8 for information on NV);
- determine the appropriate basis for export price (EP) or constructed export price (CEP) (see Chapter 7 on EP and CEP);
- become familiar with the corporate organization (including relationships with other companies that may affect the investigation or review), the distribution systems, the sales process (including the methodology the company used to determine the appropriate date of sale), and accounting practices;
- define the merchandise sold in the United States and identify any identical or similar merchandise sold in other markets;
- determine the extent of further manufacture or assembly in the United States; and
- determine if the product was exported through intermediate countries and if the product was supplied by an unaffiliated producer.
- determination if the exporting country was undergoing high inflation during the POI/POR.

2. Section B

This section requests a listing of the sales transactions for use in determining the NV of the foreign like product. We ask for data for all the subject merchandise sold during the POI or POR in the comparison market, which could be either the EC market or an appropriate third-country market if the EC market is not viable.

Our request is generally comprised of two parts. First, we ask for a sales listing on computer tape with complete sales details, including product and customer identifiers, sale dates, quantities, prices, and adjustments to be made to the prices. Second, we

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ask for a narrative description for most elements of the sales listing. Normally, the narrative should cover the following:

- product and customer identification
- terms of sale
- dates of sale
- discounts and rebates
- level of trade adjustment
- movement charges (freight, pre-sale warehouse, insurance), direct expenses (such as commissions, credit expenses, post-sale warehouse, royalties and certain advertising, warranty, and technical service expenses)
- indirect expenses (such as inventory carrying costs and product liability insurance)
- packing costs
- difference in merchandise adjustments
- taxes
- any other expenses and/or special factors to be taken into account for determining NV

For investigations and administrative reviews, the questionnaire may only request a sample of EC market sales. Consult your supervisor or program manager (PM) if a respondent requests reporting of a sample of sales or if you feel reporting by sample is appropriate. Also see section 777A of the Act. Note that Section B is not included in NME questionnaires.

3. Section C

For investigations, this section requests a listing of the U.S. sales transactions for the POI for use in determining EP and/or CEP of the merchandise. For administrative reviews, we request sales information and information on entries (shipments if entry information is not available) for the POR (see Chapter 18). We ask for the same type of information and in the same format as for Section B described above. Generally, however, we request more data for U.S. sales to cover such items as:

- international movement charges (ocean freight, marine insurance, brokerage and handling, duties, etc.)

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- duty drawback (i.e., rebated foreign duties applied to raw material imports later exported in a finished form)
- whether or not the selling expenses reported for CEP transactions relate to economic activity in the United States.

If a company sells to the United States on both an EP and a CEP basis, each class of sales must be reported separately.

4. Section D

This section requests cost of production (COP) and CV information. Unlike the previous three sections of the questionnaire, which focus on the sales of the subject merchandise, this portion focuses on the manufacture of the merchandise. In NME cases, the respondents are always required to respond to a specially-tailored version of this section so that we can determine the factors of production to which surrogate values are applied. In market-economy cases we notify the respondent in the cover letter to the questionnaire if the respondent is required to respond to this section. Sometimes, however, you will have to analyze a respondent's answers to Section A questions before you will be able to determine if answers to section D questions are required. In market-economy cases we request a response to section D if CV is, or is likely to be, used as NV and/or if we decide to investigate whether foreign market sales are made at prices below the COP. This part of the questionnaire is modified in the case of economies with high inflation. For investigations, Section D questionnaires are almost always prepared by an accountant in the Office of Accounting (OA) or by a financial analyst (see Chapter 8 for more information on COP/CV).

5. Section E

This section requests information about value added in the United States prior to delivery to unaffiliated U.S. customers. The information regarding further manufacturing or assembly in the United States is necessary to determine the value added by these operations so that we can make appropriate price comparisons. Although this section is included in the questionnaire, we usually do not ask the respondent to answer these questions until we analyze the answers to pertinent Section A questions. For investigations, Section E questionnaires are almost always prepared by accountants in the OA or a senior financial analyst (see Chapter 7 for more information on further manufacture in the United States).

6. Questionnaire Appendixes

To supplement the other parts of the questionnaire, we include:

- a detailed glossary of terms (Appendix I);

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- instructions for submitting computer data (Appendix II);
- a description of the merchandise under investigation (Appendix III);
- formats for a certificate of service for the delivery of the submission on other interested parties and a certificate from a company official as to the completeness and accuracy of the submission (Appendix IV); and
- any categorization of the merchandise we will require and product matching criteria (Appendix V).

B. Drafting the Questionnaire

Our antidumping questionnaire is compiled in a standard format that is tailored to suit the requirements of an investigation or review. Check with your supervisor or program manager (PM) to ensure that you are using a current and approved version. The Office of Policy in IA is responsible for maintaining and updating all current AD questionnaires.

1. Modifications to Standard Questionnaires

After selecting the appropriate questionnaire for use as a model, it must be modified to reflect the product under investigation or review. As part of the initiation process, the product should have been precisely defined for the purpose of our investigation. In an investigation, any refinements to the product scope should be made at this point in Appendix III. Note that only product-specific modifications can be made to the master AD questionnaire without approval. Any substantive changes to the questionnaire dealing with statutory, regulatory, or policy requirements must be cleared with your supervisor or PM and the Office of Policy for questionnaire changes. The product definition for administrative review should be based on the investigation or the most recent review unless a scope ruling has changed or clarified it.

In most investigations and administrative reviews, the subject merchandise has different control numbers to identify the product. The control numbers are assigned to each unique product reported in the sales response. Identical products are assigned the same control number in both the foreign market and U.S. sales files. Even if products in the U.S. and comparison markets possess all of the product characteristics specified in the comparison criteria in Appendix V, it does not mean that they are identical. The comparison criteria are usually used to establish what is the most similar comparison to a given U.S. product. If identical products are reported, check with your supervisor or PM to determine if additional questions should be asked in a supplemental questionnaire.

To help us with the description and categorization of the product for an investigation, we solicit and review comments from the petitioner and any prospective respondents. On occasion, we have involved product experts from elsewhere within the DOC or

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the federal government to assist in defining and classifying products. Check with your supervisor or PM if you feel such outside consultation is warranted in the case. A visit to the petitioner's production facility may also be an effective way to gain product and trade information. Check with your supervisor or PM to determine whether this type of trip is warranted for your investigation or review. If a trip is taken, you must place a detailed memo in the file describing what you learned.

Other sources for product-specific questionnaire modifications are past cases. We may have already investigated the particular product before, from the same or other countries. Check in the Central Records Unit of Import Administration (IA) to review the questionnaire and product information for these cases. The previous case may help to define the computer variables and market factors. You may find that during the course of the other proceeding certain information not originally requested in the questionnaire was needed later on in the case and, therefore, this information should be incorporated in the questionnaire for the current case. If the particular product has not been investigated before, try to review questionnaires issued on similar products. For example, if the product is aluminum sheet and there has been no investigation on it before, try steel or brass sheet and strip cases for questionnaire ideas.

In investigations and reviews, usually limited to those involving a multitude of models or complex merchandise, we send out Section A of the questionnaire in advance of the other sections. We receive a response in time to incorporate the information received into the rest of the questionnaire. The analyst must review the Section A response in that light. In particular, look at the market viability of the EC - are there enough sales (generally at least 5 percent of all U.S. sales) to use the EC as the basis for determining NV or should third-country markets or CV be considered (See Chapter 8 for more information on market viability)? Review the sections on merchandise descriptions for additional product information that may need to be incorporated. The information on discounts, rebates, sales and distribution systems should also provide some ideas on tailoring the questionnaire to the investigation or review.

Either in the Section A response or in other submissions, a potential respondent in an investigation, as well as the petitioner, may recommend altering the POI. 19 CFR 351.204(b)(1) gives us the authority to change the POI when appropriate. An example of this situation can be found in the large newspaper printing presses from Japan investigation (see the October 27, 1995, memorandum on this subject in the case file).

Once the analyst has incorporated all necessary questionnaire modifications and prepared a draft for the investigation or review, the draft should be reviewed by the IA team and case attorney and the supervisor for comments and changes. After this step, for investigations we generally allow the petitioner (or in special circumstances the respondent, e.g., concerns about high inflationary accounting systems) to comment on our draft. We usually grant the petitioner a 24-to-48-hour review period.

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There is no requirement to seek comments on questionnaires for reviews. Because review questionnaires are more standardized, given IA's experience with the product, they are not circulated to outside parties prior to issuance. Note that outside comments may prove useful as an aid, but we are under no obligation to incorporate any of the petitioner's comments into our final version of the questionnaire.

After all comments are received and considered, the analyst should finalize the draft. Team members should be given the opportunity to review the final version for any further comment, and they must initial the final version to indicate their concurrence in its use. Once the supervisor or PM has approved it, the questionnaire is ready for presentation.

2. Special-Circumstances Questionnaires

- a. Cases involving NME countries (generally any former Soviet republic, Eastern European country (except Poland), or the People's Republic of China) require special methodologies to determine NV (see Chapter 8 on NV). Whenever it appears that an NME is involved, the analyst should advise the OP, and request a determination on whether the subject country is an NME. This determination is required in every investigation or review involving one of the above-referenced countries, even if it appears obvious that the country is an NME or the country has previously been deemed an NME. In making an NME determination, the OP looks at such factors as whether the government, rather than the market, sets prices. Once it is determined that the country in question is an NME country, the OP, upon written request, provides us with a list of potential surrogate countries that are at a comparable GNP-per-capita level to the NME country and that are significant producers of the merchandise under investigation or review. The list is used to find values for the respondent's factors of production (i.e., the amount of materials, labor, overhead and other expenses necessary to produce the foreign like product) which are reported in the questionnaire response. Always consult with your team members and supervisor or PM in selecting surrogate countries for NME investigations and reviews.

In NME investigations and reviews, the questionnaire for the producers will only request U.S. sales and factors of production information for the merchandise under consideration. To find appropriate values for the factors of production, we conduct our own research as well as allow the petitioner and the respondent to supply values. See the July 25, 1995 memo on surrogate country selection in the circular welded non-alloy steel pipe from Romania investigation for an example of this process. Other examples of NME treatment include Pure Magnesium and Alloy Magnesium from the Russian Federation, 60 FR 16440 (March 30, 1995), and Polyvinyl Alcohol from the People's Republic of China, 61 FR 14057 (March 29, 1996).

- b. Cases involving economies that have experienced high inflation rates during or around the POI or POR may require special methodologies involving home

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market pricing, COP, CV, difference in merchandise adjustments, and currency exchange. Supporting information may be required in the questionnaire. Cases which demonstrate the use of these methodologies include Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Brazil, 60 FR 31960 (June 19, 1995), and Certain Pasta from Turkey, 61 FR 30309 (June 14, 1996).

II. PRESENTATION

A. Identifying the Appropriate Recipients of a Questionnaire

19 CFR 351.204(c)(1) requires us to examine, where practicable, each known exporter and producer of the subject merchandise during the POI in an investigation. However, if both the respondent and the petitioner agree, we may decline to investigate some (see Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan, 60 FR 52650 (October 10, 1995)). If it is not practicable to examine all known exporters/producers in an investigation or, in an administrative review, all parties for which we received a request for review because of the large number of exporters or producers, the DOC may determine the weighted-average dumping margins for a reasonable number of exporters or producers by limiting its examination to

1. a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or
2. exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

To determine which companies in a given country will be examined in an investigation, we request certain commercial information from the appropriate U.S. embassy. The following information should be requested during the initiation process or, at the latest, immediately after the initiation of the investigation:

1. The names of the manufacturers producing the investigated product, the U.S. quantities sold, the value of these sales, and the number of the sales for the most recently completed calendar year, and, to the extent available, the same data for the current calendar year up to the filing of the petition and for the POI specifically. Check with your supervisor or PM to see if additional information is required.
2. Any relationships between manufacturers and importers.
3. Any relationships between manufacturers and resellers (such as trading companies). If there are such relationships, a reseller portion must be added to the questionnaire.

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4. Total value, quantity and number of EC or third-country market sales of the like product for each company for the POI.

This request is sent via cable to the the Commercial Service officer at the embassy in the foreign capital. These cables must be cleared by the "desk officer" and any other appropriate official in the Market Analysis and Compliance unit of International Trade Administration. See a recent case initiation file for an example of the cable format to be used and the clearances that are required. We request a reply to our cable within 10 days. For Japanese cases, we do not send a cable but instead send a letter to the Ministry of International Trade and Industry (MITI) official at the Japanese Embassy here in Washington to obtain this information. For cases involving the People's Republic of China, we send our queries to the Ministry of Foreign Trade and Economics (MOFTEC).

In some instances, when we are unsure whether companies are exporting to the United States, we send a "mini-A" questionnaire to all known producers. The "mini-A" questionnaire requests the same information requested in the cable we send to our embassy. Additionally, we ask the producers/exporters to assist us in identifying any other producers/exporters of the subject merchandise under investigation. Once we receive responses to the "mini-A" questionnaires, we can determine the proper recipients of the entire questionnaire. The proper recipients can be confirmed by comparing the list of companies acquired in the petition, from the CS, and from the mini-A to the companies listed in "Port Import Export Reporting Service"(PIERS) and U.S. Customs data. PIERS data is accumulated from entries on ships' manifests, and can be requested in the seventh-floor reference room of the DOC building. U.S. Customs data can be requested from the computer support staff. This data is proprietary and may not be placed on the record or released to outside parties. It is only to be used to corroborate information already on the record. Always consult your supervisor before requesting U.S. Customs data as very restrictive rules apply to its use (see Chapter 7, section IX for more information on the selection of exporters or producers).

For administrative reviews questionnaires for the POR are sent based on requests by petitioners, importers, or respondent resellers or manufacturers of the subject merchandise. In a review, each and every U.S. sale made by every firm under review must be examined unless a decision is made to examine a sample of sales. See the file for any recent antifriction bearings (other than tapered roller bearings) from France, Germany, Italy, Japan, Singapore, Sweden, or the United Kingdom administrative review for information on the sampling of sales. The CAFC has ruled that a "sale" is a transfer "for consideration". Thus zero price sample "sale" are not used to calculate NV. See *NSK vs. United States*, count number 96-1359, August 10, 1997.

B. Voluntary Respondents

For investigations and administrative reviews where we are unable to examine all exporters or producers, the companies we do not select as officially designated respondents may request to be voluntary respondents. We should furnish these companies with a questionnaire. In our cover letter, we should advise these companies that, if their responses are accepted for analysis, they will be accorded the same treatment as all officially designated respondents in the investigation or review. This includes the application of facts available, if necessary. Voluntary responses

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will be accepted if 1) these responses are timely filed, and 2) the number of mandatory respondents is not so large as to make analysis of the voluntary responses unduly burdensome for the DOC (see section 782 of the Act and 19 CFR 351.204(d)(2) for guidelines on the treatment of voluntary responses).

C. Presenting the Questionnaire

Normally, for an investigation, questionnaires are issued shortly after the International Trade Commission's preliminary injury determination which occurs 45 days after the date on which the petition is filed. For administrative reviews, questionnaires should be issued as soon as practicable after initiation, usually by the 45th day after the last day of the anniversary month. Since most respondent companies are represented by legal counsel, presentations are most often made to attorneys at our offices in the DOC. We notify the respondent's counsel that the questionnaire is ready to be picked up, and that we are available to meet with them and their client to discuss the contents. If a meeting is requested, we use it to go over the questionnaire with them, highlight any special requirements (particularly product descriptions and product matching criteria), and answer their questions.

A memorandum on the meeting, covering all special requests and/or modifications to the questionnaire requests, must be made and placed in the official record. Any changes to the reporting requirements or other portions of the questionnaire that the respondent wishes must be requested in writing and approved by your supervisor or PM. If we decide to modify reporting requirements, we will respond in writing. Under no circumstances should we orally agree to change questionnaire reporting requirements.

If a respondent is not represented by counsel, we will present the questionnaire directly to the respondent. For an investigation, if the respondent cannot send someone to Washington to accept this presentation, we may be able to make an on-site presentation, depending on the magnitude of the case. More often, for investigations and reviews, the questionnaire is delivered via mail or international air express. Questions may be handled by phone, by mail, or by fax. Be certain that any requests for modifications of the reporting requirements are in writing and documented for the official record. Remember that you may not orally change reporting requirements. You should always consult with your supervisor or PM if a request is made to modify the questionnaire. When questionnaires are sent by express mail, you should contact the express company one week later to verify acceptance by the firm. For expressed and mailed packages, you should make telephonic contact with the firm one week after sending them to ensure that the questionnaire has found its way to the right individual at the company. At that time you should request written confirmation of receipt of the package and attempt to answer any questions the respondent may have. You should also go over our service, certification, and administrative protective order procedures. Always document the preceding activities by placing a memo in the file.

III. SUPPLEMENTAL QUESTIONNAIRES

The antidumping duty questionnaire presented to respondents in the early stages of the investigation or administrative review is generally not our sole request for information. A

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review of just about any case file will normally uncover a number of requests for further information. These requests are generally sent out to obtain information previously requested and not received, to clarify information submitted to the DOC, or to obtain new information based on data submitted or changed circumstances of the investigation or review.

The first and most common vehicle used to request additional information is a supplemental questionnaire. In Chapter 5, we discuss how to analyze a questionnaire response. In many cases, responses reveal the need for additional information. While the respondent may have covered all the points in the questionnaire, some areas may lack complete explanations or supporting documentation such as worksheets for expenses. The analyst will examine the questionnaire response and develop a list of these areas. This list, in turn, will be reworked into the questionnaire format, following the order of the original questionnaire.

In addition to the omissions found, the analyst should also include any requests for clarification where the interpretation of the response is not readily understandable. Ask the respondent to be specific and state in writing exactly what an item means. If you are not sure whether the respondent has reported costs in dollars or the foreign currency, ask the respondent to state which currency was used.

Finally, include any requests for new information if a response raises new questions. For example, if the response refers to exporting country market sales to Trading Company A, it would be prudent to follow up and ask whether the respondent knows if A then exports the merchandise. If so, does the respondent know the ultimate destination of goods sold to A? Is A related to the respondent? Answers to these questions will help establish whether the respondent has reported its sales, distribution channels, and corporate relationships correctly and completely.

If a CV and/or COP questionnaire response is also involved, and OA is responsible for that analysis in your case, coordinate the supplemental questionnaire with OA. Their supplemental list of questions should be combined with ours and sent out as part of a single document that has been reviewed and signed by your supervisor or PM.

Since a questionnaire response will include a computer tape (in some instances, diskettes are received), we must be certain that the tape we received has been successfully "loaded" onto our data processing facility. Check with the computer support team for your office on whether any problems were encountered with the computer tape. If so, include the programmer's corrective instructions with the rest of the supplemental questionnaire. A computer tape that is not successfully integrated into our system is useless and renders the questionnaire response useless as well (see Chapter 9 for information on computer tape responses).

When the analyst has completed the draft supplemental questionnaire and cover letter (which will include a due date for the response - see section IV below), the team should review and comment on it. After that step, the supervisor or PM will review and sign the document.

Because of the short statutory deadlines for our preliminary determinations for investigations and results for reviews and the need to give respondents adequate time to reply, the analyst should try to draft a supplemental questionnaire within one or two weeks after the receipt of the

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questionnaire response. On the other hand, the analyst needs to take sufficient time to thoroughly analyze the response and incorporate any appropriate comments made by petitioner. Before you finalize your supplemental questionnaire in an investigation, always contact petitioners to determine if they will be submitting comments on the initial questionnaire responses. While we have sent out two or more supplemental questionnaires for investigations and reviews in the past, our strong preference is to send out one consolidated and comprehensive supplemental questionnaire. Accordingly, the analyst needs to balance timeliness with thoroughness before issuing the supplemental questionnaire. Nearly all antidumping case files will contain examples of supplemental information requests.

IV. DUE DATES

Time limits for submitting factual information, including questionnaire responses for investigations and administrative reviews, are described in 19 CFR 351.301. Under subsection (c)(2)(ii), we are given the authority to set the time limit for the response. Pursuant to 19 CFR 351.302, a party may request an extension. This extension request must be in writing and provide the reasons for the request. An extension request must be approved in writing.

Typically, for investigations and reviews, respondents are given 21 days from the issuance of the questionnaire to complete the Section A portion and 37 days from the issuance for the remainder. Extensions are usually for no more than 14 days. For supplemental questionnaires, our deadline will depend on the time remaining before a preliminary determination or verification for an investigation or the verification for an administrative review. Generally, we try to grant about 10 working days.

According to 19 CFR 351.301(b)(1), factual information relevant to an investigation should be submitted not later than seven days before the scheduled date of verification. However, 19 CFR 351.301(c)(2) allows the DOC to request information at any time. For an administrative review, factual information should be submitted no later than 140 days after the last day of the anniversary month except that verifying officials can request data to be submitted by seven days after the completion of the verification. See 19 CFR 351.301(b)(2), and 19 CFR 351.301(b)(3)(4) and (5) for information on due dates for questionnaire responses for sunset reviews, new shipper reviews, and expedited antidumping reviews. See 19 CFR 351.301(Cc)(3) for dead lines on NME surrogate factor valuation data. In practice, for investigations, we do not make major requests following verification, or even following the preliminary determination. Additional supplemental requests for information for other than technical corrections or clarifications of data should be limited to instances where information developed in the course of the investigation indicates that further, relevant information is needed in order for us to make our final determination.

The regulations provide for rejection of untimely filed documents. Under 19 CFR 351.302(d), if a respondent does not meet the deadline we set, we will return the late documents to the submitter, along with written notice stating the reasons for the return. One copy of the submission is retained on the record, however, with a cover memorandum saying that we did not review the document. This is done solely for purposes of establishing and documenting the basis for returning the document to the submitter (see 19 CFR 351.104(a)(2)). In this regard, the

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analyst should emphasize to the respondent in the questionnaire cover letter the necessity of a timely response. Always consult with your supervisor or PM in these situations.

As noted above, the submission of factual information under 19 CFR 351.301(b) is sometimes tied to the date that the verification commences or ends. If a respondent has both foreign and U.S., the date of its first verification is used to calculate the submission date for pre-verification submissions in investigations. The date of the last verification for a company is used to calculate its date for post-verification submissions in reviews.

LIST OF ACRONYMS & ABBREVIATIONS

APO	ADMINISTRATIVE PROTECTIVE ORDER
CEP	CONSTRUCTED EXPORT PRICE
COM	COST OF MANUFACTURE
COP	COST OF PRODUCTION
CRU	CENTRAL RECORDS UNIT
CV	CONSTRUCTED VALUE
DOC	DEPARTMENT OF COMMERCE
EC	EXPORTING COUNTRY
EP	EXPORT PRICE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
HM	HOME MARKET
NV	NORMAL VALUE
OIT	OFFICE OF INFORMATION TECHNOLOGY
PC	PERSONAL COMPUTER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 5

ANALYSIS OF RESPONSES

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 777 - access to information
 - Section 782 - conduct of investigations and reviews
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.301 - time limits for submission of data
 - 19 CFR 351.303 - filing, format, service, and certification of documents
 - 19 CFR 351.304(c) - treatment of business proprietary information
- SAA
 - Section C.4 - procedural requirements for antidumping investigations
- Antidumping Agreement
 - Article 6 - evidence

INTRODUCTION

When a response to any portion of the questionnaire (or supplemental questionnaire) is received, it must be reviewed promptly and thoroughly in order to ensure that it has been timely filed in proper form and that it responds to each question in the questionnaire in a complete, accurate and understandable manner. The analyst should use the checklists for "Proper Filing" and "Technical Adequacy," included in this chapter, as the framework for the review of the response.

The receipt of the response is also the time for the analyst to begin preparing a response index. An index should be prepared for each respondent in the proceeding--particularly when many respondents and responses are being managed at the same time. The index may be organized either by the order of the questions in the questionnaire or alphabetically by response item. The index is updated as supplemental responses are received. The analyst will find the index to be of great help in mastering the responses. Preparing an index is an excellent way to "get started" with response analysis. Additionally, the index will assist both the analyst and other team members in locating response details over the course of the case. Finally, the index can be adapted into a

verification outline and, ultimately, edited and supplemented to become the verification report. See your supervisor or program manager (PM) for sample indices.

I. BASIC FILING REQUIREMENTS

The analyst should begin by checking that all of the filing requirements of 19 CFR 351.303 have been met. Responses must be filed in Import Administration's (IA) Central Records Unit ("CRU") in Room 1870. The CRU "received" date stamp should appear on the front page of each copy filed and should indicate a date no later than the deadline. Unless alternative arrangements have been made and set forth in a memo to the file, the respondent must file six copies of the proprietary version of the response plus, three copies of the public version {19 CFR

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351.303(c)(2)(iii)} with our CRU. Of these, three proprietary and one public version will normally be delivered to the analyst with the remainder going to the official and public files, as well as to other support offices (e.g., Office of the Chief Counsel for IA). For sections of the response reported on electronic media, one "soft" (e.g., on floppy diskette or computer tape) and one hard (paper) copy are sufficient. You cannot receive electronic media directly; it must always be submitted to the CRU. In situations where respondents are unable to furnish their responses on electronic media or need some modification to our requirements, they must advise the DOC within 14 days of the receipt of the initial antidumping questionnaire. See 19 CFR 351.301(c)(2)(iv). Under 19 CFR 351.303(c)(3), the DOC may modify electronic reporting requirements per section 782(c) of the Act.

Where business proprietary information is involved, the responses must indicate whether respondent agrees to release of the document under administrative protective order (APO). If there is no statement regarding APO release, let the APO Coordinator know immediately. Other labeling requirements of the regulations include case number, document classification, proceeding segment, and office assigned. The regulations also prescribe certain other requirements like document dimensions, certificates of service (including, where appropriate, APO versions) and accuracy (see 19 CFR 353.303(d) for details). The analyst should check that the response meets these requirements. Particular attention should be given to certificate of service and response certification requirements. Consult with your supervisor or PM immediately if the response does not meet these requirements.

As with all documents, business proprietary information must be properly summarized or accompanied by an acceptable explanation of why it cannot be summarized (see 19 CFR 351.304(c) and Chapter 3 for information on access to information).

Any problems with the form of the response filing should be discussed with your PM or supervisor and team members.

In most cases, we require the submission of sales listings and certain other information on electronic media such as diskettes, cartridges or computer tapes (see 19 CFR 353.303(c)(3)). The respondent must provide a format description and a file layout description for use in the loading and formatting of the electronic data. A printout of the data contained on the tape is also required and should reflect the data exactly. Respondent has the option of providing a printout of sample transactions, but it must do so for at least every 50th transaction. The printout is used to ensure that the tape is properly formatted with the data in the proper columns and the decimals properly placed. Diskettes, tapes or cartridges must be given to your computer support team for storage and any necessary processing (usually, for 9-track tapes, formatting and transfer to cartridges) by the OIT ("Office of Information Technology"). The data should also be copied onto the analyst's PC (or, for cases involving very large numbers of transactions, the Office of Computer Services mainframe).

Checking the electronically recorded data is one of the analyst's top priorities after receiving the response. As soon as possible after the response is filed, the data should be checked against the respondent's sample printouts as well as narrative portions of the response for inconsistencies or anomalies. The analyst should compare each variable on sample transactions to see that they

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match exactly. Errors should be discussed with the computer support team. If the errors are caused by unclear formats, data or physical problems with the electronic media, we must notify the submitting party immediately. Such problems may render the entire response useless, so they must be identified and resolved as quickly as possible (see Chapter 9 for more information on the receipt and storage of electronic media).

Turning to the response narrative, the analyst should check that all required sections of the response are included in the submission of data. Particular attention should be paid to the filing of sections D (Constructed value (CV)) and (Cost of production (COP)), and E (U.S. value added) in cases where they are required. Your team accountant or financial analyst is required to analyze these sections of the response (except for non-market-economy investigations and almost all administrative reviews) so always ensure that this person has received his or her copy and knows your time frame for issuing a supplemental questionnaire. You are responsible for seeing that all aspects of these types of analysis are performed in a timely and complete manner.

The response should then be reviewed to ensure that all information in a foreign language is accompanied by a full English translation (see 19 CFR 351.303(e)). Also review the response to ensure that all exhibits are legible. Check to see that all numeric data and narrative portions of the response are typewritten.

The following checklist should be used to ensure that basic filing requirements have been met.

- ☐ Appropriate number of proprietary and non-proprietary copies filed
- ☐ Proprietary and non-proprietary versions filed properly
- ☐ Statement regarding APO release included
- ☐ Certificate of service included
- ☐ Certifications of accuracy of factual information from a legal representative and a company official.
- ☐ Other Requirements (as appropriate):
- ☐ Electronic media (e.g., computer tape, cartridge, or diskette) included
- ☐ Electronic media record layout and file information charts
- ☐ Full (or sample) printout of sales listings included
- ☐ Section D (CV and COP), and Section E (Value Added in the United States) included and delivered to the team accountant/financial analyst
- ☐ Other information requested inflation, Non-Market Economy, Third-Country Manufacture, Trading Company Sales, Multinational Corporation Provision) included as appropriate

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- ___ APO version sent to all interested parties whose representatives have been granted APO
- ___ Public version served on parties who have no APO
- ___ Translations of foreign language material included (e.g., financial statements). Depending on the significance of material to the AD analysis, translation of key sections may be sufficient.
- ___ All exhibits are legible

II. IN-DEPTH ANALYSIS OF THE TECHNICAL ADEQUACY OF A RESPONSE

A. General Checks

We want to determine whether the respondent has answered the questions posed in our questionnaire. Thus, the analyst should begin the review by comparing the response to the questionnaire in order to ensure that all questions have been properly answered. Where a question is not applicable to the respondent's situation, the response should so indicate. The analyst should also review the content of the response to each question to ensure that the reply actually addresses our question.

The total sales reported for each market on computer tapes should be checked against the totals reported in the Section A volume and value charts in order to determine whether all sales have been reported. The analyst should develop the totals necessary to make this determination from the sales listings submitted on computer tape (with the assistance of the ADP coordinator where necessary).

If the respondent has sales of merchandise in the exporting country (EC) or to third countries which are identical to each item sold to the United States during the period of investigation (POI) or period of review (POR), reporting of sales of similar merchandise is generally not required except under special circumstances (see Chapter 8 on normal value (NV)). At this time, the analyst should determine whether transactions are reported on the basis of sales during the POI or on the basis of orders or entries for the POR rather than on the basis of shipments. The narrative response should indicate the basis for the reporting of the date of sale in each market. Discrepancies between the computer tape and the narrative should be discussed with your supervisor or PM.

The sales listing should be reviewed to ensure that all adjustments discussed in the narrative are included. The response index and respondent's computer format instructions, identifying the variables used, will assist in this determination. In addition, the analyst should check to ensure that dates of sale are reported clearly in the narrative for all transactions and that the units of quantity are reported clearly. If the respondent sells on a varying quantity basis (e.g., pounds and kilograms), there must be a column reporting the quantities on a uniform basis and any conversion factor used must be reported.

ANALYSIS OF RESPONSES

The currency reported for each value element must be reported. Prices and charges must be reported in the currency in which they were incurred. If a particular charge is incurred in a different currency for individual sales, separate columns must be established for each element in each currency. If any of these items are not clear to you, request in a supplemental questionnaire that the respondent clarify them.

The section-by-section analysis described below should be reviewed in conjunction with the checklists contained in section III of this chapter. These two sections together provide the new analyst with a good overview of what to look for in a response.

B. Section A - General Information

Often, the response to Section A is received prior to the full questionnaire response. In those instances, the Section A response gives us a head start for making decisions regarding the selection of the appropriate foreign market for NV, the use of constructed export price (CEP) export price (EP) as the basis of the starting price for U.S. sales, the use of CV, whether high inflation exists, and the need for a questionnaire section on value added in the United States after importation.

The information requested concerning the organization of the respondent's company, market structure of the industry, channels of trade, and the function of the purchasers in the respective markets is essential to the analyst's understanding of the industry. The information on channels of trade, customer category, and the seller functions performed by the respondent is used to make comparisons at the same level of trade or as part of the basis for an adjustment for differences in level of trade. Where a respondent's sales are to trading companies, it is vital to know whether the respondent knows at the time of sale that the merchandise was destined for the U.S. market; if not, a trading company might need to respond to the questionnaire. See your supervisor or PM immediately if the respondent sells through a trading company.

The information on the sales process is helpful in determining whether the respondent has compiled its list of sales made during the POI or POR using the correct date as the date of sale. Although the DOC will usually use the date of the invoice as the date of sale, parties may present evidence that another date is more appropriate. If the question arises as to what point all of the substantive terms of sale are agreed upon (especially when considering long-term contract sales), you should consult with your team (particularly your team attorney) and your supervisor or PM. It is essential that questions concerning the date of sale be addressed as soon as possible since the resolution of this matter will affect the completeness of sales reporting for the POI or POR as well as the proper exchange rates to be used for converting the NV into U.S. dollars (see Chapter 8 for information on the date of sale).

For investigations, the respondent's normal accounting period is needed in determining the appropriate period in the evaluation of cost data and in verification planning. Often, records are maintained on an annual or quarterly basis. In some countries (e.g., Japan), fiscal periods may not coincide with the calendar month. If, for example, a company's fiscal period ends on the 20th of the month, all of its financial records, including sales, may be arranged in that fashion. The analyst will want to know whether the respondent's sales and expense allocation reporting

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conforms to our POI or POR or to the respondent's accounting system. See your supervisor or PM if the periods do not coincide.

For investigations, detailed descriptions of the merchandise, including technical drawings, brochures and other documentation, as appropriate, can assist the analyst in developing the technical knowledge needed to determine the most appropriate product comparisons. All catalogs and brochures must be in English or be translated into English. The basis for the respondent's reporting of control numbers and product characteristics must be explained in detail so that the analyst can evaluate appropriate product matches fairly. For administrative reviews, this same level of detail will be needed for exporters/producers not covered by the investigation.

The analyst must check that the respondent has reported data concerning the volume and value of sales for the respective markets for the POI or POR. Sales to affiliated and unaffiliated purchasers must also be reported separately. As stated above, you should compare the respondent's data in Section A to that reported in the Sections B and C (see Chapter 8 for information on market selection ("market viability")).

All price lists, discount/rebate schedules, policy statements and descriptions of contractual arrangements must be given in English. These items assist in the determination of date of sale, the proper treatment of rebate claims, and the proper application of the rules for granting adjustments for differences in quantities.

Customer lists for both markets and the associated customer codes must be included. These lists assist in the determination of which sales are made to related customers, the proper application of adjustments which are claimed for specific customers, and the identification of documents at verification. Customer codes should be created so as not to reveal the customer's identity. If the respondent refuses to provide complete customer lists, consult with your supervisor or PM.

Any information concerning transshipments (i.e., shipments to the United States from one country via a third (intermediate) country) should be included in sufficient detail to permit a full understanding of the facts concerning the transshipments. This data is necessary for determining whether the special provisions on transshipment apply. Any questions regarding transshipments should be discussed with the team and your supervisor or PM.

C. Section B - Exporting-Country/Third-Country Sales

The analyst should begin the review of section B by determining whether sales to the appropriate market(s) have been reported. At this stage it is a good idea to double check that all appropriate sales have been reported. Are sales from outside the POI or POR included? Has the respondent indicated what sales, if any, have not been reported?

The analyst should determine if the respondent indicated whether it has reported all change orders or amendments which were made during the period, pursuant to contracts made prior to the period, or which would affect sales made during the period. If the response indicates that such change orders or amendments exist, they should be described in detail so that we can make a judgment concerning the proper treatment of the affected sales. In addition, where such change

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orders or amendments exist, they should be flagged for attention at verification. These changes to sales may also affect our date of sale determination.

The analyst should check that there is a statement that the prices reported include the cost of all options and that they are described in detail, where appropriate. Where special options are a part of the terms of sale, we will need to determine the appropriate basis for accounting for them.

The terms of sale for each sale must be included in the sales listing and must be described fully in the narrative. The reported charges for each sale should reflect the terms of sale. Estimated charges should be reported for merchandise sold during the POI which were not shipped before the response was prepared. Generally, such charges should be based on the charges incurred on the most recent shipment to the same or nearby destination.

Any charges or expenses should be reported in the sales listing on a per-unit rather than an aggregate basis. For example, where the respondent spent \$500 to ship 1000 units, the reported amount should be \$0.50--not \$500. Where charges or expenses are incurred in different currencies for individual sales, they should be listed in separate columns on the computer printouts of the sales listing in the currency in which they were incurred. Compare the narrative description of the currencies used with the computer layout instructions to see that both portions of the response indicate the same currency for each charge or expense.

Although values should normally be reported in the currency in which they were actually incurred, any exchange rates used by respondent for any conversions of currency must be reported. We use the respondent's conversion to check for any possible errors and to reconvert at the proper exchange rates amounts that respondent need not have converted in the first place.

If charges have been allocated between products or shipments, the basis of the allocations and the formulas used must be included. The response should include worksheets showing how the allocations were made. This review enables the analyst to determine whether the allocations appear reasonable. For instance, items such as freight and handling charges are usually incurred on the basis of quantity (weight, pieces, or cubic measurement) while such charges as insurance and brokerage are usually based on value. All allocations should normally be made on the basis in which the costs were incurred. Where an allocation appears to be inappropriate, corrections or further explanation should be requested in the supplemental questionnaire (see Chapters 7 and 8 for more information on allocations).

Packing costs must be fully described. A breakout of material and labor costs must be provided. Any allocations must be described and formulas included, together with worksheets, where appropriate. Often, diagrams, photos, or step-by-step descriptions of the packing process are warranted. This response portion enables us to determine whether the basis of allocation is reasonable and provides us with the necessary information to recalculate if deemed appropriate. It also permits a comparison to the packing expenses reported in any cost or constructed value responses. The description of home market/third-country packing should be compared to U.S. packing to help determine whether all costs involved in the latter have been captured.

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Where discounts and rebates are given, each discount or rebate must be listed separately. The starting price reported must be the price before any rebates or discounts are deducted. Rebate and discount policies must be fully described. Where rebates or discounts are based on quantities purchased over an extended period of time, including sales outside the POI or POR, the rebates or discounts must be allocated over all applicable sales. It is also important that the policy of granting any post-sale adjustment be clearly explained and documented. Where discounts, rebates, or post-sale price adjustments have been allocated, the basis of the allocation must be fully described. Where the allocations include out-of-scope merchandise, this merchandise should be described so that we can determine if there are grounds to suspect distortions in the allocations. Price protection or ship and debit arrangements must be fully described. This information enables us to make an independent judgment on the proper treatment of the rebates and discounts. This degree of detail also facilitates verification.

Differences in physical characteristics between the items sold in the foreign market and those sold to the United States must be fully described. Such differences only exist when there are actual physical differences. For instance, claims for adjustment based on differing prices for material inputs or on differing labor or overhead costs due to varying production runs are not based on differences in physical characteristics of the merchandise and, thus, not allowed. The claimed adjustments must be limited to differences in direct manufacturing costs between physically non-identical merchandise. Material, labor, and direct variable factory overhead costs must be reported separately for each model in the sales listing. This information enables us to calculate the appropriate adjustments for physical differences between the U.S. model being tested and the foreign market model that we have selected as the appropriate comparison product. Reported cost of manufacture data should be compared to any cost of production data submitted in response to Section D. Diagrams and photos may be helpful and we may want to request them in a supplemental questionnaire if the respondent has not already submitted them.

Payment terms must be fully described. Claims for differences in credit costs must be based on actual payment experience rather than nominal payment terms. The methodology for calculating the number of days credit was extended must be fully described and include all formulas used for the calculations--particularly when a number other than the actual number of days between the shipment date and the payment date has been reported. The source or calculation of interest rates used in the calculation of claims for differences in credit must be fully described. Other factors, such as compensating balances, interest on compensating balances and pre-payment, must be fully described and calculation formulas included. This information enables us to adjust the claimed amounts if appropriate and assists in the verification of the data.

Claims for circumstance-of-sale adjustments for technical services must be described fully. There must be sufficient information to allow us to make a judgment concerning the direct relationship of the claimed services to the sales under consideration. The specific terms of sale under which the technical services are provided must be identified in detail. All costs claimed for technical services must be isolated by cost category and described fully. Any reimbursements for technical services must be reported. All allocations must be described and formulas reported. This information enables us to determine whether the services are directly related to the sales under consideration and provides us with the necessary data to reallocate costs, if appropriate.

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The terms under which commissions are paid must be reported and all allocation formulas included. The response must indicate the relationship of the respondent to the commission recipient. Commissions paid to company employees should be reported as being paid to related parties. Where commissions are paid in the U.S. market and not the EC or third-country market, indirect selling expenses in the EC or third-country market must be reported for purposes of calculating the offset for the U.S. commissions (see below for more information on reporting indirect selling expenses).

Full descriptions of all claims for adjustment based on warranties, guarantees or servicing must be included. Warranty and guarantee experience for prior periods (usually three years) must be reported so that we have a reasonable basis for calculating the adjustment because most such expenses relating to the sales reported will be incurred after the period of investigation or review. Fixed and variable expenses should be reported separately. If actual expenses were incurred during the POI or POR, these expenses should be reported by individual category.

The response should indicate if warranty or guarantee expenses are incurred on sales to selected customers or if certain customers are eligible for warranties or guarantees. In addition, the respondent should indicate whether all of the products under investigation or review are subject to the same warranty or guarantee provisions. If there is a relationship between warranty expenses and technical service expenses, the relationship must be explained in detail. Any payments pursuant to product liability claims must be reported in detail and related allocations included. This information is needed to calculate the correct adjustment and to verify the data efficiently. Actual product liability claims paid should be reported separately from insurance premiums paid.

If the respondent pays royalties on the sale or manufacture of the merchandise under investigation or review, the full details of the conditions of the royalty agreement and payments and the products covered must be included. All allocations must be explained in detail. This information permits us to calculate any adjustment correctly and to verify the data efficiently.

Claims for adjustments for differences in circumstances of sale for advertising must be reported in detail. The expenses incurred for different categories of media advertising must be reported separately and, where available, samples should be furnished with English translations. The reporting should indicate the intended audience for the advertising. Actual or anticipated reimbursements must be reported. Advertising expenses must be reported separately by market. All allocations must be fully explained and, where applicable, advertising expenses incurred on behalf of a particular customer or related to a specific product should be reported separately. This information enables us to determine which expenses are directly related to the sales under consideration.

Claims for adjustments for pre-shipment warehousing must be described fully, including an indication of the terms under which the warehousing expenses are incurred on behalf of a particular customer. This description should include the pre-contract or contract terms under which this service was provided. Pre-shipment warehousing expenses should be reported on a sale-by-sale basis. This information permits us to evaluate the claim and reallocate expenses as

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appropriate. Post-shipment warehousing expenses should be reported on a sale-by-sale basis along with other movement charges.

General warehousing expenses should be reported separately from pre-shipment warehousing expenses involving merchandise designated for individual customers. The respondent's short-term borrowing rate should be included and the respondent should

indicate where inventory carrying costs have been included, if they are reported separately.

The information required on claims for adjustments for differences in circumstances of sale will form the basis for determining whether the claimed expenses are directly related to the sales under consideration (and are therefore allowable as circumstance-of-sale adjustments), or constitute indirect selling expenses. The information will also permit us to check the reasonableness of allocations. Similar reporting is required for sales to the United States.

EC prices should be reported without consumption-type taxes included. If these types of taxes are included in the prices, be sure that the respondent has provided all necessary information on the taxes, such as the tax base, tax rate, tax formula, and appropriate tax statutes and regulations (in English). Where the taxes vary by destination of the merchandise sold in the EC market or the tax incidence cannot be calculated on the basis of a meaningful average, we will deduct the actual taxes incurred from the EC market price on a sale-by-sale basis.

Information on other expenses incurred relative to EC or third-country sales is needed in order to determine whether they should be included in the adjustments to NV. Accordingly, all selling expenses which are not directly related to the sales under consideration should be reported separately and the basis for any allocations should be included. These expenses will be used as the basis of offsets to commissions paid on United States sales (where there are no commissions on home market sales) or, under certain circumstances, as an offset to certain indirect selling expenses incurred for U.S. sales that are based on CEP. A clear breakdown of expenses and explanations of allocations will assist in the verification.

All payments to third parties relative to EC sales should be reported and explained clearly in order to allow us to determine whether it is proper to treat them as adjustments to the home market price.

If the respondent has leases in the EC or in third countries, the full details of the lease terms should be reported. Such transactions should be brought to the attention of your PM and the team for consideration and review.

Where adjustments for differences in level of trade claims are made, the respondent must furnish complete information on the selling functions performed by the respondent and differences in pricing and costs for customers at these different levels. Even if a level of trade claim is not made, the DOC analyzes the response to the extent possible and determines if additional information is needed to make this determination (see Chapter 8 for more information on level of trade analysis).

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D. Section C - U.S. Sales

The review of section C should follow the same lines as that of section B. It is particularly important to determine that all direct selling expenses incurred on U.S. sales have been reported. If an expense has been reported in Section B but not in Section C, we should ask the respondent to explain why U.S. sales do not involve such expenses. The analyst should also look for expenses that might reasonably be expected, even if not reported. For example, if no warranty expenses have been reported, we may want to ask the respondent specifically to explain its warranty history in the United States and why no expenses were reported.

In addition, you should ensure that all sales included in the reporting of United States sales are the first sale to an unaffiliated party. For administrative reviews ensure that importer names are clearly identified for EP sales as each unaffiliated importer should receive its own assessment margin. For United States EP sales complete entry (shipment) data must also be reported for the POR. If the respondent sells to the United States through an unaffiliated trading company in the exporting country and knows at the time of the sale that the merchandise is destined for the United States, the price to that trading company should form the basis for the calculation of the export price. Where sales are made by or through an affiliated arm in the United States, we must determine whether EP or CEP is the proper basis for determining the U.S. sales price. The response must include the information necessary for us to determine the proper basis for reporting prices to the United States. Review Section A again in this regard. Generally, if the merchandise sold through an affiliated party in the United States enters into the inventory of that company, we will use CEP (see Chapter 7 on EP and CEP).

All charges which are appropriate to the terms of sale must be reported in the currency in which they were incurred. Look carefully at such charges such as export packing, foreign inland freight, ocean freight, and foreign brokerage to see that the charges were reported in the appropriate currency. All allocations of charges should be fully explained. This information is needed to permit us to judge the reasonableness of the allocations and to reallocate as appropriate.

Note whether the respondent enters into currency exchange contracts. Any such contract must be described in detail. The respondent must also specify whether currency contracts are tied to specific sales of the subject merchandise and how this is done.

Data relating to adjustments for differences in circumstances of sale must be reported for the sales to the United States so that the appropriate adjustment can be calculated. Selling expense categories must be broken down so that the appropriate distinction can be made between direct and indirect selling expenses. If commissions are involved for EC or third-country sales, and there are no commissions on U.S. EP sales, check with your supervisor or PM to determine if U.S. indirect selling expense information is needed. Always ensure that U.S. indirect selling expense information is included for CEP sales.

Where CEP is involved, all data necessary for calculating CEP profit must be reported. In addition, for CEP sales of merchandise which has been further processed in the United States prior to sale to an unrelated party, value added--defined as all costs incurred in the further

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processing--must be reported (see part E below). This data allows us to make the appropriate adjustment to the CEP.

E. Sections D (CV) and (COP), and E (Value Added in the United States after Importation)

For cases where accountants or financial analysts are involved, responses to the CV, COP, and U.S. value added sections of the questionnaire should be forwarded to them and your supervisor or PM immediately upon receipt. The analyst should also review the responses to these sections of the questionnaire in order to become completely familiar with the information submitted. The analyst should follow up on the review by the accountant or financial analyst and ensure that their comments on the adequacy of the response are included in the supplemental questionnaire. You should always discuss and agree on the date of issuance of the supplemental questionnaire with the accountant or financial analyst. For investigations and reviews where you are responsible for the analysis of the complete cost response, you should always consult with your supervisor or PM about the analysis and verification of the data.

F. Trading Company Questionnaires

In the rare market economy case in which a response is required from a trading company, the response should be reviewed in order to ensure that all relevant section A, B, C, and, if appropriate D data is provided.

G. Other Areas of Review

All areas of the response covering case-specific questions posed in Appendix V of the questionnaire with regard to product comparison characteristics should be reviewed thoroughly by the analyst and team members in order to ensure completeness and responsiveness.

The analysis of electronic media submissions is covered in detail in Chapter 9. As soon as possible, you should ascertain whether the data is usable. You must also convey a copy of electronic media to OIT for permanent storage (and, for 9-track tapes, transfer to cartridge or diskette). In rare instances, databases will be so large that they will require processing on a mainframe computer with assistance from your office's computer support team programmers. When this occurs, consult your supervisor or PM for special instructions on the analysis of electronic media. Problems must be addressed in the supplemental request for information or, as circumstances warrant, in telephone contacts with the respondent or its representative, where applicable. Again, any information you receive in a telephone conversation must be reflected in a memo to the file promptly after the conversation occurs.

III. TECHNICAL ADEQUACY CHECKLISTS

Before you start your technical analysis of the response, remember that your first task is to determine if the response is filed properly (see section I of this chapter). If the response is filed improperly, respondent (or, where applicable, its representative) should be notified accordingly

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so that the response filing can be corrected. This step should be taken with the concurrence of the supervisor or PM.

Once you have completed the checklist for basic filing requirements found in section I of this chapter, you should then ensure that all requirements beyond the basic filing requirements are met. The submission of electronic media and related formats as well as responses to all required sections of the questionnaire should be reviewed (see Chapter 9). During this review process, the analyst must ask whether the respondent has answered clearly and comprehensively each question posed in each section of the DOC's questionnaire, even if it is only to state that the question is not applicable to the company.

The analyst should review the response thoroughly as discussed in the previous section. While doing so, the analyst should seek to organize the response information in such a manner as to facilitate access, understanding, and the identification of significant issues. For example, the analyst may prepare a response index or a pre-verification outline (see Chapter 13). The index or outline will assist the analyst in locating possible problem areas at a later date and make it easier for the team members, supervisor, or PM to locate information in the analyst's absence. In addition, the response index will assist the analyst at various stages of analysis and in preparing for and conducting verification.

The analyst should indicate on the check lists all areas that are handled properly in the response. Areas of omission or deficiency, or areas where the analyst thinks there is a possible omission or deficiency, should also be indicated. You should also add other areas of concern that may not be covered by the check list. Once you have completed your analysis, you should always review it with your supervisor or PM.

A. General Review Checklist

- ☐ All questions are responded to in English in the narrative (if a question is not applicable, the response should so indicate).
- ☐ All sales are reported for each relevant market (totals in Section A equal totals reported in sections B and C).
- ☐ Reporting is based on sales concluded during the POI or sales or entries (shipment information if entry data is not available) for the POR. When long-term contract sales or EP transactions for administrative reviews are involved, you should ensure that all appropriate sales data from outside the POR is included.
- ☐ All adjustments are included on the electronic media and the sales listings.
- ☐ All sales listed include the date of sale. The date of sale will most frequently be the date of invoice (which may coincide with the date of shipment), as recorded in the exporter's records maintained in the ordinary course of trade. Exceptions to this policy will apply where we are presented with satisfactory evidence, on a case-specific basis, that a different date of sale is more appropriate (e.g., cases involving long-term contracts).

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- ___ All units of quantity are reported clearly.
- ___ Units of quantity are expressed in uniform terms of measurement in each database.
- ___ Where the merchandise is sold in different units of measurement in the respective markets, the actual unit should also be shown and conversion factors indicated.
- ___ The currency reported for each item is clearly indicated.
- ___ All items are reported in the currency in which the charge was incurred.
- ___ The printout from the submitted electronic media matches the hard copy included with the response, particularly the placement of decimals.

B. Detailed Review Checklist

SECTION A

- ___ Quantity and Value of Sales
- ___ Quantity and value of sales are reported separately for each like product category.
- ___ Quantity and value of sales data are provided for the required markets; all currency conversion rates used are provided.
- ___ Quantity and value of sales data are reported separately for affiliated and unaffiliated customers.
- ___ Organizational chart/full description of the corporate structure is included.
- ___ Affiliations with customers and/or suppliers are fully described.
- ___ The classes of customers and their functions are fully described.
- ___ Channels of trade/distribution in the industry are fully described. Functions performed and services offered in each distribution channel to each class of customer in the U.S. and comparison markets are fully described.
- ___ There is a clear indication of the date on which all terms are agreed upon. As noted above, the date of sale will normally be the date of invoice, as recorded in the exporter's or producer's records maintained in the ordinary course of trade unless there is satisfactory evidence to the contrary. Exceptions may apply on a case-specific basis.
- ___ The sales process for each channel of distribution is fully described.
- ___ Where sales are made through resellers, there is an indication that the respondent does/does not know the ultimate destination of the merchandise.

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- ___ A description of the types of sales agreements negotiated in the U.S. and comparison markets and sample sales documentation generated in the sales process (e.g., sales contracts, purchase order, order confirmation, invoice, shipping documentation) are provided.
- ___ Price lists and discount/rebate schedules are provided in English.
- ___ A description of respondent's accounting and financial reporting practices is provided, including the respondent's normal accounting period.
- ___ English versions or translations of the following financial documents for the two most recently completed fiscal years plus all subsequent monthly or quarterly statements: (1) chart of accounts; (2) audited, consolidated and unconsolidated financial statements (including footnotes and auditor's opinion); (3) internal financial statements or profit and loss reports for the merchandise under investigation or review; (4) financial statements of all affiliates involved in the production or sale of subject merchandise in the comparison and U.S. market, of all affiliated suppliers to these affiliates, and the parent(s) of these affiliates; and (5) any financial statement or report filed with the local or national government of the country in which the respondent is located.
- ___ Detailed descriptions of the merchandise produced or sold by the respondent, and the production process involved, are included, along with technical drawings, catalogues brochures and other documentation in English.
- ___ Complete explanations of the differences and similarities of the merchandise under investigation or review sold in the comparison market and that exported to the United States.
- ___ A key to product codes assigned to the merchandise in the normal course of business is included.
- ___ Information concerning value added in the United States is provided and is in sufficient detail. If the respondent believes that the value added in the United States exceeds substantially the value of the subject merchandise that has been further processed, the information provided should include a weighted-average net price for the POI or POR charged to the affiliated importer for each product included in the investigation or administrative review that has been further manufactured and the weighted-average net price for the POI or POR charged to the unaffiliated U.S. customers for each further manufactured final product.
- ___ Information concerning exports through intermediate countries (transshipments) is included and is in sufficient detail.
- ___ Information concerning sales of subject merchandise supplied by an unaffiliated producer is included, and is in sufficient detail, including whether the supplier had knowledge of

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the ultimate destination of the merchandise purchased by the respondent or its affiliate at the time of sale.

SECTION B

- ☐ EC/third-country sales are reported as appropriate.
- ☐ The narrative response coincides with the data in the electronic media.
- ☐ If the respondent has demonstrated that reporting of sales of identical merchandise is appropriate (there are sales to unrelated purchasers in the EC market of products which are identical to all products sold to unrelated purchasers in the United States and that the volume of these EC sales is at least five percent of the volume of the sales to the United States), all of the sales are reported or, if similar merchandise sales should be reported, all sales are included.
- ☐ All change orders or amendments to contracts which were made during the POI or POR, or affect sales made during the POI or POR are reported and described in detail.
- ☐ Date of sale is reported in accordance with the instructions in section A.
- ☐ Sales prices are reported net of taxes rebated or not collected when the product is exported (e.g., value added tax) and include the cost of all options.
- ☐ Terms of sale (including delivery and payment) are indicated for each sale and are fully described.
- ☐ Product codes assigned in the ordinary course of business and control numbers assigned to each unique product are included.
- ☐ Estimated charges are reported for merchandise which was sold during the POI but was not shipped at the time of the response.
- ☐ All charges are reported on a per-unit basis.
- ☐ The charges reported reflect the terms of sale.
- ☐ All charges are reported in the currency in which they were incurred.
- ☐ Where a charge is incurred in different currencies on different sales, they are presented in the sales listing in different columns.
- ☐ All exchange rates used for the conversion of currency are reported.
- ☐ All allocations of charges are explained and all formulas and calculation worksheets are included.

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- ___ Description of all charges incurred by the respondent to transport the merchandise from the factory (place of shipment) to the customer, including warehousing, is provided. If the respondent is an unaffiliated reseller that physically takes possession of the merchandise, then these charges should be reported from the point of shipment of the reseller.
- ___ Packing costs are fully reported with a proper breakout of materials, labor and overhead in calculation worksheets.
- ___ Rebate and discount policies are fully described for the EC market.
- ___ Each rebate or discount granted is reported separately on the sales listing, and is calculated net of taxes rebated or not collected when the product is exported.
- ___ Where discounts or rebates are based on quantities purchased over a period of time which extends beyond the POI or POR, they are allocated over all applicable sales.
- ___ Reasoning for any level of trade adjustment claimed is fully explained and calculation worksheets provided. Note that if a level of trade adjustment is not requested, the DOC must analyze this situation based on the information in the response. If it looks like level of trade could be involved and the information in the response is not sufficient to make a complete analysis, we must request the information necessary to make this determination in the supplemental questionnaire.
- ___ Terms under which commissions are paid are described.
- ___ Allocations of commissions paid are described.
- ___ Relationships to commission recipients, including employees, are included. For commission payments to affiliated selling agents, evidence is provided that such payments were made at arm's-length by reference to commission payments to unaffiliated selling agents in the comparison market and other markets.
- ___ Interest rates used in the calculation of credit costs are fully described. Such interest rates are based on short-term borrowings in the currency in which sales are denominated.
- ___ The methodology in determining the number of days for which credit was extended is fully described.
- ___ Other factors affecting net credit costs are described, including compensating balances.
- ___ Description of conditions under which customers are charged interest for late payment is included and interest income received is reported in sales listing on a transaction-specific basis.

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- ___ Claims for pre-shipment warehousing expenses include an indication of whether the expenses are incurred on behalf of a particular customer as a condition of sale or if inventory can be specifically associated with particular customers.
- ___ Post-shipment warehousing expenses are reported as part of movement expenses specifically by sale less any reimbursements received from the customer.
- ___ Expenses for various categories of advertising are reported. There is an indication of whether any advertising expense is incurred on behalf of a particular customer.
- ___ Advertising expenses for the foreign like product that have been assumed by the respondent on behalf of its customers are reported separately from expenses incurred by the respondent to advertise to its customers. The latter type of advertising expenses are reported as part of indirect selling expenses.
- ___ Actual or anticipated reimbursements for advertising are reported.
- ___ Allocations of advertising expenses are fully explained.
- ___ Full descriptions of warranties, guarantees and servicing are provided.
- ___ Warranty/guarantee expenses for the three most recently completed fiscal years are reported and broken down by fixed and variable expenses.
- ___ Actual warranty/guarantee expenses (less any reimbursements from the customer or unaffiliated parts suppliers) related to sales of the merchandise during the POI or POR are reported and broken down by variable and fixed costs.
- ___ The reporting of warranty/guarantee expenses reflects differences in experience among products.
- ___ Actual or anticipated reimbursements for warranties/guarantees are reported.
- ___ All relationships between warranty/guaranty expenses and technical service expenses are described.
- ___ Claimed technical services are described in detail.
- ___ Divisions of cost centers to which technical service expenses are allocated are identified.
- ___ Reimbursements for technical services are reported.
- ___ Allocations of technical service expenses are included. Direct and indirect technical service expenses are reported separately in the sales listing. Indirect technical service expenses are reported as part of indirect selling expenses.
- ___ Terms of sale under which technical services are rendered are identified.

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- ___ Full details are included regarding the payment of royalties, including the conditions and products involved.
- ___ Allocations are fully explained for royalty claims.
- ___ Payments for product liability claims are reported and described fully, including allocations.
- ___ An explanation of all domestic taxes imposed on home market sales which were rebated or not collected on products exported to the United States, and excluded from the reported sales price, is provided.
- ___ Other expenses incurred on the merchandise sold in the comparison market are identified separately.
- ___ Indication of which expenses are directly related to sales in the comparison market during the POI or POR is provided.
- ___ All calculations used in reporting other expenses are fully described.
- ___ Sales overhead expenses (indirect selling expenses) are described and calculation worksheets are provided.
- ___ The opportunity cost to maintain inventory for sale in the comparison market (inventory carrying cost) is reported. Indication of the average length of time the finished product is maintained in inventory prior to the sale to the first unaffiliated customer, calculated from the end of production to the date of shipment to the customer, is provided.
- ___ Differences in physical characteristics in merchandise are fully described.
- ___ Claimed adjustments for differences in merchandise are limited to direct manufacturing costs.
- ___ Claimed adjustments for differences in merchandise are broken down into categories for materials, labor and variable factory overhead. If full COP information is being submitted in response to Section D, no additional narrative is required.
- ___ Description of the cost accounting system and discussion of the derivation of the variable costs reported for differences-in-merchandise adjustment purposes are provided. If full cost of production is being submitted in response to Section D, no additional narrative is required.
- ___ If third-country sales are reported, information concerning the following items is included, along with calculation worksheets: international freight, marine insurance, inland freight from port to warehouse and warehouse to customer, inland insurance, brokerage and handling, Customs duty, duty drawback, and export taxes.

ANALYSIS OF RESPONSES

- ___ All information necessary to calculate offsets for commissions or, if appropriate, the offset relevant to differing levels of trade for CEP sales.
- ___ Each item included in the reporting of offsets is listed separately.
- ___ Any sales which the respondent claims are not made in the ordinary course of trade are fully described.

SECTION C

- ___ All sales to unaffiliated purchasers in the United States are reported by like product group as defined in Appendix V.
- ___ CEP sales are reported separately from EP sales.
- ___ Sales made through affiliated and unaffiliated parties for shipment to the United States are reported separately or are coded so that they are readily identified.
- ___ The names of all unaffiliated importers are clearly identified for all administrative review EP transactions.
- ___ The cost of all options included in the sales price are reported.
- ___ All change orders and amendments to contracts which were made during the POI or POR or which affect sales made during the POI or POR are reported and fully described.
- ___ The basis for determining date of sale is fully described in the same manner as that required in section B.
- ___ Terms of sale (including delivery and payment) are included for all sales.
- ___ For merchandise which was sold, but not shipped during the POI, estimated shipping charges based on the last known charges are included.
- ___ All charges appropriate to the terms of sales are reported, described and listed separately.
- ___ Allocations of charges are explained in full.
- ___ Description of all charges incurred by the respondent to transport the merchandise from the factory to the customer is provided.
- ___ Packing, including containerization, and repacking costs are reported with proper itemization of the costs of materials, labor and overhead in calculation worksheets.
- ___ Claims for discounts and rebates are reported in the same manner as similar claims in section B.

ANALYSIS OF RESPONSES

- For merchandise which is subject to CEP analysis, all costs associated with economic activity in the United States relative to the sale of subject merchandise are reported separately.
- All information concerning selling expenses related to U.S. sales is provided as required in section B.
- Where CEP is the basis for prices in the United States, the average time between production and receipt by the U. S. affiliate and between receipt by the affiliate and shipment to the unaffiliated customer is reported.
- Where appropriate, indirect selling expenses to offset commissions in the comparison market are reported.
- Variable costs for claimed differences in merchandise are reported in the same manner as that required for Section B.
- Duty drawback received upon exportation of the merchandise to the United States or duties that are not collected because of export to the United States is fully described, including calculation methodology and applicable drawback laws, where appropriate.
- The amount, if included in the price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise is fully explained.
- For CEP sales where the merchandise is further processed in the United States prior to sale to unaffiliated customers, the section relating to further processing costs is responded to fully.
- U.S. value added costs are reported in accordance with Section E requirements.
- Identification of sales of merchandise shipped into foreign trade zones in the United States for further processing is provided.

SECTION D

Even though your team accountant/financial analyst is responsible for reviewing the adequacy of Section D and E responses for most investigations and some reviews, the analyst can use the following points to better understand the possible shortcomings of these sections of the response. Note also that some of the points covered refer to areas that require reconciliation to Sections B and C of the response. Also, in investigations or reviews where you have complete responsibility for the review of a CV, COP, or U.S. value added response, you must seek the assistance of your supervisor or PM.

- General information concerning respondent's product and production process is provided, including flowcharts of production process, description of production facilities, and list of inputs used to produce the merchandise under investigation.

ANALYSIS OF RESPONSES

- Inputs obtained from affiliates are identified, and volume and value of major inputs purchased from affiliates are reported (including transfer price and per-unit cost of producing the input by the affiliated party in the case of a sales below cost investigation).
- A complete description of respondent's financial and cost accounting systems and practices are provided, including illustrative flowcharts.
- COP and CV are calculated based on actual costs incurred by the respondent during the POI or POR, inclusive of all facilities producing the merchandise, on a weighted-average basis using model-specific production quantity as the weighting factor.
- Variable costs reported for claimed differences in merchandise for purposes of Sections B and C reconcile with costs reported for Section D purposes.
- Detailed description of the methodology used to compute COP and CV is provided and addresses the following items: direct materials, internal taxes on materials purchases, import duties on materials purchases, direct labor, variable and fixed production overhead, research and development costs, general and administrative expenses, and net interest expense. These items are reported on electronic media in accordance with the instructions outlined in section D.
- Detailed description of the differences between costs computed under the respondent's normal cost and financial accounting systems and the costs submitted in response to section D is provided.
- For the model with the highest U.S. sales volume and the model with the highest comparison market sales during the POI or POR, worksheets are provided showing the reconciliation of per-unit cost of the product recorded for inventory movements from work-in-process to finished goods inventory to the COM submitted for CV and COP, respectively.

SECTION E

- General information concerning adding value after importation into the United States for the subject merchandise is provided, including: flowcharts of the U.S. production process, description of production facilities, and list of inputs used to further manufacture the subject merchandise.
- Inputs obtained from affiliates are identified and volume and value of major inputs purchased from affiliates are reported (including cost of producing the input or transfer price).
- Complete descriptions of the respondent's financial and cost accounting systems and practices are provided, including illustrative flowcharts.

ANALYSIS OF RESPONSES

- ___ Value added costs are calculated based on actual costs incurred by the respondent during the POI on a weighted-average basis using model-specific production quantity as the weighting factor.
- ___ Value added costs reported for Sections C and E reconcile.
- ___ Detailed description of the methodology used to compute value added costs is provided and addresses the following items: direct materials, direct labor, factory overhead costs (including research and development), general and administrative expenses, and net interest expense. These items are reported on electronic media in accordance with the instructions outlined in section E.
- ___ Detailed description of the differences between costs computed under the respondent's normal cost and financial accounting systems and the costs submitted in response to section E is provided.

OTHER SECTIONS

Hyperinflationary or High-Inflation Countries

Sections B and C

- ___ All reporting requirements relevant to Sections B and C above are satisfied.
- ___ Variable costs for claimed differences in merchandise adjustments are reported based on current costs in the month of the US sale.

Section D (if appropriate, check with your team accountant or financial analyst - these checklist items are mentioned for informational purposes only. If you are responsible for performing the complete analysis of this information for an investigation or review, you must see your supervisor or PM for assistance).

- ___ Current cost methodology is employed which values the cost of production in the month of shipment. COP and CV are reported based on the current costs of all facilities producing the merchandise and calculated on a weighted-average monthly basis, using model-specific production quantity as the weighting factor.
- ___ Detailed discussion of the impact of inflation on respondent's production costs accounting.
- ___ A list of monthly monetary correction indices for the POI or POR and the two prior years is provided.
- ___ A description of the accounting principles employed by the respondent to account for the effects of inflation and an explanation of the differences between the principles employed and generally accepted accounting principles are provided.

ANALYSIS OF RESPONSES

- ___ All other requirements for section D of the questionnaire for COP and CV modified to account for inflation are satisfied.

Non-Market Economy

Section C

- ___ All reporting requirements relevant to Section C above are satisfied.
- ___ Production factors information is reported for all models or product types sold in the U.S. market during the POI or POR on a per-unit basis reflecting actual inputs used by the respondent during the POI or POR as recorded in its normal accounting system.
- ___ If the subject merchandise is produced at more than one facility, factor use and output of subject merchandise at each facility during the POI or POR is reported.
- ___ General information is provided on the following items: products, production process, and production facilities.
- ___ A list of inputs and services the respondent purchased from a market-economy supplier and paid for in market economy currency during the POI or POR, and the market prices of these inputs and services are provided. A detailed description of market-economy transactions is provided, including the name of the supplier, the respondent's relationship with the supplier, the source country, and terms of payment.
- ___ Detailed description of the methodology employed to calculate the factor inputs used to produce the subject merchandise is included and addresses the following items: raw materials amounts, labor hours, labor hours, indirect labor hours, energy, by-products or co-products, packing materials, unskilled packing labor, and skilled packing labor. Also shipping distances for all material inputs. This transportation will be valued in a surrogate country. These items are reported on electronic media in accordance with the instructions outlined in the questionnaire.

Electronic Media Analysis:

Analysis of the adequacy of electronic media submissions is addressed in a separate checklist which is to be used in conjunction with this check list for purposes of identifying deficiencies in the response. This checklist is found in Chapter 9.

IV. REQUESTS FOR SUPPLEMENTAL INFORMATION

Review the section on supplemental questionnaires in Chapter 4. Requests for supplemental information should be prepared promptly and should cover all areas where the response is deficient, as well as areas where clarification or additional information is required. While we aim to send out the supplemental request for information promptly, the analyst needs to take enough time to ensure a thorough analysis of the questionnaire response.

ANALYSIS OF RESPONSES

In addition to your review, always review any comments by the petitioner for inclusion in the supplemental request. Petitioner's comments are, however, simply an aid in preparing our letter; we do not automatically accept all of these comments. If the petitioner provides additional information after the supplemental request is issued or if we find additional problems with the response, we may issue an additional supplemental request. Always check with your supervisor or PM before preparing an additional supplemental questionnaire.

If appropriate, all supplemental responses including data on COP, CV or value added in the United States must be given to the team's senior financial analyst or to an accountant assigned by the Office of Accounting immediately after submission. Any omissions or deficiencies identified by the accountants must be included in the supplemental request for information. Remember, if there is not an accountant or financial analyst assigned for your investigation or review, you must see your supervisor or PM for assistance in preparing a supplemental request. The letter should also contain requests for any required modification to electronic media based on the analyst's or computer support team's review of the data submitted.

Generally, we try to grant respondent about 10 working days to respond to any supplemental requests for information. The deadline will depend on the time remaining before a preliminary determination and on how extensive the supplemental report is. Always coordinate the due date for the supplemental data with your accountant or financial analyst.

LIST OF ACRONYMS & ABBREVIATIONS

CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
COP	COST OF PRODUCTION
CV	CONSTRUCTED VALUE
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
FA	FACTS AVAILABLE
FV	FAIR VALUE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
HTSUS	HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES
ITC	INTERNATIONAL TRADE COMMISSION
NV	NORMAL VALUE
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
PUDD	POTENTIAL UNCOLLECTIBLE DUMPING DUTIES
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	(REGARDING THE INTERPRETATION OF URUGUAY ROUND AGREEMENTS ACT)
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 6

FAIR VALUE COMPARISONS

References

The Tariff Act of 1930, as amended (the Act)

Section 733(b)(3) - de minimis dumping margins

Section 735(a)(4) - de minimis dumping margins

Section 735(c)(5) - how to estimate all-others dumping margin

Section 751(a) - export price (EP) and constructed export price (CEP) for administrative reviews

Section 771(35) - dumping margins; weighted-average dumping margins

Section 772 - EP and CEP

Section 773 - normal value (NV)

Section 776 - determinations on the basis of the facts available (FA)

Section 777A - determination of weighted-average dumping margins

Section 782(e) - use of certain information

Department of Commerce (DOC) Regulations

19 CFR 351.308 - determinations on the basis of facts available

19 CFR 351, all of Subpart D - calculation of EP, CEP, fair value (FV), and NV

SAA

Section B.2. - market viability, third-country sales, EP, CEP, and NV

Section B.3 - exclusion of sales at less than cost of production (COP)

Sections B.5. and B.6. - COP and constructed value (CV)

Section B.8. - price averaging

Section B.9.(e) - de minimis dumping margins

Section C.4.b. - determinations on the basis of FA

Section C.4.d.(2) - all-others margin

Antidumping Agreement

Article 2 - determination of dumping

Article 6.8 - best information available Annex II-best information available in terms of Article 6.8

INTRODUCTION

The U.S. antidumping duty law is designed to counter injurious international price discrimination, commonly referred to as "dumping." Only when the DOC determines that there are sales at less than fair value (SLFV), accompanied by a determination of material injury or threat of material injury to domestic industry by the International Trade Commission (ITC), can antidumping duties be levied. SLFV most often occur when a foreign firm sells merchandise in the U.S. market at a price lower than the price it charges for a comparable product sold in its domestic market. Under certain circumstances, SLFV may also be identified by comparing the foreign firm's U.S. sales price to the price it charges in other export markets or to the firm's cost of producing the merchandise, taking into account the selling, general, and administrative expenses, and profit. Under the law, this latter basis for comparison is known as constructed value (CV). Finally, where the producer is located in a non-market-economy country (NME), a comparison is made between U.S. prices and a "surrogate" NV. The difference between a

FAIR VALUE COMPARISONS

company's U.S. sales price and the NV is called the dumping "margin" which is expressed as a percentage of the U.S. sales price.

In learning what dumping is, it is also important to understand what dumping is not. For example, dumping is not the sale of foreign merchandise in the United States at a price less than the price charged by U.S. producers of the same merchandise. In a dumping case, the fact that foreign producers sell their products at lower prices in the U.S. market than U.S. producers becomes relevant only in the context of the ITC's determination of whether dumped imports have materially injured U.S. industry.

Also, many people tend to confuse dumped and subsidized import competition, mistakenly seeing them as a single phenomenon. The two are, in fact, distinct one involving the pricing behavior of individual firms, the other stemming from the decisions of governments to provide preferential assistance to exporters or specific industries. While a foreign government's decision to provide export subsidies or to protect its domestic market may create conditions conducive to dumping, a finding of dumping will ultimately turn solely on the pricing decisions of the firm in the two markets. Other U.S. trade laws, such as the countervailing duty law, are available to address more directly the trade-distortive actions of foreign governments.

FAIR VALUE COMPARISONS**The Antidumping Calculus: Comparing Normal Value to U.S. Price**

Normal Value
is derived from one
of three data sets:

U.S. Price
is derived from one
of two data sets:

Home
Market
Price

Third
Country
Price

Constructed
Value (Cv)

Export Price
(EP)

Constructed
Export Price
(CEP)

FAIR VALUE COMPARISONS

I. OVERVIEW OF EXPORT PRICE, CONSTRUCTED EXPORT PRICE, AND NORMAL VALUE

To determine whether SLFV exist in an investigation or an administrative review, an EP or CEP as defined in section 772 of the Act and 19 CFR 351.401 (see Chapter 7) is compared to a NV as defined in section 773 of the Act and 19 CFR 351.401 (see Chapter 8). Section 772(35) defines the dumping margin as being the amount by which the NV exceeds the EP or CEP of the subject merchandise.

A. Determining which U.S. sales transaction to examine: EP vs. CEP

A transaction is classified as export price (EP) if the first sale to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for export to the United States, is made by the overseas producer or exporter prior to the date of importation. A simple example would be when a U.S. company decides to distribute a foreign product in the United States and contacts the overseas producer or an exporter directly to set up the deal in terms of price, quantity, delivery, etc. If, before or after the time of importation, the first sale to an unaffiliated person is made by (or for the account of) the producer or exporter or by a seller in the United States who is affiliated with the producer or exporter, an export price must be constructed (CEP). This typically is the price charged by a U.S. subsidiary of the foreign producer/exporter to the first unaffiliated U.S. buyer less expenses incurred in selling the product in the United States and U.S. profit.

B. Determining the basis for Normal Value: Home Market, Third Country or Constructed Value

Finally, NV is based either on the prices at which the foreign like product is first sold for consumption in the exporting country or to a third country if the home market is not “viable,” i.e., not sufficiently large or it is otherwise unuseable as a comparison market. NV may also be based on CV using cost data (rather than price data) if there are no viable markets or if all of the foreign market sales are found to be at prices that are less than the cost of production (COP).

In NME cases, NV is based upon a constructed value of sorts. Each NME respondent reports to DOC the quantities of direct materials and labor used to manufacture the subject merchandise, and DOC values these inputs using prices prevailing in a suitable market economy (“surrogate”) country. To this derived cost of direct material and labor, DOC adds surrogate-country amounts for factory overhead, selling and general and administrative expenses, packing and profit, resulting in a “constructed value” for the subject merchandise.

II. OVERVIEW OF ADJUSTMENTS

In order to achieve an “apples-to-apples” price comparison, various statutory adjustments are made to calculate NV (see Chapter 8). The need for adjustments arises because there are often physical differences between the merchandise exported to the United States and the merchandise sold in the exporting country or third-country markets and differences in the circumstances under which the merchandise is sold. Therefore, to make certain that our comparisons are not distorted

FAIR VALUE COMPARISONS

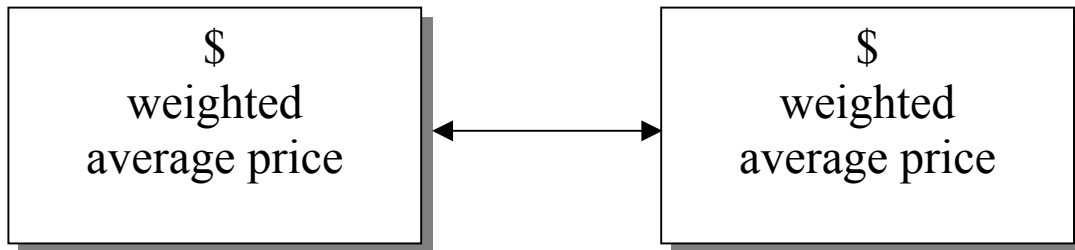
by factors extraneous to the central issue of price discrimination between markets, we adjust the “starting” prices to account for any differences in the prices resulting from verified differences in physical characteristics, quantities sold, levels of trade, circumstances of sale, applicable taxes and duties, and packing and delivery costs. Because the CEP must be constructed from a later resale of the merchandise in the United States, there are deductions detailed in Sections 772(d) and (f) that must be made, but which are not made in calculating EP (see Chapter 7).

III.OVERVIEW OF CALCULATIONS OF MARGINS

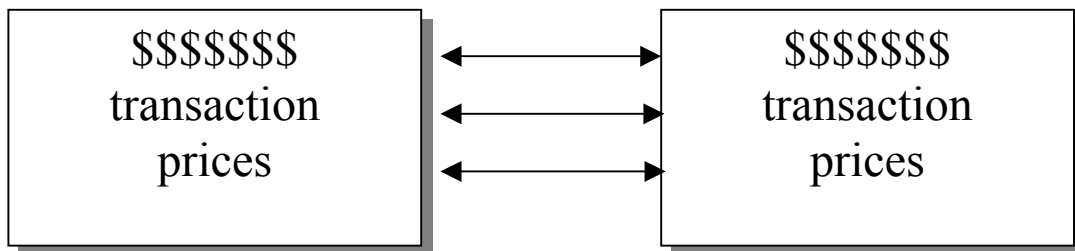
To calculate a dumping margin in an investigation, we must determine what sets of data will be compared, and how the comparison will be made. The following illustration presents three possible methods for comparing NV to U.S. price.

FAIR VALUE COMPARISONS

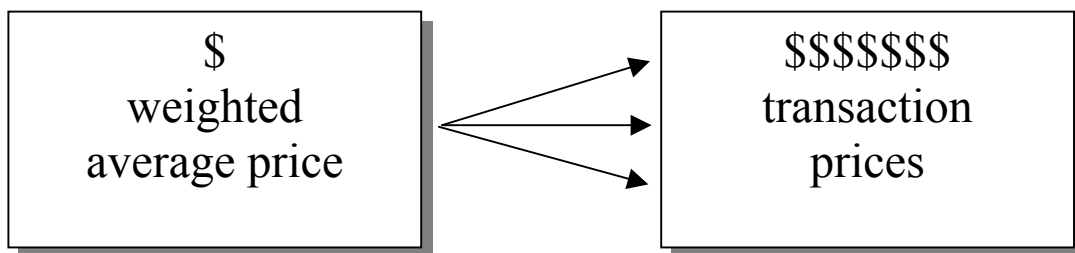
Possible Methods for AD calculations: Weighted Average Price to Weighted Average Price



Comparing Individual Transaction to Individual Transaction



Weighted Average Price to Individual Transaction Prices



FAIR VALUE COMPARISONS

A. Calculation of Margins for U.S. Sales for Investigations and Administrative Reviews

In an investigation, 19 CFR 351.204 provides that the period of investigation (POI) typically covers the four most recently completed fiscal quarters or, in an investigation involving merchandise imported from a non-market-economy country, normally the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed.

Under section 777A of the Act we normally compare the weighted-average EP or CEP to the weighted-average NV for a comparable product sold during the POI. We may also establish dumping margins by comparing NV and EP or CEP on a transaction-to-transaction basis. This is normally done only for large capital goods made to order, such as transformers. The difference between these custom-made products render average prices meaningless. Lastly, where these comparisons are inappropriate, we may compare a weighted-average NV to individual export sales transactions, provided that there is a pattern of prices that differs significantly and we are convinced that a weighted-average-to-weighted-average or transaction-to-transaction comparison is not appropriate.

For administrative reviews, the DOC generally bases NV for the period of review (POR) on monthly weighted-average prices and compares them to individual EPs or CEPs. Where no sales of the like product are made in the exporting country in the month of the U.S. sale, the DOC will attempt to find a weighted-average monthly price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. If unsuccessful, we will then look one month after and finally two months after the month of the U.S. sale. This practice is commonly referred to as the 90 60-day guideline. If no months with sales in the foreign market exist in this window constructed value is NV.

In certain instances, the DOC may use a shorter period than the whole POI to determine weighted-average NVs. In Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey, 62 FR 9738 (March 4, 1997), the DOC used monthly weighted-average prices for EPs and NVs because of significant inflation (see Chapter 8, section XV). In Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14064 (March 29, 1996), the DOC separated the POI into two periods to compute weighted-average NVs. This was done for one respondent because its exporting country sales prices were relatively low in the last 45 days of the POI which would have distorted a single POI weighted average NV. Also, for one of the respondent companies in Final Determination of SLFV of Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit and Above from the Republic of Korea, 54 FR 15467 (March 23, 1993), we based fair value on weighted-average monthly prices. Here, the respondent argued that using weighted-average monthly prices was necessary to reflect the declining prices in both the U.S. and third-country market during the POI. We examined the time-price correlation and observed a consistent downward trend in both U.S. and third country prices over the POI. Therefore, we found that monthly weighted-average prices for fair value were more representative of respondent's pricing than a single POI weighted-average. Although DRAMs is a pre-1995 investigation, the reason for subdividing the six-month POI into monthly weighted-averages would still be valid for today's investigations.

FAIR VALUE COMPARISONS

For U.S. sales where dumping is occurring (i.e., the adjusted weighted-average NV exceeds the adjusted weighted-average EP or CEP under our preferred method of comparison), the differences in the two prices are the dumping margins. In an investigation, we only need to calculate a single weighted-average dumping margin for an exporter/producer which will be used for bonding or cash deposit purposes until there is an administrative review. Accordingly, for each foreign producer/exporter in an investigation, the unit margins are multiplied by the number of units sold in the United States on a transaction-specific basis; these amounts are then summed and divided by the total value of the firm's U.S. sales to arrive at a weighted-average margin. For an administrative review, margins for EP sales are usually established for each individual U.S. importer because an exporter/producer may have dumped at different rates to different unaffiliated importers.

For administrative review of CEP sales, a single weighted-average margin is calculated for all CEP transactions during the POR. Individual, unaffiliated U.S. buyer margins are not calculated for CEP transactions. Normally, there are many (sometimes hundreds or thousands) of U.S. sales made during a POI or POR. In the simplified example shown below for an investigation and an administrative review, there are only two U.S. sales during the POI and POR, one EP sale involving 9,773 units at \$1.36 per unit and one CEP sale involving 10,000 units at \$1.27 per unit.

<u>EP</u>	<u>CEP</u>		
WTED-AVG NV	\$2.17	WTED-AVG NV	\$1.89
LESS:		LESS:	
<u>WTED-AVG EP</u>	<u>\$1.36</u>	<u>WTED-AVG CEP</u>	<u>\$1.27</u>
WTED-AVG MARGIN	\$0.81	WTED-AVG MARGIN	\$0.62

For an investigation, the two margins are combined to form a single exporter/producer margin. See section C below. For an administrative review, we would do the same thing for publication of a weighted-average rate in our results. When we send instructions to Customs to collect the final duty, an importer-specific rate will be calculated for that purpose (see Chapter 18).

B. Calculation of Potential Uncollectible Dumping Duties (PUDD)

The PUDD is the amount of dumping duties that would have been collected from the U.S. sales under investigated had an antidumping duty order been in effect during the period investigation (i.e., before the investigation began). The PUDD is used to establish a dumping margin which will remain in effect until the annual reviews established rates based upon the entries for which liquidation was suspended pursuant to the preliminary determination and for the year following the Antidumping Duty Order.

The calculation of the PUDD is, in effect, a two-step process. First, PUDD is determined for each U.S. sale by multiplying the per unit dollar margin for that sale by the total number of items sold. Second, the PUDD for each of the U.S. sales are summed to arrive at a total PUDD. The total PUDD is then used to calculate a weighted-average margin for the investigation as shown in part C below.

FAIR VALUE COMPARISONS

U.S. Sale No. 1 PUDD: Unit margin x number of units sold

$$\$0.81 \times 9,773 = \$7,916.13$$

U.S. Sale No. 2 PUDD:

$$\$0.62 \times 10,000 = \$6,200.00$$

Total PUDD:

$$\$7,916.13 + \$6,200.00 = \$14,116.13$$

C. Calculation of Weighted-Average Margins for Individual Companies and the Calculation of the “All Others Rate”

$$\begin{aligned} \text{Weighted-average margin} &= \text{Total PUDD} / \text{Total Value of U.S. sales} = \\ & \$14,116.13 / (\$13,291.28 + \$12,700.00) = \\ & \$14,116.13 / \$25,991.28 = 54.31\% \end{aligned}$$

In an investigation, once individual weighted-average margins are calculated for each producer or exporter, the dumping margins for these individual firms are then weight-averaged to calculate an "All Others rate" to be applied to sales by firms that were not investigated. If a company under investigation has a zero or de minimis margin (less than 2%), it would not be included in the calculation of the “All Others rate.” If a company under investigation has a margin based entirely on facts available, this margin would also not be included in the calculation of the “All Others rate.” Finally, margins calculated for voluntary respondents are not included in the “All Others rate” (see 19 CFR 351.204(d)(3)). See section 735(c)(5)(B) of the Act, 19 CFR 351.204(e), and section C.4.d.(2) of the SAA for information on how to treat situations where some, or all, margins are zero, de minimis, or based on facts available. Also see sections 733(b)(3) and 735(a)(4) of the Act and section B.9.(e) of the SAA for more information on de minimis rates.

For administrative reviews, a single weighted-average margin based on all EP and CEP sales (entries) for the POR is calculated for each company. It is calculated in the same way we calculate a weighted-average margin for an investigation except in this instance your amounts for duties will be actual duties as opposed to PUDD. This weighted-average margin is then used as the new cash deposit rate for the company. The “All Others” rate stays in effect from the investigation for all companies which have never received their own rates so we do not need to compute an overall weighted-average margin which incorporates the margins of all companies subject to the review.

IV. DETERMINATIONS ON THE BASIS OF FACTS AVAILABLE

A. Introduction

The DOC normally bases its margin calculations on information provided by respondents about their sales, expenses, costs, etc. The questionnaire is designed to elicit all necessary information.

FAIR VALUE COMPARISONS

In some cases, however, the DOC finds that it does not have information it needs to perform its calculations. In such cases, the DOC must use the “facts otherwise available,” which is any acceptable information which the DOC can find to substitute for a respondent’s missing information. However, under 19 CFR 351.308(e), the DOC will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements if the conditions under 782(e) of the Act are met.

B. When to Use Facts Available

Section 776(a) of the Act and 19 CFR 351.308 state that the DOC will use facts otherwise available in reaching a determination whenever:

1. necessary information is not available on the record, or
2. an interested party or any other person:
 - a. withholds information requested, or
 - b. fails to provide information requested in a timely manner and in the form required, or
 - c. significantly impedes a proceeding, or
 - d. provides information that cannot be verified.

Recent investigations where the DOC used facts available resulting from a respondent’s failure to provide a complete and accurate response to the DOC’s questionnaire include the following: 1) Final Determination of SLFV: Beryllium Metal and High Beryllium Alloys from Kazakstan, 62 FR 2649 (January 17, 1997); 2) Final Determination of SLFV: Melamine Dinnerware from The People’s Republic of China, 62 FR 1709 (January 13, 1997); 3) Final Determination of SLFV: Circular Welded Non-Alloy Steel Pipe from South Africa 61 FR 94 (May 14, 1996) (Pipe from South Africa); 4) Final Determination of SLFV: Certain Pasta from Turkey, 61 FR 30309 (June 14, 1996) (“Certain Pasta from Turkey”); 5) Final Determination of SLFV: PVA from Japan, 61 FR 14063 (March 29, 1996); and 6) Final Determination of SLFV: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996) (“Certain Pasta from Italy”).

Recent administrative reviews where the DOC used facts available include the following: 1) Final Results of Administrative Review of Antidumping Duty Order: Granular Polytetrafluoroethylene Resin from Italy, 62 FR 5590 (February 6, 1997); Final Results of Administrative Review of Antidumping Duty Order: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al., 62 FR 2081 (January 15, 1997); Final Results of Administrative Review and Termination in Part: Chrome Plated Lug Nuts from Taiwan, 61 FR 58372 (November 14, 1996); and Final Results of Administrative Review of Antidumping Order: Chrome Plated Lug Nuts from the People’s Republic of China, 61 FR 58519 (November 15, 1996).

FAIR VALUE COMPARISONS

Specific examples of different circumstances under which the DOC used facts available in an investigation are as follows:

- Where a respondent failed verification:

In Pipe from South Africa, the DOC found at verification numerous inaccuracies in the sales information provided by the respondent in its questionnaire response. The DOC determined that the inaccuracies of the information were so material and pervasive as to make the response unreliable for purposes of calculating dumping margins. Therefore, the DOC applied total facts available in the final determination.

In the case of Certain Pasta from Turkey, the DOC found at verification systematic flaws in the cost of production data submitted by one of the two respondents in the case. Accordingly, the DOC resorted to the use of facts available for the respondent's cost data. Moreover, the DOC determined that because of the flawed nature of the cost data, the respondent's reported home market sales could not be relied upon to make price-to-price comparisons (NV to EP). Therefore, the DOC applied total facts available for the respondent in the final determination.

- Where a respondent failed to provide requested information at verification (partial facts available):

Facts available may also be used for a portion of the response deemed inadequate. For example, in Certain Pasta from Turkey, where the DOC applied total facts available for one of the respondents, the DOC applied partial facts available for the other respondent. In the later situation, the respondent refused to provide certain financial information which was requested by the DOC in its questionnaire and at verification. Without having examined this information, the DOC could not verify the accuracy of certain elements of cost and sales data. Accordingly, the DOC determined that use of facts available for these elements of the cost and sales data was appropriate for the final determination.

C. Adverse Inferences

When the DOC decides to resort to facts available in an investigation, it must determine the most appropriate information to form the basis for the dumping margin calculation. In doing so, the DOC determines whether an adverse inference is warranted. According to section 776(b) of the Act, if the DOC finds that a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information, we may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. The adverse inference in an investigation may be derived from the following information: 1) the petition; 2) a final determination margin for another respondent in the investigation; 3) any other information placed on the record; and 4) final results from a prior segment of the proceeding.

FAIR VALUE COMPARISONS

The following are examples of cases where non-compliance of a respondent warranted an adverse inference when determining which facts (otherwise available) to use. The adverse facts available employed in each of these cases were based on information contained in the petition.

- Where no response to the questionnaire was received by the DOC:

In PVA from Japan, all respondents failed to respond in full to the DOC's antidumping questionnaire. Facts available was, therefore, warranted determining the dumping margins for the respondents and, since no party had acted to the best of its ability, the DOC applied adverse facts available. The petition was the only information on the record that could form the basis for a dumping calculation. The DOC considered using some pricing information that one respondent submitted in its section A response as facts available. However, because of the danger of self-serving statements by respondents who do not cooperate, such information could not be used to adjust the margin alleged in the petition. Therefore, the margins for all parties, and the all others rate, were based on the highest calculated margin derived from information contained in the petition.

- Where a respondent failed to provide information on an affiliated party:

In the preliminary determination of Certain Pasta from Italy, the DOC determined that the questionnaire responses of one respondent provided an inadequate basis for attempting to calculate a SLFV margin because the responses did not contain sales and cost data regarding an affiliated party. This information had been specifically requested by the DOC but the company repeatedly failed to submit it. The DOC determined that the company was an uncooperative party and used inferences adverse to the interests of this uncooperative party. The petition was determined to be the appropriate source of facts available for assigning a margin.

- Where a respondent failed to provided information in a timely manner:

Prior to the final determination of Certain Pasta from Italy, the DOC issued a decision memorandum announcing that it would not verify a respondent's cost of production (COP) and sales responses. It was determined that one respondent submitted a completely new COP response in an untimely manner and the acceptance of a new response would have imposed undue difficulties on the DOC in completing the case within the statutory deadlines. (It was not possible for the DOC to analyze the new responses, issue necessary supplemental questionnaire(s), receive responses to the supplemental questionnaire(s), and conduct verification within the statutory time limits.) Accordingly, the DOC resorted to the use of facts available for the respondent's cost data. Moreover, the DOC determined that, because of the flawed nature of the cost data, the respondent's home market sales could not be relied upon to make price-to-price comparisons (NV to EP). Therefore, the DOC applied total adverse facts available for the respondent in the final determination.

FAIR VALUE COMPARISONS

The company had failed to cooperate to the best of its ability in this investigation because it failed to provide complete and accurate information in a timely manner and failed to clarify inconsistencies in its submissions to the record. Thus, the DOC also determined that, in selecting among the facts otherwise available, an adverse inference was warranted.

After comparing the sizes of the calculated margins for the other respondents to the estimated margins in the petition, the DOC concluded that the petition was the most appropriate information on the record on which to base a dumping calculation for the company.

For administrative review situations, adverse inferences can lead to the use of margins calculated in previous reviews or the investigation as facts available. See Final Results and Partial Recission of Antidumping Administrative Review: Sulfanilic Acid from the People's Republic of China, 61 FR 53708 (October 15, 1996).

- In this administrative review, the DOC determined that a total adverse inference was warranted because of the untimely filing of a response by a company. Accordingly, the margin for this company from the investigation was used as adverse facts available because it was the highest rate from any segment of the proceeding.

Adverse facts available can also be selected for portions of the response as was the case in Final Results of Antidumping Administrative Review: Certain Internal-Combustion Industrial Forklift Trucks from Japan, 62 FR 5594, 5595 (February 2, 1997):

- For this administrative review, the DOC determined that the respondent did not cooperate to the fullest extent for the submission of certain home market selling expense information. Accordingly, information from the respondent's U.S. CEP sales response was used as adverse facts available.

D. Corroboration of Secondary Information

Under section 776(c) of the Act and 19 CFR 351.308(d), when using "secondary information" as facts available, the DOC must, to the extent practicable, corroborate them from independent sources reasonably available to the DOC. Not all facts available are "secondary information." "Secondary information" for an investigation is only information from the petition. For a review, "secondary information" can come from a previous review or the investigation (such as the same company's margin from a previous review or the investigation). Independent corroborative sources identified in the regulations include the following: 1) published price lists; 2) official import statistics and customs data; and 3) information obtained from interested parties during the investigation. However, the DOC may still use "secondary information" even though it cannot find independent sources necessary to corroborate that information. Calculated margins from an investigation or review need not be corroborated to establish reliability because it was based on an official proceeding and there is no independent source of corroboration for margins.

- The following is an example of how the DOC corroborated petition information:

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In PVA from Japan, the DOC attempted to corroborate the petition information by comparing the petition information on export price to U.S. Customs data and Japanese export statistics. However, both of these sources record prices based on the HTSUS subheading 3905.20.00, which includes both subject and non-subject merchandise. Therefore, each of these sources of information was not useful in corroborating the prices contained in the petition. However, on the record of the investigation was a price quote from an independent source which tended to corroborate the export price used in the petition.

As to NV starting price, or any other foreign costs, the DOC was not aware of any practicable means of corroborating such information. For the ocean freight charge reported in the petition, which was a significant adjustment to the U.S. price, the DOC found it to have probative value based on our examination of the supporting documentation contained in the petition.

- In the following example, the information did not need corroboration because it was based on margins established in official proceedings: In Final Results of Antidumping Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) from France, et al., 62 FR 2087 (January 15, 1997), the DOC used the margin for the company from a previous review as adverse facts available. The DOC stated that it did not have to corroborate this margin, but margins from a prior segment are secondary data. They just do not need corroboration as they are calculated, verified results.

The DOC's reason for making this determination was based on the fact that there were no independent sources from which to verify the antidumping margin from the previous review for the company under review.

When the DOC Declines to Use Fact Available

Section 782(e) of the Act and Section 351.308(e) of the Department's Regulations provide guidance regarding when the DOC will decline to use Facts Available.

Section 782(e) provides:

The administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority or the commission if (1) the information is established is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and (5) the information can be used without undue difficulties.

LIST OF ACRONYMS & ABBREVIATIONS

CEP	CONSTRUCTED EXPORT PRICE
C&F	COST & FREIGHT
CFR	CODE OF FEDERAL REGULATIONS
CGP	COATED GROUNDWOOD PAPER
C.I.F.	COST, INSURANCE, AND FREIGHT
CPT	COLOR PICTURE TUBES
DOC	DEPARTMENT OF COMMERCE
EC	EXPORTING COUNTRY
EP	EXPORT PRICE
F.A.S.	FREE ALONG SIDE
F.O.B.	FREE ON BOARD
FR	FEDERAL REGISTER
FTZ	FOREIGN TRADE ZONE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
LNPP	LARGE NEWSPAPER PRINTING PRESSES
NME	NON-MARKET ECONOMY
NV	NORMAL VALUE
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
PRC	PEOPLES REPUBLIC OF CHINA
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 7

EXPORT PRICE AND CONSTRUCTED EXPORT PRICE**INTRODUCTION**

The 1994 amendments to section 772 of the Act retain the distinction in the past law between “purchase price” (now called “export price” (EP)) and “exporter’s sales price” (now called “constructed export price” (CEP)). Notwithstanding the change in terminology, no changes occurred in the circumstances under which EP and CEP are used. EP and CEP are the prices at which the merchandise under investigation or administrative review is sold, or agreed to be sold, for exportation to the United States or, in the United States, to the first unaffiliated purchaser after certain adjustments are made to “starting prices” as called for in sections 772(c) for EP and 772(c) and (d) for CEP. Starting prices are net of any price adjustment that is reasonably attributable to the subject merchandise. These price adjustments include such things as discounts and rebates that constitute part of the net price actually paid by a customer. As specified in the “Comments” section of the preamble to the DOC antidumping regulations, 62 FR 27344 (May 19, 1997), the use of net prices as the starting point for the computation of EP and CEP, “... is consistent with the view that discounts, rebates and similar price adjustments are not expenses, but instead form part of the price itself.” 19 CFR 351.401 and 351.402 contain additional information on the adjustments to starting prices that are necessary to calculate EP and CEP.

In determining whether we must calculate EP or CEP, we consider when the sale is made and, if appropriate, the functions performed by affiliated persons in the United States, e.g., processing of sales documentation, repackaging, or value added to the imported merchandise. See section 771(33) of the Act for information on affiliated persons and section 772(e) for information on value added.

I. EXPORT PRICE

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 751(a) - export price (EP) in administrative reviews
 - Section 771(33) - affiliated persons
 - Section 772 - calculation of EP
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.107 - bonding and cash deposit rules for non-producers
 - 19 CFR 351.401 - general information on EP
 - 19 CFR 351.402 - calculation of EP
- SAA
 - Section B.2.b - EP
- Antidumping Agreement
 - Article 2.3 - sales after importation
 - Article 2.4 - rules for fair comparisons between EP and normal value (NV)

The DOC is required to calculate EP if the first sale to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for export to the United States is made by the producer or

EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

exporter in the exporting country market prior to the date of importation. The unaffiliated person can be a purchaser in the United States or an unaffiliated trading company located in the home market or in a third country. Normally, we consider a sale to a trading company to be a sale to the United States if the manufacturer or producer knows that the merchandise is destined for the United States at the time the sale is made (see Chapter 8, section XVII for more information on affiliated persons, and section III of this chapter for information on how to compute EP).

The following examples are representative of situations you may encounter in trying to determine if the sale to the United States requires us to calculate an EP or a CEP. If you are confronted with a fact pattern that differs from these, see section II of this chapter on constructed export price (CEP). If you do not find your situation covered there, consult with your supervisor or program manager (PM) immediately.

A. Unaffiliated Purchaser in the United States

Company A in the exporting country (EC) wants to sell color television sets to the United States. On January 15, 1996, the export sales office of company A in the EC contacts the purchasing department of an unaffiliated U.S. retailer and negotiates a sale of 3,000 20-inch color television sets for a total price of US \$750,000 and a per-unit price of US \$250.00. On February 15, 1996, the two parties agree to the price and quantity and all other terms of the sale, such as payment terms, delivery date, etc. Company A agrees to deliver the merchandise to the retailer's U.S. warehouse on March 15, 1996.

Based on the facts outlined above, we would compute an EP for this sale because: (1 the sale takes place on February 15, 1996, prior to the date the television sets are actually imported into the United States and (2 the foreign producer sells the merchandise directly to an unaffiliated U.S. customer. The EP would be calculated using the \$250.00 per-unit amount as the starting price (there are no discounts or rebates involved in the sale). The starting price would be adjusted per the requirements of section 772(c) of the Act (see Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy), 61 FR 30326 (June 14, 1996)).

B. Unaffiliated Trading Company in the EC or Third Country - Producer Knows the Destination of the Merchandise

The example in part A above is fairly straightforward. However, given the increasingly complex nature of international trade in the 1990s, we find more and more situations of foreign producers selling merchandise to the United States through trading companies. For example, Company A might find it more efficient to sell its merchandise through a trading company which would handle the necessary paperwork for arranging shipment of the merchandise to the United States, insuring the merchandise during land and ocean transit, preparing the documentation to ship the merchandise from the EC, preparing the necessary documents for U.S. Customs purposes, etc. The trading company could be located in Company A's country or in a third country. The following example illustrates this type of transaction:

Again, Company A wants to sell the same 3,000 20-inch color television sets to the United States. For purposes of efficiency, however, Company A sells the sets to unaffiliated Trading

EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

Company B in the EC for a total of US \$690,000 or \$230.00 per-unit less a \$10.00 discount. When Company A sells the merchandise to trading Company B, it knows that Company B will, in turn, sell the merchandise to an unaffiliated customer in the United States. Because Company A knows that trading Company B will sell the television sets to the United States and because there is no indication of a sale from Company A directly to the unaffiliated U.S. customer, we would compute an EP for this U.S. sale. The EP would be based on a starting price of \$220.00 per unit (the gross price of \$230.00 per-unit less the \$10.00 discount) from Company A to Company B, the unaffiliated trading company in the EC. The starting price would be adjusted per the requirements of section 772(c) of the Act (see Preliminary Determination of Sales at Less Than Fair Value: Sodium Azide from Japan, 61 FR 42585, 42588 (August 16, 1996), and 19 CFR 351.107 for information on how to set the bonding (in an investigation) or cash deposit amount for imports from Trading Company B).

If an unaffiliated trading company is located in a third country and the fact pattern is the same, the results of the analysis would be the same, i.e., EP would be computed for the sale to the United States and the \$230.00 unit price from Company A to the third-country Trading Company C, net of the \$10.00 discount, would be the starting price for the EP calculation. Adjustments to the starting price would be made under section 772(c) of the Act.

C. Unaffiliated Trading Company in the EC or Third Country - Producer Does Not Know the Destination of the Merchandise

Refer to the example in section B above for the details on the prices involved in the transaction between Company A and Trading Company B. In this example, Company A does not know the ultimate destination of the television sets at the time of sale to Trading Company B. Company B sells the merchandise to an unaffiliated importer in the United States prior to importation for a per-unit price of \$250.00 less a \$5.00 rebate. Because the sale is made to an unaffiliated buyer prior to import, the DOC will calculate an EP. The starting price for EP is the \$245.00 net-of-rebate price between Trading Company B and the unaffiliated U.S. buyer. The starting price is adjusted per the requirements of section 772(c) of the Act (see Final Results of Antidumping Duty Administrative Review: Titanium Sponge from Russia, 61 FR 30437 (July 29, 1996)).

If the same facts applied to a sale by Company A to an unaffiliated Trading Company C in a third country who then sold to an unaffiliated U.S. buyer, EP would be computed for the U.S. sale. As above, the starting price for the EP calculation would be \$245.00 per unit. Adjustments would be made in accordance with section 772(c).

These types of transactions are very unusual. If you should encounter one, see your supervisor or PM immediately.

D. Special Circumstances Involving Unaffiliated Middleman Sales

Very infrequently, a manufacturer or producer may sell to an unaffiliated trading company in the EC or in a third country, and this company may resell the merchandise to the United States at prices which do not permit recovery of its acquisition and selling costs. At the time of the sale to the trading company, the producer has knowledge of U.S. destination. If this is the case and the

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DOC receives a documented allegation that the EC or third-country trading company is reselling to the United States at prices which do not permit the recovery of its acquisition and selling costs, we will initiate a middleman dumping investigation. If we investigate and find the allegation is true, we would calculate an EP. The starting price for the EP would be the price (net of discounts and rebates) charged by the EC or third-country trading company to the first unaffiliated purchaser in the United States. In essence, this situation ultimately ignores the U.S. market "knowledge of destination" factor of the manufacturer. This situation is also very unusual. Consult with your supervisor PM immediately if you receive inquiries about a middleman dumping allegation or if you feel middleman dumping may be involved (see Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Brazil, 51 FR 5572 (February 14, 1986)).

E. Affiliated Trading Company Sales

In situations where trading companies located in the EC or in third countries are affiliates of the producer, we use the prices from the affiliated trading companies to unaffiliated U.S. purchasers as the basis for calculating the price to the United States. If the sales occur prior to importation, EP is used for our comparisons. Starting prices would be determined and adjustments would be made to these starting prices in the same manner specified in the preceding examples (see Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China ("Bicycles from the PRC", 61 FR 19026 (April 30, 1996), and section 771(33) of the Act for information on affiliated persons).

F. Affiliated Sales Agent in the United States

When a producer sells to the United States through an affiliated firm in the United States, we must consider certain details of the sales activities of the affiliated company in determining whether EP or CEP should be used as the basis for our comparison. If all of the elements are met, we would calculate EP. The elements we consider in making this determination are as follows:

1. The sales transaction occurs prior to importation;
2. The merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the affiliated selling agent;
3. This is a customary commercial channel for sales of this merchandise between the parties involved; and
4. The affiliated agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

Where all of the elements above are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the affiliated sales agent performs them and we calculate EP. Whether these

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functions are performed in the United States or abroad does not change the substance of the transaction or the functions themselves. The following example illustrates this type of transaction:

Company A in the EC wants to sell the same 3,000 20-inch color television sets to an unaffiliated U.S. retailer for \$250.00 per unit. Because Company A has an affiliated selling agent in the United States, i.e., Company D, it notifies the unaffiliated retailer that it will ship the television sets directly to it and Company D will handle all the required documentation. Because the television sets are not entered into Company D's U.S. inventory and because Company D merely acts as a processor of sales documentation, these sales would be considered EP transactions. The starting price for the calculation of EP is the \$250.00 per unit price (no discounts or rebates are involved) paid by the unaffiliated U.S. retailer to Company A. Adjustments are made per section 772(c) of the Act to arrive at the EP (see Final Determination of Sales at Less than Fair Value: Coated Groundwood Paper from Finland ("CGP from Finland"), 56 FR 56370 (November 4, 1991)).

The DOC almost always finds that a sale made prior to importation through an affiliated U.S. company requires an EP calculation. In recent determinations, however, the DOC has increasingly scrutinized the fourth criterion dealing with the functions of these affiliated U.S. companies (see CGP from Finland; Final Determination of Sales at Less Than Fair Value; New Minivans from Japan, 57 FR 21937 (May 26, 1992), and Final Determinations of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof from Germany, 61 FR 38166 (July 23, 1996) and from Japan 61 FR 38139 (July 23, 1996)). The extent of the affiliated selling agent's normal functions, such as the administration of warranties, advertising, in-house technical assistance, and the supervision of further manufacturing, may indicate that the agent is more than the sales facilitator envisioned for EP sales (see section II of this chapter on CEP for more information on this type of transaction, and section 771(33) for more information on affiliated parties).

II. Constructed export price

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 751 (a) - constructed export price (CEP) in administrative reviews
 - Section 771(33) - affiliated persons
 - Section 772 - calculation of CEP
- The Department of Commerce (DOC) Regulations
 - 19 CFR 351.107 - bonding and cash deposit rules for non-producers
 - 19 CFR 351.401 - general information on CEP
 - 19 CFR 351.402 - calculation of CEP
- SAA
 - Section B.2.b - CEP
- Article VI of the GATT 1994
 - Article 2.4 - rules for fair comparisons between CEP and NV

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In accordance with section 772 (b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted for U.S. Selling expenses and profit. As you can see, company affiliations play a major role in identifying CEP sales. Accordingly, familiarity with the provisions of section 771(33) of the Act dealing with affiliated persons is essential in order to identify CEP scenarios (see Chapter 8, section XVII, for more information on affiliated persons and section III of this chapter for information on how to compute CEP).

The following examples are representative of situations you may encounter in trying to determine if we are required to calculate CEP for U.S. sales. If you are confronted with a fact pattern that differs from these, see section I of this chapter on export price (EP). If you do not find your situation described there, consult with your supervisor or program manager.

A. The First Sale to an Unaffiliated Party Is Made after Importation

Company A in the exporting country (EC) supplies color television sets to its U.S. affiliate Company D, and the sets are placed in Company D's physical inventory. These sets are then sold out of Company D's inventory to an unaffiliated U.S. retailer for \$260.00 per unit less a \$15.00 discount. This constitutes a CEP sale. The starting price for the calculation of CEP is \$245.00 (the gross price of \$260.00 per unit less the \$15.00 discount), the price charged by affiliated importer D to the unaffiliated U.S. retailer. Adjustments are made to the starting price pursuant to sections 772(c) and (d) to arrive at the CEP (see Pasta from Italy).

B. The First Sale to an Unaffiliated Party Is Made Prior to Importation

Affiliated U. S. importer D sells some automobiles from its inventory to unaffiliated retailers in the United States. However, on numerous occasions, importer D also advises affiliated EC Company A to ship large numbers of autos that are sold prior to importation directly to unaffiliated retailers. Importer D also performs many functions in the U.S. market in addition to processing the paperwork for sales for EC Company A. Among these functions are the following: 1) installing air conditioning units and stereos in many of the vehicles at the port of entry; 2) processing all warranty claims and supplying all replacement parts; 3) procuring and placing of all U.S. advertising; and 4) training all retail customers' mechanics. Even though the autos are sold prior to importation, CEPs are calculated for these sales because of the breadth of the functions performed by the affiliated importer (see Minivans from Japan at 21937 and LNPP from Japan 61 FR at 38141. Also see Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, 62 FR 24400 (May 5, 1997)). Starting prices would be determined and adjustments would be made to starting prices for these types of transactions as specified above in section II, part A.

C. Consignment Sales

Company A in the EC negotiates an agreement with an unaffiliated flower consignment agent in the United States. A consignment price of \$1.00 per stem is placed on each flower for import

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purposes. The flowers are shipped from the EC to the consignment agent in the United States for sale to U.S. retailers. An unaffiliated U.S. retailer buys 1,000 stems from the agent, and pays the \$2.00 per-stem price set by the consignment agent. CEP is used for the dumping comparison for these sales by the unaffiliated consignment agent as the first sale of the merchandise to an unaffiliated purchaser (the U.S. retailer) occurred after importation. The consignment transaction with the unaffiliated agent is not considered a sale. The starting price for CEP is the \$2.00 per-stem price (no discounts or rebates are involved) from the consignment agent to the U.S. retailer. Adjustments to the starting price are made pursuant to sections 772(c) and (d) of the Act (see Final Determination of Sales at Less Than Fair Value: Roses from Colombia, 60 FR 6980 (February 6, 1995)).

III. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE CALCULATION METHODOLOGY

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 772 - EP and CEP
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.102(b) - definitions
 - 19 CFR 351.401(b),(c),(d),(e) and (g) - general rules
 - 19 CFR 351.402(a),(b),(c) and (d) - calculation of EP and CEP
 - 19 CFR 351.413 - disregarding insignificant adjustments
- SAA
 - Section B.2.b.(2) - adjustments to EP and CEP
 - Section B.2.b.(3) - value added after importation
- Article VI of the GATT 1994
 - Article 2.3 - sales after importation (CEP)
 - Article 2.4 - rules for fair comparisons between EP or CEP and NV

A. General Principal on Adjustments

The party in possession of the relevant information bears the burden of demonstrating the nature and amount of an adjustment (19CFR 351 401(b)).

B. Price Adjustments to Arrive at the Starting Price

Price adjustments are taken into account in order to arrive at the starting price for the calculation of EP and CEP. These price adjustments constitute part of the net price actually paid by the buyer. "Price adjustment" is a term of art defined at 19 CFR 351.102(b) which refers to adjustments made to a nominal price (such as a price in a catalog or price list). Discounts and rebates are examples of price adjustments. However, price adjustments may be made either upwards or downwards.

C. Adjustments to the Starting Price

EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

The Act requires the DOC to make a number of adjustments to the starting price before it can be compared to normal value (NV). In accordance with 19 CFR 351.401(b), the interested party that possesses relevant information about an adjustment has the burden of establishing the amount and nature of the adjustment. We prefer that respondents report actual costs and not allocated costs when reporting these adjustments. In order to allocate expenses, a respondent must establish that it is not feasible to report on a more specific basis. The respondent must also explain why its methodology does not cause distortions (see the preamble to 19 CFR 351.401(g) and the related discussion in the preamble to this regulation for discussion of allocation methodology and allocations that usually are not considered distortive). This section also addresses the problem of dealing with allocations that involve out-of-scope merchandise. The DOC will not disallow allocations based solely on the fact that out-of-scope merchandise is included in the allocation. The following are the price adjustments required by the Act or the regulations:

1. Additions

- a. Packing

If the cost of packing is not included in the price to the first unaffiliated customer in the United States, section 772(c)(1)(A) of the Act states that the starting price for EP and CEP shall be increased by "the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States."

Non-Market Economies: When packing costs are incurred in a NME country, we use costs in a surrogate country to value these costs. For example, to calculate the appropriate packing cost to add to the starting price for EP or CEP for a good produced in the PRC, we would determine the type and amount of packing materials used to pack the good for export to the United States and apply an average cost for those items from a surrogate country, e.g., India (see Bicycles from the PRC).

- b. Import Duties (Duty Drawback)

Section 772(c)(1)(B) of the Act requires that the starting price for EP or CEP shall be increased by the amount of any import duties "...imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." This adjustment is necessary to offset the amount of exporting country (EC) import duties associated with materials used in the production of the foreign like product that is sold in the EC that are also used in the production of the subject merchandise sold to the United States.

In determining whether or not duty drawback should be added to the starting price, we look for a reasonable link between the duties imposed and those rebated. We do not require that the imported input, e.g., steel used in the manufacture of

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steel wire nails, be traced directly from importation through exportation. We do require, however, that the company meet the following elements in order for this addition to be made to EP or CEP. The first element is that the import duty and rebate be directly linked to, and dependent on, one another. The second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product. For example, the imported steel must be in quantities that are able to be tied to the production and exportation of the wire nails, thus showing a direct link between the amount of the import duty paid and the amount rebated (see, e.g. Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Japan, 53 FR 23298 (June 21, 1988)) and Final Results of Antidumping Duty Administrative Review: Steel Wire Rope from Korea, 61 FR 55965.

c. Countervailing Duties for Export Subsidies

Section 772(c)(1)(C) of the Act requires an addition to the starting price for EP or CEP for any countervailing duties imposed on the merchandise to offset an export subsidy. Where there is an ongoing countervailing duty investigation but no outstanding countervailing duty order, instead of adding the countervailing duty amount for export subsidies to the EP or CEP, we adjust the estimated weighted-average dumping margin calculated for Customs bonding (for investigations only) or cash deposit purposes to reflect the impact of these duties on the dumping margin calculation. Where actual assessment of countervailing duties are being made under an outstanding order, the actual amount of duties would be added directly to the EP or CEP in performing the margin calculation.

If you are conducting an administrative review of an antidumping duty order for a product which is also subject to a countervailing duty order, you should contact the countervailing duty analyst to determine what, if any, export subsidies are involved and then discuss with your supervisor or PM how to make the appropriate adjustment given your factual situation.

2. Deductions

a. Movement Charges

Section 772(c)(2)(A) of the Act states that the starting prices for EP and CEP sales shall be reduced by the amount included in the price of any additional costs, charges, and expenses and normal U.S. import duties incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States. These expenses are referred to as movement charges.

In other words, in order to arrive at the EP or CEP used in our dumping margin calculations, we must deduct those movement charges included in the price paid

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by the customer. We normally consider the place of shipment to be the factory at which the merchandise was produced. Costs incurred in moving merchandise from the production line to a warehouse or loading area that is a part of the production facility are not considered movement charges; however, any off-site movement expenses are considered movement charges. See 351.401(e)(1) 19CFR.

When the subject merchandise is sold by an unaffiliated reseller (i.e., a person who purchased rather than produced the subject merchandise), the adjustment may encompass movement and related expenses incurred after the goods leave the place of shipment of the reseller but not movement and related expenses from the producer to the unaffiliated reseller's premises. The purpose of this approach is to avoid deduction of expenses which are really part of the cost of acquisition of the reseller. See 19CFR 351.401(e)(1)

The following are examples of the costs, charges, expenses, or duties that are typically deducted from both EP and CEP:

- U. S. inland freight and insurance (port to customer)
- U.S. brokerage, handling, and port charges
- U.S. customs duties
- International freight (ocean, air, or land) and insurance
- Foreign inland freight and insurance (production facility or a reseller's warehouse to port)
- Foreign brokerage, handling, and port charges.

In addition, under 19 CFR 351.401(e)(2), we will now adjust for warehousing expenses that occur after shipment under the movement charge provision.

As mentioned above, whenever possible, we calculate these charges on the basis of the actual costs incurred for each sale. However, we may use allocated movement charges when the transaction-specific cost information is not available. When actual movement charges are not available on a shipment-by-shipment basis, we allocate the charges on the basis on which they are incurred.

For example, freight charges would normally be incurred and, therefore, allocated on the basis of weight or volume, while insurance would usually be incurred and allocated on the basis of value.

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Terms of Sale: The reported movement charges should also reflect each shipment's terms of sale. In other words, where the terms of sale require the customer to procure some or all of its own transportation, that portion of the movement expense will not be included in the price of the merchandise and there is no need for the DOC to deduct it from the starting price. The common terms of sale, along with the associated charges, are indicated below:

- Ex-factory: no charges are included since this represents the price at the door.
- F.O.B. (free on board): includes inland freight to the port of exportation, inland insurance, handling, and loading charges.
- F.A.S. (free along side): includes inland freight and insurance to the port of exportation.
- C.& F. (cost & freight): includes inland freight and insurance to the port of exportation, handling, loading charges, foreign brokerage, and international freight
- C.I.F. (Cost, insurance, and freight): includes the charges in a C&F term, plus insurance on the international movement.
- C.I.F., duty paid: includes all of the charges in C.I.F. plus U.S. duty and, in some cases, brokerage.
- Delivered: includes all of the charges in C.I.F., duty paid plus U.S. inland freight and insurance.

Non-Market Economies: When movement charges are incurred in a non-market economy (NME) country, we use costs in a surrogate country to value the movement charges. For example, to calculate the appropriate foreign inland freight deduction for a good produced in the People's Republic of China, we would determine the distance from the factory to the port of exportation and then apply the average freight rate charged in a surrogate country, e.g., India (see Bicycles from the PRC). In addition, where ocean freight and insurance are supplied by state-controlled companies, these elements would also have to be valued based on data from a market-economy surrogate source.

However, if movement charges are source from a market-economy supplier and paid for in a market-economy currency, we use the actual cost incurred rather than the surrogate value (see Bicycles from the PRC). For example, if the NME producer used a U.S. ocean freight company to ship its goods to the United States and paid for the freight in U.S. dollars, then we would use the actual expense incurred rather than a surrogate value for ocean freight.

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b. Export Taxes

Export taxes included in the EP or CEP are also deducted in accordance with section 772(c)(2)(B) of the Act, except those specifically imposed to offset a countervailable subsidy received.

c. Reimbursed Antidumping Duties

When calculating EP or CEP for duty assessment purposes in an administrative review for an antidumping duty order, if the exporter or producer reimburses the importer for antidumping duties or pays these duties directly on behalf of the importer, a deduction for the total amount of the reimbursement must be made from the EP or the CEP. If we find evidence that the producer or exporter is paying directly or reimbursing the importer for antidumping or countervailing duties we will make the deduction from EP or CEP in our margin calculation. Additionally the importer must file a certificate with the District Director of Customs prior to liquidation of an entry that states that it has not been reimbursed. If the certificate is not filed, then reimbursement is presumed and Customs doubles the amount of duties due. Only one deduction is made for reimbursed duties. See 19 CFR 351.402(f) for detailed information on reimbursements (see, Preliminary Results of Antidumping Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 61 FR 51891 (October 4, 1996)), and Preliminary Results of Administrative Review: Furfuryl Alcohol from the Republic of South Africa 62 FR 36488 (July 8, 1997).

3. Additional Deductions Made to CEP

Pursuant to section 772(d) of the Act, we also reduce the starting price for CEP by the amount, if any, of certain expenses. The purpose of making these additional adjustments is to “construct” a price which is equivalent to an export price from the foreign country. While we prefer the reporting of actual amounts for these expenses, allocations will be permitted, if appropriate (see the introduction to Section C for more information on the reporting of allocated expenses). These additional adjustments are as follows:

a. Expenses generally incurred by or for the account of the producer or exporter in the United States in selling the merchandise under investigation or review are deducted from the starting price. These expenses are referred to as “CEP deductions.” They include:

- Commissions paid to unaffiliated agents for selling the merchandise under investigation or review in the United States. Where affiliated party commissions are involved, check with your supervisor or PM (see Section(d)(1)(A) of the Act.; LMI - LaMetalli Industriale, S.p.A. v. United States, 912 F.2d 455 (Fed. Cir.) 1990, and Chapter 8, section VIII, for an explanation of normal value (NV) commission offsets).

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- Expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties (see Section 772(d)(1)(B) of the Act; Torrington Co. v. United States, F.3d (Fed. Cir. 1996), and Koyo Seiko Co., Ltd. v. United States, F.3d (Fed. Cir. 1996)). See Chapter 8, section VI (US re packing charges) and section VIII (circumstances of sale), for a complete description of these and other direct expenses. The Chapter 8 NV principles for direct expenses apply with equal force to CEP deductions.
- Any selling expenses that the seller pays on behalf of the purchaser (see Chapter 8, section VIII, C for information on “assumed” expenses. The Chapter 8 NV principles apply with equal force to CEP deductions).
- Any other selling expenses not identified above. (see Chapter 8, section IX for an explanation of “indirect” selling expenses. The Chapter 8, NV principles apply with equal force to CEP deductions).

The CEP deduction is limited to the expense of economic activity occurring in the United States. The SAA also specifies that direct selling expenses may only be deducted to the extent they are incurred after importation. (See SAA at 153/823) Accordingly, all U. S. direct expenses incurred in the United States associated with the sale to the first unaffiliated U.S. customer would be included in this deduction, as would all indirect expenses incurred in the United States by a U.S. affiliate of the foreign exporter. Direct and indirect expenses incurred in the foreign market on behalf of U.S. sales (e.g., lodging expenses paid for by the respondent for U. S. customer’s technicians taking training in the respondent’s country (direct) and salaries of salesmen in the respondent’s country who take orders from the U.S. affiliate, and foreign inventory carrying costs (indirect)) do not form part of the deduction (see Pasta from Italy, “Delverde” Comment 2. See also Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, 62 FR 24396 and 24406 (May 5, 1997)). However, if such foreign expenses are direct in nature they may be treated as a circumstance of sale adjustment to NV. Always consult with your supervisor or PM before making a decision on where economic activities occur.

As a rule of thumb, if the expense is incurred in the United States by the affiliated importer or the exporter, it should be deducted. However, if the expense is for a foreign activity, it should not be deducted. Thus, for example, liability insurance purchased in the foreign country is only associated with economic activities in the United States, and should only be deducted to the extent it covers the subject merchandise while it is in the United States (see Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Wire Rods from France, 61 FR 47874, 47881 (September 11, 1996)).

As noted in 19 CFR 351.402(b), the relevant factor in determining whether an expense should be treated as part of the CEP deduction is where the economic

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activity associated with the expense occurs, not who pays for the expense. For example, if the home market company arranges for billboards with product-specific ads to be displayed across the United States, this would be an expense associated with economic activity (the billboards) occurring in the United States.

CEP deductions must be made in both market and non-market-economy cases, as required by the Act (see Bicycles from the PRC).

- b. Any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after importation and before its sale to the first unaffiliated customer. This adjustment is sometimes referred to as “further manufacturing.” Under the old law this deduction included an allocated amount of profit. However, under the 1994 amendments to the Act, the

“further manufacturing profit” is subsumed in the general profit deduction discussed below.

Section 772(e) of the Act sets forth the special rule for analysis of imports which have substantial value added to them after importation. Specifically, this provision states that the DOC will use an alternative method for determining the amount of dumping in situations where the subject merchandise is imported by an affiliated party and the value added in the United States is likely to substantially exceed the value of the subject merchandise. According to 19 CFR 351.402(c)(2), in order for the special rule to apply, the value added must be at least 65 percent of the price charged to the first unaffiliated purchaser. The 65-percent value added test is applied collectively to all of the subject merchandise that undergoes a further manufacturing process. The test is not applied to individual subject merchandise products within the value added pool. In order to use an alternative method, DOC also must determine that there is a sufficient quantity at sales to provide a basis for comparison and that the use of such sales is appropriate. If you come across a situation involving the special rule for value added, you should consult your supervisor immediately (see Preliminary Results of Administrative Review of Antidumping Duty Order: Gray Portland Cement and Clinker from Mexico 61 FR 51676 (October 3, 1996)). In this review, a 60-percent value added test was applied based on the DOC’s February 1996 proposed antidumping regulations. Because the U.S. value added exceeded the 60-percent guideline used in the proposed regulations (note that the May 1997 final antidumping regulations increase the guideline to 65 percent), the DOC substituted other CEP sales made by the producer that required no value added process as an alternative approach for calculating the CEP for these value added transactions.

- c. The profit allocated to the expenses described above (i.e., CEP deductions and further manufacturing costs) also is deducted from the starting price). Section

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773(f) of the Act and section 351.402(d) of the regulations provide the special rule for determining the amount of CEP profit to be deducted under section 773(d)(3).

In a market-economy case, CEP profit is calculated by first deriving the ratio of per-unit U.S. expenses to the respondent's total expenses and then multiplying this ratio by the total actual profit earned by the respondent.

For example, assume the following:

Total U.S. expenses (per unit) = \$0.45
 Total expenses = \$8,200,000
 Total profit = \$800,000

In this case, CEP profit would equal \$0.0439 per unit, calculated using the following formula:

$$\text{CEP profit} = (.45/8,200,000) \times 800,000 = \$0.0439$$

In order to derive the expenses and profit used in the above scenario, you must know the total revenues, costs, selling expenses and packing expenses for both the exporting and U.S. markets.

For example:

U.S. market sales revenue:	\$6,250,000
Exporting market sales revenue	<u>2,750,000</u>
Total revenue	\$9,000,000
Cost of U.S. merchandise	\$4,750,000
Cost of exporting market merchandise	1,900,000
U.S. selling expenses	1,000,000
Exporting market selling expenses	250,000
U.S. movement/packing costs	50,000
Exporting market movement/packing costs	<u>250,000</u>
Total expenses for CEP	\$8,200,000
Total profit for CEP	\$800,000

For an actual example of a profit calculation involving CEP, see Pasta from Italy.

In a NME case, the calculation is much simpler. CEP profit is calculated by multiplying the per-unit CEP deductions by the surrogate profit rate used in the normal value calculations. For example, if total CEP deductions were 0.45 and

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the surrogate profit percentage were 10 percent, then the deduction for CEP profit would be \$0.045 (or \$0.45 x .10) (see Bicycles from the PRC).

D. Sample Calculations for EP and CEP**1. EP**

Company A in the exporting country sells color television sets to an unaffiliated U.S. retailer on a delivered basis. The currency exchange rate is ¥150 to US\$1 or ¥1 = \$0.0067.

gross selling price (per set)		\$250.00
- HM inland freight (¥50 x 0.0067)	.34	
- HM inland insurance (¥10 x 0.0067)	.07	
- HM brokerage & handling (¥75 x 0.0067)	.50	
- ocean freight	1.00	
- marine insurance	.75	
- U.S. duty	12.50	
- U.S. brokerage and handling	.75	
- U.S. inland freight	<u>1.50</u>	
EP =		\$232.59

2. CEP

Company A ships televisions to its U.S. affiliate, Company C, which places them in its inventory for future sale. Company C then sells the sets to an unaffiliated retailer from its inventory at a later date.

gross selling price (per set)		\$250.00
- movement expenses (see EP example)	17.41	
- credit expense ¹	2.80	
- warranty expense	4.00	
- assumed advertising expense	3.50	
- indirect selling expense incurred in the U.S. ²	31.25	
- inventory carrying expense incurred in the U.S.	3.00	
- CEP Profit	<u>5.00</u>	

¹ In cases where some of the sales reported to the United States have not yet been shipped or paid, we have calculated an average number of days for credit based on the reported data for sales that have been shipped and paid, and we have applied the calculated average to these sales. Note that in cases where the customer paid for the sales prior to shipment, we have used the supplemental response and verification dates to make this computation. Consult with your supervisor or PM for the appropriate methodology for the circumstances of your case.

² Includes all selling and general and administrative expenses for Company C, the affiliated importer (i.e., those expense not directly related to a particular sale) incurred in the United States as well as indirect expenses of affiliated Company A in the EC that are associated with economic activity occurring in the United States.

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- CEP = \$183.04

IV. Date of sale

Establishing the proper date of sale, among other things, allows you to determine which sales will be included in the POI or POR and is, therefore, of critical importance in our analysis (see Chapter 8, section III for references and a complete discussion of date of sale).

V. COLLAPSING AFFILIATED PARTIES

References:

The Tariff Act of 1930, as amended (the Act)
 Section 771(53) - definition of related persons
 Department of Commerce (DOC) Regulations
 19 CFR 351.401(f) - treatment of affiliated producers

SAA

The Antidumping Agreement
 None

Although not expressly required by the Act, the DOC has a longstanding practice of calculating separate rates for each manufacturer or producer examined. Collapsing companies and calculating a single margin requires more than simple affiliation. When the DOC determines that two companies are sufficiently affiliated for purposes of an analysis for an investigation or review, it may calculate a single weighted-average margin for those companies. Under 19 CFR 351.401(f), the DOC treats affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and where there is a significant potential for the manipulation of price or production, as evidenced by common ownership, interlocking boards of directors or shared management, or intertwined operations.

- In *Pasta from Italy* 61FR 30326 (June 14, 1996), the administrative record established a close, intertwined relationship between two companies. Verification of both companies confirmed the reported information concerning ownership, boards of directors, transactions, and production processes. Such information demonstrated that these affiliated producers had similar production processes and exhibited a significant potential for price manipulation as evidenced by interlocking boards of directors and shared transactions.
- In *Final Results of Administrative Review: Gray Portland Cement and Clinker from Mexico*, 62 FR 17154 (April 9, 1997), two manufacturing companies were collapsed based on percentage of ownership, control by common members on boards of directors, and close intertwined business relationships.

Consult with your supervisor or PM for cases involving the possible collapsing of two or more companies or if you are unsure whether an importer and exporter are affiliated.

VI. SUBSTANTIAL TRANSFORMATION OF A PRODUCT IN A THIRD COUNTRY

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References:

Tariff Act of 1930, as amended
 None
 Department of Commerce Regulations
 None
 SAA
 Section B.9 - intermediate country sales
 The antidumping agreement
 None

Given the nature of international trade, it is not uncommon for merchandise to originate in one country and pass through one or more additional countries before being imported into the United States. Our investigations and reviews concern the imports of specific products from specific countries. Consequently, the question may arise whether a product exported from a third country to the United States is covered in your case.

In determining the answer to the question of product coverage, we must consider whether or not the product is substantially transformed in the third country by a further manufacturing process. Outside of a case where circumvention of an antidumping duty order is involved, the product would not be subject to the investigation or review if it is substantially transformed in the third country because it would then be subsumed as a product of that country. Our determination of “substantial transformation” does not necessarily parallel the Customs Service definition.

Two key tests are used in determining the appropriate country of origin for the purposes of antidumping proceedings. These tests are: 1) does the product enter the commerce of the third country; and 2) is the product substantially transformed in the third country? A "no" to both of these questions indicates the product merely passes through the third country and enters the U.S. unchanged from its export condition from the originating country. Under these circumstances, the product is considered a product of the originating country, and its sale would be included in an investigation or review involving that country.

The following cases illustrate substantial transformation analysis:

- In Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from Japan, 53 FR 44171 (November 18, 1987), color picture tubes (CPT) contained in kits were shipped from Japan to the United States through Mexico. These CPTs did not enter the commerce of Mexico, were not removed from the original container until their arrival in the United States, and did not undergo further manufacture or assembly in Mexico. Furthermore, it was clear that the Japanese manufacturer knew at the time of exportation that the CPTs would ultimately be exported to the United States. Therefore, we determined that these CPTs were covered in the investigation.
- In Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof from Japan, 54 FR 6433 (February 10, 1989), we found that microdisks were shipped from Japan to Canada prior to importation into the United States. While in Canada, we found that finishing processes were conducted on the

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microdisks. Based on the facts on the record, we found that the finishing process was so significant and sophisticated that it resulted in a substantial transformation of the product. As such, we considered these finished micro disks to be products of Canada and, thus, not covered in our investigation of micro disks from Japan.

EP or CEP for merchandise that is not substantially transformed in a third country is computed pursuant to sections I, II, and III of this chapter. For information on how to compute the NV for this merchandise, see Chapter 8. Always consult with your supervisor or PM if your investigation or review involves claims for substantially transformed merchandise.

VII. THE USE OF WEIGHTED-AVERAGE PRICE AND INDIVIDUAL SALE PRICE COMPARISONS TO DETERMINE DUMPING MARGINS

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 777A(d)(1)(A)(i) - comparison of weighted-average sales prices for investigations
 - Section 777A(d)(1)(A)(ii) - use of individual sale prices for comparisons for investigations
 - Section 777A(d)(1)(B) - differing export price patterns
 - Section 777A(d)(2) - less than fair value sales in reviews
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.414 - comparison of normal value (NV) with export price (EP) and constructed export price (CEP); “targeted” dumping
- SAA
 - Section B.8 p. 172/842- price averaging; “targeted” dumping
- The Antidumping Agreement
 - Article 2.4.2 - comparisons of weighted-average prices and the use of individual export transactions

Under section 777A(d)(1)(A)(i) of the Act, the DOC measures dumping margins in investigations, in most instances, on the basis of a comparison of a weighted-average of NVs for an identical or most similar like product with a weighted-average of EPs or CEPs for each different type of the subject merchandise. These weighted-average prices are usually calculated for the entire period of investigation (POI).

Because the normal method of comparison in an investigation is weighted-average EP or CEP to weighted-average NV, the boundaries of the averaging groups are extremely important. We do not simply calculate one weighted-average price for all products within the scope of the investigation to determine EP, CEP, or NV. While easy to do a comparison of such averages, it would be meaningless. The items within the averaging groups should share as many common characteristics as feasible. For example, we nearly always calculate model-specific weighted-average prices. We also compute different averages for the same product if different levels of trade are involved. Furthermore, although the normal period for averaging is the entire POI in an investigation, we do construct averages over a shorter time span if the prices appear to vary by

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time. Calculation of these “narrower” weighted-average prices yields more accurate results than broad averages which mix sales with different characteristics which affect prices (see Pasta from Italy for an example of model-specific and level of trade weighted averaging and Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14068 (March 29, 1996) for an example of using periods that are shorter than the total POI for computing weighted-average prices in an investigation). Under section 777A(d)(2) of the Act, the method for calculating dumping margins for most administrative reviews are individual U.S. sale prices are compared to weighted-average monthly prices that are limited to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale (see Chapter 6, section IV for an explanation of the 90/60-day guideline for the calculation of NVs based on weighted-average monthly prices for administrative reviews).

Under certain circumstances, section 777A(d)(1)(A)(ii) permits the calculation of dumping margins by comparing the NV of individual transactions to the EP or CEP of individual transactions for comparable merchandise. As explained in section B.8 of the SAA, p. 172/842 this type of transaction-by-transaction comparison is appropriate in those situations where there are very few sales and the merchandise sold in each market is either identical or very similar, or is made-to-order. The SAA states that this methodology will be used sparingly. In LNPP from Japan, the DOC used EPs and CEPs based on individual transaction prices because there were very few sales and because of the unique nature of each printing press. An individual NV (based on CV) was also calculated for each press.

Section 777A(d)(1)(B) addresses an exception to the use of weighted-average EPs or CEPs for dumping comparisons in investigations. This exception involves “targeted dumping.” The SAA, in section B.8, p. 173/843 explains that weighted-averages could conceal an exporter's practice of selling at especially low dumped prices to particular customers or regions “... while selling at higher prices to other customers or regions.”

Section 777A(d)(1)(B) addresses targeted dumping as follows:

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted-average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if --

- (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

The SAA, the statute, and the legislative history of the provision do not prescribe any method for analyzing databases to determine whether targeted dumping is evident. Rather, it has been left to the DOC to determine the appropriate method of analysis. 19 CFR 351.414 specifies that the

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DOC will not normally consider targeted dumping unless it receives a sufficient allegation that such targeting is taking place and that the average-to-average or, when appropriate, transaction-to-transaction methods cannot adequately deal with the targeted dumping. The language of the regulation is intended to give the DOC flexibility to self-initiate a targeted dumping analysis; however, these types of analyses will normally flow from allegations filed by petitioners. In accordance with 19 CFR 351.414(f)(2), the DOC will normally limit the application of the average-to-transaction method in investigations to those sales that constitute targeted dumping.

- In Pasta from Italy, the DOC rejected the petitioners' allegation of targeted dumping on the following grounds:

The petitioners' allegation was the result of their having selected groups of customers on the basis of relatively higher and lower prices. After the groups had been selected, petitioners ran statistical procedures to establish that the prices of certain groups were lower than those of other groups. These results, however, were predetermined by the initial composition of the different groups. Moreover, by not supplying any relevant source of comparison benchmark prices, petitioners failed to demonstrate that the price differences were "significant," as required by section 777A(d)(1)(B)(i) of the Act.

Even if the petitioners had shown targeting, in order for the targeted dumping provision to be applied, section 777A(d)(1)(B)(ii) requires that it be explained why the price differences cannot be taken into account by comparing the weighted-average normal values to the weighted-average U.S. prices. The petitioners' allegation failed to make this demonstration.

The DOC position in this final determination indicated that we will not find a sufficient basis for invoking the targeted dumping provision upon a mere showing that groups of higher and lower prices are present in the reported U.S. sales.

See your supervisor or PM if your investigation or review involves an allegation of targeted dumping.

VIII. SAMPLING TECHNIQUES AND SIMPLIFICATION OF SALES REPORTING

References:

The Tariff Act of 1930, as amended (the Act)
Section 777A(a-c) - determination of dumping margin
Department of Commerce (DOC) Regulations
19 CFR 351.204(c) - exporters and producers examined
SAA Section C.4.d p. 872 - sampling, all other rates and voluntary respondents
The Antidumping Agreement
Article 6.10 - individual margins for exporters and producers

A. Sampling Techniques for Producers/Exporters

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Section 777A (c)(1) of the Act sets forth the general rule that the DOC will determine the individual weighted-average dumping margin for each known exporter and producer of the subject merchandise under investigation. (In a review, we receive exporter specific requests for review.). Section 777A(c)(2) establishes exceptions from this requirement by specifying that where a large number of exporters or producers are involved in an investigation or review, the DOC may limit its examination to either --

- (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or
- (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that reasonably can be examined.

The DOC has conducted investigations and reviews under this section of the Act when they were so large that administrative resource constraints limited the number of exporters that could be investigated or reviewed. The number of companies selected has been based on the number that the DOC could reasonably examine given the administrative resources available to it at the time the respondents needed to be selected.

In such investigations and reviews, the DOC typically has relied upon the exception in subsection (B). For example, in the investigations involving pasta from Italy and Turkey (1995), the petitions listed 73 Italian and 15 Turkish companies as possible producers or exporters of pasta to the United States. The DOC determined that the largest number of companies from both countries that could be handled by the staff available was ten (see Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 1344-1346 (January 19, 1996)). 1996 investigations of bicycles from the PRC and of tomatoes from Mexico also presented situations that required limiting our examination to less than 100 percent of all exporters and producers. We relied upon subsection (B) in these cases as well.

In situations where the DOC has sufficiently detailed information about the universe of foreign producers and exporters to select “representative samples,” the DOC may choose to rely upon subsection (A). For example, during the second administrative review of certain fresh-cut flowers from Colombia, the DOC employed a sampling technique for dealing with the hundreds of Colombian flower growers. In that review, the DOC selected samples from “large/medium” and “small” firms, based on their volume of exports. Also, in the 1990 investigation of fresh and chilled salmon from Norway, the DOC considered, among other things, the geographical location of the fish farms in identifying an appropriate sample of respondents.

In practice, the two methods of selecting respondents--selecting the largest exporters and selecting a representative sample--generally differ in how we select the respondents but not in the number of respondents selected. Using either method, administrative resource constraints dictate the maximum number of exporters the DOC can investigate or review.

If your investigation or review involves a situation that requires sampling techniques, you should always consult with your supervisor or PM. In most instances, comments are requested from the

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parties on the appropriate methodology to be employed in the respondent selection process. Personnel from the Office of Policy always assist in determining the final methodology for selecting a sample of exporters or producers (see Chapter 4, section II, for more information on the selection of exporters or producers).

B. Simplification of Sales Reporting

Large cases often involve enormous quantities of transactions. In the 1988 investigations of antifriction bearings (other than tapered roller bearings), one respondent reported that it produced over 30,000 different regular products and thousands more custom-made products. Other respondents reported that they would each have to report over 500,000 transactions. To simplify the investigations, the DOC told respondents that if at least 33 percent by volume of their U.S. sales could be compared to home market sales of identical products, then the fair value comparisons would be limited to identical comparisons. If a respondent company failed to reach the 33-percent requirement with identical matches, we would compare the largest volume products sold in the United States to similar products sold in the home market until the 33-percent threshold was met (see Appendix B, Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19027 (May 3, 1989)).

In the 1992 investigation of carbon steel flat products from France, the respondent requested that it be permitted to limit its reporting of sales to related U.S. steel service centers to the one U.S. plant with a computer system in place capable of tracing sales back to the imported steel. Instead, the DOC permitted the respondent to report only one out of every twenty invoices for the U.S. plants without the computer facilities.

In the administrative reviews of antifriction bearings from France, et. al., which have been conducted since 1990, the DOC allowed respondents with over 2,000 U.S. sales transactions for the period of review (POR) to report one week's sales for each two-month period of the POR. The DOC selected the weeks (see Preliminary Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof from France, et. al., 61 FR 35716 (July 8, 1996)).

During the investigation phase of an antidumping duty proceeding, the DOC, upon receipt of acceptable written justification, will sometimes disregard U.S. sales of products if the volumes of those sales are insignificant. These situations usually involve the following: 1) CEP or U.S. value added transactions which require the collection of substantial amounts of information and the addition of a U.S. verification site to the investigation; 2) U.S. transactions where there are no like products sold in the home market which would necessitate the collection of detailed constructed value information to calculate NV; or 3) sales involving small quantities (see Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland, 56 FR 56363 (November 4, 1991), wherein the DOC disregarded small quantity sales involving trial and damaged merchandise). For administrative reviews, the DOC calculates margins for all sales.

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Always consult your supervisor or PM if you think your investigation or review may require the application of sampling techniques. Also, consult with your supervisor or PM if a request is made for the simplification of sales reporting requirements for an investigation.

IX. SUBCONTRACTOR SALES (TOLLING)

References:

The Tariff Act of 1930, as amended
None
Department of Commerce (DOC) Regulations
19 CFR 351.401(h) - treatment of subcontractor sales
SAA
None
The Antidumping Agreement
None

Although in some past investigations or reviews the DOC has treated subcontractors or “tollers,” as respondents, the current regulations at 19 CFR 351.401(h) provide that a subcontractor or toller is not a manufacturer or producer unless the subcontractor or toller acquires ownership and controls the relevant sale of the subject merchandise. Very infrequently, the analyst may encounter U.S. transactions where a subcontractor or toller receives a raw material from a seller and performs a manufacturing process on this material. For example, in a case involving pipe products, Company A, a producer of steel sheet in the exporting country (EC), supplies steel sheet to company B, an unaffiliated toller for conversion into steel pipe. Company A retains title to the steel sheet while Company B is making the pipe. After paying a conversion fee, Company A has Company B export the pipes to Company C, Company A’s affiliated U.S. importer. Because Company A retained title to the steel during the conversion process, Company B cannot be considered the manufacturer or producer of the subject pipe products. In this scenario, if Company C sells the pipe to an unaffiliated U.S. purchaser D after importation, the sale price of the pipe from Company C to Company D would be the starting price for a CEP calculation. In Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14070 (March 29, 1996), the DOC determined it was not necessary to analyze tolled sales. However, it was noted that the party contracting for the tolling (not the toller) would be considered the manufacturer/exporter of the merchandise if a dumping analysis was performed. If you encounter a situation in an investigation or review that involves subcontractors or tollers, see your supervisor or PM.

X. FOREIGN TRADE ZONES

References:

15 CFR 400.33(b)(2)
19 CFR 146.41.41(e)

In some investigations or reviews, the merchandise being investigated enters through a U.S. foreign trade zone (FTZ). FTZs are restricted-access sites in or near ports of entry which are licensed by the Foreign Trade Zone Board and operated under the supervision of the U.S.

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Customs Service. Merchandise may be moved into FTZs for operations not otherwise prohibited by law involving storage, exhibition, assembly, manufacture or other processing (see Foreign Trade Zones in the United States: Final Rule, 56 FR 50790 (October 8, 1991)).

Merchandise subject to an antidumping duty order must be classified as “privileged” foreign merchandise on admission to the FTZ and will, therefore, be subject to antidumping duties upon entry into the customs territory of the United States, even if transformed in the FTZ into goods not subject to the order (See 15 CFR 400.33(b)(2) and 19 CFR 146.41.41(e).) (see Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany, 58 FR 37192 (July 9, 1993)). Merchandise admitted into an FTZ that is subject to an antidumping duty order but which is re-exported and, never enters the commerce of the United States is not assessed duties.

In certain cases, merchandise is further manufactured in the FTZ or warehoused there and then sold in the United States; other times, the merchandise has been sold prior to admission into the FTZ. For merchandise sold after admission into a FTZ, we would use constructed export price (CEP) as the U.S. basis for our calculation. For merchandise sold before admission into a FTZ, we would use export price (EP). If the merchandise is re-exported from the FTZ to another country, the Act does not apply.

A. EP and FTZs

Company A in the exporting country sells 3,000 television sets at \$240.00 per unit to Company D, an unaffiliated distributor in the United States. The television sets are shipped directly to Company D, but enter the United States through the FTZ at Wilmington, Delaware, where they are warehoused before delivery. Because these television sets were sold prior to importation into the Wilmington FTZ, this is an EP comparison. We would use the \$240.00 price charged to Company D as the starting price for an EP calculation (see Final Determination of Sales at Less Than Fair Value: Frozen Concentrated Orange Juice from Brazil, 52 FR 8324, 8328 (March 17, 1987)).

B. CEP and FTZs

Company A ships 3,000 television sets to Company C, its wholly-owned subsidiary in the United States. Company C is located in the FTZ in Wilmington, Delaware. The television sets enter the FTZ on July 1 and are then re-packed for shipment to customers in the United States. On August 1, these television sets are sold at \$250.00 per-unit by Company C to Company D, an unaffiliated distributor in the United States, and are shipped out the following day. Because these television sets were sold after importation into the United States, CEP is used for our comparison. We would use the \$250.00 price charged to Company D as the starting price for a CEP calculation.

Consult your supervisor or PM if FTZ sales are part of your investigation or review. The Executive Secretary of the FTZ Board, which is part of Import Administration, should be notified of all determinations involving goods entering FTZs.

LIST OF ACRONYMS & ABBREVIATIONS

BTU	BRITISH THERMAL UNIT
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
CGP	COATED GROUNDWOOD PAPER
COM	COST OF MANUFACTURE
COP	COST OF PRODUCTION
COS	CIRCUMSTANCES OF SALE
CV	CONSTRUCTED VALUE
DIFMER	DIFFERENCES IN MERCHANDISE
DOC	DEPARTMENT OF COMMERCE
E.C.	EXPORTING COUNTRY
EP	EXPORT PRICE
F.R.	FEDERAL REGISTER
GAP	GENERALLY ACCEPTED ACCOUNTING PRINCIPLES
G&A	GENERAL AND ADMINISTRATIVE EXPENSES
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
HM	HOME MARKET
IAS	INTERNATIONAL ACCOUNTING STANDARD
ITA	INTERNATIONAL TRADE ADMINISTRATION
LNPP	LARGE NEWSPAPER PRINTING PRESSES
MOI	MARKET ORIENTED INDUSTRY
NME	NON-MARKET ECONOMY
NV	NORMAL VALUE
OA	OFFICE OF ACCOUNTING

OP	OFFICE OF POLICY
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
PRC	PEOPLES REPUBLIC OF CHINA
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
SG&A	SELLING, GENERAL AND ADMINISTRATIVE
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED
USP	UNITED STATES PRICE

CHAPTER 8

NORMAL VALUE**INTRODUCTION**

References:

The Tariff Act of 1930, as amended (the Act)

Section 773 - calculation of NV

Department of Commerce Regulations

19 CFR 351.401 - general information on NV

19 CFR 351.403 through 415 - specific information on the calculation of NV

SAA

Section B.2.c - NV

Sections B.3 through B.9 - specific information on the calculation of NV

Sections C.4.b. and d - specific information on the calculation of NV

Antidumping Agreement

Article 2 - calculation of NV

According to section 773 of the Act, NV is the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in an exporting country (E.C.) or third country market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price (EP) or constructed export price (CEP). Like EP or CEP calculations, the calculation of NV for investigations or administrative reviews calls for various adjustments to be made to “starting prices,” which are specified in section 773 of the Act. Starting prices are prices net of any price adjustment that is reasonably attributable to the like product. These price adjustments include such things as discounts and rebates that constitute part of the net price actually paid by the purchaser. As specified in the “Comments” section of the Preamble to the DOC’s antidumping regulations, 62 F.R. 27300 (May 19, 1997), the use of net prices as the starting point for the computation of NV is consistent with the position that rebates and discounts are not expenses but rather form part of the price itself. See 19 CFR 351.102(b) and 351.401. Once starting prices for NV for specific models or types of merchandise are determined, they are adjusted for a myriad of items as covered in sections VI through XII of this chapter. As is the case with EP and CEP adjustments, any interested party that claims an adjustment must establish the claim to the satisfaction of the DOC (see 19 CFR 351.401(b)). Finally, NV for investigations, in most instances, will be a model or type-specific weighted-average price for the whole period of investigation (POI). For an administrative review, NV is usually based on a model or type-specific price for a one-month period (see Chapter 7, part VII for an explanation of the use of weighted-average prices).

Throughout this chapter, the terms “exporting country” (EC) and “home market” (HM) are used interchangeably. The term “foreign market” is used to refer to EC(HM) and third-country sales. It should also be noted that, even though most sections refer to adjusting EC (home market) prices, the same adjustment and computational process, with the exception of EC taxes, is followed to compute an NV based on third-country prices.

I. EXPORTING-COUNTRY MARKET OR THIRD-COUNTRY MARKET

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References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 773(a)(1) - selecting exporting-or third-country market
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.301(d) - timeliness of market viability allegations
 - 19 CFR 351.404 - selecting exporting-or third-country market; selecting among third-country markets; exceptions
 - 19 CFR 351.405(a) - constructed value (CV) may be substituted for foreign market sales
- SAA
 - Section B.2.a - market viability and third-country sales
- Antidumping Agreement
 - Articles 2.1 and 2.2 - use of exporting-country or third-country sales

A. The Five Percent Viability Test

Section 773(a)(1)(B)(i) of the Act identifies normal value (NV) as the price at which the foreign like product is first sold for consumption in the exporting country (E.C.) (see section II of this chapter for a discussion of foreign like product). However, there are several exceptions to this rule. One exception involves market viability. A market is considered viable if the aggregate quantity of sales of the foreign like product to affiliated and unaffiliated purchasers in the market is five percent or more of the aggregate quantity of sales of subject merchandise to unaffiliated buyers in the United States. See Preliminary Results of Antidumping Duty Administrative review: Fresh Kiwi Fruit from New Zealand, 61 FR 15922 (April 10, 1996). If the EC's market for the foreign like product is not viable, NV must be based on sales to a viable third-country market or on CV. "Third-country" refers to a country other than the E.C. or the United States. 19 CFR 351.404(f) specifies that whenever an E.C.'s market is not viable, the DOC normally will calculate NV based on sales to a viable third-country market rather than on CV (see Preliminary Results of Antidumping Duty Administrative review: Certain Forged Stainless Steel Flanges from India, 61 FR 14074 (March 29, 1996)). Nevertheless, the DOC may decide to use CV over a viable third- country market in appropriate circumstances (see 19 CFR 351.404(c)(2)(iii)). Also note, that in unusual situations, the DOC may use a number that is less than or greater than five percent to determine viability (see the SAA at 821).

If the EC market is not viable, the respondent's third-country market sales must be analyzed to determine which market is best suited for NV comparison purposes. The DOC must make this decision immediately upon receipt of the response to section A of the antidumping questionnaire so the respondent can be advised on how to proceed to answer the NV section(s) of the questionnaire. Only sales to one third-country market may be used. If there is more than one viable third country market (the same five percent test is applied to each market), the DOC generally will use the following criteria specified in 19 CFR 351.404(e) to select a third country for calculating NV: (1) the foreign like product exported to the particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other countries; (2) the volume of sales to the third country is larger than the volume

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to other third countries; and (3) such other factors that the DOC considers appropriate. It is not necessary for all three criteria to be present in order to justify selection of a particular market.

Consult with your supervisor or program manager (PM) if there appears to be any question about whether E.C. sales should be reported as the basis for NV for your investigation or administrative review or if it is necessary to select a third-country market for NV reporting purposes.

B. Exceptions to Basing NV on Prices

Once a market is determined as viable, the sales must be examined to determine if they may be used for NV calculations. In doing this analysis, certain exceptions to basing NV on prices in an E.C. or third-country market (foreign markets) must be considered. These involve situations where like products are not sold in either usual commercial quantities or in the ordinary course of trade (see section IV of this chapter for more information on the ordinary course of trade). In addition, the Act states that there may be “particular market situations” in a foreign market that do not permit a proper comparison with EP or CEP. Although the Act does not identify these “particular market situations,” several are identified in the SAA although we do not routinely consider them without an allegation by an interested party. These include: (1) where a single sale in a foreign market constitutes five percent of sales to the United States; (2) where there are such extensive government controls over pricing in a foreign market that prices in that market cannot be considered competitively set; and (3) where there are differing patterns of demand in the United States and a foreign market. Finally, 19 CFR 351.404(c)(2) permits the DOC to decline to calculate NV on the basis of prices in a viable E.C. market or third-country market if parties establish to the DOC’s satisfaction that certain situations in the viable market would not permit a proper comparison of like product prices in that market with EPs or CEPs. Note that if any of the preceding circumstances eliminate all E.C. market sales from consideration, then third-country sales could be considered for NV if there is a viable third-country market.

In addition to the above exceptions, affiliated party sales may not be useable for NV calculations in certain situations (see section XVII of this chapter for information on when affiliated party sales can be used in determining NV).

C. Sample Calculation

The following is an example of an E.C. viability calculation for an investigation or administrative review:

There are sales of 11 units of the foreign like product in the E.C. market and sales of 100 units of subject merchandise to the United States. The E.C. market is viable ($11/100 = 11$ percent, which is greater than the five percent required for viability).

If it is necessary to determine the viability of sales to a third-country market, the same five-percent test is applied.

II. FOREIGN LIKE PRODUCT

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References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 771(16) - definition of foreign like product
 - Section 773(a)(1)(B)(i) - normal value (NV) must be for a foreign like product
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.411 - differences in physical characteristics
- SAA
 - Section B.2.c.(3) - adjustments for physical differences
- Antidumping Agreement
 - Article 2.4 - allowances for differences in physical characteristics
 - Article 2.6 - like product definition
- Import Administration Policy Bulletin
 - Policy Bulletin 92.2 of July 29, 1992 - differences in merchandise; 20% rule

A. Types of Comparisons

As we conduct investigations and administrative reviews, we only make comparisons between products sold in the foreign market which can reasonably be compared to the products sold in the United States. In order to make such comparisons, analysts must acquire substantial technical knowledge about the products, their uses, and process of manufacture. This knowledge is gathered from submissions by the parties, product literature such as catalogs and brochures, domestic plant tours, and information from a variety of public sources including government agencies and trade associations. On some occasions, it is necessary to consult with technical experts as we did for the Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy (“Pasta from Italy”), 61 FR 30326 (June 14, 1996), and Large Newspaper Printing Presses from Japan (“LNPP from Japan”), 61 FR 38139 (July 23, 1996). Technical experts are usually employees of the DOC or other federal agencies. Always consult with your supervisor or program manager (PM) if you feel a technical expert is required.

The Act provides general guidance in selecting the products sold in the foreign market to be compared to the U.S. sales. Section 773(a)(1) of the Act states that the preferred basis for NV is the price at which the “foreign like product” is first sold (or, in the absence of a sale, offered for sale) for consumption in an exporting-country (E.C.) or third-country market. The foreign merchandise used to determine NV must be either identical or similar to the merchandise sold to the United States. The statutory preference is to compare the subject merchandise sold in the United States to identical articles sold in the E.C. market. When this is not possible, we will compare merchandise which is physically similar to the articles sold in the United States and adjust for any physical differences in the merchandise (difmer) being compared that affect the price of the merchandise (see section XI of this chapter for information on how to compute a difmer). Foreign like product is specifically defined in section 771(16) of the Act. Difmer adjustments are discussed at length in section XI of this chapter.

B. Same Person Requirement

If resales of different manufacturers’ products are reported by a respondent, it should be noted that, in determining NV, we can only compare sales of merchandise produced by the same

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producer or manufacturer. Because section 773(a)(1)(B)(i) of the Act incorporates by reference the definition of foreign like product in section 771(16) of the Act, it prohibits our using sales of merchandise produced by persons other than the manufacturer/producer of the particular U.S. sale or sales being analyzed in our calculation of NV (see Pasta from Italy).

C. Identical merchandise Comparisons

In Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14065 (March 29, 1996), our product-comparison methodology is described as follows: "...for purposes of determining appropriate product comparisons to U.S. sales, we compared identical merchandise, or where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons based on the characteristics listed in the Department's antidumping questionnaire in accordance with section 771(16) of the Act." In Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from South Africa, 60 FR 22551 (May 8, 1995), we relied only on identical comparisons: "...because respondent had sales in the home market of merchandise identical to that sold to the United States, similar comparisons were not necessary." If the respondent made sales in the foreign market of products that are identical in all physical characteristics to all products sold to the United States and all U.S. sales can be matched to such sales in the foreign market, we will accept reporting limited to the sales of identical merchandise for the calculation of NV. A foreign market sale of identical merchandise cannot be matched to U.S. sales if the foreign market sale cannot be considered because it is so unusual as to be outside the ordinary course of trade. It is important to note that just because products sold in the U.S. and the foreign markets possess the same matching criteria specified in Appendix V of the antidumping questionnaire it does not necessarily mean that they are identical products. There still may be a need to make a difmer adjustment because some product characteristics may not have been deemed important enough to be considered in formulating the Appendix V matching criteria or because some product characteristics were not known at the time the characteristics were formulated. See part D below for an explanation of the matching criteria in the questionnaire. Consult your supervisor or PM if a respondent requests permission to only report foreign market sales of identical merchandise.

D. Similar merchandise Comparisons

When products sold to the United States do not have identical matches in the foreign market, the DOC generally requires that all foreign market sales of foreign like products and their complete technical specifications be reported. This allows us to determine which products in the foreign market are most similar to those sold to the United States. Prior to the issuance of our questionnaire we consider the physical characteristics of the merchandise in order to determine which characteristics should be used as the basis for selecting the most similar products. In an investigation, we request comments from both the petitioner and respondents regarding which physical characteristics should be given the most weight in analyzing product similarity. In a review, model-matching criteria may have been resolved in the prior segment so this step may not be necessary. Before proceeding with the questionnaire in a review, however, ensure that the product-comparison methodology is clear. If not, a comment period may be appropriate. Based on these comments, we determine the hierarchy of product characteristics that will be used to match products. We attach this hierarchical list of product characteristics, known as matching

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criteria, to our questionnaire as Appendix V. In selecting the matching criteria outlined in Appendix V, we seek to ensure that all meaningful differences in physical characteristics are captured to the extent necessary. In addition, our questionnaire asks for information on product characteristics which are not incorporated in Appendix V. If additional characteristics are reported, we analyze the data and determine whether they should be considered for distinguishing identical and similar products during product matching (see Pasta from Italy and United Engineering and Forging v. United States, 779 F. Supp. 1375, 1381 (CIT 1991)).

As a general rule, we will not consider merchandise to be similar if the difmer adjustment (see Section XI) is greater than 20 percent of the total manufacturing cost of the product sold to the United States. This percentage is a guideline used to analyze the magnitude of the differences between products (see Import Administration Policy Bulletin 92.2 for a further discussion of this issue). The 20-percent guideline may vary to some degree given the facts of the particular case and/or the nature of the product involved. Always consult your PM anytime difmer adjustments exceed 20 percent. Where we determine that the difmer adjustment is too great, we select a different product as most similar or, if there is no similar match, use constructed value (CV) for NV.

A foreign market product is similar to a product sold to the United States only if it is sufficiently similar both in terms of the matching criteria and the size of the difmer adjustment. A product may be deemed not similar on the basis of different physical characteristics even if it meets the 20-percent guideline. In particular, merchandise that is sufficiently complex in construction and made to specification may not be considered similar even if it meets the 20-percent guideline. In LNPP from Japan, we stated that, although the EC market was viable, we based NV on CV because we determined that the particular market situation, which required that the subject merchandise be built to each customer's specifications, did not permit proper price-to-price comparisons.

III. DATE OF SALE

References:

The Tariff Act of 1930, as amended (the Act)
 None
 Department of Commerce (DOC) Regulations
 19 CFR 351.401(i) - date of sale
 SAA
 None
 Antidumping Agreement
 Article 2.4.1, footnote 8 - date of sale

One of the most important issues to be resolved at the beginning of any investigation or administrative review is that of the date of sale, since the date of sale controls which U.S. and exporting country (E.C.) or third country sales are within the period of investigation (POI) or period of review (POR). Establishing the date of sale in an investigation is also vital to our determination of whether there is a need to expand the POI for the investigation in order to cover a greater number of U.S. sales. Date of sale analysis is also performed for our determination of

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E.C. or third-country market viability for investigations and reviews. In addition, in investigations where there is substantial price volatility, date of sale gives us a basis of analysis for dividing the POI into two or more weighted-average- price periods. For your information, one of the most common mistakes made by respondents is to consider shipment dates as sale dates.

Generally speaking, the date of sale is the date on which all substantive terms of the sale are agreed upon by the parties. This normally includes the price, quantity, delivery terms and payment terms. In order to simplify the determination of date of sale for both the respondent and the DOC and in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be overcome. In Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14067 (March 29, 1996), the DOC used the date of the purchase order as the date of sale because the terms of sale were established at that point. An example of a situation where invoice date would probably not be used as the date of sale involves merchandise that requires long lead times for production (see LNPP from Japan). Where invoices do not exist, the DOC will examine the respondent's records to identify an appropriate date of sale.

The date of sale determination must be made shortly after receipt of the respondent's answer to section A of the antidumping questionnaire. Because the proper determination of date of sale is so vital to the successful completion of an investigation or administrative review, you should always consult with your team members and supervisor or PM in establishing dates of sale. Upon receipt of answers to sections B and C of the antidumping questionnaire, you must ensure that the respondent has included the appropriate transactions in the POI or POR. For additional information on date of sale, see the "Comments" section of the Preamble to the DOC's antidumping regulations, 62 FR at 27348-49 (May 19, 1997).

IV. ORDINARY COURSE OF TRADE

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 771(15) - definition of ordinary course of trade
 - Section 773(a)(1)(B)(i) - requirement to consider ordinary course of trade
 - Section 773(b)(1)(B) - sales below cost not in the ordinary course of trade
 - Section 773(e) - constructed value and cost of production
- Department of Commerce Regulations
 - 19 CAR 351.102 - definition of ordinary course of trade
- SAA
 - Section B.3 - sales below cost not in the ordinary course of trade
 - Section B.4 - types of sales outside the ordinary course of trade
- Antidumping Agreement
 - Article 2.2 - reference to ordinary course of trade

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Under section 773(a)(1)(B)(i) of the Act, normal value (NV) will be based on sales made in the exporting country or third-country market that are in the "ordinary course of trade." Section 771(15) defines this term as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." That is, sales deemed to be outside the ordinary course of trade are to be excluded from the calculation of NV (see Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 10064 (March 29, 1996)). The Act, at section 771(15), defines sales outside the ordinary course of trade to include sales disregarded because they were sold at prices below the cost of production and, in calculating cost of production or constructed value, input transactions between affiliated parties that do not fairly reflect market values. The statute also allows for other types of sales to be considered outside the ordinary course of trade, but does not identify them. Ordinary course of trade is an NV concept; there is no equivalent provision for disregarding export price (EP) or constructed export price (CEP) sales.

19 CFR 351.102 specifies that sales or transactions may be considered outside the ordinary course of trade when "...based on an evaluation of all the circumstances particular to the sales in question, such sales or transactions have characteristics that are extraordinary for the market in question." Examples of such sales are those involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's-length price. Sample sales, off-specification sales, and sales through atypical sales channels (such as employee sales) are commonly considered as outside the ordinary course of trade and, thus, excluded from calculating NV for investigations and reviews. For example, see Appendix B to Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) from the Federal Republic of Germany, 54 FR 18992, 19087 (May 3, 1989), where the DOC excluded trial and sample sales from normal value for a respondent in the Japanese investigation.

V. DISCOUNTS AND REBATES

References:

- The Tariff Act of 1930, as amended (the Act)
 - None
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.102(b)
 - 19 CFR 351.401(c)
- SAA
 - None
- Antidumping Agreement
 - Article 2.4 - differences in terms of sale

Under CFR 351.401 (c), the DOC adjusts reported gross prices for discounts, rebates and certain post-sale adjustments to price that affect the net price to arrive at the "starting price" for normal value (NV) (see the "Introduction" section of this chapter for more information on starting prices). Where these types of price adjustments are granted on a transaction-specific basis, they

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should be reported on that basis. However, as with selling expenses, the DOC allows non-distortive allocations where transaction-specific reporting is not feasible.

A discount is a reduction in the price of the merchandise. Generally, we deduct discounts actually granted by a manufacturer to its home-market or third-country customers from the sales price in order to determine the net return on the sale. Common types of discounts are quantity discounts, early payment discounts, and loyalty discounts (see section X of this chapter for more information on quantity discounts).

We consider rebates to be discounts granted after the delivery of the merchandise to the customer. If the terms of the rebate are set forth at the time of sale or are understood from past dealings of the parties, we deduct the amount of the rebate. For rebates which are based on aggregate purchases over a fixed period of time, we base the deduction on the level of rebate granted in the most recently completed rebate period. For investigations this could mean that information dating from before the period of investigation may have to be requested. For administrative reviews, information dating from before and after the period of review may have to be requested. For investigations, we do not allow rebates which are instituted retroactively after the filing of a petition since such rebates could be designed to reduce the exporting country market price which could reduce or eliminate margins.

Discounts and rebates should be reported separately. The aggregating of discounts and rebates usually does not allow us to properly determine the appropriateness of the deductions for the individual discounts and rebates granted.

The following calculation reflects a situation involving an adjustment for a discount. The weighted-average discount is deducted from the weighted-average exporting-country price to arrive at a weighted-average starting price for the calculation of a weighted-average NV.

Wt-Aver E.C. Price	4,000 DM
Wt-Aver Discount	<u>- 400 DM</u>
Wt-Aver Starting Price for NV	3,600 DM

The following case citations involve various types of discounts and rebates:

In Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14064 (March 29, 1996), the DOC disallowed a quantity discount claim on specific transactions because the respondent could not demonstrate that the specific amounts claimed as quantity discounts on specific transactions had any connection to the quantity sold, and because it failed to establish that it gave discounts on a uniform basis, which were made available to substantially all home market customers.

In Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy, 61 FR (June 14, 1996), the DOC denied a rebate adjustment claim that was based on a percentage of pre-determined sales targets because the respondent failed to provide support documentation for the reported amounts at verification.

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In Final Results of Administrative Review: Color Picture Tubes from Japan, 52 FR 44171 (November 18, 1987), the DOC verified that a company's customers received the rebates in question. Furthermore, the historical patterns of loyalty rebates provided to the company's customers, measured as a ratio of total rebate payments to total color picture tube sales, shows that the rebates granted were a standard business practice. In Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Canada, 51 FR 44319 (December 9, 1986), the DOC verified that the year-end rebate expenses were provided for in the terms at the time of sale and, therefore, were directly related to sales.

VI. PACKING COSTS

References:

The Tariff Act of 1930, as amended (the Act)

Section 773(a)(6)(A) - increase in normal value (NV) for cost of U.S. packing

Section 773(a)(6)(B) - decrease in NV for cost of foreign packing

Section 773(b)(3)(C) - packing costs added to cost of production (COP)

Section 773(c)(1)(B) - packing costs added to NV for non-market-economy countries

Section 773(d)(3) - packing cost adjustments for multinational corporation comparisons

Section 773(e)(3) - packing costs added to constructed value (CV)

Department of Commerce Regulations

19 CFR 351.404(c) - adjust NV prices per requirements in the Act

SAA

Section B.2.c.(2) - packing adjustments for NV

Antidumping Agreement

Article 2.2.2 - inclusion of "any other costs" in the COP/CV

Article 2.4 - allowance for "any other differences" that affect price comparability

Adjustments made for the difference in packing costs between the foreign market sale and the U.S. sale are made to the foreign market price (see sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act). We deduct the packing cost for foreign market sales and add the packing cost for sales to the United States to the foreign market price. Packing costs include materials, labor and overhead. We prefer to use actual packing costs; however, if an allocation of costs is necessary, the cost of materials should be allocated on the basis of the weight or size of the subject merchandise, not on the basis of value. When possible, labor and overhead should be allocated based on the amount of time used to pack the subject merchandise.

When there is additional packing done while the merchandise is in the inventory of an affiliated firm in the United States prior to sale to the first unaffiliated purchaser (constructed export price (CEP) comparison situations), this additional cost is treated as a direct U.S. selling expense and deducted from the CEP in accordance with section 772(d)(2) of the Act. The cost of additional packing added after importation into the U.S. market is never added to NV.

The following is an example of a foreign market packing calculation. The calculation is the same for export price (EP) and CEP comparisons unless there are U.S. repacking charges

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included in the CEP packing charges. If repacking expenses are included in the total CEP packing charges, they would be removed before adding the U.S. packing expense to the adjusted exporting country (E.C.) price to arrive at the NV. Currency conversions are made at the rates of exchange in effect on the dates of sale for the U.S. transactions in the comparison pool of sales:

Sample Calculation of NV for Comparisons to EP and CEP in an Investigation:

The weighted-average E.C. packing cost is deducted from the weighted-average E.C. price to arrive at the net weighted-average E.C. price.

Wt-Aver E.C. Price	2,000 lira
Wt-Aver E.C. Pack Cost	- 50 lira
Net Wt-Aver E.C. Price	1,950 lira

Next the net weighted-average exporting country price is converted to a U.S. dollar amount using the weighted-average exchange rate in effect on the dates of U.S. sales within the comparison pool of subject merchandise sales to which the NV will be compared.

$$1,950 \text{ lira} \times 0.000624 = \$1.22$$

At this point, the weighted-average U.S. packing cost (converted from lira) for those U.S. sales in the subject merchandise comparison pool is added to the net weighted-average E.C. price to arrive at a weighted-average NV.

$$\text{Wt-Aver U.S. Pack Cost} = 100 \text{ lira} \times 0.000624 = \$0.06$$

Net Wt-Aver E.C. Price	\$1.22
Wt-Aver U.S. Pack Cost	+ \$0.06
Wt-Aver NV	\$1.28

The following case citations involve packing charges:

In Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30287 (June 14, 1996), the DOC stated: "...in accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs."

"We deducted from CEP the following expenses that related to economic activity in the United States: ... direct selling expenses, including advertising, warranty, credit, and repacking in the United States...." Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026 (April 30, 1996).

VII. MOVEMENT EXPENSES

References:

The Tariff Act of 1930, as amended (the Act)
Section 773(a)(6)(B)(ii) - adjustment for movement expenses

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Department of Commerce (DOC) Regulations

19 CAR 351.102(b) - definitions

19 CFR 351.401(e) - adjustments for moving expenses

SAA

Section B.2.c.(2) - adjustments for moving expenses

Antidumping Agreement

Article 2.4 - comparisons normally to be made at an ex-factory level

Movement expenses that are included in the normal value are adjusted for under section 773(a)(6)(B)(ii) of the Act. Movement expenses are transportation and other expenses, including warehousing expenses, incurred by the seller after the merchandise leaves the point of shipment in the foreign market. When sales involve unaffiliated resellers (i.e., a person who purchased rather than produced the foreign like product), the price adjustment may only involve movement and related expenses incurred after the goods leave the place of shipment of the reseller. This different treatment is to avoid deduction of expenses which are really part of the reseller's acquisition cost. Other examples of movement expenses include such costs as inland insurance, loading, forwarding, unloading, brokerage, customs duty (third country comparisons only), and handling. For information on how to handle warehousing expenses that occur prior to shipment, see section VIII of this chapter.

Movement expenses incurred for freight are usually based on the weight or physical volume of the merchandise. Where possible, we prefer that actual movement expenses for each shipment be reported. When these expenses are reported on an allocated basis because the reporting of actual expenses is not possible, our methodological preference is for the allocation to be made on the basis of the unit weight of the individual products shipped or packed. An allocation will only be accepted if the DOC is satisfied that it does not cause inaccuracies or distortions. When a verification is conducted for allocated expenses, the analyst should verify that these expenses (like any expenses that are reported based on an allocation methodology) are reported on as specific a basis as permitted by the company's records, and examine the effect of the allocation on the accuracy of the reported data.

Under the 1994 amendments to the Act, the DOC's new approach for deducting movement expenses is explained in the SAA as follows: "The [old] statute required the deduction of transportation and other movement-related expenses from export price, but is silent regarding similar costs in foreign markets. New section 773(a)(6)(B) explicitly provides for the deduction of movement charges from normal value. Failure to deduct all movement charges from the foreign price would result in a distorted comparison." (SAA at 827) Prior to the effective date of the 1994 amendments to the Act, foreign market movement expenses were deducted from foreign market value as a circumstance of sale adjustment. Because of this change, prior treatment of post-shipment factory warehousing and movement expenses as direct or indirect expenses is no longer relevant. All of these post-shipment expenses are now deducted as movement expenses.

Adjustments for movement expenses for high-inflation economy producers and exporters require special treatment (see section XV of this chapter for information on why a special adjustment is required and how to compute it).

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A sample calculation for the adjustment of an exporting-country (E.C.) weighted-average price for movement expenses is shown below. The normal value (NV) calculation is the same for U.S. export price and constructed export price comparisons.

The weighted-average E.C. inland freight and insurance are deducted from the weighted-average exporting country price to arrive at a weighted-average price to which other adjustments will be made to arrive at a weighted-average NV (see section VIII of this chapter).

Wt-Aver E.C. Price	5,775 lira
Wt-Aver E.C. Inland Freight Cost	- 75 lira
Wt-Aver E.C. Insurance Cost	<u>- 50 lira</u>
Wt-Aver Price Ready for Additional Adjustments	5,650 lira

The following are case cites involving adjustments for moving expenses:

In the Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 1350 (January 19, 1996), references are made to various adjustments for movement expenses including inland freight, warehousing, and insurance.

Where costs for movement expenses are based on affiliated party transactions, we test whether they represent arm's length transactions by comparison to unrelated expenses, or to the actual costs incurred by the affiliated party. In Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled, Cold Rolled, and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from France, 58 FR 37132 (July 9, 1993), the DOC found that ocean freight, brokerage, and handling services provided by a company affiliated with the producer were at arm's length prices. Consequently, these charges were accepted for the dumping calculation (see section XVII of this chapter for information on affiliated parties).

VIII. DIFFERENCES IN CIRCUMSTANCES OF SALE

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 773(a)(6)(C)(iii) - other differences in circumstances of sale (COS)
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.401(b) adjustments in general
 - 19 CFR 351.401(g) - allocation of expenses
 - 19 CFR 351.402(b)-calculation of export price and constructed export price
 - 19 CFR 351.410 - differences in COS
- SAA
 - Section B.2.c - adjustments to normal value (NV)
- Antidumping Agreement
 - Article 2.4 - differences in conditions and terms of sale

A. Overview

When making export price (EP) and constructed export price (CEP) comparisons to NV, we attempt to calculate comparison amounts on as near an equivalent basis as possible. In doing

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this, we take into account certain differences in directly related selling expenses, assumed expenses, and other selling expenses incurred in the markets (U.S. and foreign) under consideration. Thus, we recognize the fact that sellers incur different costs based on differences in selling conditions in their respective markets. We refer to these direct expense adjustments as adjustments for differences in COS. Parts B through H of this section contain information on the most common COS adjustments that you will encounter in doing a dumping analysis. These adjustments are made after adjustments are made for discounts and rebates and movement expenses referred to in sections V and VII of this chapter. Check with your supervisor or program manager (PM) if claims are made for other categories of COS adjustments.

19 CFR 351.410 explains the DOC's practice with respect to adjustments for differences in COS under section 773(a)(6)(C)(iii) of the Act. COS adjustments consist of the following items: 1) direct selling expenses such as commissions, credit expenses, and warranties that result from and bear a direct relationship to the particular sale¹ in question; 2) assumed expenses, which are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses; and 3) a reasonable allowance for other selling expenses when commissions are paid in one market under consideration but not the other market under consideration. In accordance with 19 CFR 351.410 (e), the amount of such allowance for other selling expenses is limited to the amount of indirect selling expenses incurred in the one market or the amount of commission allowed in the other market, whichever is less. In deciding what allowances will be made for COS expenses, we consider the cost of the differences to the exporter or producer but, if appropriate, we may also consider the effect of such differences on the market value of the merchandise. See the SAA at 821 for additional explanations of COS for EP, CEP and NV calculations. See also Torrington Co. v. United States, 82 F.3d 1039 (Fed.Cir. 1996), and Koyo Seiko Co., Ltd. v. United States, 92 F.3d 1162, 1167 (Fed. Cir. 1996).

All other selling expenses are what we consider indirect or non-variable expenses. These expenses are incurred regardless of whether sales are made. It is extremely important that direct and indirect selling expenses are properly identified since the classification of individual expenses will substantially affect the outcome of our comparisons of EP and CEP to NV (see part H of this section and section IX of this chapter for more information on indirect selling expenses and how they are accounted for in the calculation of discounts/margins). It is important to note that, in the calculation of NV, the DOC treats a selling expense as an indirect expense unless a respondent interested party establishes that the expense is direct in nature (see RHP Bearings v. United States, 875 F. Supp. 854, 859 (Ct. Int'l Trade 1995)).

Remember that any interested party claiming an adjustment must establish the claim to our satisfaction. Also, no claimed adjustment can be double counted in our calculations (see 19 CFR 351.401(b)).

1. COS Adjustment Scenarios

¹ warranties are included even though the expense can not be tied to a particular sale because of the lapse of time between sale and expense. Yet it is inescapable that had there been no sales, there would have been no warranty expense.

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The following dumping comparison scenarios show the manner in which adjustments for COS are made. These examples illustrate calculations in investigations, which typically involve weighted-average U.S. prices and expenses. For purposes of illustration, all of the COS adjustments (except for commissions - see part H of this section) that are explained in this section are included for each scenario. No additions are made for weighted-average, U.S. packing costs (see section VI of this chapter for information on how to make a packing cost adjustment). Note that most COS adjustment situations that you will encounter will only involve some of these categories of adjustments. You may also find that an individual adjustment category only pertains to the NV, EP, or CEP. Finally, you will find that present computer programming accomplishes the following results, but does so by working with individual sales transactions first.

- EP Scenario

When comparing EP to NV, we make the adjustments for differences in COS by deducting weighted-average expenses incurred on sales in the like product comparison pool in the exporting country (EC) from weighted-average EC prices for sales of products in the like product sales comparison pool, and adding the weighted-average COS expenses incurred on the sales in the U.S. in the subject merchandise comparison pool to the weighted-average EC price after it is converted to U.S. dollars. Conversion to U.S. dollars is made at the weighted-average exchange rates in effect for the dates of sale of the merchandise in the U.S. subject merchandise comparison pool. This calculation gives us the weighted-average NV.

The following calculation illustrates this procedure starting with the weighted-average EC price:

Wt- Aver EC Price

- Aver EC Credit Cost
- Wt-Aver EC Advertising Cost
- Wt-Aver EC Technical Services Cost
- Wt-Aver EC Pre-Shipment Warehousing Cost
- Wt-Aver EC Warranties Cost
- Wt-Aver EC Royalties Cost
- = Adjusted Wt-Aver EC Price

The adjusted weighted-average EC price is converted to U.S. dollars. Next, the weighted-average U.S. COS amounts are added to the adjusted weighted-average EC price to arrive at the weighted-average NV:

Adjusted Wt-Aver EC Price

- + Wt-Aver U.S. Credit Cost
- + Wt-Aver U.S. Advertising Cost
- + Wt-Aver U.S. Technical Services Cost

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- + Wt-Aver U.S. Pre-Shipment Warehousing Cost
- + Wt-Aver U.S. Warranties Cost
- + Wt-Aver U.S. Royalties Cost
- = Wt-Aver NV

- CEP Scenario

In comparisons involving CEP, we deduct weighted-average direct and assumed expenses for selling activities in the United States incurred in selling the product in the U.S. subject merchandise comparison pool from the weighted-average U.S. sales price for merchandise in the subject merchandise sales comparison pool. (In administrative reviews we use individual U.S. sales, not weighted-average U.S. sales). These deductions include an allocated amount for profit as required by section 772(d)(3) of the Act (see Chapter 7, part III for information on when these deductions are appropriate).

Next, we deduct the weighted-average EC COS expenses from the weighted-average EC price for sales in the like product comparison pool. Note that, in addition, under some circumstances we add certain U.S. selling expenses to NV as we do for EP comparisons. Because we do not deduct all selling expenses. In calculating CEP, the SAA (at 158) and 19 CFR 351.402(b) make clear that direct and assumed expenses related solely to a sale to an affiliated U.S. importer are not deducted from the U.S. price, but will be added to NV as a COS adjustment. This gives us the weighted-average NV. Profit is never allocated to EC COS expenses.

The following sample calculation illustrates this procedure starting with the weighted-average U.S. sales price:

Wt - Aver U.S. Sales Price

- Wt-Aver U.S. Credit Cost
- Wt-Aver U.S. Advertising Cost
- Wt-Aver U.S. Technical Services Cost
- Wt-Aver U.S. Pre-Shipment Warehousing Cost
- Wt-Aver U.S. Warranty Cost
- Wt-Aver U.S. Royalty Cost
- = Wt-Aver CEP

Wt - Aver EC Price

- Wt-Aver EC Credit Cost
- Wt-Aver EC Advertising Cost
- Wt-Aver EC Technical Services Cost
- Wt-Aver EC Pre-Shipment Warehousing Cost
- Wt-Aver EC Warranty Cost
- Wt-Aver EC Royalty Cost
- = Wt-Aver NV

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- Constructed value (CV) Scenario

We also make adjustments for differences in COS when the NV is based on CV. When we use CV because there are no sales in the EC at prices above COP in a like product sales comparison pool you will not have information for COS adjustments for this pool. Accordingly, if available, you will have to calculate the weighted-average COS expenses to deduct from the CV based on all above cost sales of the foreign like product in other EC sales comparison pools (all remaining above-cost like-product sales). In situations where CV is used because there are no EC or third country sales of like products, you must check with your supervisor or PM to determine how to calculate COS adjustment amounts that will be deducted from the CV. The way you make your CV adjustments for COS will depend on whether the U.S. sale is EP or CEP.

The following sample calculation illustrates the adjustment procedure for a CV when U.S. EP sales are involved:

Unadjusted CV (materials, labor, selling and general and administrative expenses (SG&A), profit, and U.S. packing expense)

- Wt-Aver EC Advertising Cost
- Wt-Aver EC Technical Services Cost
- Wt-Aver EC Pre-Shipment Warehousing Cost
- Wt-Aver EC Warranty Cost
- Wt-Aver EC Royalty Cost
- = CV adjusted for EC COS expenses

- + Wt-Aver U.S. Credit Cost
- + Wt-Aver U.S. Advertising Cost
- + Wt-Aver U.S. Technical Services Cost
- + Wt-Aver U.S. Pre-Shipment Warehousing Cost
- + Wt-Aver U.S. Warranty Cost
- + Wt-Aver U.S. Royalty Cost
- = CV(NV)

Note that the adjustment of the CV for EP weighted-average COS amounts follows the same procedure used in calculation of a NV in an EP price-to-price situation, i.e., the U.S. COS amounts are added to the CV after the CV is adjusted for EC COS amounts (see the EP price-to-price example above).

The following sample calculation illustrates the adjustment procedure for CV when U.S. CEP sales are involved:

Unadjusted CV

- Wt-Aver EC Advertising Cost
- Wt-Aver EC Technical Services Cost

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- Wt-Aver EC Pre-Shipment Warehousing Cost
- Wt-Aver EC Warranty Cost
- Wt-Aver EC Royalty Cost
- = CV(NV)

Note that, in general, no further adjustments are made to the CV to arrive at NV. As is the case in U.S. CEP price-to-price comparisons, adjustments for most U.S. direct and assumed expenses are deducted from the starting price. See the CEP price-to-price example above.

2. Adjustments for Actual or Allocated COS Expenses

Examples of various types of COS expense categories and our treatment of these categories are discussed in parts B through H below. These examples cover the expenses which are generally adjusted for in calculating EP, CEP, and NV. Other categories of COS expenses may need to be adjusted for based on the specific practices of the industry subject to the proceeding. We prefer that claims for adjustments be based on actual costs incurred on individual sales made during the period of investigation (POI) or period of review (POR). We will, however, allow companies to allocate these POI or POR expenses when transaction-specific reporting is not feasible, providing that the allocation methodology used does not cause inaccuracies or distortions (see Chapter 7, section III. A for more information on the allocation of expenses. Also see 19 CFR 351.401(g)).

The following sample calculations illustrate calculations for actual and allocated COS expenses:

Actual Expenses

Unit price	100.00
Quantity sold in one sales transaction	5,000 pieces
Bank charges related to processing a letter of credit for this sale	\$12,575.00
Total sales value for this sale	\$500,000.00
Ratio of bank charges to total sales value =	$\$12,575/\$500,000 = 0.02515$
Actual bank charges on a per-unit basis =	$\$100 \times 0.02515 = \2.52

Allocated Expenses

Unit price for sale on May 12, 1996 to customer A	\$92.55
Unit price for sale on August 16, 1996 to customer B	\$96.45
Quantity of units sold to customer A on May 12, 1996	6,000 pieces
Quantity of units sold to customer B on August 16, 1996	10,000 pieces
Total bank charges related to the above two sales	\$19,750.00
Total sales value for the above two sales	\$1,519,800.00
Ratio of total bank charges to total sales =	$\$19,750/\$1,519,800 = 0.0130$

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Allocated bank charges on a per-unit basis for customer A = $0.0130 \times \$92.55 = \1.20

Allocated bank charges on a per-unit basis for customer B = $0.0130 \times \$96.45 = \1.25

The following case citation describes a situation involving the allocation of selling expenses:

In Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 37154, “Nippon” Comment 16, (July 9, 1993). Even though the company did not keep separate warranty records for just the subject merchandise, the DOC allowed an allocation of these expenses because the company used a reasonable allocation methodology.

B. Credit

The most common adjustment for differences in COS is for differences in credit costs. This adjustment is necessary because there is usually a period of time between the shipment of merchandise to a customer and payment for the merchandise. This period of time usually varies in the respective markets. It is important to note that an adjustment for imputed credit expense is made even if the exporter does not actually have to borrow funds to carry its accounts receivable. This adjustment is required to account for the opportunity cost associated with the loss of the use of the monies involved. Our preference is to use actual credit cost information if it is available. If actual expenses are not available, we impute the cost of credit by determining the number of days payment is outstanding and the interest rate the company paid, or would have paid, if it borrowed the same money (i.e., the same amount in the same currency) to finance its accounts receivable. In determining the number of days payment is outstanding, we look at the actual payment date, not at the nominal period between shipment and payment, because payment is often made later than provided for in the terms of sale. Our preference is to obtain this information on a sale-by-sale basis. However, where this imposes too great a burden on a respondent, we can accept reporting of the average number of days for which each customer’s payments were outstanding on the basis of an analysis for accounts receivable turnover.

We use short-term interest rates for the currency of the transaction in computing imputed credit expenses. See LMI-LA Metali Industriale, S.p.A. v. United States, 912 F. 2d 455 (Fed.Cir. 1990) where it is specified that credit costs are to be computed, “...on the basis of usual and reasonable commercial behavior.” Also see LNPP from Japan 61 FR 38139, (July 23, 1996), where the DOC explains that its practice is to match the denomination of the interest factor to the denomination of the receivables and Certain Pasta from Turkey, 61 FR 30324 (June 14, 1996) where the DOC states that its first choice in determining interest rates is to use the short-term rates actually experienced by the respondent in borrowing funds in the currencies involved during the period under investigation. If the respondent has no short-term borrowings, our preference is to use U.S. prime rates for U.S. currency transactions and LIBOR+ rates for foreign currency transactions. When these rates are not available, see your supervisor or program manager for possible alternatives.

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Imputed credit costs are calculated by dividing the number of days between shipment and payment by 365, then multiplying by the interest rate and unit price. If a firm uses 360 as the credit base rather than 365 days, we divide the number of days by 360. Where possible we calculate the exact credit costs on an individual shipment basis. In all instances where the respondent provides shipment and payment dates, we use this information to calculate the actual number of days credit is outstanding. In cases where the sales reported to the DOC have not yet been shipped or paid for, we have calculated an average number of days based on the reported data and apply the calculated average for the customer to these sales (see Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy (“Pasta from Italy”), 61 FR 30324 (June 14, 1996)). In cases where the sales have been shipped, but are unpaid, we have used the date of the preliminary determination for the preliminary determination and the date of the final determination for the final determination as the payment date (see Preliminary Determination of Sales at Less Than Fair Value: Grain Oriented Electrical Steel from Italy, 59 FR 5991 (February 9, 1994), and Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France, 58 FR 68865 (December 29, 1993)).

Note that in cases where the sales are paid for prior to shipment we use the exact same formula, and we add the amount for “negative credit expense”.

Sample calculations for EC and U.S. imputed credit COS adjustments follow:

EC Sale

Date of shipment October 1, 1995
 Date of payment January 22, 1996
 Number of days 112
 Interest rate 10.5% per year
 Price per unit 250,000 yen

Calculation: $112/365 \times .105 \times 250,000 = 8054.79$ yen per year per unit

U.S. Sale
 Date of shipment October 10, 1995
 Date of payment October 31, 1995
 Number of days 21
 Interest rate 3% per year
 Price per unit \$1500.00

Calculation: $21/365 \times 1500.00 = \2.59 per year per unit

See the appropriate illustrative, dumping comparison scenario shown in part A of this section to determine how to make a COS adjustment for credit terms.

The following case citations describe additional COS credit adjustment situations:

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In Final Results of Antidumping Duty Administrative review: Brass Sheet and Strip from Germany, 60 FR 38545 (July 27, 1995), the DOC used the U.S. dollar borrowing rate of a U.S. subsidiary company even though the sales in question were made by the foreign producer. In Final Determination of Sales at Less than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from France, 59 FR 50564 (October 4, 1994), the DOC made a COS adjustment for differences in credit expenses between the U.S. and home market (exporting country). We calculated U.S. credit expense, using the rate the respondent reported at which it could borrow in U.S. dollars during the POI.

For exporter's sales price transactions (the predecessor to CEP transactions), we normally used the U.S. subsidiary's short-term borrowing rate for dollar denominated loans in computing credit costs unless it is established that the company is financing its U.S. receivables using home market loans in the currency of the U.S. sale.

We made an adjustment to the foreign market value (the predecessor to NV) for credit costs on sales made in each market using interest rates specific to the market in which each sale was made. Final Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid from Israel, 52 FR 25440 (July 7, 1987).

When a company is required to maintain deposits in order to borrow funds, the net cost of maintaining the deposits is used in the calculation of credit costs. The adjustment to interest expense is made only when the respondent can demonstrate that the deposit is a requirement for obtaining the loan (see Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Japan, 52 FR 30700 (August 17, 1987)).

C. Advertising and Sales Promotion

Most advertising expenses are aimed at the customer of the producer or exporter and as such they are not adjusted for as COS adjustments because they are considered indirect in nature (see section IX of this chapter for how to address indirect selling expenses). Advertising and sales promotion expenses can, however, be "assumed" by the producer or exporter on behalf of its customer. If this is the case, a COS adjustment is warranted. The most common types of assumed advertising expenses are consumer advertising costs paid for totally by the producer and cooperative (co-op) consumer advertising which is paid for jointly by the producer and first unrelated purchaser and aimed at customers of the first purchaser.

When considering claims for COS adjustments for assumed media advertising costs, we examine specific examples of the advertisements and the media in which the ads are placed. The advertising must be directed toward the specific product under investigation. The following examples are illustrative of different advertising scenarios that you may encounter and what the DOC's position would be on allowing an adjustment: 1) we disallow COS claims for advertising in trade journals when the sales under consideration are directly to an end-user because there is no further sale of the merchandise by the end user; 2) trade journal advertising expenses would be adjusted for as a COS if the sales under consideration were to distributors and the advertisements in the trade journal were aimed at retailers; 3) we make a COS adjustment for

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consumer advertising expenses when they involve sales made to distributors and/or retailers and the final sales of the merchandise are to consumers. These types of advertisements are usually placed in general circulation magazines, in newspapers, on television, or other broadcast media.

Another type of assumable expense involves sales promotional materials. These materials often take the form of free give-away merchandise supplied by the exporter to be given away to its customers' customers. In order to qualify for a COS adjustment, promotional materials must directly reference the merchandise under consideration. Examples of give-away merchandise would be athletic bags, t-shirts, and key chains. If these types of costs do not qualify as assumable, they would be considered indirect selling expenses.

Many advertisements cover a variety of products sold by a manufacturer. When these are aimed at a secondary purchaser, we allocate the associated expenses on the basis of the portion of the advertisement specifically directed at the merchandise under consideration. For example, if a consumer electronics manufacturer places an advertisement in a general circulation magazine which shows televisions, video recorders and compact disc players, we would determine the portion of the advertisement covering each product and allocate the cost of placing the ad in the magazine across product lines. Only the portion allocated to the product under consideration would be included in an adjustment for differences in advertising.

Sample calculations for EC and U.S. assumed advertising expenses follow. In both calculations only the portion of advertising aimed at secondary purchasers of the product is allowable as a COS adjustment. The remainder of the advertising expenses would be considered indirect selling expenses.

EC Sales

Total EC advertising costs claimed	100,000 DM
Portion determined aimed at secondary purchasers	40,000 DM
Units sold = 1,000	

Allowable COS adjustment amount =	40,000 DM
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Calculation: 40,000 DM/1,000 units =	40 DM per unit
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U.S. Sales

Total U.S. advertising costs claimed	\$150,000
Portion determined aimed at secondary purchasers	\$75,000
Units sold = 15,000	

Allowable COS adjustment amount	\$75,000
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Calculation: \$75,000/15,000 units = \$5.00 per unit	
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See the appropriate illustrative dumping comparison scenario in part A of this section to determine how to make a COS adjustment for advertising.

NORMAL VALUE

The following case citations describe various advertising and promotional material COS adjustment situations:

In Pasta from Italy, one respondent reimbursed its customer for advertising expenses directed at tertiary-level unaffiliated purchasers. The respondent requested that this expense not be treated as a COS adjustment as it was not directed at a secondary level unaffiliated customer. The DOC rejected the respondent's request, and ruled that this type of advertising qualified for a COS adjustment. In Pasta from Italy, the DOC accepted one respondent's classification of advertising expenses related to banners shown publicly at sporting events and on television as direct selling expenses because such advertising is typically directed at the customer's customers. However, the DOC rejected the respondent's classification of promotional expenses for sports trophies, calendars, and pens because these expenses were not deemed to be directed at the customer's customers.

Sample newspaper and magazine advertisements were directed solely at the customer's customer--in this case, the retailer or wholesaler of the color televisions containing the color picture tubes. Therefore, the DOC allowed advertising as a COS adjustment (see Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from the Republic of Korea, 52 FR 44186 (November 18, 1987)).

D. Technical Services

Another area of claims for adjustments for differences in COS is technical service expenses. These claims are particularly common in cases where the merchandise under investigation or review is sold to an industrial user. Such claims are usually made for services involving the use of an industrial material in a manufacturing process or the operation of machinery. Where technical services are rendered as part of a sales agreement, all, or some portion of them, may constitute COS expenses. Many claims, however, relate to services provided for purposes of determining new uses for a product in future production. Such services are considered to constitute goodwill or sales promotion and as such the expenses are not considered directly related to the sales under consideration.

Claims for technical services rendered in assisting the customer in solving problems with products purchased are adjusted for as COS to the extent that the variable costs can be segregated from the fixed costs. The allowable variable costs are usually travel expenses and contracted services by unrelated technicians as these expenses would not have been incurred if the sales in question had not been made. Salaries of technicians employed by the exporter usually would not be allowed as a COS adjustment because they are usually fixed costs which are incurred whether or not the sales are made. Therefore, they are usually indirect selling expenses (see section IX of this chapter to determine how to treat indirect selling expenses in the calculation of NV).

Sample calculations for determining the differences between EC and U.S. technical services expenses are shown below. In each instance, the portion of the claimed expenses that is allowed as a COS adjustment covers variable expenses only, i.e., travel and material expenses. Salary expenses are not allowed as a COS adjustment because they are usually indirect expenses, i.e., they are paid even if sales are not made.

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EC Sales

Total technical service expenses claimed	500,822.00 pesos
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Breakdown of expenses claimed:

Salaries	250,000.00 pesos
Travel 200,000.00 pesos	
Materials used	50,822.00 pesos
Units sold = 40,000	

Allowable COS adjustment amount is for travel and materials used, i.e., 250,822 pesos

Calculation: $250,822 \text{ pesos} / 40,000 \text{ units} = 6.27 \text{ pesos per unit}$
U.S. Sales

Total technical service expenses claimed	\$20,000.00
Breakdown of expenses claimed:	
Salaries	\$13,000.00
Travel	\$7,000.00
Units sold = 20,000	

Allowable COS adjustment amount is for travel expenses only	\$7,000.00
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Calculation: $\$7,000 / 20,000 \text{ units} = \0.35 per unit

See the appropriate illustrative discounts comparison scenario shown in part A of this section to determine how to make a COS adjustment for technical services expenses.

The following case citations describe various COS technical services situations:

The DOC allowed a technical service claim for expenses associated with helping a customer solve product-related problems (see Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker, and Flux from France, 59 FR 14136 (March 25, 1994)).

The DOC verified that the technical service expenses claimed were non-variable and would have been incurred regardless of whether any particular sale would have been made. Therefore, the DOC treated these expenses in both markets as indirect selling expenses (see Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Netherlands, 53 FR 23431 (June 22, 1988)).

The DOC disallowed the portion of the respondent's technical service claim attributable to salaries because it does not consider salaries which would have been paid regardless of whether a sale was made to be direct expenses. The DOC also disallowed the portion of the respondent's

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technical service claim related to the amortization of laboratory machinery and related equipment because these are fixed expenses. Only that portion of the home market technical service claim reflecting travel expenses for customer service was allowed (see Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Italy, 52 FR 816 (January 1, 1987)).

E. Warehousing

Respondents will sometimes claim COS adjustments for differences in pre-shipment warehousing costs incurred at the place of production (or, in the case of a reseller, the place of shipment). The DOC treats these expenses as directly related to the sales under consideration when the respondent can establish that it holds specific merchandise in inventory exclusively for a particular customer (see section VI of this chapter for information on price adjustments for warehousing expenses that occur after the merchandise leaves the place of production/shipment).

Pre-shipment warehousing expenses that cannot be classified as direct selling expenses can be classified as indirect selling expenses. See section IX of this chapter for information on how to treat indirect selling expenses in the calculation of NV.

A sample calculation for an EC COS adjustment for differences in pre-shipment warehousing expenses is shown below. The total amount of the claim is allowable because all merchandise is designated for individual purchasers as it is placed in pre-shipment warehouse inventory. If the merchandise is placed in pre-shipment general inventory, these expenses would be considered indirect selling expenses.

EC Sales

Total pre-shipment warehousing expenses claimed	1,000,000 francs
Breakdown of warehoused merchandise set aside for specific customers	
Like product	40,000,000 francs
Other products	20,000,000 francs
Units sold = 5,000	

Allowable COS adjustment amount = 1,000,000 francs
 Calculation: $40,000,000 / 40,000,000 + 20,000,000 \times 1,000,000 = 667,000$
 francs --- $667,000 \text{ francs} / 5,000 \text{ units} = 133.4 \text{ francs per unit}$

U.S. Sales

There are normally no pre-shipment warehousing claims for the U.S. market.

See the appropriate illustrative dumping comparison scenarios shown in part A of this section to determine how to make a COS adjustment for warehousing expenses.

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The following case citations describe COS adjustment situations involving pre-sale warehousing expenses:

Because the respondent was required to keep inventories of specific products for specific customers that would be available immediately upon sale, the DOC considered the pre-sale warehousing expenses as direct expenses and made an appropriate COS adjustment. See Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 59 FR 66928, Comment 10 (December 28, 1994). Also see Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan, 56 FR 16303, Comment 4 (April 22, 1991). Note that these examples involve “pre-sale” inventory expenses, and are cited only for information on the standard that must be met to qualify for a pre-shipment COS adjustment, i.e., the identity of a particular inventory with a particular customer. Because of the 1994 changes to the Act, it is possible to have a situation where post-shipment warehousing is of a pre-sale nature. In this situation, these expenses would be deducted as part of movement charges (see section VII of this chapter).

F. Warranties and Guarantees

COS adjustments for differences in warranty and guarantee expenses are allowed provided that they are directly related to the sales under consideration. These expenses usually are based on the cost of repairing or replacing a defective item. If a claim for warranty costs includes after sale services, the non-variable expenses connected with the servicing would be treated as indirect selling expenses. These types of expenses would probably include the salaries of service personnel if they are employed by the exporter (see section IX of this chapter to determine how to treat indirect selling expenses in the calculation of NV).

Since many warranties and guarantees extend over a period of time that is longer than the POI or POR or because complete information is not available at the time the questionnaire response is received, we often base our calculation of per-unit warranty costs on a weighted-average of the annual amounts for warranty expenses for the three years prior to the POI or POR. If an individual year's expenses included in the three-year historical period appear to be aberrational, they can be discarded from the calculation. When POI or POR warranty information reflects historical experience, then actual warranty information should be used. Where possible, we consider historical or actual data on a model-by-model basis. The historical granting of warranties can be used to establish a link to the sales under consideration in the absence of warranty terms in a sales agreement.

Sample calculations for EC and U.S. COS adjustments for differences in warranties expenses are shown below. In these examples, expenses covering the past three calendar years are used because total warranty expenses are not available for the POI or POR. The technicians' salaries are not allowable as COS adjustments because the producer pays these salaries even if sales are not made. The salaries would be considered indirect selling expenses.

EC Sales

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Total claimed warranty expenses	1.2% of sales value for the past three calendar years
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Breakdown of expenses:

Replacement costs	0.9% of sales value for the past three calendar years
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Salaries of technicians	0.3% of sales value for the past three calendar years
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Allowable COS expenses	0.9%
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Calculation for COS adjustment:

Unit price =	275 francs
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Per-unit allowance = $275 \times 0.009 =$	2.475 francs
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U.S. Sales

Total claimed warranty expenses	1.1% of sales value for the past three calendar years
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Breakdown of expenses:

Replacement costs	1.1% of sales value for the past three calendar years
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Salaries of technicians	None
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Allowable COS expenses	1.1%
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Calculation for COS adjustment:

Unit price =	\$10.50
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Per-unit allowance = $\$10.50 \times 0.011 =$	\$ 0.1155
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See the appropriate illustrative dumping comparison scenarios shown in part A of this section to determine how to make a COS adjustment for warranty and guarantee expenses.

The following case citations describe various COS warranty and guarantee situations:

The DOC relied on historical warranty data when claimed warranty expenses for the POI could not be tied to POI sales (see Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR 18795 (April 20, 1994)). Note that the five-year period referenced in this determination has since been changed to a three-year period.

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A formal agreement at the time of sale is not necessary in order to make a warranty claim. Mitsubishi demonstrated a five-year history of warranty expense claims. Therefore, we concluded that customers should have been aware of the existence of these warranties. We have recalculated these expenses on a model-by-model basis (see Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from Japan, 52 FR 44171 (November 18, 1987)).

G. Royalties

Manufacturers and sellers incur royalty expenses when selling merchandise which is produced under license from another company. Such licenses involve merchandise which is subject to patent or trademark restrictions. The royalties are paid pursuant to agreements, and are usually product specific. We consider the terms of the agreement in allocating the royalty expenses. If the payments are directly related to the sales under consideration, we treat them as direct selling expenses and adjust for them as a difference in circumstances of sale.

Sample calculations for EC and U.S. COS adjustments for royalty expenses are shown below. In both instances, the claims are allowed in full because payments under both agreements are made only if the merchandise is sold. If the agreements called for a flat fee payment at the beginning of the year regardless of whether sales are made, the expenses would be considered indirect selling expenses (see section IX of this chapter for information on how to handle indirect selling expenses).

EC Sales

The royalty agreement calls for a five-percent payment based on the DM 10.00 sales price of the product. The claim for a COS adjustment is for the full five- percent amount. The allowable COS adjustment amount for the royalty is $DM\ 10.00 \times .05 = DM\ 0.5$ per unit.

U.S. Sales

The royalty agreement calls for a flat fee of \$0.50 for every item sold. The claim for COS adjustment is the full \$0.50 per unit. The allowable COS adjustment amount for the royalty is \$0.50 per unit.

See the appropriate illustrative dumping comparison scenarios shown in part A of this section to determine how to make a COS adjustment for royalty expenses.

The following case citations refer to cases involving royalty claims:

See Preliminary Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware from Taiwan, 61 FR 43344 (August 22, 1996). Also see Final Determination of Sales at Less Than Fair Value: Generic Cephalexin Capsules from Canada, 54 FR 26820 (June 26, 1989). COS royalty adjustments were made in both of these investigations.

H. Commissions

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Commissions are payments to parties providing services that relate to the sale of merchandise. The commission amount is usually set forth in an agreement between the manufacturer and the selling agent. The services provided by a selling agent may vary from the level of minimal services in facilitating communication to substantive services including maintaining inventory and providing support in all areas of the sales transaction. Selling agent may be employees of a company, affiliated companies, or independent persons or firms providing the services required. Because the treatment of commissions is one of the most complex areas of our analysis, you must always check with your supervisor or PM to determine whether commission deductions will be allowed, and the current methodology employed in calculating them.

We sometimes treat commissions paid to affiliated companies or employees and unaffiliated persons differently. In addition, we adjust for commissions differently depending on whether we are using EP or CEP as the basis for calculating a price to the United States. We normally treat commissions paid to employees as direct selling expenses. In Final Determination of Sales at Less Than Fair Value: Industrial Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988), the DOC verified that the company paid bonuses to individuals and to its dealer's employees who introduced new customers. Because the payments were actual expenditures made by the firm resulting from specific sales and were not intra company transfers, the DOC treated the payments as home market sales commissions. Note that section 351.402(e) calls for deductions from a CEP starting price to normally be the expense incurred by an affiliated party, not the payment to such a party.

Pursuant to LMI-LA Metali Industriale S.p.A. v. United States, 912 F.2d 455 (Fed. Cir. 1990), the DOC determined that related (referred to as "affiliated" under the 1994 amendments to the Act) party commissions are allowable as COS adjustments if they are at arm's-length and tie directly to sales. Subsequent to this decision, we developed guidelines to determine whether adjustments should be made for affiliated party commissions paid in either the United States or the foreign market. Accordingly, to determine whether commissions paid to affiliated parties are at arm's-length, we undertake the following analysis, as appropriate:

- 1) Compare the commissions paid to the affiliated selling agents to those paid by the respondent to any unaffiliated selling agents in the same market (exporting or U.S.) or in any third-country market.
- 2) In cases where there is not an unaffiliated sales agent, compare the commission earned by the affiliated selling agent on sales of merchandise produced by the respondent to commissions earned by the affiliated selling agent on sales of merchandise produced by other unaffiliated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for service rendered in return for payment in order to ensure that both affiliated and unaffiliated agents perform approximately the same services for the commission. If we find the commissions to be at arm's length and directly related to the sale, we will make an adjustment for these commissions (see Final Determination of Sales at Less Than Fair Value:

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Coated Groundwood Paper from Belgium, Finland, France, Germany and the United Kingdom ("CGP"), 56 FR 56359 (November 4, 1991).

Examples of decisions made regarding commissions from the coated groundwood paper investigations are illustrated in the extracts from the final determinations indicated below:

In CGP Finland, the DOC found that none of the respondents used unrelated commissionaires to sell the subject merchandise in the United States. The fact that these commission arrangements were in writing was not, in itself, an appropriate standard against which to measure the arm's-length nature of the transaction. Therefore, because we had no appropriate benchmark against which to test the arm's-length nature of the commission arrangements, we were not satisfied that these payments were at arm's-length. Accordingly, we did not adjust for them.

In CGP Germany, the DOC found that the related party commissions between one company and its related U.S. agent were arm's-length transactions and directly related to the sales under investigation. During verification, we examined the contracts establishing the commission relationship between the related companies, and verified that these commissions were earned at the time a sale occurred. Furthermore, the related U.S. agent received a comparable commission rate for sales in the US market of CGP from unrelated manufacturers of CGP. Therefore, we deducted from the U.S. price the commission the related manufacturer paid to its related U.S. agent.

In another case to determine whether a claim for a commission paid to an unrelated party was a bona fide commission, the DOC looked at commission agreements which existed during the POI. The commission agreements set forth the basis for paying the commission and established the amount to be paid. We verified that no commission agreement existed between the parties involved. Further, we were unable to verify that any service was provided for the alleged commission. Absent evidence to the contrary, we have treated the amounts in question as a discount and deducted the amounts from the selling price (see Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from the Republic of Korea, 52 FR 44186 (November 18, 1987)).

For EP comparisons involving commissions on sales in both the U.S. and EC markets, an adjustment is made to the weighted-average EC price for sales in the like merchandise comparison pool by deducting the weighted-average EC commission for sales in the like merchandise pool and adding the weighted-average U.S. commission from the subject merchandise sales comparison pool (for administrative reviews you are dealing with individual U.S. sales so the U.S. commission will be the commission amount associated with the individual U.S. sale) to arrive at a weighted-average NV. For CEP comparisons involving commissions in both the U.S. and EC markets, the weighted-average commission amounts (for selling actions in the United States) are deducted from the weighted-average U.S. sales price (for reviews you are dealing with an individual U.S. sale and the commission associated with that sale) and the weighted-average EC sales price, respectively. See below if there is a significant imbalance in the amounts of commission for the sales in the U.S. and EC merchandise comparison pools.

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Section 351.410 (e) of the regulations requires that, where there is a commission paid in one market and none in the other market, we offset the commission with indirect selling expenses incurred in the other market to the extent of the lesser of the commission or the indirect selling expenses. In offsetting a weighted-average U.S. commission for sales in the subject merchandise comparison pool (or for the commission associated with an individual U.S. sale for an administrative review) when comparisons involve EP, we apply the offset by increasing the weighted-average EC price for sales in the like product comparison pool by the amount by which the weighted-average U.S. commission (the commission associated with the individual U.S. sale in a review) exceeds the EC indirect selling expenses in the like product sales comparison pool, if any. Nothing is added if the EC indirect selling expenses exceed the U.S. commissions. If there are EC commissions in the sales comparison pool and none on sales in the EP sales comparison pool (or individual U.S. sale in a review), we offset the weighted-average EC commission by deducting it from the weighted-average EC price and then adding weighted-average U.S. indirect selling expenses (in reviews, the sale-specific allocated indirect selling expense). Revised questionnaire asks for it in all instances. Up to the amount of the weighted-average EC commission. If no U.S. indirect selling expenses or, if appropriate, EC indirect selling expenses, are reported, check with your supervisor or PM to determine how to make the required offset.

In investigations with comparisons involving commissions on CEP sales but none on EC sales, we deduct the weighted-average commission paid for selling activities in the United States for sales in the subject merchandise comparison pool (for the individual U.S. sale for reviews) from the weighted-average U.S. selling price for pool merchandise (individual U.S. sale price for reviews) to arrive at the weighted-average CEP for the subject merchandise comparison pool. We then offset the U.S. commission for the EC like product comparison pool of sales by deducting weighted-average indirect selling expenses (same for reviews) up to the amount of the U.S. commission (this is referred to as “capping” the deduction) from the weighted-average EC sales price to arrive at weighted-average NV. For comparisons involving commissions on EC sales but none for U.S. CEP sales, we deduct the weighted-average EC commission from the weighted-average EC price for sales in the like product comparison pool. In calculating weighted-average CEP (or an individual sale CEP in reviews), all U.S. indirect selling expenses are deducted from the weighted-average U.S. sales price (the individual U.S. sale price for reviews). There is no cap to this deduction as section 772 of the Act calls for the deduction of all U.S. indirect selling expenses in calculating CEP.

Sample calculations for adjustments for differences in commissions and offsets for commissions in comparisons involving EP and CEP sales are given below. For ease of understanding, all amounts shown are in U.S. dollars. Also, remember that while we calculate weighted-average EPs and CEPs in investigations, we rarely do so in reviews. Accordingly, all references to weighted-average U.S. amounts in the following examples should be read as individual U.S. sale amounts if you are doing an administrative review.

The following are examples of commission offsets involving EP sales:

- 1) If the total amount of commissions for sales in the merchandise comparison pools for both the weighted-average U.S. price and weighted-average EC price is not

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significantly different, you should subtract the weighted-average EC commission from the weighted-average EC price, and add the weighted-average U.S. commission to the weighted-average EC price to arrive at a weighted-average NV. See below if there is a significant imbalance between the total amounts of commission in the two markets.

U.S. Sales		EC Sales	
Wt-Aver U.S. Price	= 10	Wt-Aver EC Price	= 13
Wt-Aver U.S. Commission	= 4	Wt-Aver EC Commission	= 3

NV Calculation = 13(Wt-Aver EC Price) - 3 (Wt-Aver EC Commission) + 4 (Wt-Aver U.S. Commission) = Wt-Aver NV of 14

- 2) If all or a portion of the sales in the U.S. subject merchandise comparison pool have commission included and sales in the EC like product comparison pool do not, subtract weighted-average EC indirect selling expenses capped by the weighted-average U.S. commission from the weighted-average EC price, and add the weighted-average U.S. commission to the weighted-average EC price to arrive at the weighted-average NV.

U.S. Sales		EC Sales	
Wt-Aver U.S. price	= 10	Wt-Aver EC Price	= 13
Wt-Aver U.S. Commission	= 4	Wt-aver EC Indirect Selling Expenses	= 4

NV Calculation = 13 (Wt-Aver EC Price) - 4 (Wt-Aver EC Indirect Sell Exp) + 4 (Wt-Aver U.S. Commission) = Wt-Aver NV of 13

- 3) If sales in the U.S. subject merchandise comparison pool do not have commission and all or some portion of the sales in the EC like product comparison pool do, you subtract the weighted-average EC commission from the weighted-average EC price, and add the weighted-average U.S. indirect selling expenses capped by the

EC commission to the weighted-average EC price to arrive at a weighted-average NV.

U.S. Sales		EC Sales	
Wt-Aver U.S. Price	= 10	Wt-Aver EC Price	= 13
Wt-aver U.S. Indirect Selling Expenses	= 3	Wt-Aver EC Commission	= 3

NV Calculation = 13 (Wt-Aver EC Price) - 3 (Wt-Aver EC Commission) + 3 (Wt-Aver U.S. Indirect Sell Exp) = Wt-Aver NV of 13

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The following are examples of commission offsets for CEP transactions:

- 1) If the total amount of commissions for U.S. CEP sales and EC market sales is not significantly different, you subtract the weighted-average commissions from the weighted-average U.S. sales price and EC sales prices, respectively. See below if there is a significant imbalance in the amounts of commission between the markets.

U.S. Sales

EC Sales

Wt-aver U.S. Price = 30
Wt-aver U.S. Commission = 4

Wt-aver EC Price = 42
Wt-aver EC Commission = 3.9

CEP and NV Calculation = 30 (Wt-aver U.S. Price) - 4 (Wt-aver U.S. Commission) = Wt-aver CEP of 26 and 42 (Wt-aver EC Price) - 3.9 (Wt-aver EC Commission) = Wt-aver NV of 38.1

- 2) If the weighted-average U.S. price has a commission and the weighted-average EC price does not, deduct the weighted-average U.S. commission from the weighted-average U.S. price to arrive at the weighted-average CEP. You then deduct weighted-average EC indirect selling expenses capped by the amount of the weighted-average U.S. commission. You must consult with your supervisor or PM if an indirect selling expense offset for level of trade is also involved in your calculation.

U.S. Sales

EC Sales

Wt-aver U.S. Price = 30
Wt-aver U.S. Commission = 4

Wt-aver EC Price = 42
Wt-aver EC Indirect Selling Expenses = 11

CEP and NV Calculation = 30 (Wt-aver U.S. Price) - 4 (Wt-aver U.S. Commission) = Wt-aver CEP of 26 and 42 (Wt-aver EC Price) - 4 (Capped Wt-aver EC Indirect Selling Expenses) = Wt-aver NV of 38

- 3) If the weighted-average U.S. price has no commission and the weighted-average EC price does, you deduct the weighted-average EC commission from the weighted-average EC price to arrive at NV. You then deduct all weighted-average U.S. indirect selling expenses from the weighted-average U.S. price. The deduction of U.S. indirect selling expenses is not capped because section 772 of the Act requires that all U.S. indirect selling expenses be deducted in computing CEP.

U.S. Sales

EC Sales

Wt-aver U.S. Price = 30
Wt-aver U.S. Indirect Selling Expenses = 6

Wt-aver EC Price = 42
Wt-aver EC Commission = 3

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CEP and NV Calculation = 30 (Wt-aver U.S. Price) - 6 (Wt-aver U.S. Indirect Selling Expenses) = Wt-aver CEP of 24 and 42 (Wt-aver EC Price) - 3 (Wt-aver EC Commission) = Wt-aver NV of 39. There is no cap on the deduction of U.S. selling expenses.

If you have an EP or CEP situation where only a portion of the sales involve a commission and significantly more total commission is paid on sales in the U.S. subject merchandise comparison pool than on sales in the EC like merchandise comparison pool, you need to make an adjustment for this imbalance. This requires identifying the total amount of commission included in the weighted-average EC price and subtracting it from the total commission included in the weighted-average U.S. price or vice-versa. This difference is then adjusted for by deducting EC indirect selling expenses from the weighted-average EC price up to the amount of the difference in the commissions to arrive at a weighted-average NV. The same adjustment is necessary for situations when the EC like product sales comparison pool has a significantly greater amount of commission than EP sales in the U.S. subject merchandise comparison pool. For comparisons involving EP transactions, U.S. indirect selling expenses would be added to the weighted-average EC price up to the amount of the difference in the commission amounts to arrive at a weighted-average NV. For comparisons involving insignificant commission amounts for CEP transactions, no further adjustment is necessary to the weighted-average U.S. sales price as all indirect selling expenses are removed under section 772 of the Act in calculating CEP. Where EC sales involve insignificant commission amounts relative to CEP transactions, an adjustment for this imbalance is made by deducting EC indirect selling expenses capped by the difference in the U.S. and EC commissions to arrive at NV. Always ensure that your computer program correctly accomplishes this type of adjustment. Also, you must check with your supervisor or PM if indirect selling expense information is not available for the offset or a level of trade adjustment is called for in your calculation.

These examples illustrate the adjustments required for EP imbalance situations:

1) U.S. Sales

EC Sales

Wt-Aver U.S. Price = 14
Wt-Aver U.S. Commission = 4

Wt-Aver EC Price = 15.0
Wt-Aver EC Commission = 0.5
Wt-Aver EC Indirect Sell Exp = 6.0*

EC Price Adjustment = 15 (Wt-Aver EC Price) - 0.5 (Wt-Aver EC Commission) - 3.5 (Wt-Aver EC Indirect Sell) + 4 (Wt-Aver U.S. Commission) = Wt-Aver NV of 15

* Note that in this example the EC indirect selling expense deduction is capped by the difference in the commission amounts.

2) U.S. Sales

EC Sales

Wt-Aver U.S. Price = 14
Wt-Aver U.S. Commission = 1
Wt-Aver U.S. Indirect Sell Exp = 1*

Wt-Aver EC Price = 15
Wt-Aver EC Commission = 3

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EC Price Adjustment = 15 (Wt-Aver EC Price) - 3 (Wt-Aver EC Commission) + 1 (Wt-Aver U.S. Commission) + 1 (Wt-Aver U.S. Indirect Sell Exp) = Wt-Aver NV of 14

- * Note that in this example the U.S. indirect selling expense addition could be 2 but because the U.S. indirect selling expenses only amount to 1 that is all that can be added.

These examples illustrate the adjustments required for CEP imbalance situations:

1) U.S. Sales

Wt-aver U.S. Price = 16
Wt-aver U.S. Comm = 3

EC Sales

Wt-aver EC Price = 17
Wt-aver EC Commission = 0.5
Wt-aver EC Indirect
Selling Expenses = 5

CEP and NV Calculation = 16 (Wt-aver U.S. Price) - 3 (Wt-aver U.S. Comm) = Wt-aver CEP of 13 and 17 (Wt-aver EC Price) - 3 (Combination of 0.5 Wt-aver EC Commission and 2.5 Wt-aver EC Indirect Selling Expenses (Capped by the difference in the U.S. and EC Commissions)) = Wt-aver NV of 14

2) U.S. Sales

Wt-aver U.S. Price = 13
Wt-aver U.S. Commission = 0.5
Wt-aver U.S. Indirect
Selling Expenses = 4

EC Sales

Wt-aver EC Price = 14
Wt-aver EC Commission = 3

CEP and NV Calculation = 13 (Wt-aver U.S. Price) - 0.5 (Wt-aver U.S.

Commission) - 4 (Wt-aver U.S. Indirect Selling Expenses) = Wt-aver CEP of 8.5 and 14 (Wt-aver EC Price) - 3 (Wt-aver EC Commission) = Wt-aver NV of 11. There is not an adjustment for an imbalance on the CEP sales because section 772 of the Act requires that all U.S. indirect selling expenses be deducted in computing CEP.

IX. ADJUSTING NORMAL VALUE BY THE CEP OFFSET (INDIRECT SELLING EXPENSE) ADJUSTMENT

References:

The Tariff Act of 1930, as amended (the Act)
Section 773(a)(7)(B) - constructed export price (CEP) offset
Department of Commerce Regulations
19 CFR 351.412(d) - CEP offset
SAA
Section B.2.c.(4) - CEP offset
Antidumping Agreement

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Article 2.4 - adjustments for comparisons at equivalent level of trade

The CEP offset is described in Section 773(a)(7)(B) of the Act and in 19 CFR 351.412 (f). This offset is an adjustment that, in limited circumstances, is made to normal value (NV) when NV is being compared to CEP sales in the United States. The CEP offset adjustment is only made to NV when NV is established at a more advanced level of trade than the level of trade of the CEP sales and despite the fact that the party cooperated to the best of its ability, the available data do not allow for a level of trade adjustment (see the discussion on level of trade in section XII of this chapter). The adjustment is made by reducing NV by the amount of indirect selling expenses on sales of the foreign like product in that country. The amount of the CEP offset adjustment cannot be more than the amount of indirect selling expenses deducted from CEP under Section 772 (d)(1)(D) of the Act (see the discussion of CEP deductions in Chapter 7, section III). Indirect selling expenses are selling expenses that the seller would incur regardless of whether particular sales were made but that reasonably may be attributed, in whole or in part, to such sales (e.g., salesperson's salaries).

In practice the CEP offset adjustment is derived by (1) computing the weighted-average of each type of per-unit indirect selling expense reported for the foreign like product sales being compared to CEP sales, (2) summing these weighted-averages, (3) converting this sum to a U.S. dollar amount using the average exchange rate in effect for sales in the U.S. sales comparison pool during the period of investigation (POI) or, in a review, the exchange rate in effect on the date of sale of the CEP sale being compared, and (4) comparing this U.S. dollar amount to the total weighted-average indirect selling expense for the CEP sales. The CEP offset adjustment is equal to the lesser of the total weighted-average indirect selling expense for the foreign like product sales or the total weighted-average indirect selling expense for the CEP sales. For example, assume you calculated the following weighted-average amounts from the indirect selling expenses reported by a respondent in an investigation in which NV in the exporting country (EC) is at a more advanced level of trade than the level of trade of the CEP sales but the data do not allow for a level of trade adjustment:

Wt-aver, per-unit indirect selling expenses incurred in the EC on like product sales:

Indirect advertising	1,000 lira
Technicians' salaries	2,500 lira
Product liability insurance premium	1,700 lira
Warehousing	3,000 lira
Salespersons' salaries	<u>4,500 lira</u>

Total wt-aver, indirect EC selling expenses	12,700 lira
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Wt-aver, per-unit indirect selling expenses for U.S. CEP sales:

Indirect advertising	\$1.00
Technician's salaries	\$2.00
Product liability premiums	\$1.50

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Pre-sale warehousing	\$3.25
Salesperson's salaries	\$1.25
Total wt-aver, indirect U.S. CEP sales selling expenses	\$9.00

If the weighted-average exchange rate for the POI is 0.000715 U.S. dollars per Italian lira, then the total weighted-average foreign market indirect selling expense expressed in U.S. dollars is \$9.08 ($12,700 \times 0.000715 = \9.08). However, the CEP offset adjustment to NV is limited or "capped" by the total weighted-average indirect selling expense deducted from the CEP. In this example the "cap" is \$9.00 which is less than the total weighted-average EC indirect selling expense of \$9.08. Therefore, the CEP offset deduction is \$9.00.

In Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30326 (June 14, 1996), the DOC denied one respondent's request for a CEP offset adjustment because the respondent's sales in the United States (that is, the CEP) and Italy were made at the same level of trade (see Comment 7 of the notice). In Final Results of Antidumping Duty Administrative review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from France, et al., 62 FR 2105 (January 15, 1997), the DOC determined that the CEP offset adjustment to NV was appropriate.

X. DIFFERENCES IN QUANTITIES

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 773(a)(6)(C)(i) - adjustments for differences in quantities
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.409 - adjustments for differences in quantities
- SAA
 - Section B.c.(3) - adjustments for differences in quantities
- Antidumping Agreement
 - Article 2.4 - allowances for differences in quantities

A. Adjustment Criteria

Section 773(a)(6)(C)(i) of the Act provides that normal value (NV) may be adjusted to reflect the differences in quantities sold between the exporting-country (EC) or third-country market and the U.S. market. The granting of a quantity discount adjustment depends more on the pricing behavior of the individual exporter or producer, and not on whether other firms in the industry engage in similar behavior. 19 CFR 351.409 lists the requirements normally needed to be satisfied to qualify for a quantity adjustment. In brief, where an exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country during the period examined or a more representative period or if the exporter or producer demonstrates that the discounts reflect savings specifically attributable to the production of the different quantities, NV will be based on sales with quantity

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discounts. The existence of a price list that includes a quantity discount, or the lack of such a discount, will not in and of itself determine the eligibility of a respondent for this adjustment. If a level of trade adjustment is claimed in addition to the quantity discount adjustment, the latter adjustment will not be granted unless the respondent demonstrates that the effect on price comparability due to differences in quantities is separate from that due to differences in levels of trade.

The respondent must demonstrate either that it consistently granted discounts based on quantity for at least twenty percent of its sales of the subject merchandise or that the discounts are directly related to cost savings in producing these quantities. However, quantity discounts in calculating NV are seldom allowed for all sales because foreign sellers usually do not adhere strictly to a quantity discount program and because few are able to demonstrate actual cost savings. If a producer or seller does not satisfy these conditions, we calculate NV based on a weighted-average price that includes all sales in the averaging group, along with the specific discounts associated with those sales.

The DOC's criteria in granting the quantity discount adjustment were elaborated in such cases as Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Netherlands, 53 FR 23431, 23433 (June 22, 1988), where we rejected a quantity discount claim because the alleged quantity discounts were not granted on a uniform basis, but rather were part of the Dutch company's customer-specific sales negotiations. We made a similar finding in the Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14064 (March 29, 1996), where the Taiwan respondent was unable to demonstrate that the claimed "quantity discounts" for sales in the EC had any connection to the quantity sold and instead had the appearance of volume rebates. Moreover, the respondent made no attempt to demonstrate that the alleged quantity discounts were granted on a uniform basis.

In the case of the quantity discount adjustment claim in Final Results of Antidumping Duty Administrative review: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, 61 FR 14049 (March 29, 1996), although the respondent showed that it granted a quantity discount on more than 20 percent of its home market sales of such or similar merchandise, we did not allow the claim. We made this decision because the respondent reported the quantity discount on an average basis which precluded us from determining that the discounts were offered on a uniform basis to all purchasers. In contrast, in Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip from the Federal Republic of Germany, 52 FR 822 (January 9, 1987), an adjustment for differences in quantities sold was allowed on all home market sales because the DOC found that at least 20 percent of these sales received a quantity discount on a uniform basis during the six- month period of investigation (POI).

B. Sample Calculation

When a quantity discount is granted during the POI or period of review (POR), every sale used to calculate NV has a deduction made for the quantity discount. The following example illustrates how the adjustment works:

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<u>EC sales over the POI/POR</u>	<u>No. of units</u>	<u>Gross price per unit</u>	<u>Quantity discounts</u>	<u>Net price per unit</u>
1	10	\$1.00	10%	\$0.90
2	2	\$1.00	0%	1.00
3	3	\$1.00	0%	1.00
4	10	\$1.00	10%	0.90
5	5	\$1.00	0%	1.00

Facts: The manufacturer maintains a quantity discount price schedule to which it strictly adheres. The schedule calls for a \$1.00 gross price with a quantity discount of 10 percent for purchases in quantities of 10 units or greater. The transactions to the United States average 10 units or more; EC sales 1 and 4 provide as comparable a sale quantity level as possible to the U.S. sale. All sales are made at the same level of trade.

Conclusion: As sales 1 and 4 in the EC represent 67 percent of sales by number of units sold, the company has demonstrated that over 20 percent of sales received the discount during the POI or the POR. Further, the discounts were applied according to a consistent price policy, and were of the same magnitude. Consequently, the company has satisfied the quantity discount adjustment criteria. We would calculate EC price as follows:

<u>Sale</u>	<u>Calculation</u>
1	price-10% = net price
2	price-10% = net price
3	price-10% = net price
4	price-10% = net price
5	price-10% = net price

Weighted-average price = Total price divided by number of units = \$27/30 = \$0.90 per unit.

19 CFR 351.409(b)(2)) requires that the seller demonstrate to the DOCs satisfaction that the discount is warranted on the basis of savings which are specifically attributable to the production of the different quantities involved. We consider differences in the direct cost of manufacture in quantifying a cost based adjustment. For example, we would consider the cost savings attributable to the purchase of raw materials at a discount due to the quantity purchased. Respondent may make claims for differences in the cost to produce different quantities based on theoretical cost studies. Such claims are not allowed. Cost adjustment claims must be based on direct manufacturing costs. Claims that additional setup time is required for shorter runs do not form the proper basis for an adjustment. Most manufacturers will arrange their production schedules to obtain the greatest possible efficiency in setting up production runs. Thus, when a manufacturer has two orders of the same product, it will produce the quantity needed to fill both orders at the same time.

19 CFR 351.409(e) ensures that there is no double-counting between the quantity discount adjustment and a level of trade (LOT) adjustment. Thus, where we make a LOT adjustment, we

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will not also make a quantity adjustment unless the respondent satisfactorily isolates the price comparability effect of difference of quantities from the effect of differences in LOT.

XI. DIFFERENCES IN MERCHANDISE

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 773(a)(6)(C)(ii) - differences in merchandise (difmer)
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.411 - differences in physical characteristics
- SAA
 - Section B.2.c.(3) - difmer
- Antidumping Agreement
 - Article 2.4 - differences in physical characteristics
 - Article 2.6 - like product definition
- Import Administration Policy Bulletin
 - Policy Bulletin 92.2 of July 29, 1992 - difmer; 20% rule

A. Difference in Merchandise Adjustments

Section 773(a)(6)(C)(ii) of the Act provides for an adjustment to normal value (NV) for differences in the physical characteristics of the products being compared. Where identical products are not sold in the U.S. and exporting country (EC), we will compare the good sold in the United States to the good sold in the EC that is most similar in physical characteristics. Where similar products are compared, a “difference in merchandise adjustment” (difmer) must be made to normal value to account for the differences in the physical characteristics of the merchandise sold in the United States and the EC.

The DOC adjusts the EC price by the net difference in the variable manufacturing costs incurred in producing the differences in physical characteristics. The adjustment is based on actual physical differences in the products, and is calculated on the basis of direct manufacturing costs. We include the cost of materials, labor and variable factory overhead as direct manufacturing costs. See Final Results of Antidumping Duty Administrative review: Brass Sheet and Strip from Canada, 62 FR 16771 (April 8, 1997), Final Determinations of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30287 (June 14, 1996), and Polyvinyl Alcohol from Taiwan, 61 FR 14065 (March 29, 1996).

An example of the calculation for an export price (EP) difmer adjustment is shown below -- the calculation is the same for constructed export price (CEP) transactions:

EC Sales		U.S. Sales	
Wt-Aver EC price converted to US\$=	\$5.00	Wt-Aver EP	= \$5.50
Total variable manufacturing costs	= \$3.00	Total variable manufacturing costs	= \$2.96

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$$\begin{array}{llll} \text{Difmer} = \$3.00 - \$2.96 & = \$0.04 & & \\ \text{Wt-Aver NV} = & \$4.96 & \text{Wt-Aver EP} & = \$5.50 \end{array}$$

In this example, the variable manufacturing costs are \$3.00 for the EC product and \$2.96 for the U.S. product. Because the variable manufacturing costs are less in the United States, a \$0.04 deduction is made from NV. If the costs were greater for the U.S. product, an addition would be made to NV. We do not consider differences in the cost of production when the products being compared have identical physical characteristics. Remember that although products may have identical comparison criteria as stated in Appendix V of the antidumping questionnaire, they are not necessarily identical in all physical characteristics. Also, adjustments cannot be made for difmers based on 1) the fact that the exporter is charged different prices for its inputs depending on the destination of the finished product or 2) the fact that the domestic and exported products are produced in different facilities with differing production efficiencies. Finally, if the EC's economy has high inflation (over 25% per annum). During the period of investigation or review, consult with your supervisor on how to handle difmer adjustments (see section XV of this chapter for information on how to compute difmer adjustments in high inflation situations).

B. The 20 Percent Difmer Guideline

As a further step, we must assess whether there is a reasonable basis for comparing merchandise.

The following example illustrates our assessment of comparability.

EC Sales		U.S. Sales	
Ex works, EC price	30DM	Ex works, U.S. price	\$13.00
Variable manufacturing costs of EC product:		Variable manufacturing costs of U.S.	
materials	14DM	materials	13DM
labor	2DM	labor	1DM
direct factory overhead	<u>3DM</u>	direct factory overhead	<u>2DM</u>
Total variable manufacturing cost of EC product	= 19DM	Total variable manufacturing cost of U.S. product =	16DM
		Non-variable manufacturing costs of U.S. product =	4DM
		Total manufacturing cost of U.S. product =	20DM
Calculation of difmer:			
Variable manufacturing cost of EC product	= 19 DM		
Variable manufacturing			

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cost of U.S. product 0 = -16 DM

Difmer = 3 DM

In the above example, the variable manufacturing costs of the U.S. product are less than the costs of the comparison EC product. However, we only make comparisons between products which can reasonably be compared (see section II of this chapter for a further discussion of this topic). Sales of products in the EC market with a difmer exceeding 20 percent of the total average cost of manufacture, on a model specific basis, of the product exported to the United States will normally not be used in determining NV. Any use of products with a difmer exceeding 20 percent must be noted and fully explained (see policy bulletin 92.2 for information on the 20-percent guideline).

Total manufacturing costs are the variable costs of manufacturing plus the non-variable or fixed manufacturing costs of the product. The formula for determining whether two products can be compared using the 20-percent guideline is as follows:

$$\frac{\text{Difmer}}{\text{Total manufacturing cost of U.S. product}} \leq 20\%$$

Applying this formula to our example above, we divide the difmer of 3 DM by the U.S. product's total cost of manufacturing of 20 DM for a result of 15 percent. Insofar as there is less than a 20-percent difference in variable manufacturing costs, we conclude that the EC product is sufficiently similar to the U.S. product that it can be used for comparison purposes with a difmer adjustment. Accordingly, we deduct 3 DM from the EC price of 30 DM to account for the smaller variable manufacturing costs of the U.S. product to arrive at an NV of 27 DM as reflected in the following calculation:

EC price before difmer	30 DM
Difmer	- 3 DM
NV	27 DM

XII. DIFFERENCES IN LEVEL OF TRADE

References:

- The Tariff Act of 1930, as amended (The Act)
 - Section 773(a)(1)(B)(i) - requirement for same level of trade (LOT)
 - Section 773(a)(7)(A) - explanation of LOT
 - Section 773(a)(7)(B) - constructed export price (CEP) offset for LOT
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.412 - LOTs; adjustments for differences in LOTs; CEP offset
 - 19 CFR 351.414(d)(2) - LOT and price averaging groups
- SAA
 - Section B.2.c.(4) - LOT adjustments
 - Section B.8 - LOT and price averaging
- Antidumping Agreement

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Article 2.4 - requirement to compare sales at the same LOT

Article 2.4.2 - requirement to consider LOT when comparing prices

Section 773(a)(1)(B) of the statute requires that normal value (NV) shall be based on exporting-country (EC) (or third-country) sales at the same level of trade as the export price (EP) or CEP. Section 773(a)(7)(A) adds that, if comparisons are made between sales at different LOTs, an adjustment may be made based on price differences between the two LOTs in the exporting-country or third-country market. Section (A) states that differences in LOTs for which adjustments may be made involve the performance of different selling activities and a demonstrated effect on price comparability. This definition contrasts with the one used prior to the 1994 statutory changes; previously, the LOT was often defined as the position of the customer in the market, e.g., end users or original equipment manufacturers, wholesalers or distributors, and retailers, without regard to specific selling functions performed. Such customer categories may still be considered as the basis for different LOTs if the DOC determines that differences in selling functions exist between groups. Alternatively, these groupings can be used to establish different price averaging groups (see Chapter 6, section V for more information on price averaging).

19 CFR 351.412(c)(2) provides the following additional guidance in identifying LOTs:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

Also see section B.2.c.(4) of the SAA for a detailed discussion of LOT adjustments: In the case of export price (EP) transactions, LOT will be determined based on the starting price, while for CEP, LOT will be determined based on the starting price as adjusted under section 772(d) of the Act. NV LOT is based on the starting price or constructed value. Starting price is, in most instances, the gross price less all discounts and rebates.

If EC or third-country sales at the same LOT as the U.S. sales are inadequate for comparison, the DOC will calculate NV based on sales at the most comparable commercial LOT, making appropriate adjustments for differences affecting price comparability. When comparisons are made between EP or CEP and NV at different LOTs, and there is a pattern of consistent price differences between sales made at different LOTs in the EC market, a LOT adjustment will be made in accordance with 19 CFR 351.412(e), which prescribes that:

The Secretary normally will calculate the amount of a LOT adjustment by:

- (i) Calculating the weighted-averages of the prices of sales at the two levels of trade identified in paragraph (d), after making any other adjustments to those prices appropriate under section 773(a)(6) of the Act [i.e., movement expenses, packing expenses, duty drawback, circumstances of sale, etc.] and this subpart;

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- (ii) Calculating the average of the percentage differences between those weighted-average prices; and
- (iii) Applying the percentage difference to normal value, where it is at a different level of trade from the export price or constructed export price (whichever is applicable), after making any other adjustments to normal value required by section 773(a)(6) of the Act and this subpart.

Under special circumstances as described in 19 CFR 351.412(f), the DOC may make a CEP offset using indirect selling expenses in the EC or third-country market. The offset can only be applied where the respondent has succeeded in establishing that there is a difference in LOT, the EC LOT is more remote from the factory, but, although the respondent has cooperated to the best of its ability, the available data do not permit a determination on whether the difference affects price comparability. See your supervisor or program manager (PM) if it appears that this type of an adjustment is warranted.

Additionally, because DOC policy on LOT under the Act is still evolving, analysts should always 1) read the last several LOT determinations or final results for investigations or administrative reviews respectively, and 2) consult with their supervisor or PM as to the current policy. One application of the LOT provisions is discussed in Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30287 (June 14, 1996). In this determination, we analyzed the customer groups defined by the respondents, which included supermarket chains, wholesalers, buying consortiums, etc., with respect to the selling functions performed by the respective respondent for each group. In analyzing the selling functions, we considered all types of selling functions, both claimed and unclaimed, that had been performed, with no single selling function in this industry being sufficient to warrant determining a separate LOT. Examples of selling functions included sales process, inventory maintenance, forward warehousing, freight services, advertising, and warranties. Where we found differences in several functions between the respondent's groups, we considered these groups to be at different LOTs but, where there was only one difference, we did not find different LOTs. Also see Final Results of Antidumping Duty Administrative review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France et, al., 62 FR 2106 (January 15, 1997). In this review, the DOC examined whether comparison sales were at different stages in the marketing process than the EP or CEP sales. This determination was made on the basis of a review of the distribution system in the comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. As a result of this analysis, the DOC found different levels of trade. In addition, see Final Results of Antidumping Administrative review: Gray Portland Cement and Clinker from Mexico, 62 FR 17155 (April 9, 1997) where the DOC denied respondent's request for different levels of trade because the selling functions were largely the same across the levels of trade reported.

LOT analysis is performed in all investigations and reviews whether or not it is requested by the petitioner or respondent. In the antidumping questionnaire, respondents are asked to report and justify the different LOTs according to the selling functions performed and services offered to each customer or class of customers. We ask the respondent to separate customers into phases of marketing to which a unique set of selling functions/services apply and provide a consolidated,

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detailed narrative analysis of the selling functions and services provided to each of these unique customer classes.

XIII. CONSTRUCTED VALUE

References:

The Tariff Act of 1930, as amended (the Act)

Section 773(a)(4) - use of constructed value (CV)

Section 773(b)(1) - normal value (NV) based on

CV if all sales are below

the cost of production (COP)

Section 773(e) - calculation of CV

Department of Commerce Regulations

19 CFR 351.405 - when to base NV on CV; where to

look for selling, general, and

administrative expenses (SG&A) and

profit

19 CFR 351.407 - how to calculate CV and COP

SAA

Section B.2.c.(5) - adjustments to CV

Section B.3 - NV based on CV if all sales are below cost

below cost

Section B.5 - calculation of costs

Section B.6 - SG&A and profit for CV

Antidumping Agreement

Article 2.2 - when CV may be used

Article 2.2.1.1 - how to calculate CV

Article 2.2.2 - how to calculate amounts for

administrative selling and any other

costs and profit

Import Administration (IA) Policy Bulletin

Policy Bulletin 91.2 of July 18, 1991 - source of cost of manufacture (COM)

Policy Bulletin 92.4 of December 15, 1992 - the use of CV in COP cases

A. Use of CV

CV is an alternative basis for the calculation of NV. In many cases, CV is calculated by accountants in the Office of Accounting (OA) or senior financial analysts from your office. Regardless, the analyst must be aware of how to make these calculations. Once CV calculations are completed, the analyst must make any adjustments to the numbers that are required for a fair comparison to U.S. price. These adjustments will almost always involve circumstances of sale (COS) and, in some instances, levels of trade (LOT). You should consult with your program manager (PM) or accountant involved on the appropriate way to handle CV adjustments and comparisons to export prices (EP) or constructed export prices (CEP).

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Sections 773(a)(1), 773(a)(4) and 773(b)(1) of the Act and 19 CFR 351.405 provide that we use CV for NV when:

1. Neither the exporting country (EC) nor a third-country market is viable,
2. There is a viable EC or third-country market but a particular market situation does not permit a proper comparison with the EP or CEP,
3. All sales failed the cost test in section 773(b)(1) and (2) (see Import Administration Policy Bulletin 92.4. Note that certain provisions of this bulletin reference pre-1995 practice). Consult your supervisor or PM if there is any question on current policy.
4. The remaining sales that did not fail the cost test were made to establish a fictitious market or were not made in the ordinary course of trade (e.g., aberrationally high prices, year-end models, seconds, etc.) or were not at a time contemporaneous with the U.S. sales.

When EC market sales are not viable, we generally use sales to a viable third-country market rather than CV. However, we still retain the discretion to select CV, if more appropriate, over a third-country market (see Section 773(a)(4) and 19 CFR 351.405(f)).

After the comparison market is chosen, the issue of viability will not normally be reexamined. In those situations where all the EC market sales prices of the product which is most similar to the U.S. product are disregarded, because they failed the cost test, or are outside the ordinary course of trade for reasons other than cost, we use the CV for comparison purposes rather than sales prices of less similar merchandise in the EC market or sales prices in a third-country market (see sections I, IV, and XIV of this chapter for explanations of market viability, ordinary course of trade, and COP, respectively).

B. General Guidelines for the Calculation of CV

1. CV Components

The first step in the process of constructing a value is to sum the three major components of CV in accordance with section 773(e) of the Act. These are the following:

- a. Cost of manufacturing (COM), which includes material, fabrication and other processing costs incurred in producing the merchandise. The COM of the CV is for the product exported to the U.S. (the subject merchandise) (see IA Policy Bulletin 91.2).
- b. The actual amount of the selling, general, and administrative (SG&A) expenses and profit from sales in the EC or third-country market of the product under investigation or review for the specific company under investigation. This calculation of SG&A is known as the “preferred methodology” (see 19 CFR

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351.405(b)(1)). When such data is unavailable, section 773(e)(2)(B) provides for alternative methodologies to be used.

Since selling costs are based on actual amounts, imputed selling expenses (e.g., credit and inventory carrying costs) are not included in the CV (see Certain Pasta from Italy, 61 FR 30361 (June 14, 1996)).

In cases where the producer is not the exporter and CV is the basis for NV, the costs of the exporter is combined with the costs of the producer to arrive at the CV of the merchandise. This procedure is followed whether or not the exporters and producers are affiliated parties. See Final Determination of Sales at Less than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (February 25, 1991).

The amounts computed for SG&A and profit are added to the COM.

- c. The actual packing costs incurred for packing the subject merchandise for shipment to the U.S. market is then added to the amounts for COM, SG&A and profit.
2. Adjustments to CV

Next, all required adjustments to CV are made in accordance with section 773(a)(8) of the Act. These adjustments usually involve differences in the expenses for circumstances of sale in the two markets (see section VIII of this chapter for information on circumstance of sale adjustments). Note that no adjustment is necessary for differences in the merchandise because the COM of the U.S. subject merchandise is used in computing CV. Once these adjustments are made, you have computed CV. See part F of this section for sample calculations of CVs for U.S. EP and CEP sales.

C. SG&A Methodologies and Guidance for Quantifying and Valuing CV Components

1. Calculation of SG&A and profit by the preferred methodology

Under section 773(e) of the Act, actual amounts incurred and realized by the specific exporter or producer being investigated or reviewed are used in the preferred methodology. Specific guidelines for calculating SG&A and profit using the preferred methodology are as follows:

- a. Sales data from the selected market, i.e., the home or third-country market, is used as the basis for SG&A.
- b. SG&A and profit are calculated on an average of foreign like products sold in the selected market, not on a model specific basis.
- c. Profit is derived by subtracting the COPs from the prices in the selected market.

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- d. General and administrative (G&A) is calculated by dividing the fiscal year G&A expenses by the fiscal cost of goods sold (adjusted for categories of expense not included in COM, such as packing) and then applying the percentage to the COM of the product.
 - e. Selling expenses are derived from the home market sales list.
2. Alternatives to the preferred methodology for SG&A and profit

Section 773(e) of the Act also lists three alternatives, without priority, preference or hierarchy, which may be used for calculating SG&A and profit if the preferred methodology is not attainable.

These alternatives are:

- a. Actual amounts incurred or realized on products of the same general category as the products under investigation sold in the EC by the company under investigation or review.
- b. The weighted-average of the actual costs incurred or realized by other companies under investigation or review for the production and sale of the foreign like product in the EC, and
- c. Any other reasonable method.

When we use an alternative methodology, the data must be from the country under investigation or review. It cannot be data from a third country market (see 19 CFR 351.405(b)(2)). Consult with your supervisors or PM if an alternative methodology is proposed.

3. Quantifying and Valuing the Elements of Cost

Guidance for quantifying and valuing the elements of costs are provided in Section 773(f) of the Act.

- a. We use data from the books of the respondent to calculate the COP/CV if such books are kept in accordance with the generally accepted accounting principles (GAAP) of the country and reasonably reflect the costs of producing the merchandise. Costing methodologies and allocations may also be relied on if they have been historically used and reasonably reflect the cost of producing the merchandise.

Each country has its own GAAP (broad conceptual accounting guidelines) established by the accounting profession, economists, business leaders, and/or the government. Although maintaining books in accordance with GAAP should reflect the economic reality of the cost, there may be cases when this is not so

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(e.g., GAAP based on tax rulings may result in expensing the purchase price of equipment instead of depreciating the cost of the equipment over its useful life).

1) The following cases illustrate situations where the DOC did not consider the costs to be stated in accordance with GAAP or the GAAP did not appropriately account for the costs related to the product:

In Certain Pasta from Italy, 61 FR 30355 (June 14, 1996), the DOC noted that one company's method of capitalizing the cost of exchange losses related to elimination of debt which was not the recommended method under Italian GAAP, nor was it acceptable under U.S. GAAP. In Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, et. al., from Brazil, 58 FR 37097 (July 9, 1993), the DOC did not accept the change in the useful lives of the assets because the revised remaining lives were longer than the lives commonly utilized in the steel industry worldwide.

2) We have also made adjustments to the data maintained by the respondent in accordance with the country's GAAP in those cases where the respondent is located in a country experiencing a high rate of inflation. Since the company's transactions are usually recorded as of the date that they were incurred or realized and because the high inflation caused a rapid erosion in the value of the currency, the amount recorded does not reflect the actual value of the expense as of the date of the U.S. sale. Consequently, we have either used the current value (e.g., price of material at the time of the U.S. sale) instead of the amount recorded on the books, or applied an inflation index to the cost data (see section XV of this chapter for more information on calculations for costs in high-inflation economies).

- b. We allocate the portion of non-recurring costs that benefit current and/or future production to the periods that will benefit from the expenditures. The method and period of time over which the costs are allocated are determined on a case-by-case basis.
- c. We adjust the COP/CV for the costs incurred for a startup operation. These costs must be tied directly to manufacturing of the merchandise. In brief, start-up operations are only those operations where a) a producer is using new production facilities or producing a new product that requires substantial additional investment and b) production levels are limited by technical factors associated with the initial phase of commercial production.

The 1994 amendments to the Act have significantly clarified when an operation is considered to be in a start-up mode and how to account for the costs associated with start-up. Consequently, a case conducted prior to these amendments in which a start-up adjustment was granted should not be relied upon as a precedent for decisions under the present Act. Consult with your supervisor or PM when

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there is a claim for a startup adjustment. See section 773(f)(1)(c) and 19 CFR 351.407(d)

- d. We also review various qualitative and quantitative factors to determine whether a representative measure of the materials, labor, overhead and other costs have been allocated to the product. We should specifically review the allocation methods (e.g., production quantities and relative sales values) to determine whether an appropriate portion of common costs have been allocated to the product. For example:

Where different grades of merchandise result from the same manufacturing process, adjustments in CV can be made based on the value of the various products (see Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea, 56 FR 16311 (April 22, 1991)).

D. Affiliated Party Inputs

Section 773(f)(2) of the Act authorizes the DOC to review the values of transactions made, directly or indirectly, between affiliated parties to determine whether the values "fairly" reflect the value (market value) in the country under investigation or review. Unaffiliated third-party comparable transactions are a good measure to test the validity of the market price of the affiliated transaction. When we do not have unaffiliated third-party information, we may use other information which is available on the record.

Also, when we have a reasonable basis to "believe or suspect" that the value reflected on the company's books for a major input, obtained from an affiliated party, is below the COP for that input (see 19CFR 351.407(b) and the relevant section of the preamble 62 FR at 27361-2) we may use the COP of the input if it is higher than the value determined under section 773(f)(2), i.e., if the COP is greater than both the transfer price and the market value.

The 1994 amendments to the Act significantly changed the definition of affiliated parties and, therefore, a case conducted prior to the enactment of these amendments might not be an appropriate precedent for determining whether a party is considered to be an affiliated party or whether the value used was an appropriate value for a transaction with an affiliated party (see Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof from Japan ("LNPP" from Japan), 61 FR 38162, 38163 (July 23, 1996), wherein the DOC determined affiliation based on a close supplier relationship, and declared that an input accounting for two percent of COP was a major input because of the thousands of parts included in a large printing press.) Whether an input qualifies as "major," however, must be determined on a case-by-case basis. You should consult with your supervisor or PM when there are questionable transactions which might involve "affiliated parties" (see section XVII of this chapter for more information on affiliated parties and 19 CFR 351.407).

E. Important Procedures for COP/CV Investigations

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1. The decision to request CV information

The CV and the COP sections of the questionnaire are sent at the initial stage of the investigation or review along with the other sections of the questionnaire. A respondent is not required to submit CV information as part of its response to the initial questionnaire unless a) an acceptable COP allegation is part of the petition in an investigation (CV information is always required to be submitted when COP data is required), b) it is known that a COP inquiry is needed at the time of initiation of a review because the DOC disregarded below cost sales for the same company in the most recent previously completed segment of the proceeding, c) it is known that a CV comparison will be made based on the case history of a review or d) there is no contemporaneous foreign market sale of identical or similar merchandise for comparison to one or more U.S. sales. In other instances for investigations and reviews, the respondent will be required to furnish CV information after the issuance of the questionnaire. These instances involve situations where a) section A responses to the questionnaire reveal that the exporting-country and third-country markets fail the market viability test (see section I of this chapter) and b) when acceptable country-wide or company-specific allegations are received. See Chapter 4 for more information on questionnaires for COP and CV data.

2. Determining the period for CV and/or COP information

After the decision to use CV is made, the assigned accountant or senior financial analyst, as available, should be notified. The case analyst and the accountant or financial analyst should coordinate to ensure that the period of investigation (POI) or period of review (POR) will provide for the cost data needed to calculate the CV and/or COP.

Examples of when the POI or POR may not provide for the cost data required to calculate the CV and/or COP are:

- When the sales of a customized product are consummated prior to production of the product and, as a consequence, the actual manufacturing of the product occurs subsequent to the sale dates.
- When the product requires longer than one year for manufacturing (e.g., certain agricultural products).

3. The analyst's responsibility for CV/COP

In cases where the analyst is not responsible for calculating the CV and/or COP, he or she is still responsible for knowledge of the basic methodology and the particular issues of the investigation or review that relate to cost. The analyst is also responsible for verifying and providing the necessary data on selling expenses and packing which are used in the COP/CV computation. The analyst and, where applicable, the accountant or financial analyst should coordinate on information for indirect selling

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expenses submitted in response to sections B and D of the questionnaire to ensure that the numbers are the same. The analyst should also coordinate with the accountant or financial analyst regarding the verification of indirect selling and packing expenses.

For cases where the analyst is responsible for calculating CV and COP, he or she must work closely with their supervisor or PM on all aspects of the analysis and verification.

4. Conducting the panel review and disclosure meeting

The analyst and the accountant or financial analyst must both be present for the panel review and subsequent disclosure of the COP/CV calculations to the parties. During panel review, certain areas need to be specifically checked and coordinated to ensure that the calculations and comparisons are correct. The most important of these are as follows:

- a. Checking to ensure that appropriate matching of the sales price and the CV for each specific model has occurred; and,
- b. Checking to ensure the use of the appropriate selling expenses for the sales.

F. Sample Calculations For CV

1. CV calculation for comparisons to U.S. CEP sales (amounts shown are in foreign currency unless otherwise specified):

COM

(This is the COM of the U.S. subject merchandise.)

Materials (quantity x unit price)	2.50
Labor (hours x rates)	1.00
Factory Overhead (direct and indirect)	<u>1.00</u>

Total COM	<u>4.50</u>
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SG&A

Preferred Methodology

(These are the actual expenses of the producer as found on the company's books. The selling expenses are for the product sold in the foreign market and do not include imputed expenses. See, LNPP from Japan 61FR at 38147 wherein the DOC states that imputed expenses are not part of CV).

General and Administrative (e.g., salaries of non-sales personnel, rent, and heat) at a rate of 22 percent (22% x 4.50 = 1.00)	1.00
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Direct Selling Expenses (i.e., expenses that can be directly tied to the sale of a specific unit, e.g., credit, warranty and advertising expense)	.50
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Indirect Selling Expenses (i.e., expenses which cannot be directly tied to the sale of a specific unit but which are proportionally allocated to all units sold during a certain period, e.g., telephone, rapifax, postal charges)	.50
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Total SG&A	2.00
Financial Expense (66% x 4.50) =	.30
Total cost without profit added	6.80

Profit	.50
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Packing cost for U.S. market	<u>.50</u>
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Total CV unadjusted for COS	7.80
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Deduction of EC COS Amounts

Less	
EC Warranty	.03
EC Advertisement	.02
EC Technical Services Expenses	<u>.15</u>

Total COS amount	.20
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CV adjusted for EC COS	7.60
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Conversion to U.S. Dollar Amount

Hypothetical Exchange Rate: 1@ = \$.1321	
Adjusted CV = (7.60) X exchange rate (\$.1321)=	\$1.00

Usually there are no amounts for U.S. direct and assumed selling expenses to be added to the CV because these amounts are deducted from the U.S. sales price before a comparison is made to a U.S. CEP transaction.

2. CV calculation for comparisons to U.S. EP sales (amounts shown are in foreign currency):

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Unadjusted CV (see above)	7.80
Less: EC COS adjustments (see CEP/CV example above)	<u>.20</u>
CV adjusted for EC COS	7.60
Conversion to U.S. dollar amount (7.60 x \$.1321) =	\$1.00
Addition of U.S. market COS amounts	
Plus	
U.S. Credit \$.06
U.S. Warranty	.01
U.S. Advertising	.04
U.S. Technical Services	<u>.15</u>
Total COS amount	\$0.26
CV adjusted for EC and U.S. market COS	\$1.26

XIV. SALES AT LESS THAN COST OF PRODUCTION

References:

- The Tariff Act of 1930, as amended (the Act)
 - 773(b) - sales at less than cost of production (COP)
 - 773(f) - special rules for the calculation of COP
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.406 - calculation of NV if sales are made at less than COP
 - 19 CFR 351.407 - calculation of COP
- SAA
 - Section B.3 - exclusion of sales below COP
 - Section B.4 - ordinary course of trade and sales at less than COP
 - Section B.5 - calculation of costs
- Antidumping Agreement
 - Article 2.2.1 - sales below COP
 - Article 2.2.1.1 - calculation of COP
 - Article 2.2.2 - calculation of COP
- Import Administration Policy Bulletins
 - Policy Bulletin 94.1 - standards for initiation of COP investigation

In many cases, COP is calculated by accountants in the Office of Accounting (OA) or financial analysts. It is important, however, that the analyst is aware of how these calculations are made.

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Once COP amounts are calculated, the analyst is responsible for comparing them to the prices for like products in the exporting country (EC) or, if appropriate, third-country sales prices. The results of these comparisons will dictate whether prices or constructed value (CV) will be used for normal value (NV). In some cases, the analyst is responsible for calculating COP. In these situations, you must work closely with your supervisor or program manager (PM) in performing the analysis and verification of the data.

Section 773(b) of the Act states that sales of the foreign like product made at prices below the COP may be disregarded for determining NV whenever such sales have been made 1) within an extended period of time in substantial quantities and 2) at prices which do not permit the recovery of all costs within a reasonable period of time.

A. Initiation of a COP Investigation

A "sales-below-cost" investigation is conducted, pursuant to Section 773(b) of the Act, when there are reasonable grounds to "believe or suspect" that sales have been made below the COP. We do not automatically initiate a COP inquiry in every investigation or review. We initiate only when we have the following:

- In an investigation, administrative review or a new shipper review, an allegation has been presented by a domestic interested party indicating that sales have been made at less than COP. This allegation must be presented in a timely manner and supported with sufficient evidence.
- In an administrative review, some or all of the company's sales were disregarded in the calculation of NV in the most recent segment for that company that is completed or, if no review has been completed, the investigation.

An allegation is considered to be filed in a timely manner, as required by 19 CFR 351.301(d)(2), when we have the following:

- In an investigation, it is made on a country-wide basis within 20 days after the date on which the initial questionnaire was transmitted to any person, and
- In an investigation, administrative review, new shipper review, or changed circumstances review, it is made on a country-wide basis within 20 days after a respondent files a response to the relevant section of the initial questionnaire (unless the DOC determines that the relevant questionnaire response is incomplete).

We can grant additional time beyond the 20 days to the party making a country-wide allegation when we determine from the facts of the particular case that such additional time is needed. However, once company -specific information (i.e. Section B response) has been submitted for a firm, the party must make a company-specific allegation. We can also grant additional time for a company-specific allegation when we determine that the questionnaire response for that company is incomplete.

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Sufficiency of an allegation will be considered on a case-by-case basis. A COP allegation is considered sufficient when it is supported by information reasonably available to the petitioner, including information already on the record. When company-specific costs and sales information are on the record such information must be used for the allegation.

Import Administration Policy Paper 94.1 clarifies that an allegation need not

- reflect that sales were made below COP in substantial quantities (i.e., 20 percent of the sales of the foreign like product), or
- include sales of every model involved in the investigation or review. However, the sales for the models of the product which are used for an allegation should be representative of the models which are to be used to determine NV in the final determination for the investigation or review.

See Certain Pasta from Italy, 61 FR 30361, “La Molisana” Comment 13, (June 14, 1996).

If company specific information is not on the record we consider a COP allegation to be sufficient when petitioners rely on their own COP data for the relevant period and adjust the costs for known differences between costs in the U.S. and those in the country under investigation or review. Such adjustments include, but are not limited to, adjustments for 1) wage and salary rates, 2) volume of output of the company under investigation or review which affect the fixed overhead costs, 3) material prices, and 4) differences in the methods used in the manufacturing processes.

Because we need to determine whether the sales prices are below the COP as defined by the Act, an allegation also needs to comply with our usual methodology for determining the COP, and should identify each major component of the COP. The major components of COP are materials, labor, variable overhead, fixed overhead, selling general, and administrative expenses (SG&A) and packing.

OA normally prepares a memo analyzing the COP calculation methodology used in the allegation (the analyst will have to do this if OA is not involved). This memo is attached to a decision memo that includes an analysis of the comparison of COP to individual sales prices and that states whether or not the DOC should initiate an investigation (although if a country-wide allegation is received in the petition then the analyses would be part of the case initiation memo). See below for information on how to calculate COP and how to compare COP to EC or third-country prices.

B. Calculation of COP

In accordance with section 773(b) of the Act, sales at less than COP should be for a period of time which would "ordinarily permit the production of the foreign like product in the ordinary course of business" and should include the following:

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- Cost of Manufacturing, which includes materials, labor, variable overhead, fixed overhead and other processing costs incurred for the foreign like product,
- an actual amount for SG&A incurred for the foreign like product, and
- all actual costs for packing the product for shipment in the foreign market.

C. Quantifying and Valuing the Elements of Cost

Specific guidelines for quantifying and valuing the elements of costs are provided in Section 773(f) of the Act.

1. We use data from the books of the respondent to calculate the COP/CV if such books are kept in accordance with the GAAP of that country and reasonably reflect the costs of producing the merchandise. Costing methodologies and allocations may also be relied upon if they have been historically used and reasonably reflect the cost of producing the merchandise.

Each country has its own set of GAAP (broad conceptual accounting guidelines), established by the accounting profession, a group of economists, business leaders, etc. and/or the government. Although maintaining books in accordance with GAAP should reflect the economic reality of the cost, there may be cases when this is not so, e.g., GAAP based on tax rulings may result in expensing the purchase price of equipment instead of depreciating the cost of the equipment over its useful life.

We make adjustments to the COP/CV when we do not consider the costs to be stated in accordance with GAAP or when we believe that the GAAP does not appropriately account for the costs related to the product. For example:

The DOC did not accept the change in the useful lives of the assets because the revised remaining lives were longer than the life commonly utilized in the steel industry worldwide (see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, et.al., from Brazil, 58 FR 37097 (July 9, 1993)).

In Final Determination of Sales at Less Than Fair Value: DRAMs from Korea, 58 FR 15479 (March 23, 1993), the DOC did not accept the changes of the depreciation method and the useful lives of the assets because the new lives of the assets were established as if they were new assets and, contrary to GAAP, the financial results were not retroactively restated to reflect the change.

2. We allocate a portion of non-recurring costs that benefit current and/or future production to the period that will benefit from the expenditures. The method and period of time over which the costs are allocated are determined on a case-by-case basis.

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3. We adjust the COP/CV for the costs incurred for a start-up operation. These costs must be tied directly to manufacturing of the merchandise. A start-up operation is defined by Section 773(f)(1)(C) of the Act. In brief, start-up operations are only those operations where a) a producer is using new production facilities or producing a new product that requires substantial additional investment, and b) production levels are limited by technical factors associated with the initial phase of commercial production.

The 1994 amendments to the Act have significantly clarified when an operation is considered to be in a start-up mode and how to account for the costs associated with start-up. Consequently, a case conducted prior to the enactment of the 1994 amendments, in which a start-up adjustment was granted, cannot be relied on as precedent. You should consult with your supervisor or PM when there is a claim for a start-up adjustment. (See Section 773(f)(1)(c) and 19CFR 351.407(d)).

4. We review various qualitative and quantitative factors to determine whether a representative measure of the materials, labor, overhead and other costs have been allocated to the foreign like product. We should specifically review the allocation methods (e.g., production quantities and relative sales values) to determine whether an appropriate portion of common costs have been allocated to the product. For example where different grades of merchandise result from the same manufacturing process, adjustments in CV can be made based on the value of the various products (see Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea, 56 FR 16311 (April 22, 1991)).

D. Affiliated Party Inputs

Section 773(f)(2) of the Act authorizes DOC to review the values of transactions made, directly or indirectly, between affiliated parties to determine whether the values "fairly" reflect the value (market value) in the country under investigation or review. Other third-party comparable transactions are a good measure for the market price of the affiliated transaction. When we do not have third-party information, we may use other information which is available on the record.

Also, in calculating COP and CV, when we have a reasonable basis to "believe or suspect" that the value determined under section 773(f)(2) (i.e., the transfer price or market value) for a major input obtained from an affiliated party is below the inputs actual production costs, we may base the value of that input on the higher of transfer price, market value or COP consistent with section 773(f)(2) and (3) of the Act.

The 1994 amendments to the Act significantly changed the definition of affiliated parties and, therefore, a case conducted prior to the enactment of the 1994 amendments might not be an appropriate precedent for determining whether or not a party is considered to be an affiliated party or whether the value used was an appropriate value for a transaction with an affiliated party (see LNPP from Japan, 61 FR 38162, 38163 (July 23, 1996)), wherein the DOC determined affiliation based on a close supplier relationship, and declared that an input accounting for two

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percent of COP is a “major” input because of the thousands of parts included in a large printing press. Whether an input qualifies as major, however, must be determined on a case-by-case basis. Consult with your supervisor or PM when there are questionable relationships which might involve “affiliated parties” or questions about major inputs (see section XVII of this chapter for more information on affiliated parties, and 19 CFR 351.407).

E. Determining Whether Sales Should Be Disregarded

The sales-below-cost test is always done on a product specific basis.

Section 773(b) of the Act requires that when sales prices are below the COP and are made 1) within an extended period of time in substantial quantities, and 2) at prices which do not permit the recovery of all costs within a reasonable period of time, that they be disregarded for calculation of the NV.

The terms associated with these two requirements are specifically defined by the Act as follows:

- An extended period of time for an investigation or review is normally one year, but not less than six months. See Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey (61 FR 30323 (June 14, 1996), wherein the DOC stated that for hyper-inflationary economies the period of investigation (POI) should be considered the extended period of time and not individual months within the POI.
- Substantial quantities exist if the volume of sales represent 20 percent or more of the volume of total sales of that product under consideration for the determination of NV.
- Substantial quantities may also be considered to exist when the weighted-average per-unit price of the sales under consideration for the determination of NV is less than the weighted-average per-unit COP for these sales. DOC intends to use this criterion for determining whether substantial quantities exist for specific types of products, e.g., agricultural products.
- Costs are considered to be recovered when the sales price below the COP at the time of sale is above the weighted-average per-unit COP for the whole POI or POR. Thus, when costs are declining, prices which are below cost at the beginning of the POI or POR may be above average costs for the period and useable for NV.

F. The Comparison of COP to Sales Prices

It is particularly important to ensure that the COP used for comparison purposes represents the COP for the prices of the model, grade, etc., of the product under investigation or review. To conduct the cost test, we compare EC market or third-country market prices, net of discounts and rebates, movement charges, and direct and indirect selling expenses, to a COP which is composed of COM, general and administrative (G&A), actual interest cost and home market packing. No additions are made to the COP and no deductions are made for imputed expenses, i.e., imputed credit and inventory carrying costs.

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Movement charges and rebates are normally deducted from the EC prices before comparison to COP, if appropriate. However, some companies record the cost of freight and rebates to customers as direct selling expenses. In this case, in order to avoid double counting, we must either reduce the direct selling expenses by the amount of the freight charge and rebates or not subtract the transaction-specific freight and rebate charges. In addition, when U.S. sales are export price (EP) sales, and indirect selling expenses may not be reported for NV, make sure that the COP contains SG&A inclusive of actual indirect selling expenses.

When the COP is compared to individual EC or third-country sales prices, where 20 percent or more by volume of the sales of a given product during the POI or POR fail the cost test we may disregard only the below-cost sales. All of the remaining sales are used in the calculation of NV.

Where less than 20 percent of the sales during the POI or POR of a given product fail the cost test, we do not disregard any below-cost sales of that product because the below-cost sales are not made in substantial quantities within an extended period of time. The “within an extended period of time” language contained in the 1994 amendments to the Act allows for the exclusion of below cost sales that occur in a single month of the POI or POR if they are in substantial quantities relative to quantities for the entire POI or POR and are not at prices that would permit the recovery of costs. Sales below cost permit the recovery of costs if their price is more than the average cost for the entire period. This becomes relevant when we are calculating costs for periods shorter than the POI/POR. When costs are declining, prices below cost early in the period may be above period-long average cost, and would, therefore, not be disregarded.

In an investigation, when all sales of a specific product fail the cost test we disregard all sales of that product, and calculate NV based on CV (see Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30334 (June 14, 1996)). Also, in a review, when all contemporaneous sales of the comparison product are disregarded, we calculate NV based on CV (see Professional Electric Cutting Tools from Japan; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 42750 (August 8, 1997)).

G. Important Procedures for COP/CV Investigations

1. The decision to request COP information

The COP/CV section of the questionnaire should be sent at the time of the initiation of an investigation or the commencement of a review, even when a COP allegation has not been received. The respondent should then be notified of the need for a response, if an affirmative decision that an acceptable COP allegation is made at some time in the future. If we disregarded below cost sales in the most recent completed segment of the proceeding for a company, the company is automatically subject to a COP investigation for the subsequent review, and should be instructed to respond to the COP section of the initial questionnaire. In addition to responding to the COP questions, the respondent must furnish complete CV data in case there is a need to use CV for NV after the completion of the below cost sales analysis (see section XIII of this chapter for information on CV).

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2. Determining the period for COP information

After the decision is made to commence a COP investigation, the OA accountant or financial analyst, as available, should be notified. The case analyst and the accountant or financial analyst should coordinate to assure that the POI or POR will provide the cost data needed to calculate the COP/CV (see part E of section XIII of this chapter for examples of when POI data may be insufficient).

3. Case analyst's responsibility for COP/CV

In cases where the analyst is not responsible for calculating COP and/or CV, he or she is still responsible for knowledge of the basic methodology and particular issues of the investigation or review that relate to cost. The analyst is also responsible for verifying and providing the necessary data on selling expenses and packing costs which are used in the COP/CV computation. The analyst and accountant or financial analyst should coordinate on information for indirect selling expenses submitted in response to sections B and D of the questionnaire to ensure that the numbers are the same. The analyst should also coordinate with the accountant or financial analyst regarding the verification of indirect selling and packing expenses.

For cases where the analyst is responsible for calculating COP and CV, if appropriate, he or she must work closely with their supervisor or PM on all aspects of the analysis and verification. Junior analysts are not normally the primary case analyst in these situations.

4. Conducting the panel review and disclosure meeting

The analyst and the accountant or financial analyst must both be present for the panel review and subsequent disclosure of the COP/CV calculations to the parties. Particular attention should be given to the appropriate matching of the EC or third-country sales data with the COP data.

H. Sample Calculation for COP

All amounts shown in this calculation are in units of foreign currency. There is no need to convert them to U.S. dollars as they will be compared to the EC or third-country prices of the product. Remember that COM is product-specific for the product sold in the selected market whereas selling expenses are transaction specific. Thus, the movement and selling expenses should be subtracted from the COP, not added to the COP.

1. COM

(This is the COM of the EC/third-country product.)

Materials (quantity x unit price)	3.50
Labor (hours x rates)	3.00
Factory Overhead (direct and indirect)	<u>1.00</u>

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Total COM	7.50
2. G&A	
(These are the actual expenses of the manufacturer as found in the company's books. Selling expenses are not part of this number because these expenses are deducted from sales prices before the COP is compared to these prices -- see part F of this section.)	
General& Administrative at a rate of 13 percent (e.g., salaries of non-sales personnel, rent, and heat)	
(13% x 7.50= 1.00)	1.00
Total G&A	1.00
3. Financial expense (4% x 7.50=.30)	.30
4. Home market Packing	.50
Total COP	9.30

As detailed in part F of this section, the COP figure of 9.30 per unit is then compared to EC or third-country market sales prices net of discounts and rebates, movement charges, and direct and indirect selling expenses to determine if these prices are below cost.

XV. HIGH INFLATION ECONOMIES

References:

The Tariff Act of 1930, as amended (the Act)
None
Department of Commerce (DOC) Regulations
None
SAA
None
Antidumping Agreement
None
Import Administration Policy Bulletin
Policy Bulletin 94.5 of March 25, 1994 - Difference in merchandise adjustments (difmers)
in hyperinflationary economies

A. Inflation and Its Effects

“High inflation” is a term used to refer to a high rate of increase in price levels. Investigations and reviews involving exports from countries with highly inflationary economies require special

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methodologies for comparing prices and calculating constructed value (CV) and cost of production (COP).

You should check with the Office of Policy at the beginning of the investigation or review when it appears that the rate of inflation in the country under investigation is abnormally high. Often, an accountant from the Office of Accounting (OA) or a financial analyst will be assigned to assist on these types of cases. Please contact your Program Manager if you believe that your case involves issues of high inflation.

In prior years, the Department of Commerce (DOC) has found antidumping (AD) margin calculations in cases involving “hyperinflationary” economies to be distorted when the average monthly and/or annual inflation rate in such countries exceeded 5 or 50 percent, respectively. In the mid-nineties, many of the economies which were hyperinflationary during the eighties and early nineties began to stabilize, but some economies still showed signs of high inflation. At this point, the DOC began to examine the impact of the application of its antidumping methodology in situations involving high, but not “hyper” rates of inflation. The standard questionnaire developed as a result of this inquiry asks whether the annual inflation rate in the country under investigation exceeds 25%. This 25% rate has been used as a general guide for assessing the impact of inflation on AD investigations and reviews. Sometimes, (e.g., due to the mid-year institution of currency reforms or a sudden plunge in the value of a currency) inflation may be sufficiently high during certain months of the POI/POR to significantly affect dumping calculations, even though the annual rate of inflation is below 25%. Please contact your Program Manager regarding possible adjustments if this appears to be the case.

When an economy is experiencing high inflation, the value of the country’s currency is rapidly deteriorating, resulting in each unit of local currency having substantially less real value over time. Consequentially, a greater nominal amount of the currency is required to purchase a product at a later point in time than was needed at an earlier point in time. Even if real costs remain constant, because of the decline in the currency’s value, the price of the inputs used to produce the product under investigation or review would be expressed at a lower nominal value at the beginning of the POI/POR than at the end. Similarly, the price to home market customers purchasing the same domestic like product will be expressed at a lower nominal value at the beginning of the POI/POR than at the end of the POI/POR. If the DOC determines that the inflation rate in the country under investigation will likely distort the margin calculation, a modified questionnaire should be used. Always consult with your Program Manager to determine the specific needs of your case.

To assure that we are appropriately matching the prices and the costs, we generally make our price-to-price, price-to-CV and price-to-COP comparisons over shorter periods of time during which inflation will have a less distortive effect in our analysis. For example, when inflation exceeds 25% per year, we often limit our averaging of EC sales to sales within the same month as the U.S. sale to which they will be compared. For COP and CV, we generally compute a monthly cost that is based on the weighted average of all monthly costs as indexed for inflation over the POI/POR. This methodology is illustrated below under “calculation of cost of production and constructed value.” Thus, EC sales, U.S. sales, COP and CV are stated in nominal currency of approximately the same value when they are compared to each other.

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For various methodologies which the DOC has used in dealing with highly inflationary economies, see e.g., Rebar from Turkey, 62 FR 9737 (March 4, 1997); Certain Welded Carbon Steel Pipe and Tube from Turkey, 61 FR 69067 (December 31, 1996); Certain Pasta from Turkey, 61 FR 30309 (June 14, 1996); Small Diameter Circular Seamless Standard, Line and Pressure Pipe from Brazil, 60 FR 31960 (June 19, 1995); Ferrosilicon from Brazil, 59 FR 732 (January 6, 1994).

B. Sales

In high inflation cases, identification of the date of sale is particularly critical, because it affects whether, and to what extent, inflation-related adjustments must be made when comparing the U.S. price to other prices and/or to the CV. 19 CFR 351.401 states that the date of sale will normally be the date of invoice as recorded in the producer's/exporter's records in the ordinary course of business.

While sales comparison periods based on the month of the U.S. sale have been the norm in past cases, the determination of the proper comparison period should be reviewed for each case. Sales comparison periods may be influenced by the pattern of inflation observed during the POI/POR. Comparisons of periods of greater than one month may be non-distortive if the inflationary trend is low for certain months within the POI/POR. You should discuss the circumstances of your specific case with your Program Manager in order to establish a reasonable basis on which to determine the appropriate averaging period.

For administrative reviews, we normally compute a weighted average NV for each model during each month of the POR. Then, each sale to the U.S. is matched to an EC monthly weighted average from the 90/60 day window associated with the month of the U.S. sale (see Chapter 6, section IV on the mechanics of the 90/60 guideline). High inflation generally does not create a problem under this approach, when the U.S. sale is compared to an EC sale in the same month. However, if we need to use a EC price in a month other than that of the U.S. sale to which it is being compared, we must consider the effects of inflation on the calculation of the margin. Always consult with your program manager if this situation arises.

C. Calculation of Cost of Production and Constructed Value

In countries experiencing high inflation, the nominal value of production costs increases over time, even where such costs -- expressed in real terms -- remain constant. This may cause distortions in our antidumping analysis because of our practice of comparing period-average COP and CV amounts to transaction-specific prices during the POI or POR. As an example of this distortion, consider a sales-below-cost analysis where real production costs remain constant but, because of high inflation, nominal costs rise throughout the POI. Under this scenario, a period-average COP figure based on monthly nominal cost amounts would tend to be higher than individual sales prices at the beginning of the period, but lower than prices at the end of the period. Depending on the timing of the home market sales, this could result in an excessive quantity of below-cost sales at the beginning of the period or, conversely, an overstatement of the number of above-cost sales at the end of the period. These same distortions exist where we compare U.S. prices to CV based on period average costs in high inflation economies.

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To help mitigate the distortions in our antidumping analysis caused by high inflation and rapidly escalating costs, we may compute the period-average COP and CV on a constant currency basis using inflation indices during the period and then restate this average in terms of the currency value in each month. The table below illustrates how inflation indices can be used to compute the weighted-average cost of manufacturing (COM) for COP and CV.

Month	Per-Unit Nominal COM	Total Production Quantity	Total Nominal COM	Inflation Indices	Total Inflation-Adjusted COM	Per-Unit Inflation-Adjusted COM
January	\$ 8.00	25	\$ 200	1.00	\$ 430	\$ 8.05
February	8.00	26	208	1.10	407	8.86
March	9.00	30	270	1.25	464	10.06
April	10.00	28	280	1.30	463	10.47
May	11.00	25	275	1.42	416	11.43
June	13.00	19	247	1.55	343	12.48
July	15.00	13	195	1.60	262	12.88
August	15.00	12	180	1.73	224	13.93
September	16.00	17	272	1.85	316	14.89
October	16.00	19	304	1.91	342	15.38
November	17.00	21	357	2.00	384	16.10
December	18.00	24	432	2.15	432	17.31
Total		259	\$3,220		\$4,483	

In this example, the monthly amounts shown in the “Total Inflation-Adjusted COM” column were calculated by multiplying the total nominal cost for each month by the ratio of December’s inflation index to the inflation index for the month of production. For example, the March inflation-adjusted cost of \$464 was calculated as $\$270 \times (2.15/1.25)$. In this way, monthly nominal costs are adjusted for the cumulative effects of inflation to the end of the POI or POR. Once all monthly production costs have been expressed in common, inflation-adjusted currency values, the figures can be added together in order to compute a weighted-average cost for the product. In the example above, the weighted-average cost for the period is \$17.31, which is calculated as the sum of the monthly inflation-adjusted costs, \$4,483, divided by the total production quantity of 259 units.

Note that the weighted-average cost of \$17.31 per unit represents production costs expressed in December’s currency value; that is, at the end of the period for which costs were reported. To obtain the weighted-average cost of the product expressed in the currency value for any other month, as shown in the “Per-Unit Inflation-Adjusted COM” column, we need only “deflate” December’s per-unit cost using the same inflation indices. For example, March’s inflation-adjusted cost of \$10.06 per unit is calculated as $\$17.31 \times (1.25/2.15)$. In a sales-below-cost analysis, the \$10.06 figure would be used to compute total COP for comparison to EC sales prices during the month of March. Likewise, the same inflation-adjusted cost figure of \$10.06 would be used to compute CV for comparison to U.S. sales made in March.

In selecting an appropriate index for use in calculating COP and CV in your case, you should consider indices commonly used in business applications in the high inflation economy country,

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preferably on a sector-specific basis. If reliable sector-specific indices are not available, indices can be based on the wholesale or consumer price index, as appropriate, or on the rate of inflation of the country's exchange rate against the U.S. dollar. Because countries experiencing high inflation usually maintain several indices which may change over time, or maintain multiple exchange rate systems, it may be difficult to develop a general list of indices/exchange rates to be used for each country. Therefore, the decision to use indexation and the selection of an appropriate index/exchange rate system should be made on a case-by-case basis. See Policy Bulletin No. 94.5.

D. Calculation of Differences in Merchandise Adjustments

As discussed above, in cases involving high inflation, we normally compare U.S. sales prices to EC sales made in the same month. However, where we match non-identical products, inflation may distort our comparisons when production of either the U.S. or EC product does not occur in the month of sale. These distortions result from the fact that the difference in merchandise ("difmer") adjustment that we use to adjust for physically dissimilar merchandise is calculated as the difference between variable production costs incurred in producing the U.S. and EC products. In high inflation environments, nominal costs in one month cannot be meaningfully compared to nominal costs in another month without first restating them in similar currency values. In addition, as was shown above for COP and CV, monthly costs may vary in real terms and, thus, a weighted-average variable cost for the period must be calculated for the U.S. and EC products prior to computing any difmer adjustment.

To illustrate how we calculate the difmer adjustment in cases involving high-inflation economies, assume that the U.S. sale occurred in May at a per-unit price of \$10.00. Production of the U.S. merchandise occurred only during the three-month period from May through July. The table below provides information regarding the variable costs incurred in manufacturing the U.S. product. The information is reported in the local currency (LC) of the exporting country.

Month	Per-Unit Nominal VCOM	Total Production Quantity	Total Nominal VCOM	Inflation Indices	Total Inflation- Adjusted VCOM	Per-Unit Inflation- Adjusted VCOM
January	-	-	-	100	-	-
February	-	-	-	134	-	-
March	-	-	-	201	-	-
April	-	-	-	293	-	-
May	LC 51.00	40	LC 2,040	404	LC 4,408	LC 45.67
June	68.00	40	2,720	647	3,670	73.13
July	95.00	50	4,750	873	4,750	98.68
Totals		130	LC 9,510		LC 12,828	

Note that the inflation-adjusted variable cost figures in the table are calculated using the same method shown above under "Calculation of Cost of Production and Constructed Value." That is, using the inflation indices, the total nominal cost figures in each month are indexed to the last month in which production occurred (i.e., the month of July) in order to compute a weighted-average cost of LC 98.68, or LC 12,828 divided by production quantity of 130 units. The

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inflation-adjusted variable cost figure for May of LC 45.67 is then computed as LC 98.68 x (404/873).

To continue the illustration, during the month of May, the EC model most similar to the U.S. product was sold at a per-unit price of LC 70.00. The average exchange rate for May was LC 6.00 to \$1.00. Production of the similar EC model, however, occurred only during two three-month periods, January through March and September through November. The variable costs incurred for the product are shown in the table below.

Month	Per-Unit Nominal VCOM	Total Production Quantity	Total Nominal VCOM	Inflation Indices	Total Inflation-Adjusted VCOM	Per-Unit Inflation-Adjusted VCOM
January	LC 10.00	50	LC 500	100	LC 26,705	LC 10.17
February	14.00	45	630	134	25,111	13.63
March	22.00	55	1,210	201	32,152	20.44
April	-	-	-	293	-	29.80
May	-	-	-	404	-	41.09
June	-	-	-	647	-	65.80
July	-	-	-	873	-	88.79
August	-	-	-	1240	-	126.11
September	173.00	60	10,380	1870	29,647	190.19
October	242.00	60	14,520	2518	30,799	256.09
November	387.00	50	19,350	3514	29,410	357.39
December	-	-	-	5341	-	543.20
Total		320	LC 46,590		LC 173,824	

Although the EC product was not manufactured during May, the month of the U.S. sale, we can derive a variable cost of LC 41.09 for the product using the weighted-average cost at the end of the period and the inflation indices, or LC 543.20 x (404/5341). We can then calculate the difmer adjustment and normal value (NV) as follows:

$$\text{Difmer} = \text{U.S. VCOM} - \text{EC VCOM} = \text{LC } 45.67 - \text{LC } 41.09 = \text{LC } 4.58$$

$$\text{Normal Value (NV)} = \text{EC Price} - \text{Difmer} = \text{LC } 70.00 - \text{LC } 4.58 = \text{LC } 65.42$$

To calculate the dumping margin in this example, we convert NV to U.S. dollars using the average exchange rate of LC 6.00 to \$1.00 to derive the foreign unit price in U.S. dollars of \$10.90. Comparing the dollar-denominated NV to the U.S. price of \$10.00 results in an dumping margin of \$0.90, or 9.0 percent, calculated as (\$10.90 - \$10.00)/\$10.00.

Pursuant to Section 773(f)(1), we normally calculate the COP and CV based on the records of the producer if such records are kept in accordance with generally accepted accounting principles of the country and reasonably reflect the costs associated with the production and sale of the merchandise. However, in some countries experiencing high inflation, GAAP of the country cannot be used because, for example, the accounting records and financial statements have not been adjusted for the effects of inflation. Companies in countries with a long history of high inflation may maintain their accounting records and prepare their financial statements on an inflation-adjusted basis following the GAAP of the country. Such data may be useful for DOC

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purposes, and may be used as an alternative to indexation by the DOC provided that the data are derived in a way that does not distort antidumping margins. You should check with the Office of Accounting if costs in your case are submitted in “constant currency” terms.

Where inputs are purchased in U.S. dollars, or for an unspecified amount in foreign currency corresponding to a stated amount of U.S. dollars, we may use the dollar acquisition cost because the dollar is not subject to major inflation. Similarly, where prices of materials and wages remain constant due to government controls, the reported costs in the company’s records reflect the current value of these costs, and need not be indexed. For certain types of cost (e.g., depreciation), we may rely on the historical cost adjusted for inflation by indexing or other methods.

Other areas of special consideration in the calculation of COP and CV include general and administrative (G&A) expenses and finance (interest) costs. For G&A expenses, the monthly amounts that comprise fiscal year historical costs may be indexed to obtain a year-end average. Interest expense will be calculated differently depending on the lending terms and the country’s GAAP. However, we have calculated G&A expenses and finance costs based on indexed financial statements, rather than historical statements, if maintained by the respondent in the ordinary course of business. See *Oil Country Tubular Goods from Mexico*, 60 FR 33567 (June 28, 1995).

XVI. NON-MARKET-ECONOMY COUNTRIES

References:

The Tariff Act of 1930, as amended (the Act)
 Section 771(18) - definition of a nonmarket economy (NME);
 factors considered in determining
 NME status; and other items
 Section 773(c) - NME countries
 Department of Commerce (DOC) Regulations and preamble to DOC proposed
 AD and CVD rules (61FR 7308, February 27, 1997)
 19 CFR 351.408 - calculation of normal value (NV) for
 NME countries

SAA

None

One of the most complicated areas under the Act is the calculation of NV for cases involving NME countries. The presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. In addition, the fact that the currencies of these countries may not be convertible means that, even if a NV could be calculated in the country, it might not be expressed meaningfully in U.S. dollar terms. Always consult with your supervisor or program manager (PM) if you are assigned a NME investigation.

1. The country in your case, call it “X”, has” NME country status if: (1) DOC has treated X as a NME country in past cases and no interested party contests NME

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- treatment in your case or (2) there is no prior history of NME country treatment for X, but DOC nevertheless determines (in your case) that NME methodology is warranted. In making such a determination, DOC would consider the six factors in Section 771(18) of the Act and would give full consideration to all interested party comments and arguments. Situation 2 arises only where there is no case history, such as with North Korea.
2. For NME countries, section 773(c) of the Act requires that DOC normally calculate NV using market economy (“surrogate country”) prices to value the NME country “factors of production” used to produce the subject merchandise. These factors include, but are not limited to 1) hours of labor required; 2) quantities of raw materials employed; 3) amount of energy and other utilities consumed; 4) representative capital costs, including depreciation. To these factor costs, DOC adds amounts for factory overhead, general, selling and administrative expenses, profits and packing.
 3. The valuation of labor is different from the valuation of all other physical or material inputs because we set the rate for each year. (See 19 CFR 351.408(c)(3) and the preamble to the 2/27/97 proposed AD regulations.) This wage rate essentially is an average of wages prevailing in market-economy countries at the per capita GDP of the NME country.
 4. The statute requires that the country you use as a surrogate must be, to the extent possible, at a stage of economy development comparable to the NME country and a significant producer of comparable merchandise.
 5. The Office of Policy (OP) determines, primarily on the basis of per capita income, which market economy countries (any country not treated as a NME country under the law) are economically comparable to the NME and hence, qualify as potential surrogates. You must check with OP for a current list of potential surrogates in each investigation/review that you do. Once OP provides you with this list of 5 or 6 countries, your team must then determine, on the basis of interested party comments and input from USG industry experts, which, if any, of the countries on OP’s list is a significant producer of comparable merchandise.
 6. If the necessary price data is not available for factor valuation purposes, the statute allows you to base NV on the price at which merchandise comparable to the subject merchandise is exported from the surrogate country to other countries, including the United States. Since amendment of the current NME provision in 1988, we have not resorted to this alternative.

A. Hierarchy for Valuing Factors of production

Presently, the DOC considers it appropriate in NME cases to rely, to the extent possible, on publicly available information from the first choice surrogate country to value all factors of production (except labor). However, if the inputs used to produce the product under

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investigation or review are purchased by the NME respondent from market-economy suppliers and paid for in a market-economy currency, then our practice is to use the actual price paid for these inputs, where possible, before relying on surrogate country information. See Lasko Metal Products, Inc. v. United States, 43 F.3d 1442 (Fed. Cir. 1994). Where a portion of an input is purchased from a market-economy supplier and the remainder from a NME producer, the DOC normally will value the factor using the price paid to the market-economy supplier.

In developing factor value information, we try to remain within one surrogate country to the extent possible. If there is no reliable information from the first choice surrogate country for a particular factor, we will attempt to use public data from another surrogate (see Final Determinations of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058 (May 18, 1992), and Sulfanilic Acid from the People's Republic of China, 57 FR 29705 (July 6, 1992)).

B. NME Factor Valuation and Construction of NV

Factors of production are inputs such as materials, labor, and energy used in producing a product. Material inputs are measured in the number of physical units used in the production of the product, i.e., tons, pounds, gallons. Labor is measured in terms of hours and we distinguish between direct and indirect labor. Energy is measured in terms of quantities used, e.g., BTUs (gas), kilowatt hours (electricity), gallons (fuel oil).

The NME questionnaire requires information on the quantity of inputs actually used to produce the subject merchandise in the NME. If the NME exporter is a trading company, we will normally require factors information from each of the factories supplying that trading company with exports of the subject merchandise to the US. Where there are a large number of factories involved in the production of the merchandise, we may limit our questionnaire to only the largest suppliers.

1. Valuation of Materials and Energy

We rely almost exclusively on publicly available data sources to value input factors and have developed an index of such sources employed in previous NME investigations and reviews. (See Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC, and Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from NME Countries Other Than the PRC, located in the Central Records Unit, B-099). Parties should be encouraged to submit factor values. Where we have several surrogate values from which to choose, we make our selection based on the quality and contemporaneity of the data.

A primary quality concern is the extent to which the surrogate factor price corresponds to the NME factor of production. In many cases, an exact match is not possible, e.g. we must match no. 2 fuel oil to the price of no. 4 fuel oil, or we must use the price of a basket of goods that includes, but is not limited to, the NME factor. If subject merchandise is energy intensive, we should use the price of energy to large

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users in the surrogate country. Note that we value factors of production using price contemporaneous with the POI/POR, regardless of when the subject merchandise was actually produced (see Beryllium Metal from Kazakhstan: Final Determination of Sales at Less Than Fair Value, 62 FR 2648 (January 17, 1997)). If the values are not contemporaneous with the POI or POR, we adjust them using wholesale price indices from publicly available sources. Moreover, to the extent possible, we use tax-and-duty exclusive factor prices. Further, factor values should be prices that are broadly available in the surrogate economy. For example, if we have information on what a particular producer pays for an input and also have information on what producers economy-wide pay for the same input, we would choose the latter (all other things being equal).

Where we cannot develop publicly available data in the surrogate country, we use data from other sources, including that supplied through our Foreign Commercial Service office in our embassy in the surrogate country. We may also use information from the petition as facts available.

a. Materials

To obtain a cost figure, we multiply the surrogate factory price by the factor input quantity, including a wastage factor, if applicable. If a by-product or a co-product is generated in the manufacturing process, we allow a credit for it in accordance with generally accepted accounting principles (see Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China, 59 FR 28053 (May 31, 1994)).

b. Labor

We value labor hours using regression-based wage rates that are up- dated once a year. These wage rates are posted on IA's web page.

We calculate direct labor cost by multiplying the labor hour input and the regression based wage rate.

Indirect labor may not need to be valued separately if it is included in the surrogate value for factory overhead (see below).

c. Energy and Utilities

Most production processes use a variety of energy sources. These may include the use of electricity, steam, natural gas, oil or water. We value these inputs by determining the amount of each energy source or utility used in the production process and applying the appropriate per-unit surrogate values.

If energy is not an important production factor it may not be necessary to quantify this input separately. In this situation, energy may be included in the surrogate

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value for factory overhead, (see below). If it is included in overhead, do not double count energy and utilities.

2. Factory Overhead, General Expenses and Profit

Factory overhead, general expenses, and profit are included in the constructed value. Until recently, we have been unable to obtain published surrogate information to value these cost elements. However, in two 1996 investigations involving products from the PRC, we used publicly available financial statements of producers of comparable merchandise from the surrogate country (see Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 62 FR 14057 (March 29, 1996), and Bicycles). For factory overhead general expenses and profit, it is important to fine tune the information as much as possible to surrogate producers of the identical (or similar) merchandise rather than more broadly aggregated data.

a. Factory Overhead

The most important component of factory overhead is depreciation. It can also include supervisory and indirect labor, maintenance, and energy. Normally, factory overhead is expressed as a percentage of the cost of goods sold.

b. General Expenses

Included in general expenses are selling and administrative expenses (SG&A). We use actual SG&A expense amounts obtained from published data sources. When the published information we have been able to obtain from the surrogate country does not distinguish between direct and indirect selling expenses, we do not make an adjustment for differences in circumstances of sale in EP cases. We will only deduct these items when calculating CEP if we can break out direct and indirect expenses on the NV side. (see, Bicycles at 19031, and Preliminary Results of Antidumping Duty Administrative review: Tapered Roller Bearings and Parts Thereof from the People's Republic of China, 61FR 40613 (August 5, 1996)).

c. Profit

We rely on actual profit amounts from published data in the surrogate country. Profit is usually found in published company financial statements (see Bicycles at 19031).

3. Packing

Packing for shipment to the United States is valued in the surrogate country based on factor amounts for materials and labor supplied by the NME respondent.

C. Separate rates

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Individual dumping margins are automatically assigned to exporters in market-economy country cases. In NME cases, however, exporters must pass a “separate rate” test to receive their own, individual dumping margins. Those exporters that do not pass this test receive the NME country-wide dumping margin.

In Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China ("Sparklers"), 56 FR 20588 (May 6, 1991), and amplified in the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China ("Silicon Carbide"), 59 FR 22585 (May 2, 1994), DOC set out the elements of this separate rate test. It essentially requires that the exporter demonstrate that its export activities, on both a de jure and de facto basis, are not subject to government control. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities would include 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, and 2) any legislative enactments devolving central control of export trading companies.

Relevant evidence for the de facto determination includes: 1) whether the export prices are set by or are subject to the approval of a government authority, 2) whether the respondent has the authority to negotiate and sign contracts and other agreements, 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. The DOC has found that “ownership by all the people,” where private property/ownership does not yet exist on a large scale, does not itself imply anything about government control over export activities.

In situations where the NME respondent's ownership is located outside the NME, the DOC does not perform a separate rates analysis for the NME respondent because it is beyond the jurisdiction of the NME government. Accordingly, these types of NME respondents are given separate rates. See Final Determinations of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China, 60 FR 22359, 22361 (May 5, 1995), and Bicycles from the People's Republic of China ("Bicycles"), 61 FR 19026, 19027 (April 30, 1996).

D. Market-Oriented Industry (MOI)

Section 773(c)(1) of the Act allows the DOC, in certain circumstances, to use the market-economy methodology described in section 773(a) to determine NV in an NME case. To identify those situations where we would use our market economy methodology and calculate NV based on domestic prices or costs in the NME, we developed the market oriented industry (“MOI”) test.

Under the current MOI test, an affirmative finding of a market-oriented industry requires:

- For the merchandise under investigation or review, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production or allocation of production of the merchandise, whether for

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export or domestic consumption in the non-market-economy country, would be an almost impossible barrier to finding a MOI.

- The industry producing the merchandise under investigation or review should be characterized by private or collective ownership. There may be state-owned enterprises in the industry, but substantial state ownership would weigh heavily against finding a MOI.
- Market determined prices must be paid for all significant inputs whether material or non-material (e.g., labor and overhead) and for all but insignificant proportions of all the inputs accounting for the total value of the merchandise under investigation or review. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation or review pay a state-set price for the input or if the input is supplied to the producers at government direction.

Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, the producers of the merchandise under investigation or review will be treated as NME producers and the NV will be calculated in accordance with section 773(c) of the Act.

E. Sample Calculation for NV

The sample calculation shown below is a very simple example of the type of factors valuation calculation that is done in investigations or reviews involving merchandise from a NME country.

The product is widgets from NME country A, and the surrogate is country B

<u>Factor in Country A</u>	<u>Factor Amount (including waste) Used in Country A</u>	<u>Value in Country B</u>
Steel rod	100 lbs	\$0.35 per lb.
Plastic molding	2 lbs	\$2.50 per lb.
Labor:	45 min	\$10 per hr.
Factory overhead		20% of cost of
goods sold		
SG&A		20% of foregoing
Profit		5% of foregoing
Export Packing	carton	2.00 per piece and straps
+ packing labor		
<u>Factor</u>	<u>Calculation of Value</u>	<u>Per Unit Amount</u>
Steel	100 lbs X \$.35 per lb.	\$35.00
Plastic	2 lbs X \$2.50 per lb.	\$ 5.00

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Labor	45 min. X \$10 per hr.	\$ 7.50
Subtotal		\$49.50
Factory Overhead	49.50 X .20	\$ 9.90
Subtotal		\$59.40
SG&A	59.40 X .20	\$11.88
Subtotal		\$71.28
Profit	71.28 X .05	\$ 3.56
Packing		\$ 2.00
NV	(Materials + labor + factory overhead) SGA + profit	\$76.84

XVII. AFFILIATED PARTIES

References:

The Tariff Act of 1930, as amended (the Act)

Section 771(33) - affiliated persons

Section 773(a)(5) - sales through an affiliated party

Section 773(d) - multinational corporations and control

Section 773(f)(2) - affiliated transactions and COP/CV calculations

Section 773(f)(3) - affiliated transactions for major inputs for COP/CV calculations

Department of Commerce Regulations

19 CFR 351.102(b) - affiliated persons; affiliated parties
- control factors

19 CFR 351.403(c) - sales to an affiliated party

19 CFR 351.403(d) - sales through an affiliated party

SAA

Section B.2.e - affiliated party transactions

Antidumping Agreement

Article 2.4 - any other differences that affect price
comparability

Article 4.1 foot note 11

In these days of mergers, conglomerates, and multinationals, we are often faced with situations that involve affiliated parties and affiliated party transactions in our consideration of sales comparisons and in the calculation of cost of production (COP) and constructed value (CV). In defining relationships, we normally do not consider the companies to be affiliated where stock ownership is less than five percent in accordance with section 771(33) of the Act. However, under this same section of the Act, we may find two parties to be affiliated with less than five percent or no stock ownership if we find other evidence of control in such areas as close supplier relationships, franchise or joint venture agreements, debt financing, or other corporate or family affiliations.

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A. Affiliated Party Sales

The location of the affiliated party in the sales process in the exporting-country or third-country market determines the level of transaction we require a respondent to report. When sales of the foreign like product are made through an affiliated company, we require that the affiliated company report the resales of the product to its first unaffiliated customer unless the sales account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product. Depending on the circumstances, the DOC may decide that a percentage higher than five percent is an appropriate benchmark. For example, this situation would apply to merchandise resold in the home market by an affiliated distributor (see 19 CFR 351.403(d) and the "Comments" section of the preamble to the DOC's antidumping regulations, 62 FR 27355 (May 19, 1997)). If the merchandise is consumed by an affiliated purchaser in the home market, the respondent should report these sales in accordance with 19 CFR 351.403(c). Sales of this type can only be used if the DOC is satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to an unaffiliated person (see Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products, 61 FR 20225 (May 6, 1996)).

We include home market or third-country affiliated party sales in our analysis only if the respondent's sales are made at "arm's length", i.e., at prices and terms which are comparable to sales to unaffiliated parties. In determining whether affiliated party transactions are made at arm's-length prices, we generally compare the respondent's reported prices to affiliated parties with the respondent's prices to unaffiliated parties at the same level of trade. If affiliated party prices are, on average, less than 99.5 percent of unaffiliated party prices, we reject them. (see Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 1350 (January 19, 1996). Also see Final Results of Antidumping Duty Administrative review: Steel Wire Rope from the Republic of Korea, 62 FR 17171 (April 9, 1997)). If the affiliated party prices are comparable, then the DOC includes them in the margin analysis. If there are no comparable sales to unaffiliated parties to use as an arm's-length benchmark or the sales in question are not deemed to be at arm's length, we generally will disregard the reported sales to affiliated parties for margin calculation purposes (see Final Results of Antidumping Duty Administrative review: Welded Carbon Steel Pipe and Tube Products from Turkey, 55 FR 42230 (October 18, 1990)). Finally, when the sales made through the affiliated party constitute all or a significant percentage of home market sales, the DOC calculates normal value based on the sales price by the affiliate to the first unaffiliated party (see Final Results of Antidumping Duty Administrative review: Roller Chain, Other Than Bicycle From Japan, 55 FR 42602, 42608 (October 22, 1990)).

As discussed in the "Comments" section for the preamble to the DOC's antidumping regulations, 62 FR 27355 (May 19, 1997), the DOC is currently reviewing its 99.5 percent test, and evaluating other possible tests. Consult your program manager (PM) or supervisor to ensure there has not been a change in policy.

An example of a decision made regarding affiliated party transactions is illustrated in the extracts from the final determination indicated below:

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In order to identify the manufacturer, producer or exporter of the merchandise, we require the recipients of our questionnaires to see that affiliated companies also report their sales. Here, Company A owns virtually 100% of Company B, which sells brass sheet and strip products in the home market. Despite our repeated requests, Company A refused to report Company B's home market sales, arguing that the regulations do not permit us to "collapse" the companies. While it is true that the regulations do not directly address this issue, the regulations are not intended to cover all factual situations that arise in antidumping cases. In our view, it is necessary for respondents to report sales by affiliated companies to ensure that our investigation or review covers the applicable U.S. and home market sales of the class or kind of merchandise. If respondents were not required to report these sales, they could manipulate their affiliates' selling prices or set up separate home market selling subsidiaries, so as to mask sales at less than fair value. We cannot ensure that we have adequately investigated applicable sales of the merchandise subject to investigation unless affiliated companies' sales are reported. We, therefore, view our reporting requirement as a reasonable exercise of our authority to administer the antidumping laws (see Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France, 52 FR 812 (January 9, 1987)).

For information on collapsing affiliated companies for purposes of reporting U.S. sales, see Chapter 7.

B. COP/CV and Affiliated Parties

When calculating cost of manufacture for CV or COP, it is common to find affiliated suppliers of goods and services used in making the subject merchandise or foreign like product. Pursuant to Section 773(f)(2) of the Act, we may scrutinize these affiliated transactions to determine if the price of the input is less than purchases from, or sales to, independent parties (i.e., whether they are at arm's-length). Pursuant to Section 773(f)(3) of the Act we may also investigate whether transactions involving affiliated suppliers of major inputs are made at prices above the COP of the input. In LNPP from Japan at 38163, the DOC stated that a decision on affiliation may be based on a close supplier relationship. Accountants from the Office of Accounting (OA) or financial analysts are usually involved in these types of analyses. See your supervisor or PM if you encounter these types of situations and there is no OA accountant working with you. See sections XIII and XIV of this chapter for more information on CV and COP affiliated party transactions.

C. Other Affiliated Transactions

Occasionally we find affiliated suppliers of services which are not considered under the COP/CV area. These situations most frequently involve freight companies, insurance companies, or commissionaires. We follow the same procedures we follow for COP/CV, i.e., we try to establish whether the prices paid for these services are arm's length (see LNPP from Japan at 38150 for a situation involving the rejection of an arm's-length claim for insurance premium prices from an affiliated insurance company, and LNPP from Japan at 38156 wherein the DOC rejected a claim that a U.S. commissionaire was affiliated with the producer. Also see section VIII of this chapter for more information on affiliated party commissions).

NORMAL VALUE**XVIII. TAXES**

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 773(a)(6)(B)(iii) - deduction of taxes
- Department of Commerce (DOC) Regulations
 - None
- SAA
 - Section B.2.c.(2) - deductions for indirect taxes
- Antidumping Agreement
 - Article 2.4 - differences in taxes

Section 773 (a)(6) of the Act requires the deduction from NV of any taxes imposed directly upon the foreign like product or components thereof (sales in the exporting-country (EC) market) which have been rebated or which have not been collected on the subject merchandise (U.S. sales), but only to the extent that such taxes are added to or included in the price of the foreign like product. This change from previous legislation is intended to ensure dumping margins will be tax neutral.

The following sample calculation illustrates the adjustment required for indirect taxes for sales in the EC. When NV is based on third-country sales this adjustment is usually not necessary as the taxes usually only apply to sales in the EC.

EC Sales

Wt-aver EC price DM	6.50
Less included consumption tax	DM 1.00
Wt-aver EC price, net of taxes	DM 5.50

U.S. Sales

There is no need for an adjustment as EC, internal consumption taxes have been rebated or not collected on U.S. sales.

The following case citation describes a situation involving EC market indirect taxes:

In Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Preliminary Results of Antidumping Administrative review; 61 FR 20225 (May 6, 1996), the DOC made no adjustment for VAT taxes as none were included in the EC market prices that were reported by the respondent. Note, however, that VAT taxes in Brazil are structured differently than those in other countries and examine recent notices and consult with your PM on how to adjust for them.

XIX. CURRENCY CONVERSIONS

References:

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The Tariff Act of 1930, as amended (the Act)
Section 773A - currency conversions
Department of Commerce (DOC) Regulations
19 CFR 351.415 - currency conversions
SAA
Section B.3.7 - currency conversions
Article VI of the GATT 1994
Article 2.4.1 - currency conversions
Office of Policy Bulletin
Policy Bulletin 96-1 - Import Administration exchange
rate methodology

To determine if dumping margins exist, price comparisons must be done in the same currency. Accordingly, one of the final steps in calculating normal value (NV) is the conversion of the net price or constructed value (CV) from foreign currency into a U.S. dollar amount. This is necessary because the export price (EP) or constructed export price (CEP) is usually expressed in dollars.

A. General Rule

The 1994 amendments to the Tariff Act of 1930 provide explicit guidance regarding the exchange rate to be used when converting currencies in antidumping proceedings.

As stated in the DOC's Notice: Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996), the DOC intends to use an exchange rate model announced in Import Administration's Policy Bulletin 96-1 for one year and then evaluate its performance based on public comment. Accordingly, after March 7, 1997, check with your supervisor or program manager on the status of the exchange rate model.

Based on the amended Section 773A of the Act, the DOC is required to ignore "fluctuations" in the exchange rate and to provide respondents in an investigation at least 60 days to adjust prices after a "sustained movement" in the exchange rate.

B. Summary of Model

The model determines the official rate for each day on the basis of a lagged rate. A list of official rates starting with January 1, 1992, for the 30 exchange rates collected by the New York Federal Reserve Bank is available on Internet ([www.ita.doc.gov/import admin/records](http://www.ita.doc.gov/import_admin/records)) and through the Central Records Unit.

The model classifies each daily rate as "normal" or "fluctuating" based on a "benchmark" rate. The benchmark is a moving average of the actual daily exchange rates for the 40 reporting days immediately prior to the date of the actual daily exchange rate to be classified. Whenever the actual daily rate varies from the benchmark rate by more than two-and-a-quarter percent, the actual daily rate is classified as fluctuating. If the rate is within two-and-a-quarter percent, the actual daily rate is classified as normal. Actual daily rates classified as normal are the official

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exchange rate for that day. However, when an actual daily rate is classified as fluctuating, the benchmark rate is the official rate for that day (see Preliminary Results of Antidumping Duty Administrative review: Ferrosilicon from Brazil, 61 FR 20795 (May 8, 1996)).

Whenever the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks ("the recognition period"), the model classifies the exchange rate change as a sustained movement. During the eight-week recognition period, the model continues to classify each daily rate as normal or fluctuating and to substitute the benchmark rate for the actual daily rate when the daily rate is fluctuating.

When there has been a sustained movement increasing the value of a foreign currency in relation to the dollar, respondents under investigation, but not review, are given 60 calendar days to correct their prices. The 60-calendar-day grace period begins on the first day after the recognition period. During that period, the official rate in effect on the last day of the recognition period will be the official rate in the investigation. For reviews, the model continues to apply the eight-week average to determine whether daily rates are normal or fluctuating.

When a foreign currency has decreased in value in relation to the dollar, there is no adjustment required for a sustained movement, and the official rate generated by the model will normally apply to currencies depreciating against the dollar. However, in both investigations and reviews, whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, the lower actual daily rates will be employed from the time of the large decline (see Certain Pasta from Turkey at 30309 and 30325).

C. Decision Rules in Greater Detail

Below is a summary of the decision rules used in applying the model:

1. We will use the actual daily exchange rate unless the actual daily rate varies by more than two-and-a-quarter percent from the benchmark rate ("fluctuates"). The benchmark rate is defined as the moving average exchange rate of the 40 reported days immediately preceding the date of the exchange rate being tested and classified.
2. When the actual daily rate fluctuates from the benchmark rate, we will use the benchmark rate until the daily rate fluctuates by more than five percent in the same direction from the benchmark rate for a period of 40 days (approximately eight weeks). In other words, the weekly average of the actual daily rates will be compared to the average benchmark rate for the same week. If the actual exchange rate average exceeds the benchmark average by five percent or more for eight consecutive weeks, a sustained movement in the value of the currency is deemed to have occurred.
3. In investigations, if a sustained movement has occurred and the foreign currency has increased in value in relation to the U.S. dollar, we will continue to use the official rate from the last day of the recognition period for 60 days following the end of the

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recognition period. On the 61st day, we would return to comparing the actual daily rate to the benchmark rate.

Whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, we will use actual daily rates from the start of the recognition period.

D. Other Discussion and Sample Calculations

See section XV of this chapter for a discussion of the effect of currency conversion in high-inflation-economy investigations or reviews.

Sample calculations throughout this chapter include illustrations of the mechanics of currency conversion.

XX. EXPORTATION FROM AN INTERMEDIATE COUNTRY

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 773(a)(3) - exportation from an intermediate country
- Department of Commerce (DOC) Regulations
 - None
- SAA
 - Section B.9 - intermediate country sales
- Antidumping Agreement
 - Article 2.5 - exportation from an intermediate country

When merchandise is shipped through an intermediate country, Section 773(a)(3) of the Act requires that normal value (NV) will be based on prices for the merchandise in the intermediate country. However, NV can be based on sales prices in the country of origin if any of the following conditions are met: 1) the producer knew at the time of the sale that the merchandise was destined for exportation; 2) the subject merchandise is merely transhipped through the intermediate country; 3) sales of the foreign like product in the intermediate country do not meet

the market viability requirements of Section 773(1)(C) of the Act; or 4) the foreign like product is not produced in the intermediate country.

Consult your supervisor or program manager if your investigation or review involves merchandise shipped through an intermediate country.

LIST OF ACRONYMS & ABBREVIATIONS

CFR	CODE OF FEDERAL REGULATIONS
DOC	DEPARTMENT OF COMMERCE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
ITC	INTERNATIONAL TRADE COMMISSION
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 10

CRITICAL CIRCUMSTANCES

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 733(e) - preliminary determinations
 - Section 735(a)(3) and 735(c)(4) and 735(c)3 - final determinations
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.206 - preliminary and final determinations
- SAA
 - Section C.8.a. - critical circumstances
 - Section C.8.b. - time limits on retroactive assessments
- Antidumping Agreement
 - Article 10.6 - retroactive duties

INTRODUCTION

If there are affirmative preliminary determinations of dumping and injury an importer of a product under investigation must normally post a bond or deposit estimated dumping duties with U.S. Customs. The starting date of suspension of liquidation and posting of a cash deposits or bond is the date of publication of an affirmative preliminary determination in the Federal Register (FR). In anticipation of high preliminary dumping duties, the importer may deliberately import and stockpile large quantities of a product under investigation in order to avoid the possible payment of antidumping duties.

Usually, an importer may enter a product under investigation without risk of liability for assessed antidumping duties during the period between the date of publication of initiation of an investigation and an affirmative preliminary determination. However, section 733(e) of the Act and 19 CFR 351.206 provide for a 90-day retroactive suspension of liquidation which the Act allows under “critical circumstances.”

I. SUBMISSION OF ALLEGATION

Petitioner may allege critical circumstances in the petition or by amendment to the petition at any time but no later than 21 days before the date of the final determination. Petitioner must include factual information such as import data to support the allegation (see section 733(e) of the Act).

II. BASES FOR CRITICAL CIRCUMSTANCES FINDING

In accordance with Section 733(e) of the Act, we determine critical circumstances to exist if there is a reasonable basis to believe or suspect the following: 1) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or 2) the importer knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales; and 3) there have been massive imports of the subject merchandise over a relatively short period of time.

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A. Critical Circumstances Criteria

1. History of Dumping and Material Injury

For the history of dumping, we examine recent antidumping duty cases of the product under investigation in the United States or elsewhere (see Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia, 59 FR 4023 (January 28, 1994)). The Office of Policy is responsible for researching whether there are any outstanding antidumping orders for the product under investigation in countries other than the United States. The primary source of this information is the Semi-Annual Report to the Committee on Antidumping Measures published by GATT.

The need to examine the history of material injury is a 1994 addition to this criterion. See section VI of this chapter, "Sharing of Responsibilities With the ITC," for information on determining the history of material injury.

2. Importer Knew or Should Have Known that Exporter Was Selling at Less Than Fair Value and There Was Likely to be Material Injury.

In order to determine whether or not the importer of a product under investigation knew or should have known that the exporter was selling the product at less than fair value, we use the estimated margins in our determinations as a guide. We consider the following estimated margins to be sufficient to "impute knowledge" to the importer:

- a. estimated margins of 25 percent or greater if the exporter sells to an unaffiliated company in the United States (export price situations); or
- b. estimated margins of 15 percent or greater if the exporter sells to an unaffiliated company through an affiliated company in the United States (constructed export price situations).

See the Final Determinations of Sales at Less Than Fair Value for Ferrosilicon from Brazil, 59 FR 732 (January 6, 1994); Disposable Pocket Lighters from the People's Republic of China, 60 FR 22359 (May 5, 1995), and Manganese Sulfate from the People's Republic of China, 60 FR 52155 (October 5, 1995).

See section VI of this chapter for information on the importer's knowledge of the likelihood of material injury.

3. Massive Imports Over a Relatively Short Period of Time

As specified in 19 CFR 351.206(h), we consider the following factors in determining whether imports have been massive:

- a. the volume and value of the imports;

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- b. seasonal trends (if applicable); and
- c. the share of domestic consumption accounted for by imports.

As outlined in 19 CFR 351.206(h)(2)(i), we consider at least a three-month period, beginning with the filing of the petition, as a relatively short period of time. We generally consider the period beginning with the filing of the petition and ending with the preliminary determination. We then compare this period to a period of equal duration immediately prior to the filing of the petition to determine whether imports had been massive over a relatively short period of time. However, if it can be substantiated that the importers or exporters of the product under investigation had prior knowledge of the filing of the petition, we can consider a period including the time prior to the filing as part of the "post-petition" period.

If the petition is filed in the first half of the month, that month should be considered part of the "post-petition" period. If the petition is filed in the second half of the month, that month should be considered part of the "pre-petition" period. For the purposes of our preliminary determination, we base our massive imports determination on the data available from the questionnaire response. The respondents must submit updated data for massive imports through the date of the preliminary determination prior to our verification.

As stated in 19 CFR 351.206(h)(2), we consider imports of the product under investigation to be massive if there has been an increase of 15 percent or more over a relatively short period of time. However, the determination of massive imports is more than a single comparison of import levels before and after

filing of the petition. We must also examine trends over time and determine whether there is seasonality with respect to the imports.

4. The "All Others" Category

If we find that critical circumstances exist for all companies that we investigate, we will normally find that they exist for companies included in the "All Others" rate category. Likewise, if we find that critical circumstances do not exist for all companies, we normally find that they do not exist for companies in the "All Others" category. For situations where critical circumstances are found for only some of the companies investigated, consult with your supervisor or PM. In Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey ("Rebar from Turkey"), 62 FR 9737 (March 4, 1997), the DOC found critical circumstances for the "All Others" category producers and exporters because it found critical circumstances for three of the four companies investigated.

III. COLLECTION AND VERIFICATION OF DATA

To collect this information, we request respondents or U.S. Customs to provide shipment data for the product under investigation.

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A. DOC Requests

If the critical circumstances allegation is submitted prior to the transmittal of our questionnaire, we include a request for company-specific shipment data in our questionnaire. If the critical circumstances allegation is submitted after the transmittal of our questionnaire, we either include our request for data in a supplemental questionnaire or a separate letter. We request all companies to submit data for two complete years and all months of the current year up until the date of publication of the preliminary determination in the FR. Companies are required to submit all available data and provide additional month's data as they become available.

In some situations, we request Customs to compile information on an expedited basis regarding entries of the subject merchandise (see 19 CFR 351.206(g)). Always consult with your supervisor or program manager (PM) and Import Administration's Customs Liason Team before making one of these requests.

B. Verifications

We check the accuracy of all data submitted by the respondents and used in our massive imports analysis at verification. If we are unable to verify the data submitted by the respondent and we conclude that the respondent has not cooperated to the best of its ability, we assume that imports have been massive for the purposes of our massive imports determination (see Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Malaysia, 60 FR 10550 (February 27, 1995)).

IV. PRELIMINARY FINDINGS

A. Retroactive Suspensions of Liquidation

For an affirmative critical circumstances finding, the effective date of the suspension of liquidation is 90 days prior (retroactive) to the date of publication of an affirmative preliminary determination unless the date of initiation of the investigation occurred on a later date. If this is the case, liquidation is suspended from the date of initiation. Even though the merchandise represented by an entry may have long since left the custody of Customs if the entry was filed within the 90-day, retroactive period and if the entry has not been liquidated, the importer may be liable for antidumping duties on that entry.

B. Issuance of Findings

If the critical circumstances allegation is made 30 days or more before the final determination, the Department will issue a preliminary critical circumstances finding in one of the following ways:

1. If the allegation is filed 20 or more days before the preliminary determination, then the DOC must issue its preliminary finding no later than the preliminary determination; and

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2. If the allegation is submitted later than 20 days before the preliminary determination, then the DOC must issue its finding within 30 days after the submission.

V. FINAL FINDINGS

A. Affirmative Final Findings

In the event of an affirmative final critical circumstances finding, section 735(c)(4) of the Act requires that one of the following three procedures is applied:

1. If the preliminary and final critical circumstances findings are both affirmative, then we direct Customs to keep the retroactive suspension of liquidation ordered in the preliminary determination in effect
2. If the preliminary critical circumstances finding is negative and the final finding is affirmative, we direct Customs to put into effect a 90-day retroactive suspension of liquidation period from the date of publication of an affirmative preliminary determination in the FR.
3. If the preliminary determination is negative but critical circumstances is affirmative, we direct the Customs Service to put into effect a 90-day retroactive suspension from the date on which suspension is first ordered

B. Negative Final Findings

In the event of a negative final critical circumstances finding, section 735(c)(3) of the Act requires that one of the following two procedures is applied:

1. If the preliminary finding was affirmative and the final finding is negative, we will end the retroactive suspension of liquidation ordered at the preliminary determination, and will instruct Customs to release the cash deposit or bond for entries made during the 90-day retroactive period.
2. If there is no preliminary determination and the final finding is negative, no Customs directive is required.

VI. SHARING OF RESPONSIBILITIES WITH THE ITC

A. Background

Section 733(e)(1)(A) of the Act directs the DOC to determine whether (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales.

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The bifurcated responsibilities of the DOC and the ITC in antidumping investigations have otherwise required all issues relating to material injury to be resolved by the ITC. It is the ITC that examines the sales of merchandise in U.S. markets. The DOC does not normally collect this type of information. Each agency has conducted separate investigations and established separate administrative records that have minimal overlap. However, the DOC is now required to develop information regarding material injury for a critical circumstances finding. In implementing this responsibility in the first two investigations involving this provision, the DOC did the following: 1) In Rebar from Turkey, at 9741, the DOC found that a history of dumping in another country was sufficient to establish material injury in the United States, and 2) in Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160 (February 28, 1997), the DOC found that a preliminary determination of present "reasonable indication of material injury" for these cases by the ITC was sufficient to fulfill the material injury requirement of the critical circumstances provision. The DOC also stated in this FR notice that an ITC preliminary finding of threat of material injury would not be sufficient to fulfill the critical circumstances requirement.

Because the material injury provision may evolve as more critical circumstances cases are received, you must consult with your supervisor or PM to determine what information is necessary to make this determination for your investigation.

B. Preliminary Determinations

By the time of the DOC's preliminary determination of critical circumstances, the ITC's preliminary determination of material injury will have been made. Thus, the DOC should be in a position to obtain data regarding material injury from the ITC to make a critical circumstances decision.

C. Final Determinations

In the case of the final determination, however, the DOC's final critical circumstances determination will have to be made before the ITC has made its final injury determination. Thus, the DOC will not be able to use for its final determination the information that the ITC uses for its final determination. Therefore, the DOC will have to use the best information at its disposal to complete the final critical circumstances determination.

VII. CRITICAL CIRCUMSTANCES FINDINGS BY THE ITC

In the event of a final affirmative critical circumstances finding by the DOC, the ITC must also address the issue of critical circumstances in its final determination. In accordance with section 735(b)(4) of the Act, the ITC determines whether the imports subject to an affirmative critical circumstance finding are likely to undermine seriously the remedial effect of the antidumping duty order.

A. The ITC's Decision Criteria

In making its critical circumstances finding, the ITC considers:

CRITICAL CIRCUMSTANCES

1. The timing and the volume of the imports;
2. whether there has been a rapid increase in inventories of the imports; and
3. any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

B. Final Findings by the ITC

Depending on the final finding by the ITC, one of the following actions will be taken:

1. For an affirmative critical circumstances finding by the ITC, the DOC directs Customs to keep the 90-day, retroactive suspension of liquidation in effect.
2. For a negative critical circumstances finding by the ITC, the DOC cancels the retroactive suspension of liquidation, and directs Customs to return all cash deposits or release all bonds for entries made during the 90-day retroactive period.

LIST OF ACRONYMS & ABBREVIATIONS

A	ADVISORY
AD	ANTIDUMPING
APO	ADMINISTRATIVE PROTECTIVE ORDER
AS	ASSISTANT SECRETARY
CCIA	CHIEF COUNSEL FOR IMPORT ADMINISTRATION
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
COP	COST OF PRODUCTION
CRU	CENTRAL RECORDS UNIT
CV	CONSTRUCTED VALUE
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
F	FULL
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENTS ON TARIFFS AND TRADE
HTSUS	HARMONIZED TARIFF SYSTEM OF THE UNITED STATES
IA	IMPORT ADMINISTRATION
ICA	IMPORT COMPLIANCE ASSISTANT
IP	INTERESTED PARTY
ITC	INTERNATIONAL TRADE COMMISSION
N	NO
NME	NON-MARKET ECONOMY
NV	NORMAL VALUE

OA	OFFICE OF ACCOUNTING
OD	OFFICE DIRECTOR
OP	OFFICE OF POLICY
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 11

PREPARATION OF PRELIMINARY AND FINAL DETERMINATIONS, OTHER FEDERAL REGISTER NOTICES, AND OTHER DOCUMENTS

References:

The Tariff Act of 1930, as amended (the Act)

- Section 733(d) - preliminary customs notification for investigations
- Section 733(f) - preliminary determinations for investigations and the International Trade Commission (ITC) and interested party notifications
- Section 735(c) - final customs notification for investigations
- Section 735(d) - final determinations for investigations and ITC and interested party notifications
- Section 735(e) - correction of ministerial errors for final determinations for investigations
- Section 736(c) - expedited administrative reviews
- Section 751(h) - correction of ministerial errors for final determinations for administrative reviews
- Sections 751(a) (b) and (c) - time limits for administrative review determinations
- Section 777(i) - publication of determinations; requirements for final determinations for investigations and administrative reviews
- Section 781(f) - time limits for scope reviews

Department of Commerce (DOC) Regulations

- 19 CFR 351.205 - preliminary determinations for investigations, interested party, ITC, and Customs notifications
- 19 CFR 351.210 - final determinations, interested party, ITC, and Customs notifications for investigations
- 19 CFR 351.213 - time limits and exceptions for administrative review determinations
- 19 CFR 351.224 - preliminary and final determination disclosures and corrections of ministerial errors for investigations and administrative reviews
- 19 CFR 351.225 - time limits for scope determinations

SAA

- Section A.10 - public notice and explanation of determinations for investigations
- Section C.5 - provisional measures for investigations
- Section C.7.a - time limits for completion of administrative reviews
- Section C.10 - publication of determinations for investigations and administrative reviews

Antidumping Agreement

- Article 6.9 - preliminary determination disclosures for investigations
- Article 7 - provisional measures for investigations
- Article 11.4 - procedures for administrative reviews
- Article 12.2 - public notice of preliminary and final determinations for investigations
- Article 12.2.1 - public notice of provisional measures for investigations
- Article 12.3 - public notice of determinations for administrative reviews

PREPARATION OF PRELIMINARY AND FINAL DETERMINATIONS,
OTHER FEDERAL REGISTER NOTICES, AND OTHER DOCUMENTS

I. TIME LIMITS FOR PRELIMINARY AND FINAL DETERMINATIONS FOR INVESTIGATIONS, ADMINISTRATIVE REVIEWS, AND SCOPE DETERMINATIONS

A. Time Limits for Investigations

Under section 733(b)(1)(A) of the Act, a preliminary determination in an investigation shall be made within 140 days of the date on which the DOC initiates an investigation. Preliminary determinations for “short life cycle” merchandise shall be made within either 100 days or 80 days from the date of the initiation (see 733(b)(1)(B)) depending on whether the manufacturer is a second-time or multiple offender. Finally, preliminary determinations for investigations where there is a waiver of verification shall be made within 75 days after initiation (see 733(b)(2)). (Note: this rarely occurs)

As required by section 735(a)(1) of the Act, the time limit for final determinations for all of the different types of investigations specified above is within 75 days after the date of

the publication of the preliminary determination (see Chapter 12 for information on time limits for postponements of preliminary and final determinations for investigations).

B. Time Limits for Administrative Reviews and Scope Determinations

Under section 751(a)(3) of the Act, preliminary results of annual antidumping duty order and suspension agreement administrative reviews shall be made within 245 days after the last day of the anniversary month of the publication of the antidumping order or suspension agreement. Under section 751(a)(2)(B), for reviews involving new shippers, the preliminary results shall be made within 180 days after the date on which the review is initiated. There are no deadlines for preliminary results for changed circumstances or five-year administrative reviews. There are no preliminary results published for expedited reviews under section 736(c) of the Act or scope reviews under section 781 of the Act.

Section 751(a)(3) of the Act requires that final results of administrative reviews of antidumping duty orders or suspension agreements be made within 120 days after the date on which the preliminary results are published. Section 751(a)(2)(B) requires that final results for new shipper reviews be made within 90 days after the preliminary results are issued. For changed circumstances and five-year administrative reviews, section 751(b)(5) requires that final determinations be made within 240 days after the date on which the review was initiated. For expedited reviews under section 736(c) of the Act, final determinations are due 90 days after the date of publication of the order. For scope reviews under section 781(f), final determinations, to the maximum extent practicable, shall be made within 300 days from the date of initiation of the circumvention inquiry (see Chapter 12 for information on time limits for postponements of preliminary and final results of administrative reviews).

II. PRE-SIGNATURE RESPONSIBILITIES

PREPARATION OF PRELIMINARY AND FINAL DETERMINATIONS,
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A. Federal Register Notices and Other Documents

1. Background

- a. Preliminary/Final Determination Federal Register (FR) Notices. For investigations, the DOC is required to publish a FR notice of "Affirmative (or Negative) Preliminary Antidumping Determination," including the dumping margin. The DOC is also required to publish a FR notice of "Affirmative (or Negative) Final Antidumping Duty Determination," including the final dumping margins. For administrative reviews, the DOC is required to publish FR notices of "Preliminary Results of Administrative Review" and "Final Results of Administrative Review," including the assessment rates for individual exporters and producers (see part E.4. of this section for concurrence chain information).
- b. Other FR Documents: In addition to preliminary and final determination FR documents for investigations and administrative reviews, there are many other FR documents that may be prepared during an antidumping (AD) proceeding. For a list of additional types of FR documents and the required concurrence chains, see part E.4. of this section. See part D. of this section to determine the procedures you must follow in preparing these documents.
- c. Other Documents: In addition to FR documents, you will be required to prepare other types of documents that will require movement through a concurrence chain. For a list of these documents, see part E.5. of this section. Consult with your supervisor or program manager (PM) to determine the procedures you must follow in preparing these documents.

B. Concurrence Meetings

Concurrence meetings for preliminary and final determinations for investigations and administrative reviews must be held at each of the following levels, in the order noted:

1. Team

The case analyst and assigned staff from the Office of the Chief Counsel for Import Administration (CCIA), and Office of Accounting (OA) (when appropriate) meet to discuss the major issues in the investigation or review. Once issues are defined, an effort is made to reconcile differing views. If consensus appears to be impossible, the representatives of each office are requested to discuss the issues with their supervisors for resolution. To avoid last-minute conflicts and to identify issues for supervisors as early as possible, this meeting should take place, if possible, at least 30 days before a preliminary determination and shortly after parties file their case briefs and any hearing is held for a final determination.

2. Supervisor or PM

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When case analysts meet with their PMs to discuss any outstanding issues, team members from CCIA and OA should attend, when appropriate. Concurrence memos (or whatever is used in their place, see below) (hereinafter referred to as concurrence memos) are required to be delivered no later than one day in advance of the meeting, but preferably sooner .

3. Office Director (OD)

The case analyst will schedule a team concurrence meeting with the office director, if deemed necessary. Concurrence memos are required to be delivered one day in advance of the meeting.

4. Deputy Assistant Secretary (DAS) and Assistant Secretary (AS)

The case analyst must provide a copy of the concurrence memo to the DAS at least one day prior to the concurrence meeting with the DAS (always check to see what the current practice may be for your DAS). If necessary, a meeting with the AS will then be scheduled. In that event, a copy of the concurrence memo to the AS must also be provided at least one day prior to the concurrence meeting with the AS (always check to see what current practice may be). For both meetings, the team, supervisor or PM, and OD meet with each of the aforementioned parties to discuss the highlights of the investigation or administrative review and the pending decision. The team should be prepared to address any pertinent questions regarding the investigation.

C. Concurrence Memos

1. Early Warning Memo

This memo identifies and describes the key issues for consideration in the investigation or administrative review in advance of the concurrence memo and/or concurrence meeting. This type of memo should be prepared as soon as potential major issues are determined in consultation with your team, and forwarded to the DAS for feedback and approval. It should be written in bullet form and be no longer than one page. Recommendations are not made in these memos. A copy should be sent to the OD when the DAS copy is sent.

2. Concurrence Memo Content

In the past, we have prepared a concurrence memo for both preliminary and final determinations for investigations. The concurrence memo would typically contain the following information:

- a. team members: a list of the names and offices of all personnel in your DAS group, CCIA and OA;

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- b. case calendar: as appropriate, a list of important investigation, including the date of the filing of the petition, date of initiation, the review period, date of ITC preliminary or final determination, date of DOC preliminary or final determination; and date of the order;
 - c. dates for the period of investigation (POI);
 - d. scope of the investigation or administrative review: a statement describing the product under investigation or review (usually same as in the notice of initiation);
 - e. quantity and value of imports: a chart listing the year, quantities and values of imports of the product under investigation for two or three complete years prior to the POI, depending on the availability of data (see the DOC IM-146 import statistics);
 - f. petitioner and respondents: list of the participants and respective counsel involved in the investigation;
 - g. charges and adjustments: for each company under investigation, the calculation of normal value (NV) and export price (EP) or constructed export price (CEP), including the applicable deductions from and additions to the price, and
 - h. issues: identification of any major issues for consideration in the investigation (consult with your supervisor or PM and team members for final identification of the major issues).
3. Concurrence Memo Alternatives

For your information, different types of memos have been prepared for different cases, depending on the work load and the complexities of each case. Before you start to draft your concurrence memo, find out what type of

concurrence memo was used in the most recent case involving your DAS and then consult with your PM on the type of memo you should prepare.

Different variations are possible; these procedures have been followed over the past year:

- a. The preparation of a full concurrence memo including all information outlined above for both the preliminary and final determinations. Alternatively, an abbreviated concurrence memo that only includes part of the information outlined above (although the issues section would definitely need to be included) for both the preliminary and final determinations. Consult with your supervisor or PM before you attempt to do an abbreviated memo.

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- b. Do a concurrence memo just for the preliminary determination but, use the “Interested Party Comments” section of the final determination FR notice to lay out the issues that need to be decided for the final determination. This has worked in the past since most issues in a final determination are raised by interested parties anyway. An informal decision memo for other small issues not addressed by interested parties (and therefore not included in the FR notice) will probably need to be developed. Also, because the FR notice is drafted late in a case, this method may cause difficulty where there is significant internal disagreement about an issue. Consult with your supervisor or PM and team members about this.
- c. The preparation of a decision memo that only contains issues in place of the concurrence memo for both the preliminary and final determinations. This could include all issues raised by interested parties as well as smaller issues not specifically addressed in the FR notice. Such a memo will be necessary when any issue requires discussion of proprietary information which cannot be included in the FR notice.

D. Preparation and Circulation of Concurrence Packages

The following documents should be prepared and included in the concurrence package for any preliminary or final determination:

1. Fact Sheet.

For investigations, prepare a fact sheet for the Office of Public, Congressional & Intergovernmental Affairs. The fact sheet is released on announcement day, and it should include a brief description of the scope, dumping margins, IM-145 import volume and value data, case calendar, and name(s) of petitioner(s) and respondent(s). Analysts should check with their DAS’s special assistant office on the need to prepare a fact sheet for an investigation or review.

2. ITC Letter.

A letter (to be signed by the DAS) advising the ITC Chairman of our determination for an investigation.

3. E-mail

For investigations, prepare e-mail instructions to the U.S. Customs Service advising field offices of our determination and instructions on how they should proceed (see Chapter 18 for detailed instructions on e-mails for administrative reviews).

4. FR Notice

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The case analyst, in consultation with the other case analyst(s) and/or supervisor or PM, begins preparation of the FR notice after completion of the review of the questionnaire response (for prelims) or the case briefs and rebuttals (for finals) by following these steps:

First, obtain a copy of the FR notice used in the most recent antidumping determination and adapt the information as necessary, including the following topics: 1) the applicable statutory and regulatory citations; 2) a summary; 3) the case history; 4) the scope of the investigation or review; 5) the POI or POR; 6) the use of facts available (if applicable); 7) separate rates (for NME cases); 8) fair value comparisons; 9) EP and/or CEP; 10) NV, which may include any of the following topics: home market price, third-country price, sales made below cost of production (COP) over an extended period of time, constructed value (CV), factors of production and valuation of factors of production in NME cases; 11) country-wide rate (in NME cases); 12) verification, if appropriate; 13) interested party comments (for final determinations only); 14) suspension of liquidation for investigations; 15) ITC notification for investigations; and 16) public comment (for preliminary determinations only).

17) For investigations, check to ensure that your Harmonized Tariff Systems of the United States (HTSUS) numbers are current. If you move into a new calendar year since the date of your last FR action notice, the HTSUS numbers may have changed

5. Concurrence Record Sheet for FR Notices

All FR notices for the preliminary and final determinations must include a "Concurrence Record," a standard form obtainable electronically or from an import compliance assistant (ICA) or program secretary. The concurrence record must be completed by the case analyst and ready for circulation with the final version of the FR notice. This is the sheet on which the parties in the concurrence chain initial when they concur with the FR notice. The FR notice must include initials from all parties listed on the sheet before it is passed to the appropriate official for signature (see section B.4 of this chapter to determine the names that will be placed on the concurrence record sheet for the action involved). The following information must be included on the concurrence record in the applicable blanks:

- a. subject of the FR notice and memo - copy the title/country from the top line of the FR notice;
- b. name and office of the originator - fill in the names of the team members and appropriate office, including yourself and the appropriate representatives from your DAS group, CCIA and OA;
- c. telephone number of the analyst circulating the FR notice;

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- d. deadline date - should be the date the signature is due for the notice. However, since notices are due to the AS one week in advance, you should note that deadline as well; and
- e. 'submitted to' blocks - as appropriate, and in descending order, each of the following persons must be included: supervisor or PM, senior counsel from CCIA, director of OA (if there is a CV or COP analysis), office director (OD), DAS, and AS. Names of team members should appear in the block where your name is placed.

6. Circulation Requirements

Circulate copies of the FR notice to any other case analyst(s) and the team leader involved in the investigation or review for comment, and edit documents accordingly once you receive their comments.

Next, circulate copies of the FR notice to team members, including members in CCIA, and OA, in the event of a CV or COP analysis. Always set a date for return of the draft with comments. Review comments with any other case analysts and the team leader, and edit the document accordingly. Consult with your supervisor or PM if you do not receive timely comments.

Finally, prepare the document for circulation with the concurrence record described in part D.5. of this section.

7. Timetable

In general, the case analyst should follow the timetable outlined below to ensure adequate review and concurrence prior to determination due date of the FR notice (check with your supervisor or PM to ensure that this is the appropriate timetable for your case as these deadlines change from time to time or from DAS to DAS):

- a. Supervisor or PM: In general, a draft of the FR notice should be given to the supervisor at least 14 days prior to the preliminary or final determination due date.
- b. OD: A draft of the FR notice should be given to the OD at least 12 days prior to the preliminary or final determination due date. Unless time does not permit, the OD, the senior attorney in CCIA and must concur on the FR before it is given to the DAS.
- c. DAS: A final concurrence version of the FR notice should be given to the DAS at least eight to ten days prior to the preliminary or final determination due date.
- d. AS: A final concurrence version of the FR notice should be in the office of the AS at least seven calendar days prior to the determination due date, approved by all

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the persons identified on the concurrence record (always check to determine current policy for delivery time).

E. Concurrence Levels

The following categories refer to the level of concurrence necessary for the many different FR packages that are prepared for circulation on particular actions. Note that all documents must at least be agreed to by your team.

1. No Concurrence (N)

The analyst will notify everyone in the chain below the signing official by e-mail, but the document is directly passed from the team (the team includes the case analyst, case attorney, case policy analyst, and case accountant, if appropriate) to the signing official. However, because of occasional difficulties in the past, analysts should always check to see that documents have been received and opened by addressees. Therefore, everyone is informed, but only the signing official has to “concur.” This category does not apply to the preparation of preliminary and final determinations.

2. “Advisory” (Limited) Concurrence (A)

The document is concurred on by the team members and the supervisor. The document then goes directly to the signing official. The rest of the people in the chain below the signing official receive the document by e-mail and it is their responsibility to raise any issues they have with the team within a reasonable time period (e.g., two days; note: the team will determine what is a “reasonable” time period).

3. Full Concurrence (F)

This is reserved for major documents/issues. This category includes all preliminary and final determination decision memos and FR notices.

4. List of FR Notices.

The following list shows the concurrence chains for various types of FR notices:

a. Investigations

<u>Concurrence</u>	<u>Signing Official</u>	<u>Description</u>
F	AS	Initiation
F	AS	Postponement of Initiation
F	AS	Preliminary Determination
A	DAS	Postponement of Preliminary. Determination.
F	AS	Amended Prelim. Determination

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F	AS	Agreement Suspending the Investigation
F	AS	Final Determination
A	DAS	Postponement of Final Determination
F	AS	Amended Final Determination
A	DAS	Order
F	DAS	Critical Circumstances
F	AS	Termination of Investigation
F	AS	Notice of Court Decision - change in Department policy
A	DAS	Notice of Court Decision - "Timken notice"

b. Administrative Reviews

<u>Concurrence</u>	<u>Signing Official</u>	<u>Description</u>
N	DAS	Opportunity to Request Review
N	DAS	Initiation
F	AS	Preliminary Results of Review
A	DAS	Postponement of Prelim. Results
F	AS	Final Results
A	DAS	Postponement of Final Results
F	AS	Amended Final Results
A	DAS	Termination of Admin. Review
F	AS	Results of Changed Circumstances AD Administrative Review
F	AS	Notice of Price Determination (Suspension Agreement)
F	AS	Terminate Suspended Investigation
F	AS	Terminate Suspension Agreement
N	DAS	Intent to Revoke Order - old law procedure will be followed for old law cases
N	DAS	Determination to Revoke Order - old reg procedure will be followed for old reg cases
F	AS	Intent to Revoke Order
F	AS	Determination to Revoke Order
F	AS	Initiation of Anti circumvention Inquiry
F	DAS*	Preliminary Determination of Scope Inquiry
F	DAS*	Final Determination of Scope Inquiry
N	DAS	Quarterly Notice of Scope Rulings
F	DAS	Notice of Scope Amendment
F	AS	Notice of Court Decision - change in Department policy
A	DAS	Notice of Court Decision - "Timken notice"
A	AS	No Comment Finals

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A	AS	Initiation of New Shipper Reviews
F	AS	Initiation of Changed Circumstance Review
A	AS	No Shipment Finals

* Except for complicated cases. See your supervisor or PM on complex issues.

5. List of Other Documents.

The following list shows the concurrence chain for other types of investigative and administrative review documents that may be prepared:

<u>Concurrence</u>	<u>Signing</u>	<u>Official Description</u>
N	PM	Draft petition comment/deficiency list
N	PM	Petition deficiency list
A	DAS	Initiation Checklist
N	PM	Interested Party letters
A-F	DAS	Decision Memoranda
N	PM	Embassy Notification
N-A	PM	Questionnaire
N	PM	Questionnaire cover letters
A	PM	Supplemental questionnaires

<u>Concurrence</u>	<u>Signing Official</u>	<u>Description</u>
N	OD	Deadline extension requests
N	PM	Calculation Memo
N	OD	Suspension agreement analysis memo
F	OD	Quarterly prelim and final NV determination (suspension agreement)
N	PM	Verification outline
N	PM	Verification Reports
A	PM	Customs e-mail (initiation, prelim., final, order, amendments)
A	OD	Clerical error memos
F	AS	Draft Remand Results
F	AS	Final Remand Results
N	DAS	Early Warning Memoranda
A-F	DAS	Briefing Papers
N	DAS	Factual Taskers as indicated N DAS Controlled correspondence as indicated
N	OD	Scope Inquiry Packages
N-A	OD	Scope Initiations
N-A	DAS	Scope Decisions
N-A	OD	Return/Rejection of Data

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N-A	OD	COP initiations
A	OD	Automatic Liquidation E-mail (note: scope team must concur)
A	OD	Liquidation Instructions - (CCIA must confirm no pending litigation)
N-A	PM	Other Correspondence: Soliciting matching comments, factor values, responding to inquiries about the case, etc.

F. Calculation Review Panel

All margin calculations must be checked by the designated calculation review panel prior to signature of the FR by the AS (see Chapter 9, section V, for information on calculation review panels).

III. POST-SIGNATURE RESPONSIBILITIES

The case analyst is responsible for ensuring that the following tasks are completed after the signature and announcement of each preliminary and final determination in an investigation or review.

A. Announcement of Results

1. Phone Calls

After consultation with the supervisor or PM and/or other analysts, telephone or cable each of the following entities for investigations or reviews, as appropriate:

- a. U.S. embassy of foreign government(s) (investigations only);
- b. petitioner(s) or counsel for petitioner(s);
- c. respondent(s) or counsel for respondent(s);
- d. Market Analysis and Compliance country desk officer (investigations only); and
- e. analyst at the ITC (investigations only).

2. Copies

Distribute copies of the signed and dated FR notice to the following:

- a. Central Records Unit (CRU): the FR notice with the original signature and three additional copies must be sent to the CRU (in addition, the diskette with FR notice saved in Word Perfect 5.1 and a certification form must also be provided to the CRU);

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- b. Crimsing - CRU: two copies with the concurrence record sheet attached to the back must be crimsed (one to official and one to public file);
- c. Petitioner(s) and respondent(s): set up for messenger pick-up after telephone notification of the results;
- d. Analyst working file;
- e. Supervisor or PM, OD, DAS, and other IA DASs and Office Directors; and
- f. Team members (if they request a copy);

The program ICA or secretary will distribute copies of the notice to other parties that regularly obtain copies of our notices. In addition, any other parties not identified above can pick-up copies of the FR notice in CRU, room B-099, prior to publication in the FR.

3. Interested Parties/ITC Letters

- a. Statutory Provisions: For investigations, in accordance with section 733(f) of the Act for preliminary determinations and 735(d) for final determinations, the DOC is required to notify all parties to the proceeding and the ITC of the results of its determinations. For reviews, there are no statutory requirements to notify. However, notifications are made as a matter of policy. Notifications to significant interested parties are made telephonically and followed up with a letter enclosing the FR. Other interested parties receive notice by mail only.
- b. ITC Notification: for investigations, the case analyst is required to prepare and send a letter, including a copy of the FR notice, to the Chairman of the ITC. This letter is signed by the DAS and the letter must include a statement regarding ITC access to all information included in our files in accordance with section 733(d)(3) of the Act and 19 CFR 351.205(d) for preliminary determinations and section 735(c)(1)(a) of the Act and 19 CFR 351.210(j) for final determinations.
- c. Special Interested Party Letters: for investigations, the case analyst is required to prepare and send a letter to each of the special interested parties identified below. A FR notice does not need to accompany these letters. Consult with the program ICA or secretary for the latest version of this letter and appropriate addresses. For administrative reviews, check with your supervisor or PM to determine if any of the individuals listed below should be notified.

(i) Special Trade Activities Division, Bureau of Economic and Business Affairs - U.S. Department of State;

(ii) Majority Trade Counsel - Senate Finance Committee;

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- (iii) Assistant General Counsel - Office of the U.S. Trade Representative;
- (iv) Minority Chief International Counsel - Senate Finance Committee
- (v) Majority Staff Director, Subcommittee on Trade - Committee on Ways and Means
- (vi) Minority Staff Director, Subcommittee on Trade - Committee on Ways and Means
- (vii) Foreign Embassy Commercial Attache (include a copy of the FR notice if requested)

4. U.S. Customs Service Notifications for Investigations and Administrative Reviews

a. Statutory Provisions

(i) Preliminary Affirmative Determinations: For investigations, in accordance with section 733(d) of the Act and 19 CFR 351.205(d), the DOC instructs the U.S. Customs Service (Customs) to require a cash deposit or a bond equal to the estimated dumping margin for each entry of the merchandise suspended by the affirmative preliminary determination. For reviews, there are no requirements to notify Customs of our preliminary determinations.

(ii) Final Affirmative Determinations: For investigations, in accordance with section 735(c) of the Act and 19 CFR 351.210(d), the DOC instructs Customs to continue to require a cash deposit or bond equal to the estimated dumping margin for each suspended entry of the merchandise entered or withdrawn from warehouse on or after the date of publication of the affirmative final FR notice. There is no requirement to notify Customs for final determinations for reviews. However, section 736 (a) of the Act directs the DOC to notify Customs of assessment (appraisement) amounts (see Chapter 18, section I, for detailed information on assessment notifications).

(iii) Preliminary Negative Determination and Final Affirmative Determinations: For investigations, in accordance with section 735(c)(1)(C) of the Act and 19 CFR 351.210(d), the DOC instructs Customs to order the suspension of liquidation and the posting of a cash deposit or bond for unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final affirmative FR notice.

(iv) Preliminary Affirmative and Final Negative Determination: For investigations, in accordance with section 735(c)(2) of the Act and 19 CFR 351.210(k), the DOC instructs Customs to terminate the suspension of liquidation, and to release any bond or other security, and refund any cash deposit upon publication of the final negative

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determination (see Chapter 18 for information on Customs notifications involving revocations for antidumping orders).

- b. Internal Procedures for E-Mail and AD Module Notifications for Investigations: For security reasons, your office (or DAS group) has only one or two people (usually ICAs or secretaries) who have been designated as the ones responsible for all Customs electronic communications. You should always know who these people are. Notification of Customs involves two actions: updating the AD module and sending Customs an e-mail message. The AD module is a computer database which contains relevant case information to identify those import entries which may be subject to suspension of liquidation and AD duties. E-mail is an electronic mail system which connects the various units within Customs to each other, to Commerce, and to participating importers and brokers nationwide. Since information from both the AD module and e-mail is needed to determine whether import entries are subject to suspension of liquidation and AD duties, it is important that the case information in the AD module and the e-mail message always be consistent with each other. Therefore, between the signature date and publication date of a FR notice, the following two actions need to be completed by IA personnel for investigations:

- (i) update the AD module with the new case information from our determination, and
 - (ii) transmit the final e-mail message informing Customs units and the importing public of the results of our determination.

For affirmative determinations, it is vital that both of these actions be accomplished before the FR publication date in order to ensure maximum enforcement of the AD law.

- c. Internal Procedures for E-Mail and AD Module Notifications for Administrative Reviews: Notifications to Customs involve updating the AD module to reflect cash deposit amounts for all exporters and producers subject to an antidumping duty order and a separate e-mail message identifying the updated rates and effective dates. Because weighted-average rates can vary substantially from review period to review period, it is extremely important that the information in these systems be as current as possible. Care must be taken to ensure that both systems contain the same information. E-mails containing detailed appraisement instructions for specific periods of review are sent to Customs (see Chapter 18 for specific information on e-mails).
- d. Internal Procedures in Detail for Initiations, Preliminary and Final Determinations, Orders, Terminations and Suspension Agreements:

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For investigations, a draft e-mail message informing Customs and the importing public of our determination will be included as part of the concurrence packages for initiation, preliminary and final determinations, amended preliminary and final determinations, orders, terminations and suspension agreements. The case analyst will draft the text of the e-mail message, and the program ICA will enter (but not send) the e-mail text to the Customs' computer. At this stage, all the information in the draft e-mail message will be complete except for the FR publication date.

The signed FR notice will be taken to the CRU in Room B099. Within a few days, CRU will notify the IA contact persons listed in the FR of the publication date. The analyst immediately should insert the publication date into the draft e-mail message and give copies to the ICA for e-mail transmission and for input into the AD module.

The ICA will insert the FR publication date into the e-mail message, update the module, and transmit the completed e-mail message to Customs. After review, Customs will transmit the final e-mail message to all Customs units, to participating importers and brokers, and to IA.

The publication date of an affirmative preliminary determination in the FR is the effective date at which Customs starts to suspend liquidation. The effective date does not change at the final determination; however, the margins may change. At the time of the publication of an AD order, we will instruct Customs that it must require a cash deposit. The use of bonds in lieu of cash deposits of potential duties by importers is no longer allowable.

If critical circumstances are found, the effective date which suspension of liquidation begins is 90 days before the publication date of the preliminary determination (see Chapter 10 for a discussion on the retroactive suspension of liquidation).

The final e-mail message from Customs will appear in the ICA's e-mail "In Box." The ICA must check the "In Box" every day for the final e-mail message and, when it arrives, must print the e-mail message and give it to the case analyst. The final e-mail message will contain a "Document ID" number and the Customs' transmission date should be put into the case file by the analyst.

If the final e-mail message has not been received by the afternoon before the FR publication date, the case analyst should immediately request that the ICA find out why the e-mail message has not been transmitted by Customs.

Every effort should be made to ensure that the final e-mail message goes out on or before the FR publication date.

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Along with the draft e-mail message and the FR publication date, the analyst must give the ICA a condensed, three-or-four line version of the product scope for inclusion in the AD module. The ICA will enter the case information into the AD module and will give the case analyst a printout of the revised case information.

The case analyst and supervisor will initial the printout, and return it with any changes to the ICA. Once the changes are made to the AD module, the program assistant will give the case analyst a printout of the case information for the files.

See Chapter 18 for detailed information on Customs AD module and e-mail notifications for appraisement activities.

e. Internal Procedures for ITC Negative Preliminary and Final Findings

For investigations, report all ITC negative preliminary and final determinations immediately to the ICA so that the AD module can be updated.

5. Update the Lotus Notes case tracking system.

B. Disclosure of Calculation Methodology

1. Regulatory Provisions

In accordance with 19 CFR 351.224(b), for preliminary and final determinations in investigations or reviews, the DOC provides a further explanation of the calculation methodology used in making a determination for parties to the proceeding which request disclosure.

2. Internal Procedures

19 CFR 351.224(b) also specifies that, normally, within five days after the public announcement of the preliminary or final determination in an investigation or the final determination in a review, a full disclosure of all calculations, including the computer printouts and worksheets used, will be made to the petitioner(s) and respondent(s), under administrative protective order (APO). The disclosure period for a preliminary determination for a review is normally within ten days of the date of announcement. The DOC will not extend the deadline for disclosing ministerial errors in a preliminary determination for an investigation. The case analyst is responsible for ensuring that the information provided during disclosure is released only to the person(s) which are covered by an APO. The case analyst should contact the APO coordinator prior to disclosure for instruction.

3. Meeting

The case analyst is responsible for arranging the disclosure meeting if one is to be held. In most cases this meeting should also take place no more than five days after

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the public announcement date (five days after publication of the FR notice if there is no public announcement) because parties only have five days from the earlier of the document disclosure or meeting to identify errors as discussed below (ministerial errors cannot be claimed for administrative review preliminary determinations). The case analysts and the team member from CCIA should be present during the disclosure. The supervisor or program manager must be notified of the time and location of the meeting. The case analyst "walks through" the computer program, explaining the various factors used, i.e., the charges and adjustments, in our calculations. During a disclosure conference, petitioner(s) and respondent(s) or their legal representatives are not allowed to question why a particular methodology was used in the determination or why certain factors were included, excluded, or adjusted in the analysis. The only purpose of the disclosure meeting is to explain how the calculations were done. In the event ministerial error claims are made during the disclosure, the case analyst should advise the petitioner(s) and respondent(s) that such concerns will not be addressed during disclosure, but, instead, must be provided in writing to the DOC as discussed in section C.2. below.

4. Memo

After the disclosure, the case analyst prepares a memo to the file which identifies the participants and the date. The case analyst must submit the memo to the supervisor for review. After approval from the supervisor, the case analyst should retain a copy for the working file and submit two copies to CRU for the official and public files.

5. No Disclosure Meeting

In some cases, usually reviews, parties wish only to have calls, but do not require a meeting. If that is the case, ensure that you release proprietary documents appropriately.

C. Ministerial Error Procedures

1. Background

In accordance with sections 735(e) and 752(h) of the Act and 19 CFR 351.224(e), the DOC is required to correct all significant ministerial (clerical) errors in a preliminary determination for an investigation and all ministerial errors in a final determination for an investigation of a review. The DOC is normally required to do this within 30 days from the date of the preliminary or final determination. All parties to the proceeding are granted the opportunity to comment on ministerial errors in the preliminary (investigation only) or final determination.

The term "ministerial error" is defined in 19 CFR 351.224(f) as an error in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and other types of unintentional errors. A

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“significant ministerial error” in a preliminary determination for an investigation is defined in section 351.224(g) as one in which the correction of the error, either singly or in combination with other errors 1) would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination in an investigation, or 2) would result in a difference between a weighted-average dumping margin of zero (or de minimis) and a weighted-average dumping margin of greater than de minimis or vice versa, also in an investigation. Note that these terms refer to errors in the DOC’s calculation rather than errors in the submitted information. If significant ministerial errors have occurred, amended preliminary or final determination must be prepared for publication in the FR. Ministerial errors are sometimes referred to as “clerical” errors.

2. Claims

Under 19 CFR 351.224(c), petitioner(s) and respondent(s) have five days from release of documents either prior to disclosure or at the disclosure meeting (whichever occurs first) to review the information and to submit in writing any comments on ministerial errors in the calculations for preliminary determinations for investigations and for final determinations in investigations and reviews. Comments can only be made regarding the calculations. Comments on methodological or other issues will be disregarded. For final determinations in investigations and reviews, replies to ministerial error comments are permitted within five days of the date the original comments are filed with the DOC. No replies to ministerial error comments are allowed for preliminary determinations in investigations. Parties can make ministerial error claims for preliminary results of reviews in their case brief.

3. Procedures for Analyzing Ministerial Error Claims

The case analyst usually prepares a memo addressed to the DAS through the OD which includes a brief summary of each ministerial error allegation and the team analysis and recommendation (always check with your supervisor or PM for current procedure). The memo is reviewed by the team and the supervisor, and forwarded to the OD for concurrence and the DAS for final approval. After signature, the case analyst should retain a copy for the working file and submit two copies (one is a public version) to CRU for the official and public files. If there has been a change in any calculated margin, an amended preliminary determination for an investigation or final determination for an investigation or review FR notice must be published reflecting the new margin(s).

D. Certification of Case Files

The case analyst should, within two weeks after the signature date of the AD duty order or final results of review, certify in writing through the supervisor or PM to the office director that the official and public versions of the file are complete (see Chapter 2).

LIST OF ACRONYMS & ABBREVIATIONS

CFR	CODE OF FEDERAL REGULATIONS
CRU	CENTRAL RECORDS UNIT
DOC	DEPARTMENT OF COMMERCE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
IA	IMPORT ADMINISTRATION
ITC	INTERNATIONAL TRADE ADMINISTRATION
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 12

POSTPONEMENTS OF DETERMINATIONS

References:

The Tariff Act of 1930, as amended (the Act)

Section 733(c) - extension of provisional measures period

Section 733(d) - preliminary determinations

Section 735(a) - final determinations

Sections 751(a)(2)(B)(iv) and (a)(3) - extensions of preliminary and final results of administrative reviews

Department of Commerce (DOC) Regulations

19 CFR 351.205(e) - preliminary determinations

19 CFR 351.210 (b), (e) and (g) - final determinations

19 CFR 351.213(h) and (i) - extensions of preliminary and final results of administrative reviews

SAA

Section C.5 - extension of provisional (preliminary) measures for investigations

Antidumping Agreement

Article 7.4 - extension of provisional (preliminary) measures for investigations

I. POSTPONEMENTS FOR PRELIMINARY DETERMINATIONS AND RESULTS

Section 733(c) of the Act and 19 CFR 351.205 (e) provide for postponement of the preliminary determination in an investigation. Section 751(a) of the Act and 19 CFR 351.213 (h) (annual reviews and suspension agreements) and 351.214 (new shipper reviews) provide for postponement of a preliminary results of an administrative review.

A. Petitioner Requests for Postponements of Preliminary Determinations for Investigations

Under Section 773(c)(1)(A) of the Act, the petitioner may request a postponement from 140 days to not later than 190 days after the initiation of an investigation. A written request, including reasons for the postponement, must be submitted to the DOC at least 25 days prior to the preliminary determination. In general, because an affirmative preliminary determination marks the beginning of antidumping protection for the petitioner, the DOC grants all requests for postponements of preliminary determinations by the petitioners.

B. DOC Postponements of Preliminary Determinations for Investigations and Results of Administrative reviews

Under Section 773(C)(1)(B) at the Act, the DOC may postpone the preliminary determination from 140 days to no later than 190 days after the initiation of an investigation if it determines that the parties concerned are cooperating and if it also determines that the case is “extraordinarily complicated.” An investigation may be deemed extraordinarily complicated by reason of:

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1. the number and complexity of the transactions to be investigated or adjustments to be considered;
2. the novelty of the issues presented; or
3. the number of firms whose activities must be investigated.

In addition to being extraordinarily complicated, additional time must be necessary to make the preliminary determination.

The DOC cannot postpone a determination in an investigation where certain short life cycle merchandise is involved unless the petitioner gives its written consent.

For an administrative review of an antidumping duty order or suspension agreement, under section 751(a)(3) of the Act, if it is not practicable to complete the preliminary results in 245 days, the DOC may postpone the preliminary results to 365 days after the last day of the anniversary month of the order or suspension agreement. For new shipper reviews, under section 751(a)(1)(B), the preliminary results may be postponed from 180 to 300 days after the date on which the review is initiated.

C. Notices of Postponements for Preliminary Determinations in Investigations or Administrative reviews

Section 733 (c) of the Act requires the DOC to notify all parties to the proceeding of a postponement of an investigation no later than 20 days before the originally scheduled date of the preliminary determination and publish a postponement notice in the Federal Register (FR).

There are no statutory notification requirements for the postponement of the preliminary results of administrative review. It is DOC policy, however, to notify the parties that an extension has been signed and then publish the postponement notice in the FR.

II. POSTPONEMENTS FOR FINAL DETERMINATIONS AND RESULTS

Section 735(a) of the Act and 19 CFR 351.210 (b) provide for the postponement of the final determination in an investigation. For postponements of final determinations of administrative reviews of antidumping orders and suspension agreements, see section 751(a) and (c) of the Act and 19 CFR 351.213 (annual reviews); 351.214 (new shipper reviews); 351.216 (changed circumstances reviews); 351.218 (five-year reviews).

A. Respondent Requests for Postponements of Final Determinations in Investigations

Under section 735(a) of the Act, in the event of an affirmative preliminary determination in an investigation, exporters or producers represent a significant proportion of the producers or resellers of the product under investigation may request a postponement of the final determination from 75 days after the date of the preliminary determination to up to 135 days after the date of publication of the preliminary determination in the FR. A request must be in writing, including the reasons for it. Requests can be made at any time up to the date of the final

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determination. The DOC generally accepts requests for postponement of final determinations absent compelling reasons to reject them. 19 CFR 351.210(e)(2) specifically states that requests for postponements of final determinations for investigations by exporters who account for a significant portion of exports of the subject merchandise will be rejected for compelling reasons if the exporters do not furnish a request to extend the period for provisional measures (suspension of liquidation) from four to six months (see section 733(d) of the Act).

B. Petitioner Requests for Postponements of Final Determinations in Investigations

Under section 735(a) of the Act, in the event of a negative preliminary determination in an investigation, a petitioner may request a postponement of the final determination. The requirements for a postponement are the same as specified in part A above except for the one that involves the pro portion of exports of the subject merchandise. Absent compelling reasons, the DOC generally accepts a petitioner's request for postponement.

C. DOC Postponements of Final Results of Administrative reviews of Antidumping Orders and Suspension Agreements

Unlike postponements of final determinations for investigations which can only be requested by the adversely affected party, postponements of final results of administrative reviews and suspension agreements are at the discretion of the DOC. Under section 751(a)(3) of the Act, for administrative reviews of antidumping duty orders or suspension agreements where the preliminary results have been extended and it is impracticable to complete the review in 120 days from the date of publication of the preliminary results, the final results may be postponed by the DOC to 180 days from the publication date of the preliminary results. For annual administrative reviews where the preliminary results have not been extended, the DOC may postpone the final results from 120 days after the date of the publication of the preliminary results to 300 days after the date of publication of the preliminary results (see section 751(a) of the Act and 19 CFR 351.213(h)).

Under section 751(a)(2)(B) of the Act, new shipper reviews may be postponed by the DOC from 90 days after the date of issuance of the preliminary results to 150 days after the date of issuance, if the case is extra ordinarily complicated. Section 751(c)(5)(B) allows for DOC postponements of final results for extraordinarily complicated, changed circumstances, or five-year reviews for an additional 90 days.

D. Notices of Postponements of Final Determinations or results in Investigations or Administrative Reviews

In the event of postponement of the final determination in an investigation, the DOC must notify all parties to the proceeding and publish a postponement notice in the FR. See section 735 (d) of the Act. There are no statutory requirements for notification of the parties for administrative reviews. It is DOC policy, however, to notify the parties of the decision to postpone and then publish a notice of postponement in the FR.

E. Extension of the Suspension of Liquidation Period for an Investigation

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Section 733 (d) of the Act specifies that suspensions of liquidation (provisional measures) of entries in an investigation may not remain in effect for longer than 4 months unless exporters representing a significant portion of exports request that the period be extended to not more than 6 months (see part A of this section).

III. INTERNAL PROCEDURES

The case analyst must ensure the following: 1) the appropriate analysis of requests for postponements by the parties for investigations; 2) the proper analysis leading to DOC initiated postponements for investigations and administrative reviews; 3) the notification of the parties; and 4) the publication and distribution of the FR notice:

A. Pre-signature Responsibilities:

1. meet with your supervisor and/or program manager to discuss the postponement to ensure that the DOC determination for an investigation or administrative review or petitioner/respondent requests for an investigation meet the criteria outlined above;
2. draft a FR notice based on the FR for the most recently postponed antidumping investigation or administrative review; and
3. circulate the FR for concurrence in accordance with the February 6, 1996, issuance entitled "Changes to IA Concurrences" as found in Chapter 12 of this manual.

B. Post-signature Responsibilities

1. for investigations, immediately notify the International Trade Commission (ITC) analyst by phone after the FR notice is signed;
2. for investigations and administrative reviews, notify the parties;
3. send copies of the signed and dated FR notice to the petitioner(s) and respondent(s) involved in the investigation and the ITC in the case of an investigation; and
4. distribute copies of the signed and dated FR notice to the following:
 - a. the original and four copies along with a computer disk to the Central Records Unit (CRU);
 - b. a copy to each of the team members involved in the investigation or administrative review;
 - c. a copy for the working file; and
 - d. two copies for transmittal to CRU for the official and public files.
5. amend the Lotus Notes case management system to reflect the new action dates.

LIST OF ACRONYMS & ABBREVIATIONS

AIT	AMERICAN INSTITUTE IN TAIWAN
APO	ADMINISTRATIVE PROTECTIVE ORDER
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
CS	UNITED STATES AND FOREIGN COMMERCIAL SERVICE
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
GATT	GENERAL AGREEMENTS ON TARIFFS AND TRADE
GUI	GOVERNMENT UNIFORM INVOICE
IA	IMPORT ADMINISTRATION
ITC	INTERNATIONAL TRADE COMMISSION
NME	NON-MARKET ECONOMY
OA	OFFICE OF ACCOUNTING
ITC	INTERNATIONAL TRADE COMMISSION
OBS	OBSERVATION
PCSAS	SAS FOR THE PERSONAL COMPUTER
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
PRC	THE PEOPLE'S REPUBLIC OF CHINA
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED
USTR	UNITED STATES TRADE REPRESENTATIVE

CHAPTER 13

VERIFICATION

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 782(i) - verification
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.307 - verification of information
- SAA
 - Section C.4.a.(6) - verification of information
- Antidumping Agreement
 - Articles 6.6 and 6.7 - verifications
 - Annex I - procedures for on-the-spot investigations

INTRODUCTION

This chapter describes the purpose of an antidumping verification and how to prepare for and conduct a successful verification. For those who have never participated in an antidumping verification, it might seem like an impossible task to incorporate all of these procedures into a verification which typically lasts one week. Bear in mind, however, that this chapter is a compilation of everything that should be incorporated into the planning and execution of a successful verification.

The ability to conduct a successful verification is dependent upon the skill level of the verifier, number of verifiers and everything going as planned. Note that the emphasis is on the skill level and not the experience of the verifier. It is possible to be skilled and have limited experience or to be experienced with limited skills. New analysts should always be assigned to work with a senior analyst on their first verification(s) and should not be assigned to lead a verification until they have attained the desired skill level. Typically, two verifiers are always present at a verification, although skilled senior analysts may be called upon to conduct “solo” verifications without assistance from time to time. Tips for conducting verifications with two verifiers are interspersed throughout this chapter. For those cases where detailed cost or financial information is part of the proceeding, an accountant, financial analyst, or analyst with accounting expertise should participate in the verification. Finally, the saying about “the best laid plans...” is especially true for verifications. No two verifications are alike, and things will happen that you did not plan for. Expect the unexpected, and, above all, be flexible.

I. OVERVIEW OF VERIFICATION OBJECTIVES AND PROCEDURES

Under Section 782(i) of the Act, the DOC shall verify all information relied upon in making a final determination in an antidumping duty investigation, final results of administrative review under section 751(a) of the Act if certain requirements are met, or an antidumping revocation under section 751(d) of the Act. 19 CFR 351.307 specifies other times when verifications are generally conducted as follows: 1) the continuation of a suspended antidumping investigation; 2) the final results of an expedited review under section 751 of the Act; and 3) the final results of an

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administrative review, new shipper review, or changed circumstances review, if the DOC decides that good cause exists.

The information we rely on to make a final determination in an investigation or in an administrative review is the questionnaire responses of the respondent. We verify this information by conducting a verification at the respondent's facility (or facilities) in a process designed, in most instances, to focus on a prioritized, cross section of information from the response that will prove or disprove the validity of the overall submission.

A. Objectives

1. Verify the accuracy of the data submitted in the response.
2. Verify that relevant data was not omitted from the response.

B. Timing, Verification Report Content, and Procedures

19 CFR 351.307 specifies when verification is to occur for antidumping investigations and reviews, the contents of the verification report, and the procedures for verification. Below are relevant excerpts of this regulation:

- (b)(1) When a domestic interested party requests a verification for the final results of administrative review, this request must be in writing and made no later than 100 days after the date of publication of the notice of initiation of review.
- (b)(3) If the Secretary decides that, because of the large number of exporters or producers included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample.
- (b)(4) The Secretary may conduct verification of a person if that person agrees to verification and the Secretary notifies the government of the affected country and that government does not object. If the person or the government objects to verification, the Secretary will not conduct verification and may disregard any or all information submitted by the person in favor of use of the facts available under section 776 of the Act and §351.308
- (c) Verification Report - The Secretary will report the methods, procedures, and results of a verification under this section prior to making a final determination in an investigation or issuing final results in a review.
- (d) Procedures for verification. The Secretary will notify the government of the affected country that employees of the DOC will visit with the persons listed below in order to verify the accuracy and completeness of submitted factual information. The notification will, where practicable, identify any member of the verification team who is not an officer of the U.S. Government. As part of an antidumping verification,

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DOC verifiers will request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted of (1) producers, exporters, or importers, (2) persons affiliated with the persons listed in paragraph (d)(1) of this section, where applicable, or (3) unaffiliated purchasers.

II. GENERAL PRINCIPLES

A. Planning

Verification preparation begins when you analyze the questionnaire responses. Ask yourself if the questionnaire response provides enough information and sufficient support, such as charts and worksheets, in order to verify the data. Consider how you might verify the information and start drafting a verification outline. If you believe the response does not include the relevant data for verification, request the necessary information in a supplemental questionnaire (See chapter 5 for information on the analysis of a response.).

B. Risk Analysis

The concept of “risk analysis” should always be in the back of your mind as you prepare for and conduct your verification. Always consider which direction is to the advantage or disadvantage of the respondent. This approach will help you focus your time and energy at verification on those areas where it is needed the most (especially in completeness). For example:

1. Don't spend a significant amount of time considering what movement or other direct selling expenses the respondent failed to claim as a deduction to normal value. Claiming these expenses as deductions would only serve to lower the dumping margin and it is the respondent's role to make and demonstrate favorable adjustments. However, if you do find unreported home market expenses, note them in the verification report.
2. Do be concerned about whether the respondent reported all U.S. movement expenses or other direct selling expenses. Obviously, failure to report these expenses could have the effect of decreasing any dumping margin. The seriousness of these omissions could be the basis for the respondent failing verification.

C. Control the Verification Process

1. Proper time-management is a crucial aspect of all verifications. You control the verification schedule. Always bear in mind your objectives and do not allow yourself to become bogged down in relatively insignificant topics or adjustments.
2. Do not become involved in a discussion of case related issues or attempt to justify or explain decisions made in the investigation or review.
3. Be reasonable in your time and work demands placed on respondents. To the extent practical, work with the respondents in meeting your schedule and objectives. Many

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times the company personnel have done their best to set a schedule to accommodate your outline and other logistical requirements.

4. At the same time, do not feel obligated to stick to a set agenda or to follow the order of the verification outline. Spontaneity is often the key to a successful verification.
5. Understand the players at verification, their roles and their personalities. While it is sometimes more efficient to deal with the company's spokesperson, you should normally work with the company person responsible for that topic.

D. Setting Priorities for Verification

1. Usually, it is not necessary nor is there time to verify every bit of data in the questionnaire response. Therefore, it is critical to rank your verification topics by priority. Keep in mind that the verification priorities are your priorities, not the respondent's.
2. Do not advise the respondent in advance what you may or may not verify (either within or outside of the verification outline). To insure the integrity of the verification process, the respondent must always be prepared to verify any sections of its response.
3. The fact that an item was not actually verified will not mean that the item is unverified. Verifications involve a great deal of sampling. Consequently, assumptions about items not selected for verification will depend on how the verification went for the selected items. If the selected items in the response tie to the company records, we will have a good deal of confidence in the accuracy of the items we don't specifically verify.

E. Important Insights and Suggestions

1. Generally, respondents are truthful in their responses. Nonetheless, you should always ask probing questions or examine a matter from different perspectives in order to ensure that you receive accurate information.
2. Be aware that, in some parts of the world, it is an accepted business practice to have a second set of books. If you are concerned that the records you are reviewing are not reflecting the true business practice of the company, you may overcome this situation by advising the company (directly or through consultation with their attorney) that you are just interested in the business facts as they pertain to the investigation or review.

If you find that a company has a second set of books, you must exercise extreme caution and sound judgement in how these books are used. Have the respondent describe to you how the books differ. Wherever possible, you should link the second set of books to the official records. For example, if certain income from U.S. sales is

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- kept offshore in unreported foreign accounts, the respondent will be pushing to apply that income to its U.S. prices in order to push the price up. Since this methodology is to the respondent's advantage (remember "risk analysis"), the company bears the burden of proof to directly link this income to the U.S. sales.
3. Be aware of cultural differences in conducting the verification. For example, it may be the custom (or tactic) in some places to only answer a question exactly as asked. Therefore, if you or your interpreter don't phrase the question properly, you will not receive a full and complete response. Where necessary, discuss the topic with your interpreter and ask him or her to be sensitive to the problem.
 4. Do not limit your discussions to company personnel (or its attorney or consultant) responsible for presenting the company response. While there are advantages in having one person speak for the company, such as efficiency and continuity, you should always be sensitive to the fact that, by using one person as a spokesman, the company may be controlling the information it wants you to see or hear.
 - a. When you want an "unrehearsed" answer or explanation, request that certain company personnel be called into the verification room. Ensure that all conversations are in English or are monitored by your interpreter.
 - b. Spontaneous phone calls are also an effective and efficient way to corroborate information, particularly if the party you wish to speak to is not at the verification site. In these cases, have your interpreter translate the questions and answers. Always allow company officials to listen in (use a speaker phone) to ensure that the translation is correct and that they are aware of what is being said.

F. Do Not Lose Sight of Your Two Objectives

1. Verification of the accuracy of information submitted in the response.
 - a. You must first verify the data as submitted in the response unless you are absolutely certain that such data will not be used in the final determination. Realize, however, that the magnitude of some submissions may mean that not all data will actually be examined. In these instances, your prioritized verification outline will be crucial to the success of the verification.
 - b. Although you may believe that the respondent's data is flawed, failure to verify the data on the record places the DOC in a tenuous position in arguing pro or con on a topic in reaching a determination or before the court. Your verification results should provide the support for the record of the correctness or incorrectness of the questionnaire response.
 - c. Do not rely on respondent's worksheets as the source documents for verification of a particular topic. Worksheets should be first tested for accuracy (if these documents are already on the record, try this test before verification) to determine

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if the math, formulas, and assumptions yield the results claimed in the worksheet. Do not simply accept the respondent's methodology as presented. There may be fundamental assumptions that are not supported by the facts or alternatives that provide a more reasonable and accurate accounting. Once you have examined a worksheet in this manner, trace, as appropriate, back to accounting records and source documents.

2. Verification that relevant data was not omitted from the response.
 - a. This objective is commonly referred to as verifying the completeness of the response. Completeness, though frequently applied only to the reporting of sales transactions, also applies to charges and adjustments.
 - b. If you limit your verification to the information in the response, you have not conducted a thorough verification.
 - c. Completeness should not be thought of as a single phase of the verification. It has its roots in the foundation of knowledge you establish in the beginning of the verification, and is constantly evolving as you probe and attack the response from different directions. "Risk Analysis" is a key component of completeness.

See section VII of this chapter for a further discussion of the topic of completeness.

G. Thoroughness

The outcome of an antidumping investigation or review is often vitally important to the petitioner or respondent. Therefore, you should be thoroughly familiar with the questionnaire responses, other case facts, and the issues of the investigation or review before you commence the verification. Above all, conduct yourself in an impartial manner at all times.

III. PRE-VERIFICATION PLANNING

A. Logistical Plans

1. Length

The length of a verification for an investigation or a review will depend on the complexity of the questionnaire response and the resources (including budgetary) available for the verification. As a general rule of thumb, most market-economy verifications at overseas sites take four to five working days. Verifications in the U.S. for constructed export price (CEP) transactions generally last from one to three working days.

For non-market-economy (NME) cases, we usually spend one to two days verifying the sales portion of the response, and two to three days verifying the factors of production portion of the response. The length may be determined in part by the number of U.S. sales transactions and number of production factors involved. If the

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same company sells and produces the merchandise, a total of two to four days may be sufficient. In some NME cases, we may also visit a government or business association office. These verifications are generally limited to one day.

Bear in mind that, whenever possible, additional time should be considered if a senior analyst is training a new analyst.

2. Dates and Places

Ideally, in an investigation, verification should begin between one to two weeks after the publication of the preliminary determination. While the objective is to verify as soon as possible, you should allow enough time after the preliminary determination for proper preparation. If there are outstanding issues that require additional focus or information, the schedule should be adjusted accordingly.

If the final determination in an investigation is postponed, you may also need or want to push back the verification later than two weeks after the preliminary determination.

However, you still need to schedule the verification well in advance of the final determination in order to allow plenty of time for the verification reports, interested party briefs, the hearing, and developing the final determination.

It is a good idea to begin informally discussing verification dates and locations with the respondents or their attorneys well ahead of time. This way, to the extent possible, you can try to work around potential conflicts, holidays, etc. before you advise the respondents of the verification dates.

In some cases, you may need to consider conducting some business on the weekend. For example, Saturday is at least a one half-day workday in some countries and planning some verification work on a Saturday may be appropriate for your schedule.

Remember, however, that you, and not the respondent, are ultimately responsible for setting the verification schedule. In doing so, first consider the needs of the DOC, then, where possible, factor in the concerns of the respondents.

3. Location

While in most cases, it will be fairly obvious where source documents are maintained and, hence, where verification will take place, in other cases it will not be as clear. Due to the roles of affiliates, sales offices, the factory, trading companies, etc., it may be necessary to conduct verification at multiple sites. Be sure to develop this information during your analysis of the questionnaire response. Don't hesitate to question the respondent (or its counsel) to identify the appropriate verification sites. Ultimately, your team will determine where to verify.

When faced with the prospect of verifying at multiple sites, respondents have occasionally suggested that all verification documents be brought to one central

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location for verification. While we have conducted such verifications in the past, extreme caution must be exercised. Our stated objective is to verify at the location where the source documents are to be found, both for verifying the information submitted as well as for conducting completeness tests. If the respondent insists on having the documents brought to one central site, it should be advised in writing that failure to provide the source documents requested could be to its detriment.

4. Travel Orders and Notifications

- a. Travel orders must be prepared for all official travel. Generally, travel orders are prepared by the office support staff. Travel orders should be drafted as soon as possible after the verification itinerary is determined - probably three to four weeks prior to departure - but no later than two weeks prior to departure. Be sure to provide the following information to the preparer:

- Names of all verifiers
- Location of all verification sites
- Proposed itinerary
- Proposed modes of transportation
- Anticipated expenses such as interpreter fees and travel expenses, excess baggage, official telephone calls and faxes, additional travel, car rentals, etc. as appropriate.

You may need to assist in estimating the costs of your travel expenses in order to prepare the travel orders.

- b. Country clearance must be obtained from the U.S. Embassy or other representative (e.g., the American Institute in Taiwan (AIT)) in order for travel orders to be approved. Once you have determined a tentative verification schedule, notify the U.S. State Department, the Commercial Service, and the United States Trade Representative (USTR) (only if you are traveling to the People's Republic of China (PRC)) of your plans and any assistance required. Generally, the office support staff will prepare a fax with your assistance that requests country clearance and provides at least the following information: names of verifiers, places and times of verification, and what type of assistance may be required, such as obtaining interpreters, lodging, and/or local travel. Check the interpreter log and the experience of other analysts in requesting an interpreter; you may wish to request a specific person in your communication to the overseas post. The fax may include all of the travel details or simply the general information with the statement that a detailed itinerary and request for assistance will follow after receipt of country clearance. Under the latter, you will need to follow up by fax or cable with the details of your requests, addressed to the "control officer" identified in the country clearance cable you will receive.

The country clearance request fax is transmitted to the State Department, the Commercial Service, and USTR (only if you are traveling to the PRC) which will

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prepare and transmit a cable to the post after its own clearances are obtained. This process may take up to two weeks, so it is always a good idea to prepare the requesting fax as soon as you have determined your travel plans. Travel to the PRC requires a three week advance notice. No IA traveler is permitted to leave for official travel outside the United States without an official cable granting country clearance.

- c. We are required to notify the respondents and representatives of the government of the country where we intend to verify. As discussed in 19 CFR 351.307(b)(4), the DOC will verify information in a foreign country only after: (1) obtaining agreement from the persons whose information will be examined; and (2) notifying the foreign government concerned of the details of the verification. If the foreign government concerned or the person whose information is to be verified objects to verification, the DOC will not conduct the verification and may disregard the submitted information in favor of the facts available, pursuant to amended section 776. 19 CFR 351.307 also provides that the DOC shall give sufficient notice to persons involved before verification is conducted. This notice should identify any member of the verification team who is not an officer or employee of the U.S. Government. Such non-government members will be required to sign a standard non-disclosure agreement regarding limited disclosure of business proprietary data to ensure the confidentiality of proprietary information obtained or examined during verification. This notification should be made as soon as you have determined your travel plans.

B. Review Responses and Calculations

1. Knowing a respondent's questionnaire response thoroughly is critical for a successful verification. Prior to the verification, conduct a thorough review of all responses as well as petitioner's pre-verification comments. Review the product catalogs and financial statements included in the response. If you have not already done so by this time, read the ITC preliminary determination report, as it frequently has valuable information on the product and production processes.
2. Invite Petitioner comments. When verification has been planned, prepare a letter to petitioner or its counsel advising of the verification schedule, inviting comments as to the major elements of verification concern. The petitioner should be reminded that verification time is limited so its comments should be directed at helping the verification team to organize its time so that, if appropriate, the response elements of most concern to petitioner are sufficiently addressed at verification.
3. Continue to analyze the numerical data. Review the sales and adjustment claims and, where appropriate, cost or factors of production data to identify what is important and what is not. For example:
 - a. Identify "outlier" sales and related information for each response. That is, identify the transactions with the maximum and minimum values for prices and

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adjustments. These values may identify erroneous data, or costs and expenses that may need to be checked carefully.

- b. Identify some “typical” sales close to the average or mean of the data base that include most of the typical adjustments encountered in the response. These sales often constitute the “bread and butter” of the response and are good baselines to compare against the “outlier” sales.
- c. Sort a variety of data by customer or groups of customers (i.e., affiliated and unaffiliated) or customer categories (e.g., distributors and end-users). Examples of key data to sort are quantity and value, rebates, discounts, channels of trade, and commissions. Sum the totals for all quantifiable data fields and break it out by reported variables within that field. These totals may be useful in determining the significance of certain variables or for checking allocations.
- d. In investigations, review the preliminary determination calculations for such items as sales that may be driving the margins or which sales were or were not used for product comparisons. This examination will give you a better idea of what was relevant for the preliminary determination and what could be relevant for the final determination.
- e. In reviews, look at the results of the previous determinations. If the company has been verified before, examine the reports from earlier verifications.
- f. For factors of production or cost of production responses (if Office of Accounting (OA) accountants are not involved), identify those products or models with the highest and lowest consumption of inputs or costs. Identify the models or products which generated the highest and lowest margins at the preliminary determination in an investigation, and try to identify any inputs or cost elements which may have generated these results.

These analysis will help you identify areas on which to concentrate at verification. As part of this process, you should be able to identify specific transactions for inclusion as “pre-selected” or “on-site” sales at verification. Similarly, if you are involved with a factors or cost verification, you may uses this process to identify specific models and inputs or cost elements for detailed examination at verification.

The OA maintains a library of reports which explain the types of accounting data that companies are required to maintain in different countries. Include a review of the country's accounting reporting requirements in your pre-verification preparations.

- g. External Source of Information

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In preparation for each verification, to the extent practicable, members of the verification team and the team's managers should search for external sources of information regarding industries and companies to be verified. In particular, the team should coordinate closely with other agencies of the U.S. Government, such as the U.S. Customs Service, ITA's Trade Development offices, the State Department and embassies/consulates in the appropriate countries, and the United States and Foreign Commercial Service (Commercial Service). Caution: Without the consent of the owner of proprietary information, you cannot disclose this proprietary information under APO or to another U.S. government agency. Therefore, all IA staff must be certain to limit discussions of information we have to public information only. There is an exception under the statute for providing proprietary information, under some circumstances, to Customs and the ITC. However, any decision to do so must be approved by the appropriate Deputy Assistant Secretary.

For purposes of seeking external U.S. government sources of information, contact the following:

U.S. Customs Service (headquarters and overseas offices) - Use your designated IA Customs liaison person.

Trade Development - Office of Planning, Coordination and Resource Management (482-4921).

U.S. Department of State (headquarters and embassies) - Special Trade Activities office, Economics and Business Bureau (202-647-6078).

The Commercial Service - For overseas offices, the appropriate regional office within the International Operations office here at headquarters. Main number is 482-6228 and regional offices' numbers are:

Africa, Near East and South Asia (482-4836)

East Asia & the Pacific (482-2422)

Europe (482-1599)

Western Hemisphere (482-2736)

U.S. domestic offices (482-476)

Information from other sources:

Information on U.S. companies and some foreign companies can be obtained through public sources such as Dun and Bradstreet, Moody's, Lexis/Nexus, Predicasts, World scope, etc.

Information on U.S. companies can be obtained from the articles of incorporation (which will usually include the names of the boards of directors) through the Secretary of State of the state where the company is incorporated.

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C. Tools for the Verification

Obviously, you will need to bring the questionnaire responses and related documents to verification, at least in some form. You can always try to pack up your office and bring everything, but experienced verifiers generally use a more organized approach. These tools and techniques, described below, will help you organize the response information to make your verification proceed smoothly and efficiently. They will also help cut down on your luggage requirements.

1. Data Packages

Data packages are collections of documents from the submissions which deal with a specific verification topic. Those who have used them consistently strongly recommend using data packages for all but the simplest of responses.

- a. Each data package should contain all submissions, including exhibits, which have been submitted on the specific topic. Date the top of each page with the submission date. Place the latest submission on the top. Be sure to include the petitioner's pre-verification comments in the packages.
- b. Data packages are generally maintained in separate folders. Any verification exhibits or notes taken during verification should be included in these packages.
- c. Examples of typical data package topics would be organizational structure, relationships, accounting (includes financial statements), product information, distribution systems, date of sale, discounts, rebates, commissions, ocean freight, duty drawback, difmer, advertising, etc. Where the charge or adjustment is unique to the U.S. and home markets, separate data packages should be prepared. Additional packages can be created at verification for completeness and sales traces.
- d. If time allows, data packages can be made even more useful in organizing data or reducing response volume by front and back copying, cutting and taping multiple submission narratives onto a topic page, excluding all but sample pages or relevant pages of particularly voluminous documents (e.g., product catalogs, customer code lists) if you know that the remaining pages will not be needed at verification or that the respondent will have a full copy of the response at verification, and excluding submissions that have been superseded for non-methodological reasons.

2. Advantages of Data Packages

- a. When the responses are large and there have been multiple filings on a topic, the packages give you all of the relevant data in one place without having to fumble through multiple submissions.

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- b. Data packages make it very easy to jump from topic to topic. When starting a new topic simply pick up the appropriate package and review the submissions in one quick read. Having the petitioner's comments included allows you to focus on the full scope of the issue. Similarly, during the verification when you need to jump back into another topic or to review some earlier exhibits, you know right where to find them.
 - c. It makes verification report writing easier in that everything needed on a topic is right at hand, including the relevant verification exhibits.
 - d. Data packages make it very simple for someone unfamiliar with a response and petitioner's issues to assist with verification. They simply pick up the package, review the documents, and verify. In this regard, data packages are essential.
 - e. It shows the respondents that you are well-prepared and well-organized, all of which enhance your appearance of professionalism.
 - f. Properly done, data packages actually reduce the volume of paper carried to verification.
 - g. The time spent preparing the packages is not only a useful review, but is also returned to you in time saved during verification and report writing.
3. Response Index

An alternative to data packages are detailed response indexes which consolidate, by topic, the location in the response of all submissions on that topic. A response index is a tool that should be prepared as the questionnaire responses are submitted, not immediately before verification. Analysts who have used this tool find them extremely helpful for tracking response information through the supplemental questionnaire and preliminary determination process, as well as for verification planning and conduct.

Typically, the indexes are set up to follow the questionnaire format. Each questionnaire item may be a heading in the index. Under each heading, identify where the respondent has responded to the question by date of response and page or exhibit number. As appropriate, include notes about the response. Where a supplemental response provides information that supersedes earlier information, these changes are reflected in the index and may provide a line of inquiry at verification (e.g., why was one set of data originally reported and how did the respondent identify the error?). Below are some sample index excerpts:

Accounting Practices

9/10 response, p.24: Normal fiscal year period = Jan. 1 - Dec. 31. Maintains no internal financial stmts.

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9/10, Exhibit 2: Company's 1997 and 1998 financial statements (English)

9/10, Exhibit 11: Financial statements of affiliates Foreign Production Co., Ltd., and Major Input Supplier, S.A. (English)

Adjustments for Rebates and Discounts

Home market

OTHDIS1H, *f*/MT; REBATE1H, *f*/MT (variable names, with currency and unit)

9/10, pp. 7-10: Description of discount and rebate programs

10/20, pp.9-10: No discounts except for a "trader's discount" offered to resellers of certain merchandise, based on [x.x]% of full price trader/reseller purchased from Respondent. Annual rebate program for 2 customers at [y]% if they meet their target volume.

11/17, p.23: OTHDIS1H = trader's discount, credited on invoice.

11/17, p.24: REBATE1H granted by credit note after end of calendar year as [y]% of GRSUPRH less freight.

11/17, Exhibit 26: Sample invoice and sales data for rebate claim.

4. Smaller, Simpler Responses

In some investigations and reviews (typically those involving non-market economies and a relatively small number of sales), questionnaire responses may be relatively small and easy to follow. For these cases, data packages and/or a response index may not be necessary as long as you are able to keep track of all of the response information without these tools. Such smaller responses generally are not a burden to bring to verification.

5. Other Methods

Some experienced verifiers have used variations of the above, such as both data packages and response index or data packages for some major issues and partial copies of responses for others. The verification outline (discussed below) may incorporate aspects of a response index and may be sufficient for your purposes. Consult with your program manager (PM) or supervisor for the approach which suits you and the verification best.

6. Laptop Computers

Many verifiers travel with a laptop computer which is available from their office. In addition to its use as a word processor to draft the verification report while at verification, the computer is also useful as a verification tool for maintaining "soft" copies of case documents and to analyze data bases at verification. If you want to use a laptop for this purpose, encourage respondents to submit copies of the questionnaire responses on diskette so that you can load the document on the laptop computer.

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Laptop computers are generally equipped with Lotus spreadsheet software. If the sales, cost, and/or factors data was submitted in Lotus 1-2-3 format, load the data onto the laptop, along with the margin calculation program. This procedure will allow you to continue to analyze the data and the impact of various verification items while at verification.

In some cases, it may be possible to perform similar verification analyses of data in SAS format. As of this writing, PC SAS software is not usually installed on laptops, but may be installed prior to verification. If you are comfortable with SAS and want to try using it during verification, sign out a laptop and work with the Information Technology Unit to install the software prior to departure for verification. Allow enough time for a successful installation of the software and the data bases you want (including exchange rates, where applicable) as well as time to test it on the laptop.

D. Selecting Sales for Verification

Prior to verification, you should identify specific sales transactions from the U.S. and exporting-country (EC) or third-country data base for detailed examination at verification. Some of these sales are listed in the verification outline and are commonly known as “pre-selected sales”. Others will be identified to the respondent in the course of verification and will be referred to as “on-site” sales.

The specific sales selected should cover the full spectrum of terms of sales, charges, adjustments, etc., as well as sales with unusual characteristics. Your data analysis prior to verification, discussed above, should provide you with some direction in choosing these sales. If there is a cost of production investigation in the proceeding or where normal value is based on constructed value, coordinate the selected sales for the sales verification with the products and costs to be examined at the cost verification. If an OA accountant is involved in the cost investigation, be sure to coordinate the objects of the sales and cost verifications. For example, make sure the cost team is aware of the sales transactions that you consider important and they can focus their verification to cover the cost side of the same transaction.

In identifying selected sales to the respondent, include enough unique information to allow the respondent to identify the proper sale. It is not uncommon for much of the same sales transaction data to be repeated for different observations (OBS) or for the OBS# in your program to differ from the OBS# used by the respondent.

For the pre-selected sales, select as many sales as needed to cover the range of data you wish to observe while keeping in mind your time constraints at verification. Around five pre-selected sales for each market is typical for a normal market-economy case. If both EP and CEP are involved, you may want to choose four to six sales of each type. Select an equal number of “on-site sales” to be presented during verification.

In some cases, particularly NME proceedings, the total number of sales reported may be so small as to make pre-selection unnecessary. For example, if a respondent only made 10 sales during a period, it is probably easier to advise the respondent to consider all sales as “pre-selected.”

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The term “surprise sales” often has been used to refer to on-site transactions presented to the respondent during verification. Generally, there is nothing “surprise” about these sales as the respondent will typically disappear with the list in order to collect the necessary supporting documents. Instead, you should use sales selected on-site to further examine topics of interest that were identified prior to or during verification. If there is a particular concern about the legitimacy of documents, then a member of the verification team may decide to accompany the company officials as they gather the necessary documents.

Prior to your departure on verification, run a printout of the complete transaction data for each of the selected sales. If possible, produce a printout with the invoice number of each of the selected sales so that you can compare all of the sales transactions reported to those on the actual invoice. Each selected sale or invoice should be printed on a separate page that you have extra space to take notes on during the verification of that sale. Ultimately, every relevant column should be checked off as verification of that topic is completed.

E. Verification Outline

The verification outline may be the single most important tool of the verification. It provides a description of the structure of the verification: what will be verified, what documents will be reviewed, in what order items will be verified, etc. In essence, the outline is your “script” to the verification. The outline is also a guide to the respondent to insure that it has properly prepared for the verification.

As discussed further below, work on the verification outline could begin as early as when the questionnaire responses begin to arrive. The outline should be presented to the respondent at least two weeks before the verification begins, but in no case should it be provided less than one week prior to the verification.

1. Outline Style

Import Administration (IA) is currently using a standardized outline which will also serve as the outline for the verification report. To the extent possible, each section of the standard outline should address response specific data that is to be verified. Such presentations can easily be incorporated into the verification write-up. See your supervisor or PM for a copy of the outline, or check the most recent verification report done for an investigation or review.

2. Cover Letter

The cover letter to the outline should identify who will be verifying and the dates you will be at each verification location. Most importantly, the cover letter will provide an overview of the verification requirements, including preparation of verification exhibits for release to petitioner under APO and other instructions. Certain points may need to be emphasized in the cover letter. For example, it is very important to stress the need to have reliable copier facilities close at hand. In addition, the respondent may need to be reminded to have verification documents translated into

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English in advance of the verification. You should also reach agreement with the respondent on your planned work hours.

IV. OPENING THE VERIFICATION

The reader will note that it has taken a number of pages discussing verification preparation before we begin to discuss the actual verification. The previous discussion should make it apparent that the key to a successful verification is good preparation. In addition, you can further help yourself by establishing effective work procedures and verification atmosphere at the start of the verification.

A. Using an Interpreter

All IA personnel conducting verifications in non-English speaking countries must obtain the services of an independent interpreter. Such services will normally be arranged through our embassies/consulates in conjunction with travel arrangements and country clearance. For most overseas verifications, you will be relying on an interpreter to translate your questions, the respondent's answers, and many of the source documents. Occasionally, respondent's personnel will feel comfortable working in English. If you do verify in English, you and your interpreter should observe how this procedure is working. Your interpreter should then be used to listen to the side-discussions taking place in the native language and to translate documents as needed.

If you have the opportunity, send or fax a copy of the non-rank ordered version of the verification outline to the interpreter in care of the embassy or consulate which arranged for the interpreter services. Even so, it is a good idea to meet with the interpreter prior to the verification to brief the interpreter on the verification process. Go over any difficult terms for translation, such as technical production terms specific to the product. Take this opportunity to review work requirements, such as the hours the interpreter is expected to be on duty, and the need to sign a statement of independence and confidentiality. All interpreters, except those foreign nationals working for the United States Government, are required to sign a statement certifying their independence from the firm(s) involved and assuring that they will not divulge any information that they observe or hear during the course of the verification to others.

Although you will be speaking "through" the interpreter to the company officials, you are really speaking directly to the company officials. Try to phrase your questions in the first person and look at the company officials, rather than the interpreter, when speaking.

As you proceed through verification, remember that the interpreter is working for you, not the company. Do not permit the respondent to take over the interpreter's services or to provide instructions to the interpreter.

IA experience has been that some interpreters are better than others in a verification context. Observe and listen carefully to the interpreter and his/her interaction with the company officials during the first part of verification. If you note that the interactions are going smoothly and the interpreter has few problems understanding what you and the company officials are saying, then you probably have a good verification interpreter and should have few translation problems.

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However, if you observe your interpreter stumbling over words or frequently asking the company officials to further explain their answer (or ask you to restate your questions), then you may encounter some translation difficulties. In these instances, proceed cautiously and carefully with your questions. Use clear and precise language, without jargon or slang, in posing questions to the company. You may need to repeat and rephrase your questions in order to be sure that both you and the company officials understand what is being said.

If these problems persist, contact the embassy, consulate, or agency which arranged for the interpreter and ask about obtaining a new interpreter. Note, however, that a substitution may not be possible on short notice at verification sites outside metropolitan areas. An inadequate interpreter can seriously undermine the integrity and professionalism of the verification.

B. Getting Started

1. Exhibits

Since you have prepared a meaningful outline, attempt to follow the order in the outline. Nevertheless, you may want to discuss the order at the beginning of verification, particularly if part of your verification needs to take place at another site, such as a factory or affiliated party at another location. Further when the opportunity arises to pursue another topic, you need to make a judgement call on whether to deviate from the outline. This situation frequently occurs when you see the opportunity to conduct a completeness test or need to have the respondent collect certain types of data. Another example would be the opportunity to verify a topic spontaneously.

Exhibits are copies of the source documents you view at verification that support the response and/or verification findings. You do not need to take a copy of every document you see. Generally, take what you need to support a point. If the item is complex or contentious, you will likely take most or all of the documents. In other cases, you may simply take a sample of what you have seen. If accompanied by a senior verifier, she or he will help you determine what is appropriate. Feel free to write on exhibits and data packages (if you use them), especially where translations are necessary.

When dealing with a particular topic for the first time, always ask for copies of the relevant exhibit before the explanation begins. That way, you will have them to write on. It is not uncommon for a respondent to try to explain a topic to you before giving you the exhibit. Discuss with the respondent how many copies of each exhibit need to be made (include respondent's needs in your count).

Exhibits are given numbers in order to list them in the verification report. Make the first exhibit 1 and number sequentially thereafter. If you need to refer to specific pages within the exhibit, assign the exhibit subsections (for example, Exhibit 1 could be comprised of exhibits 1a, 1b, 1c, etc.). This technique is particularly useful in

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tying parts of an exhibit to your notes. It also makes a verification report cite to an exhibit in your verification report more precise.

When tying data back to source documents, your goal is to see the original source document. When this is not always possible or practicable, you should randomly demand to see the original document.

The respondent or, if present, its counsel needs to have the same set of exhibits and reference numbers as the DOC. Explain the numbering system you intend to follow and work out a system for ensuring that the respondent has the same exhibits as you (note that yours will have your notes on them but the respondent's will not). A good approach is to organize your exhibits at the end of each day's verification and go over them with the respondent either at that point or the next morning. Be sure, however, that you maintain control of the exhibits at all times.

2. Using a laptop computer

If you have taken a laptop computer to verification, make a copy of the verification outline, and use the copy to draft your verification report. Keep this draft report file open during the verifications. After each verification topic (or at a break point during a complicated topic), take time out to summarize your notes or to actually write up that section of the report. Experienced verifiers have learned the following:

- a. Every 10 minutes spent writing during verification or afterwards that evening is equivalent to 30 or more minutes of report writing when you get back to the office.
- b. You will feel less stressed out knowing that all of that day's work is not piling up in your head. You will feel refreshed to start a new topic.
- c. Writing during verification allows you to go back and ask follow-up questions, or reveals new leads. It also gives you a reference to refer back to as the verification progresses.
- d. The respondent can be kept busy preparing the next topic or following through on work assignments while you take the time to write.

3. People Resources

When 2 verifiers are present, both should participate in the phase where you lay the foundation for the verification. However, once you reach the point of verifying stand-alone topics (such as movement charges, specific adjustments, sales traces, etc.), one person can write up a section he or she verified while the other verifies a new topic. Alternatively, each verifier could conduct separate portions of the verification simultaneously with the other verifier. In such instances, however, you

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must first establish that the respondent has the ability to conduct simultaneous verifications.

You can expand your verification team by putting the respondent's staff to work for you. Give them structured assignments and have them report results back when completed. Most respondents will eagerly cooperate with this request as they are anxious to speed up the verification process and this is one area where they can make a difference. Always, of course, maintain control of the verification process. Let it be known that you will check to source documents as needed.

For example, you have decided to conduct a completeness test using the 10 branch office sales ledgers which are contained in 40 ledger books. You select 30 sales and tab the page. To maintain control, you note the volume, page and invoice number. You then sketch out a format of what type of data you would like the respondents to collect for each sale. You tell them to tie the sales to a variety of source documents and to bring you the filled-in worksheet and source documents when completed. You check the first few against source documents, and randomly check others. For other assignments, you may simply ask them to tell you if there were any discrepancies and check nothing.

The key is to be unpredictable as to when and how you will actually trace the worksheet results to source documents.

C. Overview to Respondents

Verifications often begin with an introductory session with those people directly and indirectly involved in the preparation of the response and those responsible for verification. There may be only one or two company officials or upwards of 25 individuals. Include the following information in your overview:

1. That you are there to verify the accuracy of their responses as required by our antidumping law.
2. That you will be verifying the negative as well. That is, you will be examining whether any relevant data was omitted or confirming that certain expenses or other items do not exist.
3. How exhibits, new information, and photocopying will be handled.
4. Set the agenda for the first day and explain how you intend to proceed. Let them know the types of hours you will be working and what is expected of them (in terms of after work assignments). If they have a schedule planned based on your outline, you may consider it but emphasize that you reserve the right to deviate from it as needed. This procedure usually works out as long as you give them advance warning of changes.

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5. Discuss meal arrangements. You may suggest that “working lunches” be used with food brought in to the verification site. While current ethical guidelines permit meals overseas with a foreign entity’s representative, such meals should not be excessive. However, as impartial investigators, verifiers have a unique responsibility and must take care to avoid any appearance of a conflict of interest. After hours activities with respondent personnel or its counsel should be approached with caution or avoided altogether.
6. Agree to maintain a visible check list of outstanding assignments and documents. If the verification room has a chalkboard or large pad on an easel, use it for this purpose. Go over it daily to ensure that both parties understand where things stand. This procedure is an essential task in maintaining control of the verification.

D. Dealing with Response Revisions and New Information

Conclude your introductory comments by asking if there are any clerical errors or new information to present. These situations usually arise after the company has begun preparing for verification or their counsel has done a dry-run verification.

There is a fine line between clerical errors or minor omissions and new information. New information would include such things as modification to date of sale methodology or the reporting of many new sales or adjustments. Clerical errors are typically corrections to existing calculations while a minor omission might involve dates of payment that were not available for the initial or supplemental response to the questionnaire. In all cases, your benchmark for evaluating the claim should be its relevant significance to the response.

If you feel that the respondent is presenting substantially new information, either prior to or during verification, you should contact your supervisor in Washington and ask how to proceed. Do not make any commitments to accept the new information until you have talked to your supervisor. Due to the time difference between most countries where we verify and Washington, it is likely you will not be able to reach your supervisor during that work day. To the extent possible, attempt to determine the magnitude of the problem as this information will be needed by you, the senior analyst accompanying you, or your supervisor in Washington in deciding how to proceed.

Any new information or corrections of clerical errors that are accepted during verification should be submitted for the record in Washington, and served as required to all parties to the proceeding as soon as possible.

E. Dealing with Discrepancies Discovered During Verification

Discrepancies are errors in the information reported in the response or required information that was not reported in the response that were discovered by the verifier during the course of the verification. Minor discrepancies are similar in magnitude to clerical errors and should be noted in the appropriate section of the verification report. The verifier must bear in mind, however, that many of the items being verified (such as the sales traces) represent a small sample of the

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data reported. Thus, when a seemingly minor discrepancy is found, you will need to evaluate the depth of the problem - does it affect only that transaction, or does it reflect errors in the invoice, sales order or complete data base?

Major discrepancies are serious flaws in the data base which call into question the integrity of certain sections of the response or the complete response itself. An example of a discrepancy in a specific section of the response would be if your completeness tests on expense accounts reveal the existence of direct U.S. advertising expenses (your "risk analysis" assessment would tell you that it was to the respondent's advantage not to report direct U.S. advertising expenses) when the respondent reported no such expenses. In this case, you should document the existence of the discrepancy and collect additional information (such as account totals or U.S. account totals), as time and resources allow, that will provide alternatives for dealing with the problem during the post-verification decision making process.

Examples of a major response discrepancy affecting the complete response would be failure to report a large number of period of investigation (POI) or period of review (POR) sales or the existence of consistent inaccuracies throughout all sections of the response. Upon discovering such major discrepancies, you should contact your supervisor in Washington and ask how to proceed. Again, where time and resources allow, you should collect sufficient information (such as what is the magnitude of unreported sales - 1%, 5%, 40% of total sales) for dealing with the problem in the post- verification decision making process. It is important that you make it very clear to the respondent that collection of such information does not constitute acceptance or verification of the information. Furthermore, the analyst should not discuss the possibility of using facts available for the missing data in making a final determination.

V. INTRODUCTORY REVIEW

Laying the foundation is essential to a successful verification. On the one hand, you are reviewing the information already on the record while, on the other, you are fleshing out this information to the depth needed. This process will give you a fuller understanding of how the company is put together and how it operates. You cannot verify the negative without this knowledge about the company because it gives you the tools and know-how with which to probe.

A. Corporate Organization and Structure

Even if the response is clear on corporate organization and structure, go through the entire structure. It tells you who the players are and gives you a better overview of the entire company, not just the unit involved with the subject merchandise. Such information may lead to unreported sales channels or affiliated customers and suppliers.

Make sure that you have the organizational structure in effect for the POI or POR. Frequently, you will find out at verification that the structure changed during the period and you only have one of the structures.

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For those key sections of the company relevant to your investigation or review, obtain names and numbers of people in the section. You may want to question people later or use numbers for a reallocation.

Where appropriate, identify the accounting codes or cost centers for each key section.

In dealing with non-market-economy cases where a respondent's claimed independence from government control is an issue, you will want to review the company structure to identify all potential areas of government involvement or coordination with other producers and exporters. The company's legal identity or status may also be important. Make sure you understand the relevance of this concept in the verification country - it will often be a clue as to the degree of independence from state control that the company has. At the same time, do not rely solely on this status to verify this issue. You will want to test the application of this claimed independence frequently throughout the verification.

B. Accounting Review

You must have a basic understanding of the company's accounting system in order to adequately conduct a verification of the facts as presented\ and to verify the negative. Furthermore, since all verification steps ultimately reconcile to the financial statement, you must ensure that you possess the audited financial statement applicable to the POI or POR. If two or more financial statements overlap the POI or POR, pick one period (preferable the one that covers most of the POI or POR) and focus your attention on that document when you establish a verified accounting baseline (see below). The other periods can then generally be relied upon with the same degree of satisfaction as the baseline period.

At NME verifications and particularly at production facilities, you may not be working with audited financial statements - at least in the sense that we are accustomed. While joint venture companies are likely to have financial reports which generally follow a modified GAAP, other types of companies may have no financial reports, with most somewhere in between. Rarely will you find audited financial reports. In these instances, identify the closest equivalent - a financial, tax payment, or other accounting document on which you are satisfied the company relies as an accurate reflection of its normal record keeping . Such reports can be used to confirm other verification findings, but they should not constitute the sole source document for verifying other topics.

During the accounting review, you should:

1. Ask for an explanation of the internal accounting system which describes how, when and where the financial and sales accounting systems tie together. If verifying factors of production, look for how the production and/or inventory accounting system ties to the financial records. Given the limited time of verification, focus on the essential and relevant information for the verification.
2. Verify the financial statements submitted in the response to an audited original. If the original is not in English, confirm translations of key sections of these reports

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(balance sheets and profit & loss (P&L) statements) with your interpreter. If they have not been submitted in the questionnaire responses, ask for the financial statements for affiliate companies.

3. If not already submitted, obtain the general ledger's chart of accounts and sub accounts. Identify those accounts covering sales, movement charges and direct and indirect selling expenses. Similarly, if your verification includes data on cost of production or factors of production, you will need to identify the accounts which track the relevant production and inventory categories.
4. Using the relevant account codes noted above, locate and review the accounts in the general ledger for these items. This process gives you a clear understanding of the types of accounting detail available and whether or not additional supporting ledgers are needed. Where appropriate, identify account transactions of interest and ask the respondent to trace to source documents. These steps give you a head-start on completeness tests and tracing charges and expenses to the general ledger.
5. In some countries, you may find certain financial filings with government authorities to be quite useful. For example, in Japan, all publicly listed companies are required to prepare a year-end annual securities report called the "Yuka Shoken Hokokusho" for submission to the Ministry of Finance. This report, commonly called the MOF report, is submitted to the Ministry of Finance within three months of the end of each fiscal year. The MOF report contains a wealth of information and may be considered as the primary accounting source document.

C. Computer Data Base Review

We are finding that much of the verification material and even source documentation is maintained "on-line," particularly for large multinational companies. In some instances, no hard copies of typical accounting source documents are kept. For these companies, you will need to develop the integrity of the computer data bases in order to rely on this source for your verification. Below are some useful tips for such verifications. Note that some of these documents may have been submitted as part of the questionnaire responses or in a separate filing prior to verification.

1. Ask to meet with the person in charge of computer operations and have this person give you a complete list of the types of computer reports generated and/or available in the ordinary course of business.
2. Review samples of these reports and select those that could be of interest during the verification. This procedure is particularly important for adding to the variety of completeness tests in that you can cross check different types of reports against the ones proffered to you by the respondent for the completeness tests. Where necessary, ask that certain reports be produced for the POI or POR.

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3. Where possible, ask that the data base for the sales listing be loaded and that a programmer be available to run various sorts of that data base . If appropriate, ask that certain programs be run. This procedure will give you a good idea of what is involved and how long it will take.

D. Affiliations

In their questionnaire responses, companies are required to report affiliates involved in the production or sale of the subject merchandise. Often respondents, especially large companies, will limit this reporting to affiliated companies that have a direct role in the production or sale of the subject merchandise without having considered all of their investments and holdings. Our goal in verifying affiliations is to confirm that reported affiliations between companies through investment or interlocking board members and officers are accurate and complete. In those instances where there are affiliated companies, you must also consider that affiliate's relationships with its customers and suppliers. Verification of affiliations in large, multi national companies is much more difficult than for smaller, less complicated companies. The process can be greatly facilitated by pursuing the issue vigorously in the questionnaire and follow-up deficiencies. See Chapter 8, section XVII for information on affiliated persons.

1. Verification of potentially unreported affiliations means that you must first become familiar with the customers and suppliers reported in the response. The list of customers can run into the thousands; therefore, you should refer to your pre-verification data sorts (as discussed above) to determine which customers are significant. If the response data field for "customer code" uses the same coding kept in the company's internal records, then it would be helpful to also sort the customer codes in numerical order. Use the list of relevant customers and suppliers to cross-check against verified holdings and investments of the respondent.
2. Verification of company shareholders can easily be accomplished through a variety of documents. The notes to the financial report will often list all, or at least the major, shareholders. You can also verify using the "shareholders equity" section of the balance sheet. Other documents include shareholders reports, government registration documents or published security reports of public companies, such as the "Shikiho" in Japan.
3. Verification of company share holdings and investments is primarily accomplished using the asset section of the balance sheet. Asset accounts, such as "marketable securities," "investment in securities," "investment in subsidiaries and affiliates," and "loans to affiliates" should be traced through the general ledger and sub ledgers. If percentages of investments and holdings are not observable from the ledgers, the company should be required to compute the percentage for selected investments of interest.
4. Verification of holdings and investments by reported affiliates is generally more difficult because you may not have that company's financial statement on the record or the company is distant from the verification site. In these instances, you may use

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the respondent's verified company data to check for sales, expenses, charges or production activity between the two companies or you may rely on faxed copies of source documents from the distant affiliate.

5. In non-market-economy verifications, we are interested in any formal relationships to export customers as well as to government entities. However, it is often difficult to verify affiliations through the balance sheet because the concept of investment is very different than in market economies. Most affiliations would occur through interlocking owners, board members or officers of the company.

E. Product Information

It is essential that you understand what products the company produces, where they are produced and how individual products are accounted for in the accounting system. Begin by reviewing the scope of the investigation or review as well as the questionnaire product and product matching characteristics that the respondents were required to report. Your verification will focus primarily on whether the respondent properly accounted for all subject merchandise and properly reported all product characteristics. Your goal is to establish a master list of subject merchandise that will become your source document during other phases of the verification, especially the completeness tests.

1. Review products produced by the respondent and its affiliates that are both inside and outside of the scope of the proceeding. Ask for a product code list covering all specific products produced by the company as well as codes for larger product groupings. Examine how this product coding system is integrated into the accounting system. This procedure will give you an understanding of what types of product-specific information is available.
2. Have the company explain how it segregated the subject merchandise from all other products produced. Where applicable, review the computer program used to identify the subject merchandise and ensure that all requested product characteristics were captured. For excluded products that are similar to the subject merchandise, examine the chemical and physical specifications to ensure that they are not subject merchandise. Finally, examine the technical characteristics of the products reported as subject merchandise to ensure that the characteristic codes assigned in the response are accurate. For continuity purposes, it is useful to use the products related to the pre-selected sales for testing reported characteristics. The resultant verified list of products is your product master list.
3. Where appropriate, discuss the product matching with product specialists or engineers. This step could be important if the respondent had requested that additional product characteristics be considered in the product matching criteria or if the hierarchy of physical characteristics is an issue. Further, if you are verifying difference in merchandise adjustments, it helps to know which characteristics, both reported and unreported, affect the variable cost of manufacturing (VCOM) and total cost of manufacturing (COM).

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4. Discuss the production process to the extent necessary for the particular investigation or review. If you feel one is necessary, it is a good idea to schedule a plant tour in the verification outline to alleviate scheduling problems that can arise during verification. However, unless you have extra time, don't feel committed to the plant tour unless you consider it necessary. In a factors of production verification for a NME case, a plant tour is essential and is discussed further below.
5. During a plant tour, observe the flow of the product through the production process, incoming raw materials, packaging of finished goods, shipping, etc. If you are verifying cost-related elements, identify those areas where cost differences between models may occur and consider whether the production differences appear consistent with the reported magnitude of cost differences. Note customer and supplier names that may be useful later in the verification process. Feel free to talk to factory personnel, especially in packing, shipping and inventory control. While the information they provide may not be appropriate as the primary source of verification of a topic, it may provide some "leads" for the verification.

F. Non-Market Economy Verification Plant Tours

1. Prior to taking the plant tour, review the product process thoroughly with the company. Take a copy of the production process diagram from the response (or have one provided at verification) and review it with the company's technical personnel. Identify where in the process materials are added. Repeatedly ask whether all materials used in production have been reported. Similarly, ask where all by-products, co-products, scrap, and waste are generated and whether these items undergo any further treatment or processing. If so, ensure that all factors related to these steps have been reported. Ask how the energy inputs are utilized and ensure that all form of energy used in the process have been reported. Make notes as appropriate on this diagram.
2. Take your production diagram with you on the plant tour and compare it with what you observe during the tour. Confirm that the process and inputs are as described by the company. Look carefully to see if the respondent may have omitted any inputs. Don't hesitate to ask any questions about what you see. Feel free to talk to the personnel on the factory floor (through your interpreter if necessary) and do not allow the company officials or counsel (if present) to coach the answers.
3. If quality or specific type of input is an issue in the case, such as for purposes of assigning the appropriate surrogate value, use the factory tour to examine (if possible) the material and how it is used. Ask about all relevant characteristics of the material and what effects different specifications have on the production process.
4. Observe how labor is utilized. As you see workers on the factory floor, ask how the company classified the skill level of the labor performed. This information will be important in determining whether the company properly reported its labor factors.

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5. At the shipping and packing department (or equivalent), note how the product is packed for export and ensure that all packing materials also have been reported properly. Observe packing labels, containers, etc. to identify further areas of verification attention, such as the factory's customers and export channels.
6. Incorporate your findings in the verification report. Your observations may well be as important as any document review.

G. Sales Process and Distribution System

Although this information is extensively reported in the response, it is often not focused upon in detail prior to the preliminary determination. Review the information and ask further questions if needed. Fundamental sales process and distribution system information is needed throughout the verification, particularly where level of trade, customer category, date of sale, and other such issues are contentious.

H. Date of sale/Sales Reporting

The final step in building the foundation of the verification is understanding the date of sale (DOS) methodology reported by the respondent and how the reported sales transactions were collected from the respondent's data base. Both of these processes are key components of the completeness tests.

1. Review all documents and discuss with the respondent how the date of sale is determined in the normal course of business.
2. The DOC now generally uses the invoice date used in the normal course of business as the date of sale except for long-term contract sales. This change in practice should make date of sale a less contentious issue and easier to verify. That said, you still have the responsibility to verify that the date reported is consistent with the normal practice of the company.
3. For long-term contract sales, you will still need to understand how price and quantity were negotiated and how that date may be reflected in company records. Even for those sales, you will want to know how the company records the date of sale for its own records. Always consult with your team lawyer prior to verification where complicated contracts are involved.
4. Unless there is clear evidence at verification that the respondent misrepresented its date of sale reasoning in the response or if you are concerned about the use of different DOS methodologies in the U.S. and home market, further verification of date of sale at this point of the verification is time-consuming and impracticable. One exception is where there are a small number of sales in a particular market, and revising date of sale would have a dramatic effect. This situation may frequently occur with large contract orders. If you have reason to believe that the respondent's

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date of sale methodology is not correct, collect data which supports your position. Use the sales trace segment of verification to test the respondent's methodology.

5. Once it is clear what date of sale methodology was used by the respondent, you need to know the procedure used by the company to extract the POI or POR sales from its data base. The actual procedure will range from manually reviewing sales and shipment records to complicated computer programming. A POI or POR which overlaps accounting periods or subject merchandise which doesn't conform to the company's record keeping will greatly complicate the process. Whatever the methodology, it forms the parameters for the first goal of the completeness test, which is to confirm that the company followed its claimed sales selection process.
6. If computer programming was used to access huge sales data bases, you will first need to verify the accuracy of the program itself. Meet with the programmer and review the critical language that covers the following.
 - a. All applicable data bases. Use your knowledge of the accounting system and the organizational structure to ensure that all applicable data bases are brought into the program.
 - b. The correct POI or POR dates.
 - c. The identification codes which capture the subject merchandise.
 - d. The date of sale methodology employed by the respondent.
 - e. Any language which otherwise excludes certain products or sales.

The company should then provide copies of all files or worksheets used in arriving at the sales transactions reported - we often ask for these worksheets in the verification outline. If you are concerned, you may ask the company to re-run the program in your presence.

VI. RECONCILIATION OF QUANTITY AND VALUE OF SALES

Reconciliation of quantity and value of sales is the transition phase between laying the foundation and conducting the completeness tests. It also serves another very important purpose in that it "baselines" accounting ledgers and worksheets that will be used to verify many other topics. "Base lining" documents means that you have established the validity of these documents by tying them into the audited financial statements and that other verified topics can be tied into these documents without having to go back to the general ledger. Thus, each of the documents used to reconcile the total quantity and value of reported POI or POR sales back to the financial report can be considered a source document. This exercise requires that you establish to your full satisfaction that the tie-in to the financial statement is complete and accurate. If not, where appropriate, you should continue to reconcile verified topics back to the

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company's general ledger. Remember that our questionnaire requires the respondent to submit a quantity and value reconciliation on the record prior to the start of verification.

The total quantity and value of sales is simply the sum of the quantity and value of individual transactions in the response's transaction data base. Thus, verification of total quantity and value is accomplished by tying selected individual sales transactions into the financial statement and by testing the ledgers and worksheets used for completeness.

Recognize that the quantity and value of sales total from the sales transaction data bases may differ from the questionnaire section A quantity and value of sales. If they do, you should obtain an explanation. Normally, you will only need to verify the section A numbers if they differ significantly or if a close decision on home-market viability was based on the data from the section A response.

Bear in mind that it is not always possible to tie sales transactions directly into the financial report using records and ledgers kept in the ordinary course of business. This situation occurs because our definition of the product, POI or POR, and date of sale often do not coincide with the company's accounting procedure. (With the date of sale as invoice date, we expect to find fewer problems in this regard.) Worksheets probably will be needed to bridge between accounting records and the sales data bases submitted by the respondent. These worksheets should also be tested during the completeness checks.

Top-down or bottom-up? That is, should you begin verifying from the financial statement and work your way down to the response or from the response and work your way up to the financial statement? Both approaches are acceptable; it is really up to you and how your mind best functions to decide how to proceed in tying quantity and value into the financial statement.

VII. COMPLETENESS CHECKS

Completeness is the process in which numerous tests are conducted to confirm both the accuracy and thoroughness of the information submitted by the respondent and its affiliates. The accuracy component focuses on the worksheets, records and methodology used by the respondent to compile and support its response. The thoroughness component focuses on whether or not the worksheets, records and assumptions made by the respondent omit any data which should have been reported. The two categories of completeness tests are as follows: 1) completeness of reported sales, and 2) completeness of charges and expenses.

A. Sales Completeness

Most important to the integrity of the response is to ensure that the respondent has reported all of the required sales transactions. Thus, all of the criteria used by the respondent in preparing the sales data base, such as the date of sale methodology, product selection, and computer programming, must be verified for accuracy and completeness. The ways and means of accomplishing this varies from response to response and from respondent to respondent. Tying worksheets into ledgers and ledgers into audited financial statements are among the most basic forms of completeness tests and these are the tests that the respondent typically will present to

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you. The real challenge is finding a variety of alternative methods to come at the subject from different directions and to cross-check continually these sources against one another. In a sense, completeness has no defined beginning or end. You start looking for ways to probe and scrutinize the response from the first minute of verification and don't stop until the verification is over. There is no set number of tests required; you simply conduct as many as time allows.

Depending upon the complexity of the response and the “comfort level” you develop with the respondent and the questionnaire response, you may conduct as few as one or two completeness tests or as many as ten. The following are samples of the types of documents and methods that can be used to conduct sales completeness tests. Please bear in mind that your ability to conduct different types of completeness tests is directly related to the knowledge obtained in the earlier phases of verification. The following list enumerates various document sources:

1. Sales records kept in the ordinary course of business such as monthly sales journals. Such records may be on a company-wide basis, by sales office, by product codes, by customer, by country, etc.
2. Sales management reports, which come in a myriad of forms. (You should have identified these reports in the computer data base review for those companies which rely on computerized records.)
3. Hard copies of commercial invoices, preferably in sequential order. In some countries, such as Taiwan, the companies are also required to use and retain invoices issued on government forms (e.g., “GUI” or government uniform invoice).
4. Sales order or confirmation logs.
5. Customer correspondence files.
6. Shipping logs and reports that show shipments from the factory, including bills of lading and air freight bills files.
7. Export licenses, where appropriate.
8. Quality control records and certificates of inspection.
9. Inventory records for finished goods. Select shipments of finished goods for tracking back to purchase orders. Such records are also useful for ensuring that all product codes of subject merchandise were reported.
10. Production records provide the same utility as inventory records.
11. Payment records, such as letters of credit, promissory notes and credit insurance policies. A review of files containing these documents may provide leads on sales to specific markets and customers.

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12. Expense ledgers for ocean and air freight, bank charges, commissions, brokerage and handling, etc. can be used not only for completeness of these charges and expenses but also to trace back to commercial invoices.
13. Duty drawback records of export shipments.
14. Credit and debit memo journals. These records must be reviewed to determine if there were canceled or revised sales or additional debits or credits on sales.
15. Customer or product files and records maintained in other offices, such as engineering, R&D or at the factory, which refer to customers and orders.
16. Making phone calls to salesmen and branch sales offices asking about customers, orders or the existence of certain types of other information that could be used in completeness.

In conducting completeness checks using the types of records cited above, we typically select a number of transactions from the selected file, and ask the respondent to identify whether or not the transaction is included in the response and, if not, why. We also ask to see the original sales documents, such as invoices, and documentation to support the respondent's exclusion of the information from the response if the sale or other information is not part of the response. In assigning transactions to be traced, be sure to keep your own record of "starting point" documents, such as invoice or purchase order numbers selected.

The task of conducting completeness tests can be greatly facilitated if you identify the document and items of interest and have the respondent's staff prepare the completeness worksheets and supporting source documents.

Note that in the case of NME respondents completeness checks are also useful in verifying the extent of state control with regard to a "separate rates" claim (see chapter 8, section XVI for information on NME analysis). As you review the types of files described above for checking sales completeness, also look for any evidence of government involvement or coordination in sales transactions. Using your interpreter, look for endorsements, certifications, approvals, etc. in the documents reviewed. Follow-up with the respondent any such items you identify.

B. Completeness of Charges and Expenses

Let the concept of "risk analysis" be your guide in determining which charge or expense you should pursue for completeness. Consider the examples noted above as possibilities for charge and expense completeness. However, the most efficient approach is to start with the chart of accounts and identify expense accounts of interest. Follow-up by examining supporting subledger accounts or account activity reports that reveal enough detail to allow you to select specific entries. Again, you may use the respondent's staff to compile the results and supporting documents. Check the results to ensure that these expenses were appropriately accounted for in the response.

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VIII. TRACING SALES

A. Transaction Data

The purpose of the sales trace verification is to verify the factual information reported for the pre-selected sales identified in the outline as well as those sales identified during verification. This sales trace is a two-part process in which a sale is first traced through the customer records from the initial inquiry/order to payment by the customer. In the second part of the sales trace, charges and adjustments that represent the actual charges and adjustments for that sale are examined and verified.

You should begin the sales trace with a relatively uncomplicated sale. During the sales trace, you should be able to verify the following basic sales transaction data:

- sale date
- shipment date
- invoice date (if different from sale date)
- payment date
- product code reporting
- quantity sold
- unit price
- some price adjustments, such as on-invoice discounts

If certain charges and adjustments (typically credit days, rebates, discounts, commissions) are the actual expenses (as opposed to allocations) for that sale, then those items should also be verified in that sales trace. Otherwise, charges and adjustments should not be included in the sales trace but should be verified as separate, stand-alone topics.

B. Verification Procedures

1. For the first sale, take as an exhibit copies of all documents which support each element of the sale. Make sure that appropriate sections of these documents are translated as these translations will serve as a source of reference later on during verification of other sales traces. Be sure to link the documents in that exhibit to one another and take ample notes on the documents if you need them.
2. You should be able to rely on the foundation and baselining established earlier in the verification process to verify the sales details relatively quickly. For example, your quantity and value examination and completeness checks should have provided you with a working knowledge of the sales and accounting documents included in the sales trace package.
3. As you verify each detail of a particular sale, check off the item on the sales trace printout. Where something doesn't check out or contains significant new findings, note the discrepancy and take copies of supporting documents.

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4. For each sale verified after the first sale, you do not need to take copies of all documents as exhibits, except where they support an unusual sales detail or finding. For those sales for which you do take copies for exhibits, include copies of key documents such as order confirmations, contracts, invoices and bills of lading.
5. Depending on how much time you have at verification and how much energy you have for verification work in the evening, you may want to consider taking some of the sales trace packages to review in the evening. In this way, you are able to confirm the transaction data reported and study the sales documents for in-depth follow-up questions the next day. This practice allows you to concentrate your verification time with company officials on items which require more of their attention than simply checking off data entries on the sales transaction printout. Some verifiers have found this procedure useful for verifications in the United States which generally last three days or less, and where all documents are in English. Overseas, you should not rely on reviewing the sales in your hotel unless you are sure you will be able to understand the sales documents on your own, without an interpreter or company official to guide you. Thus, this procedure is best used after having reviewed at least the first sales trace in each market during the verification session.

C. Sales Trace Source Documents

1. Typical sales trace source documents include:
 - Customer contracts and purchase orders.
 - Order confirmations and/or proforma invoices.
 - Customer correspondence files.
 - Purchase order logs or pending shipment files.
 - Production control records.
 - Invoice to customer.
 - Shipping documents such as bills of lading, airway bills and delivery receipts.
 - Factory shipping logs.
 - Inventory records.
 - “Base lined” internal sales reports and worksheets.
 - Sales ledgers.
 - Accounts receivable records.
 - Records of payment, such as canceled checks, letters of credit, debit/credit memos, promissory notes, bank deposit slips and/or bank statements.
 - Credit insurance.
 - Debit/credit memos for post sale price and/or quantity increases or decreases.
 - Where appropriate, invoices, expense ledgers, journal entry slips and records of payment for actual charges and adjustments.

D. Sales Traces for NME Transactions

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The sales trace is a major opportunity to verify the de facto separate rates criteria. Review carefully each document for any indication of State involvement or coordination. Discuss with the exporter how the sale was negotiated and how price was set. Examine sales documentation for any indication of sale approval or coordination from outside the company. Trace the payment of the sale from the customer to the bank and the company financial records - - was the respondent able to keep all of the proceeds of the sale? If not, determine what happened to the rest of the payment.

IX. VERIFICATION OF REMAINING CHARGES AND ADJUSTMENTS

Charges and adjustments that have been reported on an aggregate (not sale specific) basis and which have been allocated to reported sales are verified as separate, stand-alone topics. Examples of such stand- alone charges and adjustments typically include interest rates, inventory carrying costs, advertising, freight, and packing.

A. Allocations of Expenses

Has the respondent described the calculation and presented the supporting documents it has prepared in accordance with the instructions in the verification outline? Remember that you must first verify the data as presented in the response. Afterwards, you should pursue any concerns you may have with the methodology or the calculation.

1. Collect sufficient information on circumstance of sale adjustments to determine whether the expense is properly categorized as a direct or indirect selling expense.
2. Whenever verifying an allocation methodology, be sure that you are verifying back to Base lined or source documents and the financial accounting system rather than simply back to a worksheet. Worksheets are useful, but they are not, in themselves, source documents.
3. Take verification exhibits which support your findings. Your exhibits may include the following source documents:
 - Sample calculations.
 - Allocation worksheets.
 - Invoices to respondent.
 - Expense ledger entries.
 - Journal entry slips.
 - Records of payment.
 - Accounts receivable and payable ledgers.
 - General ledger entries.
 - Other ledgers and records, which may be used to support such items as calculation of credit days, interest rates, inventory carrying time, duty drawbacks.

X. NME FACTORS OF PRODUCTION VERIFICATIONS

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In NME proceedings, you will be verifying the reported factors of production, which form the basis of the normal value calculation. The techniques used to verify this response are generally applicable to the factors verification as well. Keep these techniques in mind while covering the specific items to be verified in a factors verification. Ideally, you should have conducted the plant tour before beginning the verification of the reported consumption factors so that you are able to compare what you have seen in the production process with the documents you review.

A. Production Quantity

In most cases, the respondent has reported its consumption factors as the product of material consumed divided by subject merchandise during the period. Therefore, you should first verify the production quantity - the denominator in most or all of the respondent's calculations - before the specific factors. As you would with a sales quantity verification, use financial statements, production records, and/or inventory ledgers to verify the production amount.

Make sure that the production quantity you are verifying refers to the product as sold. In some cases, a producer will maintain its production records based on a standard that may be different from the product that is actually sold. For example, a chemical producer may sell its product at a 90% concentration level, but maintain its records on a 100% concentration level standard. Where such differences exist, make sure that all reported factors are appropriately and consistently adjusted, and discuss any inconsistencies in your report. Similarly, as you examine both production and factor inputs, be sure that the respondent has reported, and you are verifying, actual, not standard, production figures. If production yield is relevant in the case, you will also verify the net yield in this step.

B. Material Inputs

Materials consumed are often verified as the numerator in the respondent's factor calculation. Typically, the respondent has compiled the data from monthly production records, and summed the monthly figures to arrive at a consumption figure for the POI or POR that is divided by the POI or POR production total. If you have successfully verified the production denominator, all you need do is verify the numerator and check the math. A common technique is to test the material consumption figure by examining in detail the records from one or more months of the POI or POR. Source documents for such testing may include:

- Production records
- Production line records
- Material purchase receipts
- Freight invoices
- Material inventory subsidiary ledgers
- Inventory in/out tickets
- Plant workshop statistics
- Daily production/consumption reports

As with sales verifications, you are always conducting completeness checks. Instead of sales completeness, you are checking for factor completeness - has the respondent reported all

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materials consumed? Are by-products, co-products, scrap, and/or waste properly accounted for? Use the knowledge gained from the plant tour and, if you visited the petitioner's plant, the U.S. producer to constantly test the questionnaire response.

Materials purchased from market-economy countries and paid for in market-economy currencies may be valued at the actual purchase price or at a weighted-average price if there are multiple purchases. Use invoices, purchases orders, inventory records, etc. to verify price, quantity, and consumption during the period. Always consider the following:

1. Be wary of price quotes used to claim a market economy purchase - such quotes may have been obtained solely for the purposes of an antidumping duty proceeding and may not reflect actual purchases or significant consumption by the company over time.
2. Note the terms of sale to determine whether or not freight from the supplier to the factory is included in the purchase price.
3. Check whether the factory purchased the material from a trading company and paid for the material in the NME currency. We may not be able to accept the market-economy price for valuation if the factory itself did not pay for the material in the market-economy currency.

C. Labor Inputs

Factor responses report labor based on the time expended to manufacture a unit of the product and the skill level of the workers. The respondent's labor accounting, however, will normally not track labor in the same manner. Your verification of this labor input will depend on how the respondent's records are kept and how it applied this information to the response.

In some cases, the respondent will base its reporting on attendance and personnel records, counting the number of person-hours, by classification, attributable to producing the merchandise over the period, and dividing that total by the production total. For this verification, a review and sampling of those records is called for. In other cases, the respondent may use a standard formula tied to production results or to production studies. For those instances, you will need to test the reasonableness of the respondent's methodology. How to test will depend on the unique circumstances of the company, production process, and the available records. As one example, you may consider observing workers and timing how long it takes to perform a task, and comparing sample times to the standards established by the respondent.

Classifying labor as skilled, semi-skilled, or unskilled may be simply a respondent's judgement call, based on job title, or tied to wage rates at the company. In the first case, question the respondent regarding the basis of its judgement, and compare the reply to the labor observations from your plant tour. In the second case, we should not rely on the respondent's job title classification alone; question the respondent and consider your factory tour observations as well. In the last case, while we are not concerned with the actual wages paid in a NME case, the

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relative differences in the pay structure may be a good indication of the skill level demanded of a worker.

Another classification issue may be direct versus indirect labor. The extent to which this topic is an issue will be related to surrogate valuation. For example, if the surrogate value for factory overhead applied at the preliminary determination includes indirect labor, based on the “risk analysis” concept described above, you will want to ensure that the respondent properly accounted for all direct labor, which is separately calculated, and did not include some direct labor in its indirect labor classification, thus reducing normal. Question the respondent about its direct/indirect labor classification and, again, use what you learned from the factory tour. For example, if the respondent classified quality control labor as indirect labor but you observed quality control workers performing their tasks as part of the production line flow, you will want to discuss the classification with the respondent and include your findings in the verification report.

D. Energy Inputs

Energy inputs such as coal and fuel oil may be verified in the same manner as material inputs. Other energy sources such as natural gas and electricity are usually measured differently. From your factory tour and production process discussion, you should have learned how the company measures its consumption. In many cases, electricity and gas are measured by meters and meter reading records are main source documents used. During the factory tour, you may want to see where some of the meters are located so that you can see what production energy is being measured. In other cases, these energy sources may be provided from the equivalent of a utility company and the utility’s invoices are then used as the source documents.

In some cases, the respondent may have reported energy consumption based on its payments to utility companies. Determine if there is a time lag between actual usage and payment. If so, verify the actual usage during the POI or POR by factoring in the lag period.

Normally, we do not include steam as a factor but rather the energy used to generate steam. Be sure you understand the respondent’s methodology for calculating the per-unit energy consumption used to generate the steam.

You should always check to ensure that all energy factors have been reported. Some commonly overlooked areas include:

- All energy sources used to produce the merchandise, not just the principal production line or machines.
- Energy used to process by-products, co-products, scrap, and waste loss.
- Energy lost in transmission, such as steam lost due to leaks.
- Energy for environmental cleanup (if part of production process).

Other energy consumed may be part of factory overhead, such as factory lighting. Keep in mind the potential surrogate values for factory overhead in the case. Where you are not sure whether a

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particular energy factor is part of direct production or factory overhead, describe the facts in your report and collect the information you need for further considering the issue after verification.

Water may or may not be measured separately as a distinct consumption factor. In many recent cases, the surrogate values selected for factory overhead have been analyzed and found to include water factors typically used by most production companies. Exceptions may include specially processed water, such as highly purified or distilled water. If water consumption is an issue in your case, you will want to understand and report the source of water and the level of treatment or processing.

E. Other Inputs

1. As we often need to value the transportation cost of bringing material and certain energy inputs from a supplier to the factory, we will verify the distance between the supplier and the factory and the mode of transportation. This topic is normally a minor issue and therefore not much time should be spent on it.

To confirm the respondent's reporting, we examine such documents as maps, bills of lading, trucking company and railway invoices, rate schedules, and inventory records. If multiple suppliers and/or transportation modes are involved, you will also need to test the respondent's averaging methodology.

2. Normally, we do not need to verify specific factory overhead items as the factory overhead surrogate value covers such factors. However, whether or not a given factor should be included as a direct production factor or part of factory overhead may be an issue in the case. Use the verification to gain a better understanding of the input and how its use may correspond to the surrogate value information you have developed. Observe any potential differences between the surrogate value overhead items and those at the factory in case these differences become an issue for the valuation in the final determination.

XI. VERIFICATION REPORTS

As noted above, the verification outline itself is the starting point for your verification report. The items listed for verification become the description of the procedures you used for verification. Below each item you fill in the results. In general, if an item checks out, all that may be necessary to report is that no discrepancies were observed or that the item was consistent with the questionnaire response. Obviously, where your findings differ in any way from the questionnaire response, you will need to provide an explanation. Ask a senior analyst, supervisor, or program manager, as appropriate, for sample verification reports to use as a guide.

Bear in mind that the verification report is the place to report on the accuracy of the questionnaire response (both submitted and omitted). The report is not an analytical decision memorandum, and you must avoid drawing conclusions about the use or application of data from the questionnaire response.

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If possible, try to write, at least partially, during the verification or in the evening after verification. As a general rule, what takes you one hour to write within 48 hours of verifying a particular topic will take approximately three hours to write a week or two later back at the office. Verifications proceed at a hectic pace, requiring you to absorb vast amounts of material, so writing (or typing, as the case may be) each item as you go along, or soon afterwards, gives you the opportunity to ensure that you fully understand what you just verified. Furthermore, writing the report frequently generates new questions and clarifications, which you are then able to pursue immediately or the next day.

If you use data packages, you may want to keep your notes and exhibits together with the data packages. If you are unable to write in the evenings and your verification is scheduled to run more than a business week or you are doing back-to-back verifications, discuss with your supervisor or PM the possibility of adding an off day in the middle of verification for working on the report.

A. Report Writing Tips

1. Include a list of major findings at the beginning of your report.
2. If you did not verify a topic due to your time and issue priorities, state in the report that: “This topic was not selected for verification examination.” If, however, you were unable to cover a major topic due to respondent’s actions at verification, such as lack of preparation or refusal to permit examination of certain records, document the incident in your verification report.
3. Well-written reports ultimately may be the difference between winning and losing in court if the DOC is sued on an issue tied to verification findings. Similarly, a well-written report permits all parties (petitioners, respondents, Import Administration managers, and, surprisingly, yourself), to have a clear understanding of the facts when the time comes in the final determination to conclude the analyses and address the issues.
4. You may find the following ideas helpful in constructing a well-written report:
 - a. Remember your reader
 - Be sure that your report addresses pertinent points the petitioner and your team have raised, or that are likely to be raised, as issues in the proceeding.
 - Your writing style should assume the reader is familiar with the case in general, but you may need to explain further some details on complicated items where the verification outline does not provide enough information to fully explain the topic.
 - b. Keep your narrative clear

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- Put lists, charts, etc. in appendices, including the list of participants.
 - Do not, however, bury pertinent facts in the report by simply referring the reader to an exhibit. For example, if the terms and conditions of a sales contract are a relevant issue, identify the key terms of the contract in the text of the report instead of directing the reader to the appropriate exhibit without any further discussion.
 - Use codes, key words and abbreviations to refer to long or awkward terms, such as certain sales ("HM1" or "US1") or proprietary data ("Form A", "HM1 Customer", "Rebate Type 2", etc).
- c. Say what you saw, not what you thought you saw
- The verification report must be an accurate and credible description of what was verified. Therefore, when you write that an item checked out, it should be because you are thoroughly satisfied with the verification results. Do not allow yourself to jump to conclusions or be led to accept an item as verified unless you are satisfied with it.
 - Don't make assumptions in your verification or your report unless they are adequately supported and logical.
 - If you are not completely satisfied with a verification item and you have pursued it as far as possible at verification, describe in your report any reservations you have about the verification of the item.
- d. Stick to the subject
- Avoid including extraneous details and irrelevant facts.
- e. Write public
- In order to make the public version of the verification report as understandable as possible, use proprietary information sparingly.
 - Provide enough information in a public version to create as useful a public summary as possible (e.g.: \$[2.90] per kg. - the unit and currency appear in the public version, so only the figure itself is excised.).
 - If possible, do not use customer or supplier names in your report. These details are usually unnecessary and including them may force you to prepare, in investigations, three versions of your report - Business Proprietary, APO, and Public. Normally, it is sufficient to refer to "the customer" or "the transportation company" rather than name it.

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- Respect legitimate requests for proprietary treatment from the respondent, but, if you have reason to doubt the appropriateness of the request, discuss it with the respondent and its counsel.
- f. Good grammar and proper form count
 - Be sure to check spelling, grammar, diction, etc. in your report. Do not rely solely on computer aids such as spell check programs.
 - Check the continuity of your report - are all loose ends tied up? Have you left something unexplained? Does your report make sense? Does the report flow well?
 - Have someone in your team who was not at verification read through your draft report to check for the above items.

B. From Draft Report to Final Report

The text of your report is “final” when it is approved by your supervisor or other manager. However, the report is not ready for release to all appropriate parties until the respondent or its counsel has the opportunity to review the report for the purpose of agreeing to administrative protective order (APO) release and to request proprietary treatment for any additional material. In investigations, common practice is to allow the respondent a half business day to raise any objections to APO release of the report, and a full business day to comment on proprietary treatment. After the respondent has had these opportunities and you have incorporated any changes in the proprietary treatment of report information, the report is ready to be placed on the record.

- Following the suggestions above, try to make as much of the report “public” as possible. Treat as proprietary (i.e., place between brackets) only those information items for which proprietary treatment has been requested previously in the questionnaire response or which you are certain are entitled to proprietary treatment according to the statute or regulations. If in doubt, do not treat the information as proprietary - you can be sure that if the respondent believes it should be proprietary it will let you know, while it is less likely to advise you if information does not require proprietary treatment.
- Typically, counsel for the respondent will telephone you or fax you with additional items it believes require proprietary treatment. Review the items with counsel if you question this treatment. While legitimate requests should be granted, not all items identified by counsel or the respondent are eligible for such treatment and the request may be rejected.
- Counsel or respondent’s comments must be limited to APO release and proprietary treatment only. This opportunity is not a forum for requests to change or “correct” the substance of the report.

LIST OF ACRONYMS & ABBREVIATIONS

APO	ADMINISTRATIVE PROTECTIVE ORDER
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
CRU	CENTRAL RECORDS UNIT
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
ICA	IMPORT COMPLIANCE ASSISTANT
OD	OFFICE DIRECTOR
PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 14

HEARINGS AND BRIEFS

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 774 - hearings for investigations
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.309 - briefs
 - 19 CFR 351.310 - hearings
- SAA
 - Section C.4.c. - public comment on information
- Antidumping Agreement
 - Article 6.2 - hearings
 - Article 6.3 - briefs

I. PRE-HEARING CONFERENCE

In accordance with section 19 CFR 351.310 (b), we may conduct a telephonic, pre-hearing conference with representatives of interested parties to facilitate the conduct of the hearing for an investigation or administrative review. Issues to be discussed will include the necessity of conducting a hearing, time limits for direct and rebuttal presentations, identification of significant issues, and page limits for case and rebuttal briefs. Pre-hearing conferences may also be held at the DOC if deemed appropriate. Consult your program manager (PM) or supervisor before any type of pre-hearing conference is scheduled.

II. HEARINGS, BRIEFS, AND REBUTTALS

A. General Hearings

In accordance with 19 CFR 351.310(c), a public hearing is held when requested by an interested party in an investigation or review. The hearing provides interested parties an opportunity to present oral views. Notice of the scheduled date of the hearing will be published in the Federal Register (FR) notice that announces the preliminary determination for an investigation or the preliminary results for a review. In accordance with 19 CFR 351.310(2)(g), we will place a verbatim transcript of the public session of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript. If a portion of the hearing is closed, the transcript for the closed hearing session will be business proprietary and subject to administrative protective order (APO).

Hearing requests must be submitted within 30 days after the date of publication of the preliminary determination or preliminary results, unless the DOC alters this time limit. A party requesting a hearing should identify issues to be raised at the hearing. In addition, we normally request the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) the reasons for attending. In the event that the final determination date or final results date is postponed, the hearing date will normally also be postponed. If the hearing date is changed, you must ensure that all interested parties are

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informed. Ordinarily a hearing for an investigation or review will be held two days after submission of rebuttal briefs.

B. Closed Hearings

In accordance with 19 CFR 351.310(f), an interested party may request that a portion of a hearing be closed. This type of request must be made no later than the date the case briefs are due. Closed hearing sessions will be considered business proprietary. All attendees must have APO access to business proprietary information or be authorized to have access to the business proprietary information, or they cannot participate.

Closed hearing sessions will not consume the entirety of a hearing. This portion of the hearing will be limited to discrete issues that must be identified by the requesting party. The requesting party must also specify the amount of time needed to present the issues, and justify the need for a closed session with respect to each issue.

If a request for a closed hearing is made, you should notify your program manager at the Import Administration APO Coordinator's Office immediately in order to ensure that appropriate measures are taken.

C. Consolidated Hearings

In accordance with 19 CFR 351.310(e), we may consolidate hearings in two or more investigations or reviews. Cases where we are most likely to consolidate hearings are those where common issues exist concerning the same product from different countries or where common issues exist concerning different products from the same country. Should we choose to consolidate hearings, the aforementioned and following procedures are applicable. Note that a consolidated hearing which is "closed" may present APO problems. If these problems can not be resolved, we will change the format of the hearing.

D. Briefs and Rebuttals

Requirements for written arguments are contained in 19 CFR 351.309(c). Case briefs may be submitted within 50 days after the preliminary determination in an investigation or 30 days after the preliminary results in a review unless we approve an extension. Six copies of the case briefs must be submitted to the DOC one week prior to the hearing. Six copies of the rebuttal briefs may be submitted within five days after the time limit for filing the case brief, unless we alter this time limit. As part of their case brief and rebuttal briefs, parties should provide a summary of their arguments not to exceed five pages and a table of authorities. Case briefs must contain all arguments which parties still believe are relevant so that the DOC will have the opportunity to address these issues in the final determination or final results of review. Rebuttal briefs may only address issues raised in the case briefs.

III. INTERNAL PROCEDURES

A. Pre-Hearing Procedures

HEARINGS AND BRIEFS

Notice of the scheduled hearing date is published in the FR announcing our preliminary determination or preliminary results of review. In setting this date for an investigation, you should consider the following: 1) verification reports will have to be issued one week prior to the due date for the case briefs; 2) hearings usually occur seven to nine days after the submission of briefs; and 3) hearings should usually be conducted no later than 30 days prior to the final determination date. For reviews, remember the following: 1) briefs are due within 30 days of the publication of the preliminary results date and that rebuttals are due five days later; and 2) like an investigation, the hearing should be conducted no later than 30 days prior to the final action date. The preliminary action FR notice also specifies that requests for hearings must be received within 30 days of the date of publication of the notice. Once a written request for a hearing has been received, the following steps should be followed:

1. Determine the approximate number of attendees so that you can reserve a hearing room of a proper size. Those expected to attend are the analysts, policy and legal team members, supervisor, staff accountant, petitioners' and respondents' counsel, company officials, and other interested persons. An approximation of interested party attendees can be obtained from the hearing requests. If there is any doubt about the number of outside attendees, you should call all participants to determine an approximate number.
2. Your program assistant or secretary should reserve a conference room for the hearing by phoning the Space Management and Construction Division at 482-3460 as far in advance as possible. Always advise the scheduling office on the approximate number of attendees. After the room number has been officially assigned, you should examine the conference room to determine whether the accommodations are adequate.
3. Schedule hearings to start early in the day, if possible, so that the hearing can be completed without having to reconvene the following day. If you allow one hour per party for combined direct and rebuttal testimony, a normal hearing will last from two to four hours. You should always check with the hearing chairperson (usually the DAS for your group) to determine how much time will be allotted to each participant. Once time allotments are determined, you should call the participants, and advise them how much time they will have to present their issues.
4. Inform the program secretary or assistant of the hearing time, date, approximate hearing length, and product under investigation or review, and he/she will make the necessary arrangements for obtaining the services of a reporter.
5. Pencil in the hearing date and time on the (DAS's) and office director's calendar. In addition, you should update their schedules on the "Word Perfect Office" system, if appropriate.
6. Approximately ten days before the hearing, ask the DAS whether he/she will be chairing the hearing. If not, inform the office director so that he/she can chair the hearing or assign someone else to the task. You should also remind all team members

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of the hearing at this time. Advise your supervisor or PM if a team member will not be attending.

7. As soon as the case briefs are received (typically one week prior to the hearing in an investigation and a review), business proprietary versions should immediately be given to the chairperson. Make certain that the briefs include executive summaries of the issues of no more than five pages and tables of authorities. If these are not part of the briefs and rebuttals, you should call counsel, and ask for them. When the rebuttal briefs are received (approximately two days prior to the hearing in an investigation or a review), they should also be given to the chairperson immediately. The chairperson's copies of the briefs and rebuttals should be marked "For Briefing Book".
8. New factual information cannot be submitted as part of the briefs or rebuttals. If you detect new factual information as you read these documents in preparation for the hearing, inform your team members and supervisor or PM immediately.
9. One day prior to the hearing prepare a briefing book for use by the chairperson. The briefing book should contain the copies of the briefs and rebuttal briefs that have been reviewed and highlighted by the chairperson. The book should be prepared in a loose-leaf, 3-ring binder with appropriate index tabs. It should be assembled as follows:
 - a. A properly completed "Welcoming and Closing Remarks" section;
 - b. Participant list (if part of the hearing will be closed, a separate list of the participants that have APO coverage should be included);
 - c. Letters from the parties requesting the hearing;
 - d. Copies of briefs and rebuttal briefs;
 - e. Initiation and preliminary determination notices;
 - f. Concurrence memos.

Confirm with the chairperson that the above list meets his/her requirements. You should also ask the program secretary or assistant to phone the recording service two days before the scheduled hearing to make certain that a reporter has been scheduled and that this person has the correct date, time and room number, and to ensure that the room is still available..

B. Hearing Procedures

1. On the day of the hearing, the program secretary or assistant should check to see that the room is unlocked and that there are sufficient chairs. You should phone the team members and remind them about the hearing.

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2. If a portion of the hearing will be closed, the analyst must have the reporter sign a confidentiality statement before the hearing starts. A current copy of this statement can be obtained from the office of the APO specialist.
3. The analyst may want to provide the reporter with a list of participants, a list of frequently used acronyms such as CEP, APO, etc., acronyms relative to the specific case, and any foreign words or names that may be used.
4. During the welcoming remarks, the chairperson will apprise the participants of their allotted time, generally one hour per party to be divided as they choose between direct and rebuttal remarks. If no case brief is submitted, a party is normally allowed only a limited amount of time for rebuttal. The analyst should time each speaker and, when necessary, inform the chairperson when the speaker nears the end of his allotted time. The analyst and other team members should also be attentive to ensure that speakers limit their remarks only to issues raised in their briefs. You should advise the chairperson if you believe the speaker has introduced issues that have not been briefed. Also advise the chairperson if the participants attempt to introduce new factual information either orally or by the submission of exhibits for the transcript record. Generally, we do not accept exhibits which were not made part of the briefs and, therefore, were not properly filed and on the record with the Central Records Unit (CRU).
5. The public hearing provides an excellent opportunity for DOC personnel to ask questions about outstanding issues. Analysts may be asked to prepare questions for the hearing chairperson. If not, plan to ask your own questions (consult your supervisor prior to the hearing to determine if the questions are appropriate) when asked by the chairperson to do so. Usually the chairperson calls for staff questions at the end of the direct and rebuttal testimony segments of the hearing. Remember, no business proprietary information can be discussed during the public session of the hearing.
6. If there is a closed portion to the hearing, all interested parties that do not have access to business proprietary information under APO must vacate the room before this segment of the hearing begins. The chairperson will then appraise the participants of their allotted time for direct and rebuttal remarks. The reporter should also be advised that all portions of the closed session will have to be placed in a business proprietary document, apart from the transcript of the open portions of the hearing.

C. Post-Hearing Procedures

1. After the hearing concludes, the hearing transcript is generally received within one week. Copies should be sent to the CRU for immediate filing. In some cases, due to time constraints, we ask the reporting service to provide the transcript within one or two business days after the hearing. Hearing participants may come to the CRU and copy the public file version of the transcript, or they can request a copy of the

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transcript from the reporter at the hearing. The business proprietary section of the transcript, if any, must be released under APO by the office of the APO specialist.

2. Sometimes the hearing chairperson may ask participants for supplemental written submissions on selected issues. If this is the case, the analyst must ensure that these submissions are timely and meet all procedural filing requirements.

LIST OF ACRONYMS & ABBREVIATIONS

CFR	CODE OF FEDERAL REGULATIONS
CEP	CONSTRUCTED EXPORT PRICE
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
ITC	INTERNATIONAL TRADE COMMISSION
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 15

TERMINATIONS AND SUSPENSIONS OF INVESTIGATIONS

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 734 - termination or suspension of investigations
 - Section 782(h)(1) - termination for lack of interest
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.207 - termination of investigations
 - 19 CFR 351.208 - suspension of investigations
 - 19 CFR 351.209 - violation of suspension agreements
- SAA
 - Section C.6. - suspension agreements
- Antidumping Agreement
 - Article 8 - price undertakings

I. TERMINATIONS OF INVESTIGATIONS

“Termination” is a term that refers to the end of an antidumping duty proceeding in which an order has not yet been issued. The Act establishes a variety of mechanisms by which an investigation may be terminated.

A. Withdrawals of Petitions

The DOC may terminate an investigation under section 734(a)(1)(A) (withdrawal of petition by petitioner) or section 734(k) (self-initiated investigation) of the Act and 19 CFR 351.207(b), provided that the DOC concludes that termination is in the public interest.

The DOC may also terminate an investigation where withdrawal of a petition is based on acceptance of a quantitative restriction agreement. A quantitative restriction agreement is an understanding or other kind of agreement to limit the volume of imports of the subject merchandise into the United States. If a termination is based on acceptance of a quantitative restriction agreement Commerce will apply the provisions of section 734(a)(2) of the Act regarding public interest and consultations with consuming industries and producers and workers. The public interest provisions of section 734(a)(2) include the following:

1. Whether, based on the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement will have a greater adverse impact on United States consumers than the imposition of antidumping duties;
2. the relative impact on the international economic interests of the United States; and
3. the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in the industry.

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For quantitative restriction agreements, the DOC, before terminating an investigation, to the extent possible, shall consult with the potentially affected consuming industries and the potentially affected producers and workers in the domestic industry, including those not involved in the investigation.

B. Lack of Interest Terminations

The DOC may terminate an investigation based upon lack of interest in accordance with section 782(h)(1) of the Act and 19 CFR 351.207(c).

C. Negative Determinations

Under section 735(c)(2) of the Act, the DOC and the International Trade Commission (ITC) shall terminate an investigation upon publication of a final negative determination.

In accordance with 19 CFR 351.207(d), an investigation shall also be termination if the ITC publishes a preliminary negative determination.

D. Limitation on ITC Terminations

In accordance with section 734(a)(3) of the Act, the ITC may not terminate an investigation based on a withdrawn petition before the DOC's preliminary determination.

E. End of Suspension of Liquidation

When an investigation terminates, if the DOC previously ordered suspension of liquidation, the DOC will order the end of the suspension of liquidation on the date of publication of the notice of termination, and will instruct U.S. Customs to release any cash deposits or bonds. (See 19 CFR 351.207(e))

II. SUSPENSIONS OF INVESTIGATIONS

In a suspension agreement, the foreign exporters and producers or the foreign government agree to modify their behavior so as to eliminate dumping or the injury caused thereby or, in a NME, they agree to a quantity restriction on imports. If the DOC accepts a suspension agreement, it will “suspend” the investigation and thereafter will monitor compliance with the agreement in accordance with 19 CFR 351.208(a). The types of suspension agreements can be found in section 734 of the statute. Definitions, procedures, and special rules can be found in the regulations under 19 CFR 351.208.

As stated in the SAA at 874, “Although existing law provides for the suspension of antidumping and countervailing duty investigations pursuant to the conclusion of suspension agreements, early experience with such agreements demonstrated that they were not always effective in providing relief from unfairly traded imports. Therefore, longstanding Commerce policy has been to treat such agreements as the exception rather than the rule.”

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In accordance with section 734(d) of the Act, the DOC may suspend an investigation if satisfied that such a suspension is in the public interest and effective monitoring of the agreement is practicable. In cases where the DOC does not accept an agreement, it shall, where practicable, provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. The DOC may suspend an investigation at any time before the final determination by accepting an agreement with market economy foreign exporters or producers that account for “substantially all” of the subject merchandise (see Section II, part C.3. of this chapter for a definition of “substantially all”).

A. Types of Agreements

There are four scenarios under which the DOC may suspend an investigation:

1. Cessation of Exports

In accordance with section 734(b)(1) of the Act, the exporter(s) who are signatories to the agreement agree to cease all exports within six months (180 days) after the date on which the investigation is suspended. Exporters must agree not to increase the quantity of exports during the interim period set forth in the agreement. It must not exceed the quantity exported during a period of comparable duration considered representative by the DOC. For an example of a suspension agreement based on an agreement to cease exports, see Certain Electric Motors from Japan: Antidumping Final Determination of Sales of Large Motors at Less Than Fair Value and Suspension of Investigation for Small Motors, 45 FR 73723 (November 6, 1980).

2. Elimination of Sales At Less Than Fair Value

In accordance with section 734(b)(2) of the Act, the exporter(s) must agree to revise its prices to completely eliminate any amount by which the normal value of the merchandise which is the subject of the agreement exceeds the export price (EP) or constructed export price (CEP) of that merchandise. For an example of a suspension agreement based on an elimination of sales at less than fair value, see Suspension of Antidumping Duty Investigation: Cement from Venezuela, 57 FR 6706 (February 27, 1992).

3. Elimination of Injurious Effect

In accordance with section 734(c) of the Act, if the DOC determines that extraordinary circumstances are present, it may suspend an investigation based on an agreement by exporters and producers that account for substantially all of the subject merchandise to eliminate injurious effect by revising prices if it is satisfied that the agreement will completely eliminate injurious effect and if:

- a. The suppression or undercutting of price levels of domestic products by imports of the subject merchandise will be prevented; and

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- b. for each entry of each exporter, the dumping margin will not exceed 15 percent of the weighted-average dumping margin for that exporter during the investigation.

For an example of a suspension agreement based on elimination of injurious effect, see Suspension of Antidumping Duty Investigation: Potassium Chloride from Canada, 53 FR 1393 (January 19, 1988).

4. Special Rule for NME Suspension Agreements

In accordance with section 734(l) of the Act, the DOC may suspend an investigation based on an agreement with a NME country to restrict the volume of imports into the United States if the DOC determines that:

- a. the agreement is in the public interest;
- b. monitoring of the agreement is practicable; and
- c. the agreement will prevent the suppression or undercutting of the price levels of domestic products by imports of the subject merchandise.

For an example of a suspension agreement based on a restricted volume of imports, see Suspension of Antidumping Duty Investigation: Silicomanganese from Ukraine, 59 FR 60951 (November 29, 1994).

B. Definitions

1. Public Interest

In order to determine whether a suspension agreement is in the public interest, the DOC considers the views of all interested parties, an industrial user of the subject merchandise or a representative of a consumer organization, and U.S. government agencies (see 19 CFR 351.208(f) and section 734(a) of the Act for information on public interest factors that are considered). The 734(a) public interest factors only apply to quantitative restriction agreements under the same section of the Act. Public interest considerations for other types of suspension agreements are in section 734(d) of the Act. In the Final Determination of Sales at Less Than Fair Value: Calcined Bauxite Proppants from Australia, 52 FR 6311 (February 9, 1989), the DOC determined that, since the only respondent consistently refused to answer the DOC's questionnaire and the proposed agreement was not binding on future exporters of the subject merchandise, a suspension agreement would not serve the public interest.

2. Monitoring

The DOC will not accept an agreement unless effective monitoring of the agreement is practicable (see section 734(d)(2) of the Act). In monitoring an agreement under section 734(c) or 734(l) to eliminate injurious effect or an NME agreement, the DOC

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is not obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.

3. Substantially All

Exporters which account for substantially all of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the imports of the subject merchandise during the period of investigation or another period that the DOC considers representative (see 19 CFR 351.208(c)).

4. Extraordinary Circumstances

Circumstances in which the suspension will be more beneficial to domestic industry than continuation of the investigation, and the investigation is complex.

5. Complex

Means a large number of transactions to be investigated or adjustments to be considered, the issues raised are novel, or the number of firms involved is large.

C. Pre-Acceptance Procedures

1. In accordance with 19 CFR 351.208(f)(1)(i), the exporters and producers of the subject merchandise, or the government in an NME investigation, shall submit a proposed suspension agreement to the DOC within 15 days after the date of the issuance of the preliminary determination; and
2. In accordance with 19 CFR 351.208(f)(2) and (3), the DOC will:
 - a. notify all parties to the proceeding of the proposed suspension and provide to petitioner a copy of the preliminarily accepted agreement within 30 days after the date of the issuance of the preliminary determination;
 - b. consult with petitioner concerning the proposed suspension agreement; and
 - c. provide all interested parties, an industrial user, a representative consumer organization, and U.S. government agencies an opportunity to submit written argument and factual information concerning the proposed suspension agreement within 50 days after the date of the issuance of preliminary determination.

D. Acceptances of Agreements

In accordance with 19 CFR 351.208 (g) the DOC may accept an agreement to suspend an investigation within 60 days after the issuance of a preliminary determination. In accepting a suspension agreement the DOC may rely on any factual information or legal conclusions reached in or after the affirmative preliminary determination.

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If the DOC determines to suspend an investigation upon acceptance of a suspension agreement, the DOC shall 1) suspend the investigation, 2) publish notice of suspension of the investigation including the text of the suspension agreement (which shall take effect on the day such notice is published in the Federal Register (FR)), and 3) issue an affirmative preliminary determination under section 733(b) with regard to the subject merchandise unless one has already been issued. The ITC will suspend any investigation it is conducting.

E. Liquidation of Entries

1. Suspension Agreements to Eliminate Completely Sales at Less Than Fair Value or Cease Exports

In accordance with section 734(f)(2)(A) of the Act, the DOC will not order the suspension of liquidation of entries of the subject merchandise normally required under 733(d)(2). Any previously ordered suspension of liquidation will end on the effective date of the suspension of the investigation and the DOC will instruct U.S. Customs to refund any cash deposit or release any bond or other security deposited.

2. Suspension Agreements Eliminating Injurious Effect

In accordance with section 734(f)(2)(B) of the Act, the DOC shall suspend liquidation of entries of the subject merchandise under section 733(d)(2). If, however, the liquidation of entries of subject merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, pending a review of the suspension agreement, but the security required under section 733(d)(1)(B) may be adjusted to reflect the effect of the suspension agreement.

F. Continuations of Investigations

In accordance with section 734(g) and 19 CFR 351.208(h), within 20 days after the date of publication of the notice of suspension of an investigation an exporter or exporters accounting for a significant portion of exports to the United States of the subject merchandise, or an interested party as defined in section 771(9)(C)-(G) of the Act (manufacturers, producers, wholesalers, unions or a group of workers engaged in the manufacture of the subject merchandise, trade associations, and processors and/or producers of the subject merchandise) may request in writing that the DOC continue the investigation. The written request must be filed simultaneously with the ITC and the requester must so certify in submitting a request to the DOC. The DOC and the ITC shall continue the investigation upon receipt of a properly filed request for continuation of investigation.

Depending on the final determinations by the DOC and ITC, one of the following scenarios will occur:

1. Affirmative Final Determinations

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If the DOC and the ITC make affirmative final determinations in an investigation which has been continued, the suspension agreement will remain in effect.

2. Negative Final Determinations

If either the DOC or the ITC make negative final determinations in an investigation which has been continued, the suspension agreement will have no force or effect. The investigation will be terminated at this point.

G. Violations of the Agreements

In accordance with 19 CFR 351.209 (e), the DOC defines “violation” as noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory, except, at the discretion of the DOC, an act or omission may be deemed inadvertent or inconsequential by the DOC.

1. Immediate Determinations

If the DOC determines that a signatory has violated the suspension agreement, the DOC, without providing interested parties an opportunity to comment, will order the suspension of liquidation of all entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of the following: (1) 90 days before the date of publication of the notice of cancellation of suspension agreement or (2) the date of the first entry, or withdrawal from warehouse, for consumption of the merchandise, the sale or export of which was in violation of the suspension agreement (see 19 CFR 351.209(b)(1)).

- a. **Completed Investigations:** If the investigation is completed under section 734(g) (an exporter or an interested party requested the continuation of the investigation), and the ITC makes an affirmative injury determination. The DOC will issue an antidumping duty order and, for all entries subject to suspension of liquidation, instruct Customs to require a cash deposit at the rates determined in the affirmative final determination (see 19 CFR 351.209(b)(3)).
- b. **Incomplete Investigations:** If the investigation was not completed, the DOC will resume the investigation as if an affirmative preliminary determination was made on the date of publication of the notice of cancellation. The DOC will impose provisional measures (suspend liquidation of entries) by instructing the Customs Service to require for each entry of subject merchandise a cash deposit or bond equal to the rates determined in the affirmative preliminary determination (see 19 CFR 351.209(b)(2)).
- c. **Notification:** The DOC will notify all parties to the proceeding, the ITC and, if the DOC determines the violation to be intentional, the Commissioner of Customs. The DOC will publish in the FR a notice of "Antidumping Duty Order

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(Resumption of Antidumping Investigation); Cancellation of Suspension Agreement" (see 19 CFR 351.209(b)(4) and (5)).

2. Determinations After Notice and Comment

If the DOC has reason to believe that a signatory has violated a suspension agreement or that a suspension agreement no longer meets the requirements of section 734(d) of the Act but does not have sufficient information to determine that a signatory has violated the suspension agreement as discussed in item 1 above, the DOC will take the following steps:

- a. Publication: The DOC will publish a FR notice of "Invitation for Comment on Antidumping Suspension Agreement" (see 19 CFR 351.209(c)(1)).
- b. Types of determinations:
 - i. Exporter Violations: If the DOC determines that, based on comments received, any signatory has violated the agreement, the DOC will follow the procedure outlined in item 1a. or 1b. above for completed and incomplete investigations, respectively (see 19 CFR 351.209(c)(3)).
 - ii. Inadequate Agreements: If it is determined that the agreement no longer meets the requirements of section 734(d) of the Act, the DOC will:
 - (a) follow the procedure outlined in item 1a. or 1b. above except that the date shall be the date of first entry, or withdrawal from warehouse, for consumption on or after the later of 90 days before the date of publication of the notice of suspension of liquidation or the date of first entry or withdrawal from warehouse the sale or export of which does not meet the requirements of section 734(d) of the Act (see 19 CFR 351.209(c)(4)(i));
 - (b) for an agreement to eliminate sales at less than fair value or to cease exports, continue the suspension of the investigation by accepting a revised suspension agreement which meets the applicable requirements of section 734(d) of the Act and publish a FR notice of "Revision of Agreement Suspending Antidumping Investigation" (see 19 CFR 351.209(c)(4)(ii)) or;
 - (c) for an agreement to eliminate injurious effect or an NME agreement, continue the suspension of liquidation and publish an FR notice as described in item (ii)(b). above, investigation or, order the suspension of liquidation until the ITC completes any requested review of the agreement as described in item F above (see 19 CFR 351.209(c)(4)(iii)).
- c. Additional Signatories: If the DOC decides that a suspension agreement no longer will completely eliminate the injurious effects of exports no longer will completely eliminate the injurious effects of exports under section 734(c)(1), or

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that the signatory exporters no longer account for substantially all of the subject merchandise, the DOC may revise the agreement to include additional signatory exporters in accordance with 19 CFR 351.209(d).

H. Other Suspension Agreement Activities

1. ITC Review of “Injurious Effect” Suspension Agreements

See section 734(h) of the Act. Under this section, the ITC, upon receiving a request within 20 days after the suspension agreement, will review the “injurious effects” provision of these types of agreements.

2. ITC Regional Industry Determinations

See Section 734(m) of the Act. Under this section, if the ITC makes a regional industry determination, exporters to the region can request the opportunity to enter into a suspension agreement.

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
CFR	CODE OF FEDERAL REGULATIONS
DOC	DEPARTMENT OF COMMERCE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
ITC	INTERNATIONAL TRADE COMMISSION
PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF GATT
URAA	URUGUAY ROUND AGREEMENT ACT

CHAPTER 16

INTERNATIONAL TRADE COMMISSION INJURY DETERMINATIONS

References:

The Tariff Act of 1930, as amended (the Act)

- Section 732 (b)(2) and (d) - procedures for initiating investigations
- Section 733 (a) and (f) - preliminary determinations
- Section 734 (a), (e), (f), (g), and (h) - termination or suspensions of investigations
- Section 735 (b) and (d) - final determinations
- Section 736 - assessment of duty
- Section 739 - short life cycle merchandise
- Sections 751 (b)(2) and (c) - injury reviews for changed circumstances and five-year reviews
- Section 752 (a) - rules for determining likelihood of continuation or recurrence of material injury for changed circumstances and five-year reviews
- Section 762 - required determinations for quantitative restriction agreements
- Section 771 (2), (7), (10), and (11) - definitions and injury requirements
- Section 774 - hearings
- Section 776 - determinations based on facts available
- Section 777 - access to information
- Section 781 (e) - injury advice for prevention of circumvention of antidumping duty orders
- Section 782 - conduct of investigations
- Section 783 - petitions by third countries

Department of Commerce (DOC) Regulations

- 19 CFR 351.202 (c) - simultaneous filing of petition
- 19 CFR 351.205 (d) - availability of DOC information from preliminary determinations
- 19 CFR 351.208 (h) - continuations of suspended investigations
- 19 CFR 351.210 (j) - availability of DOC information from final determinations

SAA

- pp. 807-812, 817-818 various references to Article VI of the GATT 1994
- 846-873 determination of injury; definition of domestic industry; initiation and subsequent investigation; and evidentiary and procedural requirements
- Sections C.9.c.(1) and (4) - standards for determining likelihood of continuation or recurrence of injury and provision of dumping margins

Antidumping Agreement

- Article 3 - determination of injury
- Article 4 - definition of domestic industry
- Article 5 - initiation and subsequent investigation
- Article 6 - evidence
- Article 11 - duration and review of antidumping duties and suspension agreements
- Article 12 - public notice and explanations of determinations

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Article 13 - judicial review

Article 17 - consultation and dispute settlement

INTRODUCTION

All antidumping (AD) investigations are governed by the Act. The Act provides that AD proceedings take place, concurrently, at two federal agencies: the DOC and the U.S. International Trade Commission (ITC).

While the DOC is responsible for determining whether "a class or kind of merchandise is being, or is likely to be, sold in the United States at less than its fair value," the ITC must decide whether a U.S. industry is materially injured by reason of the imports sold at less-than fair-value prices. Both the "less than fair value" and the "material injury" criteria must be satisfied before an AD duty order can be issued.

Part I of this chapter describes the status of the ITC as an "independent" agency. Part II provides a very brief overview of the framework of the ITC's statutory findings and determinations in an AD investigation. Finally, Part III discusses provisions in the Act, most of which are changes in the law made by the Uruguay Round Agreement Act (URAA), that will require the Import Administration staff assigned to an AD investigation to maintain a close working relationship with their counterparts at the ITC assigned to the same investigation.

I. THE ITC

The ITC consists of a bi-partisan, six-person body that oversees a professional staff of investigators, industry analysts, financial analysts, accountants, economists, and attorneys. The Act prescribes that no more than three of the commissioners can be from the same political party. Although the chairman is selected by the President, he or she cannot be from the same party as his or her predecessor. Also, the vice chairman cannot be a member of the same political party as the chairman.

Commissioners are appointed for nine-year terms. It is possible for a commissioner to be appointed to complete the unexpired portion of a former commissioner's term and, subsequently, to be re-appointed to a full nine-year term. Thus, a commissioner appointed for a full term has a tenure that extends beyond that of an administration in the executive branch. Unlike the executive branch, where political appointees serve at the pleasure of the president, commissioners can be removed only for cause.

In addition, the ITC is authorized to represent itself in court. It is not represented by the Department of Justice and, therefore, can take positions in litigation independent of those promoted by the executive branch. Finally, the ITC's budget is submitted directly to the Congress. Its budget is not reviewed by the Office of Management and Budget. As a consequence of these statutory provisions, the ITC is an agency that is unusually independent of the executive branch.

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The ITC also performs a number of other functions related to international trade. Under Section 337 of the Trade Act of 1930, ITC investigates unfair trade practices such as patent, trademark, or copyright infringement. Upon finding a violation of Section 337, the ITC may issue an exclusion order, subject to Presidential disapproval. The ITC also administers Section 201 of the Trade Act of 1974 which, subject to the discretion of the President, provides for a so-called “escape clause” or “global safeguard” mechanism for import relief. Remedies available under Section 201 include the imposition of quotas or increased tariffs on fairly traded imports from all countries in order to facilitate positive adjustment to import competition.

In addition to conducting trade remedy investigations, the ITC is responsible for continually reviewing the Harmonized Tariff Schedule of the United States (HTS), and for recommending modifications to the HTS. Under section 332 of the Tariff Act of 1930, the ITC conducts general investigations on any matter involving tariffs and international trade, including conditions of competition between U.S. and foreign industries.

The ITC’s Library has an extensive library of international trade resources called the National Library of International Trade. The library is located on the third floor of the ITC Building. It is open during agency hours. Additional information about the ITC may be found at <http://www.usitc.gov>

II. STATUTORY FRAMEWORK

The ITC must make a preliminary determination as to whether there is a "reasonable indication" of material injury within 45 days of the date of the filing of an AD duty petition or notice of self-initiation of an investigation by the DOC or within 25 days after the date on which the ITC receives notice of the initiation of the investigation if the DOC had extended the period for initiation in order to poll the industry to determine whether the petition had industry support. If this determination is affirmative, the case continues; if negative, the case is terminated.

The ITC must make a final determination of material injury within 120 days of the DOC's affirmative preliminary determination or 45 days of the DOC's affirmative final determination, whichever is longer.

If the DOC's preliminary determination is negative but its final determination is affirmative, the ITC has 75 days from the DOC's final affirmative determination to make its final material injury determination.

A. Standard for Material Injury

At both the preliminary and final stages of an AD investigation, the ITC is required to determine whether a U.S. industry is materially injured or threatened with material injury, or whether the establishment of a U.S. industry is materially retarded “by reason of” the alleged less-than-fair-value imports.

For the purpose of an affirmative preliminary determination, the ITC need only find a reasonable indication that a domestic industry is injured by imports allegedly sold at less than fair value.

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Except for the different statutory standards involved, the other statutory requirements in preliminary and final injury investigations are identical i.e., the ITC must

- define the relevant U.S. industry;
- determine whether that industry is experiencing or threatened with material injury, or whether the establishment of the industry has been materially retarded; and
- determine whether there is a causal link between the injury and the imports allegedly sold at less-than-fair value.

1. The Reasonable Indication Standard

The Congress did not intend that the preliminary determination as to whether there is a “reasonable indication” of material injury be a high standard. The legislative history of the provision states that a reasonable indication of material injury exists in "each case in which the facts could reasonably indicate that an industry in the United States could possibly be suffering material injury..."

The ITC's reviewing courts have held that the “reasonable indication” standard of preliminary determination is more than just a “mere possibility” to find whether there are any facts which raise the possibility of injury. Where information available to the ITC is inconclusive that a negative determination is warranted, the ITC can continue its investigation and make a final material injury determination.

2. Material Injury

The term "material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant." Although this definition is not very helpful, it does indicate that a domestic industry need not be catastrophically injured to qualify for AD relief. In evaluating "material injury," the ITC is directed to consider three general areas of inquiry:

- a. The volume of imports and any increase in that volume, either in absolute terms or relative to domestic production. In terms of volume of imports, the ITC evaluates imports in terms of both absolute import volume and market penetration. Market penetration is the percentage of apparent U.S. consumption represented by imports. Increases in market penetration are particularly important. The measurement of market penetration is largely dependent upon the definition of the U.S. market for the “domestic like product” manufactured by the U.S. industry.
- b. The effect of imports on U.S. prices, particularly price underselling or price suppression.

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- c. The impact of imports on the domestic industry, in terms of all relevant economic factors. In assessing the impact of unfair imports on a domestic industry, the ITC must consider actual and potential declines in output, sales, market share, profits, productivity, return on investments and capacity utilization. The Act also directs the ITC to consider the negative effect of imports on cash flow, inventories, employment, wages, growth, investment and the ability to raise capital. Further, the Act requires the ITC to consider the actual and potential negative effects on existing development, as well as development of derivative or more advanced versions of the domestic like product. Finally the ITC is to consider the magnitude of the margin of dumping.

B. The Relevant Domestic Industry

The ITC must determine whether an "industry in the U.S." is materially injured by reason of the imports of the merchandise subject to investigation. The term "industry" is defined by the Act as consisting of the producers, as a whole, of a domestic like product or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that product. The Act, in turn, defines "the domestic like product" as a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to ... investigation...." The legislative history provides that the "like" product standard should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that domestically produced and imported articles are not "like" each other.

The ITC usually examines the health of the domestic industry "as a whole" but, where the statutory criteria are present, the Commission can divide the United States into regional industries. Those criteria are as follows: 1) the domestic producers within the regional market sell "all or almost all " of their production of the product within the region; and 2) the demand within the region must not be supplied, "to any substantial degree," by domestic producers located elsewhere in the U.S.

To establish material injury for a regional industry, the Act requires the ITC to find that there is a concentration of dumped imports into the isolated regional market and that all, or almost all, of the producers within that market are being injured by reason of the dumped imports.

C. Threat of Material Injury

Specific guidelines including a listing of the economic factors, for determining whether a domestic industry is threatened with material injury are found in section 771(7)(F) of the Act.

D. Material Retardation

The ITC can also make an affirmative determination if it finds that dumped imports have materially retarded the establishment of an industry in the United States. To date, nearly all AD investigations have been initiated on the basis of petitions by established manufacturers of the domestic like product and this provision has not been raised. In the cases in which material

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retardation has been raised as an issue, the ITC has required that the petitioner offer evidence to the effect that it has made a substantial commitment to the domestic production of the domestic like product and that it indicate how the dumped imports are responsible for the difficulties the petitioner experienced in attempting to establish domestic production.

E. Causation

In addition to ascertaining whether the domestic industry is materially injured, the ITC must determine whether this injury was "by reason of" the imports sold at less than fair value. The ITC's reviewing courts have held that this causation standard is satisfied if the dumped imports contribute, even minimally, to the injured condition of the domestic industry.

The Act requires that the ITC consider the cumulative effect of the dumped imports from all of the countries whose exports are the subject of AD investigations that were initiated at the same time, if such imports compete with each and the domestic like products, even though the imports from one or more of these countries might account for a small percentage of the market penetration in the United States.

The statutory focus of an ITC AD investigation consists of the following: 1) the volume of the subject imports, 2) the effect of these imports on the prices of domestically produced products in the U.S. market, and 3) the impact of this competition on the domestic producers of the like product. The ITC compares the average prices of domestically produced products, imports subject to the investigation, and imports not subject to the investigation (which, presumably, are fairly traded). In addition, the ITC has emphasized its analysis of sales lost by the domestic producers to sales of the imports subject to investigation.

The Office of Economics at the ITC has developed a computer model, "Commercial Policy Analysis System (COMPAS)," that uses spreadsheets for estimating the effect of dumped imports on the domestic industry. It relies on certain assumptions concerning the relationship between dumping margins and pricing. Although the model is not relied upon by all of the commissioners for their determinations, a minority of commissioners have used this model, or an earlier version of this model, for several years.

III.RELATIONSHIPS OF THE DOC'S AND THE ITC'S INVESTIGATIONS

Prior to the URAA, the DOC and the ITC conducted what were, for the most part, completely independent investigations although staff of both agencies have discussed product definition issues prior to initiation. The agencies did need to understand each other's determinations and orders. A change in the DOC's scope language for an investigation language could affect the proper description of the domestic like product and, consequently, the boundaries of the domestic industry determined by the ITC. Also, a partially negative determination by the ITC at its preliminary determination could affect the DOC's scope language. A partially negative final determination by the ITC might require the DOC to recalculate the margins of dumping as well as change the scope of the AD duty order.

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In addition, the extension of investigation deadlines by the DOC has always had the possibility of complicating case scheduling at the ITC. The most difficult situation is where the DOC extends determination dates for some, but not all, in a group of investigations in which the ITC had cumulated the imports in its preliminary determinations. This might force the ITC to make its final material injury determinations on certain investigations before it would have an opportunity to evaluate the causation of material injury for the others. Consult with your supervisor or program manager (PM) before recommending a postponement of a determination date for a case when there are several cases for the same product being conducted on the same time schedule.

The URAA amended certain provisions of the Act administered by the DOC that now call for the DOC to evaluate certain types of data historically gathered by the ITC rather than by the DOC. To avoid the duplicative collection of information by both agencies, there are now issues where the DOC's staff, working closely with the ITC's staff, can use certain data gathered by the ITC as well as methods of analysis relied upon by the ITC staff. These statutory provisions include determining domestic industry support for a petition, drafting an AD duty order in a case in which the ITC had found material injury to a regional industry, and imputing knowledge that dumped imports would be likely to cause material injury in critical circumstance determinations.

A. Determining Industry Support for a Petition

Although the DOC has the responsibility for determining whether a petition has the requisite industry support, the ITC has expertise in surveying domestic producers. In fact, the ITC normally sends questionnaires to all the domestic producers of which it is aware within five days of a petition being filed. Unfortunately, the ITC rarely has received an adequate response to its questionnaire survey by the DOC's normal initiation deadline, i.e., the twentieth day after the filing of the petition.

However, if domestic producer data are available prior to the initiation deadline, the ITC will share the results of those parts of its questionnaire survey dealing with production, imports, support of the petition, the ownership of the responding U.S. producer, and possible relationships of the responding U.S. producer to related companies importing into the United States or producing the subject merchandise. For example, the instructions accompanying the ITC's producers' questionnaire in its preliminary investigation of Vector Supercomputers from Japan, ITC Inv. No. 731-TA-750 (August 1996 (Preliminary)) contained the following statement concerning the release of questionnaire responses: “ ... if your firm is a U.S. producer, the information you provide on your production and imports of vector supercomputers and your responses to the questions in Part I of the producer questionnaire will be provided to the U.S. Department of Commerce, upon its request, for use in connection with (and only in connection with) its requirement pursuant to section 732(c)(4) of the Act (19 U.S.C. sec. 1673a(c)(4)) to make a determination concerning the extent of industry support for the petition requesting this investigation. Any information provided to Commerce will be transmitted under the confidentiality and release guidelines set forth above. Your response to these questions constitutes your consent that such information be provided to Commerce under the conditions described above.”

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See Chapter 1 for more information on ITC domestic producer information. Consult with your supervisor or PM before asking the ITC for this type of data.

B. Drafting Orders in Regional Industry Cases

The DOC's reviewing courts have held that the Constitution requires AD duties to be uniformly assessed at all ports. Article 4.2 of the Agreement on Implementation of Article VI of GATT 1994 of (the Antidumping Agreement) has required, since 1979, that, when the domestic industry is determined to be a regional industry, AD duties be assessed only against the products consumed in the region. Prior to the URAA, the United States had not implemented this provision. Now the URAA provides explicitly that the DOC must limit the assessment of duties to those exporters and/or producers that exported the subject merchandise for sale in the region during the period of investigation.

The findings necessary to determine if the domestic industry is regional are made by the ITC on the basis of a detailed evaluation of statistics of approximately three years' worth of domestic shipments of U.S. imports and the domestically produced like product. This analysis of U.S. shipments information can be so complex that the ITC may change its definition of the boundaries of the region between its preliminary determination and its final determination. Unlike the DOC, the ITC does not focus on the knowledge of foreign producers or foreign exporters with respect to the destination of their exports.

There are very few regional industry investigation and most of the cases to date have concerned imports of cement. Nevertheless, it would make no sense for the DOC to duplicate the information requests of the ITC to conduct our own domestic shipments analysis. When a regional industry case is filed, we should coordinate with the ITC staff to develop a methodology for tracing U.S. shipments of imports back to the appropriate importers, foreign exporters, and foreign producers. Any such effort will require an agreement with the ITC concerning the sharing of confidential information, as in the case of determining industry support for petitions. Consult with your supervisor or PM before contacting the ITC on matters involving regional industries.

C. The Determination of Critical Circumstances

The 1979 version of the Antidumping Agreement authorized the retroactive suspension of liquidation where "critical circumstances" existed. This provision was based on the premise that the initiation of an AD investigation would motivate exporters to ship as much merchandise as possible prior to a preliminary determination of dumping, which has the accompanying suspension of liquidation. The 1979 Antidumping Agreement required that the national authority determine that the importer had knowledge that the foreign exporter was dumping and that the dumping would cause material injury. However, the 1979 Act did not contain the reference to causing material injury.

Knowledge that the dumping would cause injury has been included in the URAA. The task of imputing knowledge to the importer that the dumping was likely to cause material injury was delegated to the DOC rather than to the ITC. However, the ITC must make its own critical

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circumstance decision. They have nearly always not found critical circumstances to exist. This however, does not relieve the DOC of making its own determination.

DOC has had limited experience with this provision. In one case, we have concluded that we can find the requisite implied knowledge that the dumped imports were likely to cause material injury if the ITC preliminary injury determination found a reasonable indication of present injury to the domestic industry, but not if the ITC determination found only a reasonable indication of threat of material injury. However, in different cases (Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine 62 FR 31958 (June 11, 1997); Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation 62 FR 31971 (June 11, 1997)), our preliminary determinations made affirmative critical circumstance determinations notwithstanding the fact that the ITC's preliminary determination was based only on threat of injury.

The affirmative preliminary determination in the Steel Plate cases were based on a combination of very large margins and large increases in import volume after the initiation of the investigations. As this issue is still evolving, analysts should check carefully with their supervisors and program managers whenever this issue arises.

IV. POST-ANTIDUMPING DUTY ORDER INJURY DETERMINATIONS AND CONSIDERATIONS BY THE ITC

A. . Reviews Based on Changed Circumstances

Sections 751(b)(1) and (2) of the Act call for the ITC to review its injury determinations for AD duty orders or findings and affirmative determinations resulting from continued investigations involving suspension agreements based on changed circumstances to determine if revocation of an order or finding or termination of a suspension is likely to lead to continuation or recurrence of injury. These reviews are conducted only if the ITC receives information, or a request from an interested party which shows changed circumstances sufficient to warrant a review of the determination or agreement. Notice of the review and order, finding, or suspension agreement must be published in the FR. Also, a review cannot be undertaken until 24 months after the publication of the notice of that determination or suspension. See section 752 of the Act for the special rules governing ITC injury determinations for changed circumstances. Also see Chapter 18 for information on DOC activities with regard to changed circumstances reviews.

B. Five-Year Reviews

Section 751(c) of the Act calls for the ITC to conduct its injury determinations every five years for AD duty orders and affirmative determinations of injury associated with suspended investigations that were continued. The notice of initiation to commence a five-year review must be published in the FR not later than 30 days prior to the fifth anniversary date of the publication of the order or notice of the suspension agreement. Like a changed circumstances review, the five-year review is undertaken to determine if the revocation of an order or termination of a suspension agreement would be likely to lead to continuation or recurrence of material injury.

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See section 752 of the Act for special rules governing ITC injury determinations for five-year reviews. Also see section 751(c) for rules governing these ITC reviews. See Chapter 18 for information on DOC activities with regard to five-year reviews.

C. Considerations of Injury by the ITC for Prevention of Circumvention Situations

Under section 781(e) of the Act, the DOC must notify the ITC in situations involving determinations to include merchandise in the scope of an AD duty order completed or assembled in the United States or in other foreign countries or merchandise that is later developed. The ITC may request a consultation with the DOC over the proposed inclusion of the above cited merchandise in the scope of an AD duty order. If the consultation results in the ITC's belief that a significant injury issue is presented by the proposed inclusion, the ITC may provide written advice to the DOC as to whether the inclusion would be inconsistent with the affirmative injury determination on which the AD duty order is based. See Chapter 18 for information on DOC actions with regard to prevention of circumvention of AD duty orders.

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
ICA	IMPORT COMPLIANCE ASSISTANT
ITC	INTERNATIONAL TRADE COMMISSION
NV	NORMAL VALUE
PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE IV OF GATT, 1994
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

CHAPTER 17

PREPARATION OF ANTIDUMPING ORDERS

References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 736(a) - publication of antidumping order (AD Order)
 - Section 736(d) - special rule for regional industries
 - Section 771(4)(C) - regional industries
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.211 - AD Order
 - 19 CFR 351.212 - assessment of antidumping duties
- SAA
 - None
- Antidumping Agreement
 - Article 9 - imposition and collection of antidumping (AD) duties

INTRODUCTION

When the DOC makes a final affirmative determination of sales at less than fair value, the International Trade Commission (ITC) must make a final determination involving material injury or threat of material injury. Within 7 days after being notified in writing by the ITC of an affirmative final determination, the DOC shall publish an AD Order in the Federal Register (FR). Often, the ITC will vote several days before notifying us formally in writing of its decision. The time, place, and results of the vote are public information and may be obtained in advance. The following information should be obtained from the ITC case analyst: 1) whether the vote was affirmative or negative and whether the ITC found more than one domestic like product; and 2) whether the determination involved material injury or threat of material injury. The language in the AD Order will differ according to whether injury or threat of injury is found. If possible, the AD Order should be prepared and started through the concurrence chain before the ITC notifies us in writing of its decision.

I. THE ANTIDUMPING DUTY ORDER

The AD Order signifies the final stage of the investigation before the case moves into the review phase. Up until this point, Customs requires the posting of a bond or cash deposit equal to the estimated amount by which the normal value (NV) exceeds the export price (EP) or the constructed export price (CEP). The AD Order announces the requirement of a cash deposit only. See Notice of Antidumping Order: Clad Steel Plate from Japan, 61 FR 34421 (July 2, 1996). The AD Order also specifies that AD duties will be assessed on all unliquidated entries of the merchandise entered, or withdrawn, from warehouse, for consumption on or after the date on which the DOC published its preliminary determination in the FR. If the ITC finds that critical circumstances exist (see Chapter 10), assessments would also cover a period of 90 days prior to the date on which suspension was first ordered. If the ITC finds only a threat of material injury in its final determination, then the AD Order only pertains to entries made on or after the date of publication of the ITC's final determination under section 735(b) of the Act. In this situation, Customs is directed to release the bonds or refund cash deposits for all entries where liquidation

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has been suspended prior to the date of the final ITC determination. Under 19 CFR 351.212(f), if the ITC, in its final injury determination, finds injury to a regional industry under section 771(4)(C) of the Act, then the DOC may direct that duties not be assessed on the subject merchandise of a particular exporter or producer (see 19 CFR 351.212).

Section 736(c) of the Act allows for the continuation of bonding for a 90-day period from the date of publication of the AD Order under special circumstances. Because this situation involves the submission of substantial information on post-affirmative preliminary determination sales, the DOC rarely agrees to undertake the analysis required to permit the continuation of the bonding procedure. If a respondent asks about this provision, consult with your supervisor or program manager (PM) immediately.

The final determination may have to be amended due to the correction of ministerial errors (see Chapter 11). If this is the case, an amendment to the final determination and the AD Order may be combined as one FR document. See Amended Final Antidumping Duty Determination and Order: Furfuryl Alcohol from Thailand, 60 FR 38035 (July 25, 1995).

In certain instances, the DOC's AD Order may require or allow an importer to certify facts regarding the importation of the merchandise. In Antidumping Duty Order: Fresh Garlic From the People's Republic of China, 59 FR 59209 (November 16, 1994), the DOC was concerned that, based on its use, certain garlic would pass U.S. Customs without AD duties. To remedy this problem, the imported product had to be accompanied by declarations to U.S. Customs explaining the specific method of harvesting and the use of the product. Any such requirements should be clearly stated in the AD Order.

II. INTERNAL PROCEDURES

A. Pre-Order Procedures:

1. The FR notice.

As soon as possible after you receive information on the outcome of an ITC affirmative injury determination from the ITC analyst, you should prepare the FR notice. Be extremely careful to incorporate the appropriate material injury determination language (injury or threat of injury), and also pay close attention to the language. Under certain circumstances, the ITC may only find injury on certain portions of the scope of our final determination, and you will have to make appropriate adjustments in the AD Order scope to reflect this. See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation, 60 FR 16440 (March 30, 1995). Notice of antidumping duty orders: pure magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation, 60 FR 25691 (May 12, 1995). In the Magnesium cases the ITC ruled that there was no injury with regard to Alloy Magnesium and that there was injury with regard to Pure Magnesium.

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Once the AD Order package is complete, begin to circulate it immediately. We only have a seven-day window from the point of formal notification by the ITC to publish an AD Order in the FR (see Chapter 11 for concurrence requirements for AD Order packages). Because it normally takes several days to publish an FR once it is signed, you should try to have a signed AD Order by the third or fourth day of the seven-day period.

Remember that if your final determination margins have changed because of the correction of ministerial errors, you must prepare a combined AD Order and amended final determination FR notice. Always look at the last FR published for an AD Order or AD Order/amended final determination to ensure that you are using the most up-to-date language.

2. Interested party letters.

Provide the import compliance assistant (ICA) with a list of interested parties so letters can be prepared prior to the signature of the AD Order.

3. E-Mail.

Provide the ICA with all information necessary for preparation of a U.S. Customs e-mail message (e-mail) providing updated suspension of liquidation instructions. For e-mails where a companion countervailing duty order is involved, export subsidies should be subtracted from each company's margin as well as from the "all others rate." The FR publication date must be included. Follow-up on the preparation of the e-mail to be sure that it has been approved and that it is ready to be sent to Customs at least one day prior to the publication date of the FR notice.

When the publication date is known, the e-mail is initialed by the team members and the supervisor or PM. The ICA will then update the Customs module, and transmit the e-mail suspension of liquidation instructions to Customs headquarters. When Customs receives the e-mail, it is approved, dated, and assigned a message number. The official suspension of liquidation instructions are then transmitted by Customs to all Customs management centers, district and port directors, import specialists, and the Customs Information Exchange. Customs also places the e-mail in the Customs Automated Commercial System/Antidumping/Countervailing Duty Module. When Customs sends out the officially approved e-mail, a copy is also sent electronically to the DOC. The ICA will receive this information through the Customs e-mail box. A copy of the returned, official e-mail instructions should be placed in the official, public, and work files.

B. Post-Order Procedures:

1. File Certification

PREPARATION OF ANTIDUMPING ORDERS

A memo should be prepared certifying the completeness of the official file within two weeks of the order date. Completeness of files includes the proper filing of all computer printouts and tapes in accordance with program storage instructions provided by our computer support staff. Note that the computer printouts for both the preliminary and final determinations must be part of the official file (see Chapter 2 for additional information on finalizing the administrative record).

2. Administrative review

The team that handled the investigation will generally be handling the first administrative review. Therefore, after the file is certified, determine where you will store the completed work files. For convenience and quick reference you may wish to keep copies of the following reference documents readily available: a copy of the file certification memo, the petition, verification reports, concordance, initiation checklist, analysis memos or issue papers, concurrence memos (for the preliminary or final determinations), if prepared, and any other decision documents generated by the investigation team. In the event of a court case on the investigation, check with the case attorney prior to storing portions of the work file.

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
AR	ADMINISTRATIVE REVIEW
CAFC	COURT OF APPEALS FOR THE FEDERAL CIRCUIT
CEP	CONSTRUCTED EXPORT PRICE
CCIA	CHIEF COUNSEL FOR IMPORT ADMINISTRATION
CIT	COURT OF INTERNATIONAL TRADE
COP	COST OF PRODUCTION
DOC	DEPARTMENT OF COMMERCE
EC	EXPORTING COUNTRY
EP	EXPORT PRICE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
IA	IMPORT ADMINISTRATION
NME	NON-MARKET ECONOMY
NV	NORMAL VALUE
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE IV OF GATT, 1994

CHAPTER 18

ADMINISTRATIVE REVIEWS AND OTHER POST-ANTIDUMPING DUTY ORDER ACTIVITIES

References:

The Tariff Act of 1930, as amended (the Act)

Section 736(c) - expedited antidumping (AD) duty administrative reviews (ARs)

Section 751 - ARs of determinations

Section 777 - access to information

Section 778 - interest on certain overpayments and under payments

Section 779 - AD duty drawback treatment

Section 781 - prevention of circumvention of ARs

Section 782 - conduct of ARs

Department of Commerce (DOC) Regulations

19 CFR 351.212 through 219 - various provisions dealing with specific AR topics

19 CFR 351.218 - sunset (five-year) ARs

19 CFR 351.221 - AR procedures

19 CFR 351.222 - revocations of AD orders

19 CFR 351.225 - scope rulings

SAA

Section C.7 - imposition and collection of AD duties

Section C.9.a. and b - duration and review of AD orders

Section C.9.d - revocation of AD orders

Section C.11 - anticircumvention

Antidumping Agreement

Article 9 - imposition and collection of AD duties

Article 11 - duration and review of AD duties

Article 18 - application of Article VI provisions to ARs

INTRODUCTION

Prior to the reorganization of Import Administration (IA) in 1996, the Deputy Assistant Secretary for Compliance was responsible for a variety of functions, including: 1) AD duty order administrative reviews (ARs), AD duty ARs of AD findings published by the Treasury Department, and ARs for suspension agreements; 2) scope clarifications; and 3) circumvention inquiries. Since the reorganization of IA in July of 1996, these functions as well as all investigative functions are now performed by all three Deputy Assistant Secretary groups within IA.

Although ARs begin about one year after AD orders or suspension agreements are published, there may be scope clarification requests, allegations of changed circumstances, etc., anytime after publication of the order. ARs may be deferred, in whole or in part, for one year under 19 CFR 351.213(c) if a deferral is requested and there are no objections from the exporter or producer, an importer of subject merchandise from that exporter or producer, or a domestic interested party. Expedited reviews may be requested under section 736(c) of the Act if certain stringent requirements are met. New shippers may also request expedited reviews under section

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751(b) of the Act. AR procedures and practices for AD orders, AD findings, and suspension agreements are generally the same as those employed for investigations. See the chart in section IV of this chapter for a description of the major differences between an investigation and an AR.

I. ADMINISTRATIVE REVIEWS

A. Expedited Administrative Reviews

Under section 736(c) of the Act and 19 CFR 351.215, the DOC may perform an expedited administrative review for any manufacturer, producer, or exporter. Because the requirements for an expedited review are so strict and the procedures so demanding, very few of these reviews have been undertaken. The last expedited review took place in 1985; see Early Determinations of Antidumping Duties: Certain Carton Staples and Staple Machines from Sweden, 50 FR 3582 (January 25, 1985). See the Act and the CFR for information on the requirements for these types of reviews. Also, advise your supervisor or program manager (PM) immediately if you are contacted about the possibility of undertaking an expedited review.

B. Annual Administrative Reviews of AD Duty Orders, AD Findings, and Suspension Agreements

The basic purpose of an annual AR is to determine the actual amount of AD duties that Customs will assess on imports of the subject merchandise during the period of review (POR) or to determine if a suspension agreement has been violated. In ARs for orders and findings, the DOC also establishes new cash deposit rates for entered subject merchandise for each of the companies reviewed. In some ARs, the DOC also determines whether the order or finding should be revoked with respect to a particular company or whether a suspension agreement should be terminated. See section II of this chapter for detailed information on revocations and termination.

The AR process begins approximately one year after publication of an AD duty order or suspension agreement. Each AD case has an anniversary month which corresponds to the month in which either the AD duty order or suspension agreement was published by the DOC or the AD finding was published by the Treasury Department. Each month the DOC publishes, as a courtesy, in the Federal Register (FR) a “Notice of Opportunity to Request Administrative Review,” which informs interested parties that they may request ARs. The “Opportunity Notice” specifically lists those orders, findings, or suspension agreements with an anniversary month corresponding to the month of publication of the “Opportunity Notice.” For instance, the June “Opportunity Notice” will list all those cases with the anniversary month of June.

At any time during the anniversary month, an interested party may request an AR of companies that produced and exported or exported the subject merchandise during the POR. Once the DOC receives such requests from specific firms, it initiates ARs for these companies. The DOC publishes a “Notice of Initiation” in the FR in which it lists the companies that will be subject to the AR.

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If no review is requested for a particular firm, entries from that firm are assessed AD duties at the rate of deposit at the time of entry. The DOC sends automatic assessment instructions to the U.S. Customs Service for entries of subject merchandise from all firms for which no review is requested. In non-market-economy (NME) cases, it is frequently unclear precisely which companies are separate from other companies and, thus, which companies will be covered by the final results of review. Therefore, we also conditionally initiate on unnamed firms in NME cases. If there are no requests for reviews of suspension agreements, the DOC can self-initiate reviews if it feels there has been a possible violation. Always consult with your supervisor or PM if you feel that a conditional initiation for an unnamed NME company or a self-initiated review of a suspension agreement is warranted.

Once the DOC has initiated an AR for a specific company, the analyst responsible for that review sends that company a questionnaire requesting that it report all sales to the United States or, if the company has a very large number of United States sales, a sample of sales to the United States. The questionnaire also requests that the company report sales in the exporting country (EC) of merchandise which is comparable to that sold in the United States. The questionnaire may request only a sample of such EC sales. If the company does not have any such sales in the EC market, the DOC may ask the respondent to submit third-country sales or, if those are non-existent or unacceptable, constructed value information. A complete discussion of questionnaires for ARs is offered in Chapter 4. Questionnaires for reviews of suspension agreements are specifically tailored to the contents of the agreements. See your supervisor or PM if you need to issue a questionnaire for a suspended case.

Once the analyst receives the questionnaire response from a firm under review, the analyst reviews it and issues a supplemental questionnaire seeking clarifications and/or revisions to the questionnaire response. The petitioner, at this point or earlier, may allege that the respondent's EC or third-country sales are sold at prices below the cost of production (COP). Whenever we find that there are reasonable grounds to believe or suspect that sales have been made below COP, usually on the basis of a timely allegation by petitioner, the analyst issues a COP questionnaire to the respondent. The company must then submit complete COP information for its EC or third-country sales. The DOC will initiate a COP inquiry at the outset of the review if it disregarded comparison-market sales below the COP in the previously completed segment of the case, be it in an earlier review or the investigation. See Chapter 5 for detailed information on how to analyze a questionnaire response. For a complete discussion of sales below the COP, refer to Chapter 8.

Annual verifications are not statutorily required in ARs for AD orders/findings. The Act requires verification if no verification was conducted in the previous two ARs, the company under review has requested revocation, or the petitioners or other domestic interested parties have shown good cause for verification. When a verification is required or when we choose to verify, the analyst issues a verification outline to assist the respondent in preparing for verification. The analyst then conducts the necessary verifications and writes verification reports, after which he or she analyzes the submitted data, calculates dumping margins, drafts an analysis memorandum, and prepares a "Notice of Preliminary Results of Administrative Review." Under 19 CFR 351.307(a), the DOC may verify information submitted for the AR of a

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suspension agreement as it sees fit. See Chapter 13 for detailed information on the verification process. See section 782(i) of the Act for statutory verification requirements. Also see Chapter 12 for information on the preparation of a notice of preliminary results of review and 19 CFR 351.307 for information on verifications.

After issuing the “Preliminary Results” FR notice, the analyst discloses the analysis and calculations to interested parties that request disclosure and conducts a disclosure conference, if requested by interested parties. At a disclosure conference, the analyst answers any questions about how the calculations were done that interested parties may have after their review of the analysis memorandum and dumping calculations. Within thirty days after publication of the “Preliminary Results” in the FR notice (or by the date stated in the notice), interested parties may submit written comments (case briefs), which generally are followed within five days by interested parties' written rebuttal comments (rebuttal briefs). Interested parties may request a hearing to present orally the issues that they have briefed. If requested, a hearing is usually held seven days after submission of rebuttal comments. See Chapter 11 for detailed information on disclosure conferences. Also see Chapter 14 and 19 CFR 351.309 and 351.310 for more information on hearings and briefs.

The analyst then reviews the comments received, drafts responses to each of them, and prepares a “Notice of Final Results of Administrative Review.” This notice responds to the comments we received by stating our positions and indicating any changes in the dumping calculation which result from comments received. After publication of the final results, if requested, the analyst releases to requesting interested parties both the final analysis memorandum and the revised dumping calculations, and he or she may again hold a disclosure conference. Ministerial error claims can be submitted for final results calculations. See Chapter 11 for more information about ministerial errors. Also see 19 CFR 351.224 for information on procedures for ministerial errors.

Except for the final results disclosure conference and the disposition of any ministerial error claims, each of the above steps must be accomplished within the year (see Chapter 12 for information on postponements of determinations for ARs) that the DOC has to complete each AR, although, as stated above, we do not always conduct verifications. In many of these steps as is the case for investigations, the analyst works with a staff attorney from the Office of Chief Counsel for Import Administration (CCIA). Although one full year may appear to be a great deal of time, in reality, if each of these steps is undertaken, it allows few deviations from a relatively strict timetable.

Finally, for AD orders and findings the analyst issues instructions to U.S. Customs, indicating the new deposit rates which will be in force for future entries, i.e., those made after publication of the “Final Results” in the FR. For ARs of suspension agreements that result in final negative determinations, no further actions are required. If, however, a violation is detected, see Chapter 15 for information on how to proceed. Also see section III of this chapter.

If no interested parties challenge the DOC's determination for an AD order or finding in the Court of International Trade (CIT), the analyst issues liquidation (appraisement) instructions to

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U.S. Customs stating the AD duties due as a result of the review on all entries made during the POR for the specific companies reviewed (as discussed above, entries from companies not subject to review are liquidated under the automatic assessment procedures immediately following publication of the “Notice of Initiation” except in the case of an NME review). See part G. of this section for information on the issuance of liquidation instructions.

If interested parties do challenge the final results of review, they frequently obtain an injunction against liquidation of the entries during the POR. The analyst should check with the case attorney in CCIA and, if no injunction is requested, the analyst may proceed to issue liquidation (appraisement) instructions. If an injunction is requested, suspension of liquidation is continued. The analyst also prepares the court record which includes all documents in the record of the AR. This court record, which is submitted to the CIT, is the basis for the CIT's review of the DOC's final results and all arguments made by the interested parties in the course of the ensuing litigation. The CIT relies on this record to determine whether the DOC's determination was based upon substantial evidence on the record and was otherwise in accordance with the law.

If the CIT affirms the DOC's determination, no further action is necessary. If, however, the CIT agrees with any of the complaints filed, it remands the DOC's final results of review with specific instructions. The DOC then follows these instructions in making a redetermination on remand. If the CIT affirms this redetermination and no party appeals the redetermination to the Court of Appeals for the Federal Circuit (CAFC), the redetermination stands. If not, either the CIT or the CAFC may remand the final results again. If any changes in our analysis result from these remands, the analyst prepares a “Notice of Amended Final Results” after the CIT decision or, if appealed, after the CAFC affirms the amended results. Then liquidation instructions, reflecting the amended results, are sent to U.S. Customs. See Chapter 2 for information about the administrative record of the AR. Also see Chapter 19 on court records and litigation.

C. No Shipment Responses in Administrative Reviews

If an exporter or producer that is named in a “Notice of Initiation” has no shipments (entries) during the POR, there is generally nothing to review and the company keeps its existing deposit rate. This is clearly the case for EP sales where the DOC reviews POR entries (or shipments if exact entry data is not available -- the presumption being that there would be entries in close proximity to most shipments) and for CEP transactions where the company has POR sales but no entries (shipments) into the United States. See Final Results of Antidumping Administrative Review: Silicon Metal from Brazil, 62 FR 1997 (January 14, 1997).

Upon receipt of a no shipments claim in response to an AR questionnaire, the DOC queries the Customs Service to determine if its records support the claim. If Customs confirms that there are no shipments (entries), the DOC, under 19 CFR 351.213(d)(3), may rescind an AR for that company if it concludes that there were no shipments during the POR by publishing a “Notice of Rescission (or Partial Rescission) of Antidumping Administrative Review” in the FR. The FR notice should specify that the company had no shipments and, accordingly, there will be no liquidation instructions for the company for the POR. The company's duty deposit rate would

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remain the same as from the last AR or the investigation if this is the first AR for the AD duty order.

D. Administrative Reviews for New Exporters and Producers (New Shipper Reviews)

Under section 751(a)(2)(B) of the Act, new exporters and producers can receive an expedited AR if 1) they did not export the merchandise subject to the AD order during the POI for the investigation (see 19 CFR 351.214(b) for information on required producer or exporter certifications), and 2) they are not affiliated with any exporter or producer that did export during the POI. Additionally, under 19 CFR 351.214(c), the request for review must be made within one year of the date of sale or exportation of the merchandise. If these criteria are met, the DOC can commence a new shipper review in the month following the 6-month period in which the request is made. The 6-month period may begin in either the month after the anniversary month or semi-annual anniversary month (which is 6 months after the anniversary month). The DOC can allow the posting of a bond in lieu of cash deposits for potential AD duties until the review is completed. See Initiation of New Shipper Antidumping Duty Administrative Review: Certain Pasta from Italy, 62 FR 8927 (February 27, 1997).

Time limits for preliminary and final results and extensions of the due dates for new shipper ARs are as follows: 1) within 180 days from the date of initiation of the review for the preliminary results; 2) within 90 days of the date of the preliminary results for the final results; and 3) if the DOC deems the review to be extraordinarily complicated, the preliminary date can be extended to 300 days and the final can be extended to 150 days (Section 751(a)(2)(B)(iv)) (see Preliminary Results of New Shipper Antidumping Administrative Review: Certain Forged Steel Flanges from India, 61 FR 51261 (October 1, 1996)).

E. Changed Circumstances Administrative Reviews

In addition to an annual AR, interested parties can request a changed circumstances review of an AD duty order. Under section 751(b)(4) of the Act, in the absence of good cause, the DOC may not review a final determination or suspension agreement in an investigation less than 24 months after the date of publication of the determination or the suspension.

The DOC determines on a case-by-case basis whether changed circumstances sufficient to warrant a review exist. The DOC will only initiate a changed circumstances review if the factors underlying its initial determination have changed sufficiently to warrant such a review. The DOC may revoke an order (or terminate a suspension) in whole or in part agreement through a changed circumstances review.

Examples of changed circumstances that have been found sufficient to warrant a review include 1) a country becoming newly entitled to an injury determination by means of accession to the GATT, and 2) the unification of a country, e.g., Germany. The most common changed circumstance sufficient to warrant a review and resulting in the revocation of an order or part of an order is when it is no longer of interest to domestic interested parties. The DOC's regulations

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dealing with changed circumstances reviews can be found in 19 CFR 351.221(c)(3) and 351.222(g).

F. Five-Year Reviews (Sunset Reviews)

Under section 751(c) of the Act, five years after the date of publication of an AD duty order or suspension agreement the DOC shall conduct a review to determine if revocation of these actions would be likely to lead to continuation or recurrence of dumping. The ITC must also conduct five-year reviews. See Chapter 16 on injury determinations for information on ITC activities.

Notice of initiation of a five-year review must be published in the FR not later than 30 days prior to the fifth anniversary date of the AD duty order or suspension agreement requesting willingness to participate in the review by furnishing information requested by the DOC and the ITC. If no response is received from an interested party, the DOC will issue a final determination within 90 days after initiation of the review, revoking the AD duty order/finding or suspension agreement to which the FR notice of initiation relates. If an inadequate response is received, the DOC may issue, within 120 days of the initiation of the review, a final determination revoking the AD duty order or suspension agreement without further investigation. If the responses are complete, the DOC shall make its determination within 240 days after the review is initiated. If the DOC's determination on revocation is affirmative, the ITC shall make its final determination within 360 days of the initiation of the review. Extensions of these time limits are possible if the review is deemed extraordinarily complicated. See section 751(c)(5) of the Act and 19 CFR 351.218. Also see the special rules for five-year reviews for "transition" orders in section 751(c)(6) of the Act.

G. Appraisal Instructions

The POR for an AR of an AD duty order/finding or suspended investigation can range anywhere from 12 to 17 months. Once the AR is finalized for an AD duty order/finding, appraisal instructions are issued to the Customs Service covering the entries/sales for the period reviewed unless litigation activities commence within 30 days of the publication date of the final results. Appraisal instructions are sometimes referred to as liquidation or assessment instructions or "master lists." See 19 CFR 351.212 for detailed information on appraisal instructions for AD duty orders.

Appraisal instructions are the implementation of our final results for the AR. If the total duties for a company are found to be \$10,000,000 on \$100,000,000 net U.S. value, the weighted-average margin in the DOC's final results would be 10%. Appraisal instructions from the DOC would give Customs the authority to collect special dumping duties and refund any cash deposits over the assessed amount. Part 4 of this section describes the preparation of the instructions. .

If the DOC does not advise Customs of the results of its AR once the AR is completed, 1) we have not implemented our final results of review; 2) importers do not receive refunds if their cash deposits of estimated AD duties were higher or the Treasury does not receive additional

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duties due if they were lower; 3) entry and importers are unable to settle their accounts with customs; documentation piles up at ports of entry and importers are unable to settle their accounts with customs; and 4) the DOC has not fully applied the AD law.

Types of appraisal instructions

a. “Master Lists”

Master lists are entry or sale-specific instructions on how to determine the AD duty for the entries. Generally, the DOC issues master lists only for large items that are easily identifiable like large power transformers and mechanical transfer presses.

b. Percentage instructions

Percentage instructions for appraisal are based on entered value. The percentage amount is calculated by dividing duties due by the total entered value of the sales we analyzed. We ask for this information in the questionnaire we send at the outset of the AR.

c. Special instructions

Sometimes it is appropriate to tell customs to collect antidumping duties due per unit (e.g., \$1.25/MT). Always consult with your PM if you think this is a more appropriate method of instructing Customs.

Preparation of appraisal instructions

The instructions that you send to Customs depend on the case. At a minimum Customs needs the following: 1) the POR; 2) a description of the merchandise; 3) the company name and the nine-digit case number; 4) the appraisal rates (generally given on an importer-or exporter-specific basis); 5) implementation instructions, including interest and reimbursement information; and 6) the appropriate boiler-plate language for the type of instructions that are involved. Note that the DOC's Customs Liaison Team has prepared a package of standard language for all AD e-mail transmissions to Customs. You must use the standard format that fits your situation when preparing appraisal instructions or Customs will not accept your document. See your supervisor or program manager if you cannot find the appropriate language for your instructions.

You should incorporate the programming language which will calculate your appraisal rates into your dumping analysis program for the preliminary and final results of the AR. The DOC has also started to explain in the preliminary results which of the various approaches to liquidation it intends to take so that parties can comment on this very important aspect of implementation of the AD law. This way, appraisal instructions will be ready to go to Customs when the final results publish in the FR.

If there is no litigation, instructions should go out 31 days after the publication of the DOC's final results. If litigation commences and parties obtain injunctions from the court to prohibit the

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liquidation of applicable entries, appraisal instructions will be in the file for later reference. If you haven't included the liquidation calculations in your final margin calculations, you should prepare them and put them in the file (but they won't be part of the court record) for later access upon completion of litigation. Given the length of time litigation can take, it is imperative that you include the calculations in your computer program. That way, if there's a remand, parties will see the effects of the remand on the AR assessment rates that were calculated and, at the conclusion of the litigation, you will be ready to issue the DOC's final appraisal instructions to Customs.

The questionnaire now asks respondents to provide the entered value of the sales transactions they are reporting for our reviews. Always check your response when you're preparing your supplemental questionnaire to confirm that you have received entered value information for every transaction. If you haven't received entered value information for every transaction, reiterate the request and, if the respondent cannot submit it, instruct the respondent to explain why it cannot. In such cases, we may have to estimate the entered value or issue per unit appraisal instructions. Always see your supervisor or PM if an estimate is necessary.

You should take care to note differences between EP and CEP appraisal instructions because there are different types of importers involved.

- 1) In CEP appraisal situations, the importer is affiliated with the exporter. Therefore, you will calculate an assessment rate using this calculation:

$$\frac{\text{Total Duties Due on CEP Calculations}}{\text{Total Entered Value of CEP Sales During the POR}}$$

This will yield an appraisal percentage figure (which is likely to vary from the weighted-average margin which is calculated on the basis of CEP). In this situation, the appraisal instructions will say:

"For merchandise exported by ABC Ltd. and imported by its subsidiary, ABC Corp., entered or withdrawn from warehouse for consumption during the period August 1, 1994, through July 31, 1995, assess an antidumping liability of XX percent of the entered value."

- 2) In EP appraisal situations, importers are not affiliated with the exporter. In these situations, appraisal instructions must be by importer. Calculate importer-specific instructions as follows:
 - a. Sort your transactions by customer code and generate the total dumping duties due and the total entered value for each customer to yield a percentage assessment rate. In this situation, the appraisal instructions will say:

For merchandise exported by ABC Ltd. and imported by the following importers entered or withdrawn from warehouse for consumption during the period August

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1, 1994 through July 31, 1995, assess antidumping liabilities of the following percentages of the entered value:

<u>Importer</u>	<u>Percent</u>
Austin Tunes	14.3
Mega-Mall Music	0.0
Seattle Sings	7.3

- b. In certain cases sales to the United States are made through resellers (or trading companies) and the importers is unknown. In such cases, appraisement instructions would be issued on an exporter/importer specific basis such as:

<u>Importer/Exporter</u>	<u>Percent</u>
Austin Tunes	14.3
Mitsui trading Co.	2.0

- 3) If the affiliated party in the United States is the importer of record for both CEP and EP sales and respondent has reported that there are no other importers of its merchandise, then you will calculate an assessment rate for all POR sales, both EP and CEP, and the instructions will pertain to all sales by the parent that are imported by that affiliated party. You will calculate the assessment rate as follows:

Total Duties Due on CEP and EP Calculations
Total Entered Value of all Sales During the POR

The appraisement instructions will say:

For merchandise exported by ABC Ltd. and imported by its subsidiary, ABC Corp., entered or withdrawn from warehouse for consumption during the period August 1, 1994 through July 31, 1995, assess an antidumping liability of XX percent of the entered value.

If your case involves large items for which a master list is feasible and appropriate, you should prepare instructions with very specific information. Because you are tying an analyzed sale to an entry, if you cannot provide specific information, a master list probably is not appropriate. Here is an example of such information:

LARGE CONSTRUCTION CRANES FROM FRANCE
A-427-002-003
ABC Electric Mfg. Co., Ltd.
June 1, 1994, through May 31, 1995

<u>Entry Date</u>	<u>Port</u>	<u>Unit Serial #</u>	<u>Importer</u>	<u>U.S. Price</u>	<u>Duties</u>
12/2/94	New York	34987-2	Builders Inc.	\$123,890	- 0 -

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4/13/95	New York	34987-3	Builders Inc.	\$114,987	\$5,443
5/26/95	Baltimore	35098-8	Johnson Co.	\$223,832	\$30,159

In this case you would have calculated a weighted-average margin for your final results of review and future cash deposit amount for ABC Electric Mfg. Co., Ltd as 7.7%:

<u>Total Dumping Duties Due</u>	<u>\$35,602</u>
Total U.S. Price	\$462,709 = 7.7%

Our standard language in FR notices (“(i) individual differences between U.S. price and normal value may vary from the percentage listed above”) is another way we alert the public that the rate in the FR may not be the rate we instruct customs to use to collect the final duty amount.

- f. Customer names and appraisement rates are business proprietary. Customs does not release them except to the importer.

Special Appraisement Topics

- a. Sampling procedures

Keep liquidation in mind if a sampling methodology is required. In general, the sampling of companies should not affect preparation of the instructions. If you do a time sample, such as in the antifriction bearings cases, some additional math is necessary.

- b. Concurrent countervailing (CVD) duty order

If there is also a CVD duty order on your product and export subsidies are involved, you must adjust your instructions to reflect these subsidies. See section 772(c)(1)(C) of the Act. If your AD appraisement rate is 10 percent and for the period of review there was a CVD appraisement rate, based on export subsidies of 0.91 percent, you would instruct Customs to collect 9.09 percent of the entered value for the applicable entries. Always discuss your appraisement plans for your AD cases with concurrent CVD duty orders with the case analyst responsible for the CVD duty order.

- c. de minimis margins

19 CFR 351.106(c) requires that for ARs we treat any margin that is less than 0.5 percent ad valorem on an importer-specific basis as de minimis and that we instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise to that importer during the relevant period of review made by any person for which we calculate a de minimis assessment rate.

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d. Customs Module update

You must ensure that the person with access to the Customs AD/CVD Module updates the company-specific screens as soon as Customs tells us the message number. That way, import specialists in the field will know to look for an e-mail message concerning liquidation for a specific POR.

**II. REVOCATIONS OF AD DUTY ORDERS/AD DUTY FINDINGS AND
TERMINATIONS OF AD SUSPENSION AGREEMENTS**

The term “revocation” refers to the end of an AD proceeding in which an AD duty order or finding has been issued. The term “termination” means the end of an AD proceeding in which the investigation was suspended based on a suspension agreement. Generally, these actions cannot occur unless the DOC has conducted one or more ARs under section 751 of the Act.

A. Revocation or Termination Based on an Absence of Dumping

Under section 751(d) of the Act, the DOC may revoke an AD order/finding or terminate an AD suspension if all exporters and producers covered by the action have sold the merchandise at not less than normal value (NV) (see Chapter 8 for an explanation of NV) for a period of at least three consecutive years and it is not likely that the exporters or producers will sell the merchandise at less than NV in the future. See Final Results of Antidumping Administrative Review and Partial Revocation of Antidumping Duty Order: Fresh Cut Flowers from Mexico, 61 FR 63825 (December 2, 1996), Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany, 61 FR 49729 (September 23, 1996), Final Results of Antidumping Duty Administrative Review: Television Receivers from Japan, 55 FR 11420, 11422 (March 20, 1990), and Toshiba Corporation v. U.S., 15 CIT 597, 599 (1991), for examples of situations where requests for revocation were denied. If a firm was found to have dumped merchandise in a past segment and if it meets the criteria cited above, it must in addition submit a certification that it will not dump in the future and agree to immediate reinstatement in the order/finding if the DOC concludes it has sold at less than NV subsequent to the revocation. See Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order: Forged Steel Crankshafts from the United Kingdom, 62 FR 16771 (April 8, 1997).

In general, the DOC will not revoke an AD order/finding or terminate a suspension unless it has conducted a review of the first, third, or subsequent years in the AR review process. For purposes of revocation or termination, the DOC does not have to review the “intervening” years, i.e., the second year if a three- year period is being examined or the second, third, and fourth years if a five-year review is involved. However, the DOC must be satisfied that during each of the years in question there were exports to the United States in commercial quantities of the subject merchandise to which a revocation will apply.

Requests for revocations or terminations from exporters or producers may be made during the third and subsequent anniversary months of the AD order/finding or suspension agreement. See 19 CFR 351.222(e) for the requirements of these requests. These types of requests are

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considered by the DOC to include a request for an AR and, accordingly, the DOC undertakes the appropriate AR per the requirements of 19 CFR 351.213 when they are received. If a request for revocation is received after the anniversary the DOC generally will not consider it.

Procedural requirements for revocation and termination requests found in 19 CFR 351.222(f) involve the following: 1) verification; 2) publication of receipt of request for revocation as part of the FR announcing the initiation of an administrative review; 3) publication of “Intent to Revoke” or “Intent to Terminate” notices as part of the FR announcing the preliminary results; 4) publication of a notice of “Revocation of Order” or “Termination of Suspension” as part of the final results FR notice if the DOC final determination is affirmative; and 5) instructions to the Customs Service in the event of a revocation (see this section of the DOC regulations for more information). IFA firm requests revocation, that request will also be considered a request for review in the qualifying year if the request does not specifically request review.

The DOC may revoke for a non producing exporter of subject merchandise. Normally, this revocation will apply only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

B. Revocation or Termination Based on Changed Circumstances

Under section 751(d) of the Act, the DOC may revoke an AD order/finding or terminate a suspension agreement based on a changed circumstances request if it concludes that 1) producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in whole or in part for an order or for a suspended investigation, or 2) other changed circumstances sufficient to warrant revocation or termination exist. In the absence of good cause, the DOC may not undertake this type of review until 24 months have elapsed since the time of the order/finding or suspension agreement. Also note that the ITC can revoke an order/finding based on changed circumstances involving its material injury determination. See 19 CFR 351.222(g) and (h) for other requirements and procedures associated with changed circumstances revocations and terminations involving the DOC and the ITC. Also see Chapter 16 for information on ITC actions.

C. Revocations or Terminations Based on Five-Year Reviews (Sunset Reviews)

In the case of a sunset review, the DOC will revoke an order or terminate a suspension agreement if: 1) it determines that these actions would not lead to a continuation or recurrence of dumping; and 2) the ITC determines that material injury would not be likely to continue or recur. See section 751(d) of the Act and 19 CFR 351.222(i) for more information on revocations or terminations based on five-year reviews.

III.SCOPE DETERMINATIONS

Issues often arise involving whether or not a particular product belongs within the scope of an AD duty order/finding. These situations can involve product descriptions, merchandise completed or assembled in the United States or other foreign countries, minor alterations, or

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later-developed merchandise. Most often these types of allegations are made by importers and domestic interested parties although the DOC may self-initiate a scope investigation.

Under 19 CFR 351.225(d), if there is sufficient information in the application for a scope ruling filed by the domestic interested party, the DOC will issue a final ruling based on the application. If this is not the case, then the DOC will initiate a further inquiry under 19 CFR 351.225(e) and (f). If a further inquiry is undertaken, questionnaires may be sent and verification of responses may take place. Whenever the DOC determines that a scope inquiry presents significant difficulty, it will issue a preliminary scope ruling. Comments and rebuttal comments can then be filed by the parties. The DOC will then publish a final scope ruling. Under 19 CFR 351.225(f)(5), the DOC will normally issue a final scope ruling in an inquiry within 120 days from the date of the initiation of the inquiry for scope inquiries involving product descriptions. For scope inquiries involving products completed or assembled in the United States or in other foreign countries, minor alterations, or later-developed merchandise, the DOC will normally issue its final ruling within 300 days. See section 781 of the Act for detailed information on the various types of circumvention that could result in an application for a scope ruling. Also see 19 CFR 351.225 for information on all types of scope inquiries.

A. Scope Determinations Based on Descriptions of Products

Each AD order or finding covers a specified "class or kind" of merchandise (subject merchandise) produced in a specified foreign country. This "class or kind" of merchandise subject to investigation, referred to as the "scope" of the investigation, becomes the scope of the AD duty order.

After an AD order is issued and for AD findings issued previously by the Treasury Department, the DOC frequently is called upon to determine whether particular products fall within the scope of that order or finding. This usually happens because the descriptions of merchandise contained in the DOC's and Treasury's determinations were written in general terms. In performing this task, the DOC must analyze the request using the information sources cited in 19 CFR 351.225(k), i.e., the description of the merchandise contained in the petition, the initial investigation, and the determinations of the DOC and the International Trade Commission (ITC). When the preceding information is not dispositive, then the DOC must further analyze the situation based on the following criteria to determine whether or not the product is within the scope of the order: 1) the physical characteristics of the product; 2) the expectations of the ultimate purchasers; 3) the ultimate use of the product; 4) the channels of trade in which the product is sold; and 5) the manner in which the product is displayed and advertised. See Diversified Products v. United States, 572 F. Supp. 883 (1983), and Kyowa Gas Chemical Industry Co., Ltd. v. United States, 582 F. Supp. 887 (1984), for more information on the aforementioned criteria.

As mentioned above, the analysis may take place without a formal inquiry if the record is dispositive of the issue. If the record is not dispositive, the DOC must initiate a formal scope inquiry wherein it solicits comments from interested parties.

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B. Scope Determinations Based on Circumvention Inquiries

Circumvention inquiries are designed to address actions taken by the exporter or manufacturer, subsequent to the imposition of an AD duty order, which circumvent the order, i.e., avoid AD duties. Such actions include relocation of assembly/completion operations to the United States or some other foreign country, minor alteration of the subject merchandise, or later-developed merchandise. These actions may result in the exporter's ability to continue engaging in price discrimination without being subject to AD duties.

If the DOC receives an application for a ruling containing sufficient evidence of circumvention of an order or finding, then an inquiry is initiated in which the DOC will solicit information regarding the specifics of the alleged circumventing actions. The DOC examines many factors in making a determination of circumvention; chief among them are the following: 1) the determination of whether the amount of value added in the United States or third-country assembly/completion facilities is "small;" 2) whether alterations to the merchandise in form or appearance are minor; and 3) whether a later-developed product fits the five criteria shown in section 781(d) of the Act (see the five criteria cited above for scope inquiries based on the description of the merchandise -- they are identical to the 781(d) criteria). The DOC's anti-circumvention regulations can be found at 19 CFR 351.225. Also see section 781 of the Act.

**IV. DIFFERENCES BETWEEN CONDUCTING INVESTIGATIONS AND
ADMINISTERING AD DUTY ORDERS**

The narrative and chart that follow describe and list many of the differences between investigations and ARs. Some of the differences noted are not explained in great depth because other chapters of this manual provide a complete discussion of the specific analysis and procedural matters in question. If you have any questions concerning this section, consult with your supervisor or PM.

A. Procedures and Analysis for Investigations and Administrative Reviews

A number of differences exist in the procedures and analysis for investigations and ARs. The most significant ones are as follows:

1. "Opportunity to Request Administrative Review" and specialized "Initiation" notices are published for ARs. The "Opportunity" notices list all AD cases whose anniversary month is the present month and notify interested parties that an AR may only be requested in writing during the anniversary month. Neither the regulations nor the law require that we publish the "opportunity" notice but we do so as a courtesy.

"Initiation" notices list all companies that will be subject to an AR, based on requests received during the anniversary month.

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2. For investigations, the DOC selects which specific firms it will investigate. For ARs, unless sampling or other limitations are in place, petitioners, importers, resellers or manufacturers of the subject merchandise may request that the Department examine specific firms.
3. For an AR, each and every U.S. sale made by every firm under review is examined, whereas there is considerable flexibility in determining which sales are examined in an investigation for an individual company. For an AR, the DOC may not review each and every sale if it decides to select a sample but, even then, it cannot intentionally exclude any given group of sales from the possibility of selection as part of the sample. Also, in an investigation, the DOC is required to investigate all the firms which sold in the United States during the period of investigation (POI) although there are some exceptions to this rule.
4. The POI for an investigation is typically 12 months (six months for a NME investigation). The POR for an AR is usually 16-18 months for the first AR (because it usually includes the time period between the preliminary determination and the order at the investigative stage) and 12 months for all subsequent reviews.
5. While the DOC investigates sales within the POI, it may review both sales and entries made during the POR.
6. For investigations, weighted-average U.S. prices are normally compared to weighted-average normal values (NV) for the POI. For ARs, the DOC compares individual U.S. prices to NVs based on monthly weighted-averages. For ARs where no sales (and, thus, no monthly weighted-average price) of comparable merchandise occurred in the EC market during the month of the U.S. sale, the DOC will attempt to find a monthly average price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. If unsuccessful, the DOC will then look one month after and finally two months after the month of the U.S. sale. This practice is commonly referred to as the 90/60-day guideline. If there are no sales in this period, NV is based on constructed value.
7. For investigations, the DOC is required by law to verify each respondent's questionnaire response whereas for ARs it has some flexibility in its regulations in determining which respondent firms' responses to verify and when such verifications will occur.
8. For ARs, the DOC only refers its affirmative preliminary and its negative or affirmative final determinations to the ITC when it is conducting an anti-circumvention inquiry (which is not technically an administrative review) whereas for investigations the DOC always reports its results to the ITC since the AD margin may be used in the ITC's final determination of injury.

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9. Upon a showing of ministerial error in an investigation, the DOC will issue a revised preliminary determination if certain conditions are met. DOC does so because the preliminary duty rates are used as bonding rates until it publishes its final determination. The published DOC preliminary rates for an investigation also serve as a “cap” on the amount of actual duties that may ultimately be collected on entries between the preliminary determination and issuance of the ITC's published final determination. The cap applies even if the DOC finds in its first administrative review that the margins of dumping are in fact higher. For ARs, the DOC will rarely issue revised preliminary results because the preliminary results have no effect on cash deposit rates.
10. If the margins of dumping found in an AR are above the rates deposited on entries subject to the review, then the importer must not only pay duties to make up the difference between the deposit rate and the actual calculated margin, but it must also pay the interest accumulated since the date of deposit (date of entry) on that amount. If the deposit rate is higher than the actual calculated dumping margin, then the importer receives a refund and also receives interest on the refunded portion dating from the date of deposit of estimated antidumping duties. The only exception to this practice is the cap discussed in point 9 above.

B. U.S. Customs Service-Related Differences for Investigations and Administrative Reviews

Because of the nature of the AR function, DOC interacts with the U. S. Customs Service concerning certain issues that are not addressed in the course of an investigation. These issues are due in large part to the fact that, while the DOC establishes bonding and cash deposit rates during an investigation, during an AR it is responsible for establishing the final AD duties for imports when entries are finalized or liquidated and for ensuring enforcement of the AD law. IA's Customs Liaison Team meets monthly with Customs officials to discuss solutions to problems and to facilitate the suspension of liquidation and assessment of antidumping duty processes. If you have a Customs related problem or suggestions on how to improve our interactions with Customs, consult with your supervisor or PM first and then contact the Customs Liaison Team

1. As a result of an AR, the DOC issues liquidation (appraisement) instructions for imports subject to an AD duty order. These instructions are either for automatic assessment of duties when no review is conducted or for assessment based on the final results of a review. The DOC issues liquidation instructions in an investigation only in the event of a negative preliminary determination by the ITC or a negative final determination in an investigation by the DOC or the ITC.
2. For ARs, the DOC regularly recommends to the Customs Service resolutions regarding Customs protests (disputes) filed by importing firms. Protests allege incorrect assessment of antidumping duties on entries by the Customs Service. Customs protests are not part of the investigation process.

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OTHER POST-ANTIDUMPING DUTY ORDER ACTIVITIES

3. For ARs, the DOC advises Customs of scope changes based on interpretations of the description of the class or kind of merchandise and affirmative circumvention determinations.
4. These instructions are either for automatic assessment of duties when no review is conducted, assessment when a review is rescinded due to withdrawal of request for review, or assessment based on the final results of review.
5. Sometimes the final results of an administrative review result in revocation of the order in whole or in part. If so, we instruct the Customs Service to discontinue suspension of liquidation on future entries.
6. Between the preliminary determination and issuance of an order for an antidumping or countervailing duty investigation, during expedited antidumping reviews, and until completion of a new shipper review, importers have the option of posting either a cash or a bond as security in lieu of cash deposit for each entry of the subject merchandise. Generally, after issuance of an order and during the course of administrative reviews, importers no longer may post a bond or security, but they must instead make a cash deposit of estimated duties.
7. If in an investigation we preliminarily determine that dumping or countervail able subsidization has occurred, we provided the Customs Service with a rate for use in suspending future entries of the subject merchandise. However, for the preliminary results of an administrative review, new shipper review, or expedited review, we do not provide the Customs Service with a rate at the prelim since future entries are only affected by the final results of review.

C. Administrative Reviews/Investigations Analytic and Procedural Chart

This chart lists the primary analytical and administrative procedures for ARs and investigations and the procedural differences/similarities between the two functions.

Action	Investigations	ARs
1. Opportunity Notice	Not applicable	Monthly notice of opportunity to request administrative review of AD order, finding, or agreement
2. Initiation Notice	Initiation of initial investigation	Initiation of administrative reviews

ADMINISTRATIVE REVIEWS AND
OTHER POST-ANTIDUMPING DUTY ORDER ACTIVITIES

Action	Investigations	ARs
3. AD Questionnaires	Sent only to DOC-selected firms	Sent only to firms requested for review
4. Period Investigated/Reviewed	Usually 12 months, six months for NME investigations	16-18 months for 1st review, 12 months for succeeding reviews
5. Supplemental Questionnaires	Sent soon after receipt of questionnaire responses, as needed	Same
6. Questionnaire Analysis		
- U.S. Sales	Weighted-average POI	Individual
- NV	Generally one average for the 12-month period	Generally a monthly average
- Adjustments (movement, cir. of sale, lvl. of trade, price, difmer, etc.)	Yes	Yes
- Allegation required for initiation of below COP test	Yes	Yes, although DOC will automatically initiate a COP inquiry if below-COP sales were disregarded in the last segment including the firm
7. Preliminary Determinations/Results	Yes	Yes
- Withholding of Appraisement	Yes, if affirmative	not applicable (already in effect)
- Cash/Bond Requirement	Yes, if preliminary affirmative (at preliminary rates)	Not changed; previous rates remain in effect
8. Verification	After the preliminary determination	Generally before the preliminary results
	Required in all cases	Required only:- if requested, with cause- if not conducted for two prior reviews- before revoking order in whole or in part
9. Critical Circumstances Determinations	Yes	No

ADMINISTRATIVE REVIEWS AND
OTHER POST-ANTIDUMPING DUTY ORDER ACTIVITIES

Action	Investigations	ARs
10. Written Comments, Briefs, Rebuttals	Yes	Yes
11. Hearing	If requested	If requested
12. Final Determination/ Review Results	Yes	Yes
- Cash/Bond Requirement	Yes, if affirmative	Cash only, at new rate
13. Refer case to ITC for injury determination	Yes, if affirmative	Anti-circumvention inquiries only
14. Publish Order	Yes, if DOC finds sales at less than fair value and ITC finds injury	No, already in effect
15. Litigation	If challenged in Court, assists CCIA	Same
16. Duty-Assessment Instructions to Customs	No	Yes
17. Anti-circumvention Inquiries	No	Yes
18. Changed-Circumstances Reviews	No	Yes
19. Scope Rulings	Only in context of investigation	When requested - usually conducted separately from reviews
20. Revocation	No	Yes
21. Suspension Agreements	Establish	Review
22. Advise Customs on Protests of Assessed Duties	No	Yes
23. Five-Year Revocations	No	Yes
24. Requests for Review	No	Yes

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
AS	ASSISTANT SECRETARY
CCIA	CHIEF COUNSEL FOR IMPORT ADMINISTRATION
CFR	CODE OF FEDERAL REGULATIONS
CIT	COURT OF INTERNATIONAL TRADE
CRIMS	CENTRAL RECORDS INFORMATION MANAGEMENT SYSTEM
CRU	CENTRAL RECORDS UNIT
CVD	COUNTERVAILING DUTY
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
ICA	IMPORT COMPLIANCE ASSISTANT
ITA	INTERNATIONAL TRADE ADMINISTRATION
ITC	INTERNATIONAL TRADE COMMISSION
OD	OFFICE DIRECTOR
PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE ANTIDUMPING ACT OF 1930, AS AMENDED

CHAPTER 19

COURT RECORDS AND LITIGATION

References:

The Tariff Act of 1930, as amended (the Act)
Section 516A - judicial review in antidumping
duty proceedings
Department of Commerce (DOC) Regulations
None
SAA
None
Antidumping Agreement
Article 13 - judicial review
North American Free Trade Agreement
Section 1904.14

I. PREPARATION OF COURT RECORDS

A. Introduction

Unless otherwise stipulated by the parties, when determinations are challenged in court, a complete administrative record must be filed with the Court. As explained in the preceding guidelines on keeping the administrative record, the record should be maintained from the beginning of the administrative proceeding. If the record has been diligently maintained, compilation for the Court should be simple. These guidelines address the final steps to be taken to gather all documents necessary to complete the record and file it with the Court.

B. Responsibility for Preparation of the Record

The case analyst, as the person most familiar with the administrative proceeding, is responsible for preparation of the record, and must provide the required attestation to the Court that the record is complete. Chapter 2 describes the record and the analyst's responsibility to maintain it. The analyst or import compliance assistant (ICA) will maintain the record on a regular on-going basis during the course of the investigation or administrative review. This will facilitate the preparation of the court record should a final determination, review, or scope proceeding be challenged in the Court. The analyst is required to certify the file for completeness to the office director (OD) following the final determination for an investigation or review and, again, after the International Trade Commission (ITC) injury determination in the case of an investigation.

The case attorney will prepare a certification for the case analyst to sign when a record is filed with the Court. Other team members are to assist the case analyst when needed. The staff attorney assigned to the case is responsible for providing legal guidance, especially concerning the scope of the record and classification of documents. If the case analyst is unavailable at a time when the record must be prepared, the program manager (PM) or supervisor should assign someone to be responsible for preparation of the record.

COURT RECORDS AND LITIGATION

Records are due to the court within 40 days from the day the complaint is filed which, in most cases, is due no later than 60 days after the order or the final results of review. However, for various reasons many parties file the complaint long before the deadline. It is the responsibility of the Import Administration (IA) office that is involved to see that records are prepared on time. Note, however, that this time limit must include the time necessary for the paralegals in the Office of the Chief Counsel for Import Administration (CCIA) to review the record and, usually, for microfiche copies to be made.

C. Compiling the Documents

After the administrative proceeding, the CCIA will notify the case analyst when 1) a lawsuit has been filed, 2) assistance is necessary for the court brief, or 3) it receives a court decision (see Attachment 19-1). When notified that a lawsuit has been filed, the case analyst should do the following:

1. Check with other team members and offices in the delegation chain to be sure all documents received or generated by these offices have been included. If requested, the case attorney will draft a memorandum to be sent by the case analyst to canvass other offices for documents relating to the proceeding that may not have made their way to the Central Records Unit (CRU) (see Attachment 19-2 for a list of documents contained in most records).
2. Check the appropriate segment of the official file out of CRU and request a copy of the CRIMS index for that segment.
3. Check to be sure all documents collected by or received from International Trade Administration (ITA) employees overseas have been included. If the analyst does not receive a request to prepare the file for the court from the CCIA, you should check with the case attorney shortly after the expiration of the period for filing a lawsuit (typically 30 days after an order or final results of review is issued) to ensure that a request has not been made.

D. Organizing and Indexing

The record should be organized and indexed by the case analyst, as he or she is best able to identify documents that are part of the record and to describe them; the case analyst is also most likely to be aware of any documents that might be missing. Once the initial organizing and indexing is done, the paralegals in the CCIA will be available to finalize the index and number the documents, as well as to see to the microficheing, photocopying, assembling, and mailing of the record.

1. The case analyst should:
 - a. Place all documents in chronological order, keeping the public, business proprietary and privileged documents separate, beginning with the oldest document and ending with the most recent in each of the three groups.

COURT RECORDS AND LITIGATION

- b. Make all corrections to the CRU index in the form required by CRU. Note that business proprietary and privileged documents are kept separate from the public documents, and are sent to the court in separate, sealed, marked envelopes. Privileged documents should be identified early so that privilege claims can be cleared through the Under Secretary for International Trade and approved by the Department of Justice. There usually are very few and, most often, no privileged documents are in a record.
 - c. Meet with the case attorney to determine whether changes are necessary in the contents of the record or classification of documents.
 - d. Check to be sure that all business proprietary or privileged documents are marked as such on their face and are properly designated in the index.
 - e. Take the corrected final index to CRU where the correction will be made and a final index will be printed.
 - f. After checking with the CCIA Paralegal Office that there is room to store the record, bring the final corrected CRU index and the documents to the CCIA Paralegal Office.
2. The paralegals will then:
- a. Number documents: Begin with the oldest document as number 1. Place the number in the bottom right hand corner of the first page of each document.
 - b. If a record is to be microfiched, the microfiche contractor will place the page numbers on the index. If a record is to be photocopied, the paralegal will place the page numbers in the index as the documents are numbered.
 - c. Three copies must be made of the complete record: one for the Court of International Trade (CIT), one for the CCIA, and one for the Department of Justice. CRU maintains the original paper document after photocopying or microfiching. The paralegal will order microfiche copies of the record for parties who want them and agree to pay for the copies. At least two weeks before the record is due, the record, along with a requisition form appropriately signed, will be sent to the microfiche contractor.
 - d. When the copies or microfiche cards are returned, they are assembled for mailing to the Court; the public documents are separated from the business proprietary documents. Business proprietary and privileged documents are placed in separate, sealed envelopes and marked accordingly. Privileged documents are sent to the CIT separately with a declaration of privilege by the Under Secretary for International Trade.
 - e. The complete package for mailing includes:

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- i. all public documents or microfiche cards of public documents.
 - ii. a separate, sealed envelope of business proprietary documents or business proprietary cards and a separate, sealed envelope of privileged or government classified documents and tapes.
 - iii. the case analyst's certification that the record is complete (see Attachment 19-3)
 - iv. the transmittal letter (prepared by the case attorney).
- f. The record package, along with mailing labels, goes to the mail room for mailing by 10:30 A.M. on the date due (prepared by the CCIA attorney). Mailing must be by certified, return receipt requested. To be post marked on a certain day, the record must be mailed by midnight from a U.S. post office.

E. Amending the Record

If documents were inadvertently omitted from the record which has been filed with the Court, you should notify your case attorney, who will:

1. Follow the same procedure used to compile the original record: number the pages, add a description of the document to the index, and make copies. Be sure that the document and the index show any business proprietary or privilege classification.
2. Prepare another certification, explaining the reason for the amendment, for the case analyst to sign.
3. Send the complete package (new documents, complete copy of the index as amended (marked "amended on date"), new certification, and transmittal letter) to the Court, and notify parties that the record has been amended.

II. BRIEFS

When the CCIA receives a brief challenging a determination of the ITA, it will notify the appropriate office with a brief notification form (see Attachment 19-1). The form will indicate the date that the DOC's brief is due and will highlight the issues on which Chief Counsel believes it will need assistance from ITA. Unless this request is received directly from your supervisor or PM, you should immediately advise this individual that you have received a request. The supervisor or PM and the analyst should also immediately work out a schedule for completion of the work with the case attorney and any other IA officials that are involved. This schedule should allow for the final brief to be reviewed through the DAS level before it is sent to the Justice Department.

III. REMANDS

A. Introduction

COURT RECORDS AND LITIGATION

When a court (in antidumping and countervailing duty cases, it is the CIT in New York City) decides that something the agency determined was wrong, it remands the case back to the agency to correct the error and issue a new determination. These errors can be ones of fact (a factual determination by ITA that is not supported by substantial evidence in the record) or errors of law (ITA's determination is not in accordance with law). A remand is a "mini" investigation or "mini" 751 review. The agency opens the administrative process, including, in some cases, opening the record, and makes a new determination consistent with the Court's decision. The new determination is published in the Federal Register (FR) after it is approved by the Court. A remand is an order from the court to the operational offices of the agency, not to the Justice Department or DOC lawyers.

B. Remand Proceeding

When the CCIA receives a court decision and remand, it will forward the decision to the director of the appropriate office along with a copy of the court report form (see Attachment 19-1). This notice will provide the due date for the remand results to be sent to the Court, a summary of the issue or issues being remanded and the name of the Chief Counsel attorney assigned to the case. The PM or supervisor should immediately assign an analyst to the remand (preferably the original analyst on the case). Once the analyst is assigned, he or she should immediately set up a meeting with the case attorney, the Office of Policy person, and, if appropriate, an Office of Accounting accountant assigned to the case in order to discuss the procedures, time limits and plan of action for the remand. If the analyst is advised of the remand by anyone other than his or her supervisor or PM, he or she should immediately advise the supervisor or PM as he or she should be part of the meeting that sets the plan of action for the remand. The completion date for the remand should, in most instances, allow enough time to circulate the draft remand to the parties to the lawsuit for comments prior to finalizing it. There must also be sufficient time for internal review of the draft and final remand results through the assistant secretary's (AS) level.

Every remand procedure is not the same. The nature of the error or errors, the type of work required of ITA, the necessity to gather new evidence, and the magnitude of the change in policy all influence what type of remand procedure should be followed. For example, if the Court determines that ITA should have used respondent's advertising adjustment of 2% instead of the DOC's reallocated figure of 1%, then the remand is a simple mathematical calculation which should be able to be completed without adding new evidence to the record. ITA will simply have to release its new calculations for comments from the parties so that it is sure there are no ministerial errors in the final remand results it submits to the Court. However, if the Court determines that ITA's reasons for allowing a 1% advertising adjustment are not in accordance with law, it orders the ITA, on remand, to choose a different figure and explain it. If this is the case, then new evidence may be required and ITA will have to write up a detailed final remand after gathering comments from the parties on ITA's draft remand results. These comments, complete explanation, and any new evidence gathered will create a complete record for the Court to review. A more complex remand where the ITA is ordered to develop a new theory or methodology requires a more complete proceeding than a remand where ITA does not have to make a new decision but only has to do a calculation. The more complete remand proceeding is usually required because the Court seldom simply orders the DOC to use a particular number.

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If a complete remand proceeding is needed, the following procedures should be followed:

- Send out questionnaires if new information is needed.
- Even if new information is not needed, requests may be made of the parties to submit comments before ITA proceeds with the remand if ITA believes this would be helpful. (This step is often used when the remand order by the Court is unclear or when what the Court has ordered is a complete change from past practice. Often in these cases, comments from the parties assist the ITA in focusing its options and in anticipating the reactions from the parties.)
- Draft notice of remand results. This should look somewhat like a FR notice. It should give the history of the case, what the CIT ordered, what ITA has done to comply with the remand, why what ITA has done is correct, and what the new final results are as a result of the remand. This notice goes through the concurrence chain to the AS level, but it does not get signed by the AS nor is it published.
- Send a copy of the draft remand results (including any calculations) to all parties and give them a limited time to comment (two to seven days, but it could be longer or shorter depending on the total time the Court gave for completing the remand).
- Consider the comments and make any changes to the draft remand results as a result of those comments. Add a section to the draft results called comments, and summarize the comments and write answers. The “draft results” are now the “final results”.
- Make a copy of the final remand results, add a concurrence sheet and send it through the concurrence chain as you would any final determination. The notice will be signed by the AS.
- While the package is in the review chain, convene a calculation review panel to review the calculation changes.
- Prepare the record of the final remand results, an index and a certification. Send this to the Court soon after (within a week of) the final remand results.

In very simple calculation remands, the recalculations should be done and written up in a draft notice of final remand results. After clearing the draft with the AS’s office, notify the parties and allow them to review the calculations for errors. Make any corrections, and correct the notice and work sheets. The final remand results notice should be signed by the AS and sent to the Court along with the record (often just the calculation sheet or new computer printout).

The Court will either approve the remand results or remand them to the ITA again. When the remand results are approved and become final (after 60 days if no appeal is filed), ITA must publish the new results in the FR. In certain cases, we may be sued again on these published results.

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IV. SETTLEMENTS

Lawsuits in some cases may be settled. This can only be done with the agreement of the Department of Justice and with the recommendation of the CCIA. If a settlement offer is made in a lawsuit involving an antidumping or countervailing duty case, the case attorney will notify the appropriate office and involve them in the negotiations. Advise your supervisor or PM about these negotiations immediately if they are not the ones to advise you about them. A settlement agreement will not be made without the approval of the AS for IA.

V. INJUNCTIONS

At various points during the life of an antidumping or countervailing duty order ITA must order Customs to liquidate entries and instruct them on the proper amount of antidumping or countervailing duties to collect. All parties to ITA's proceedings, (e.g. the domestic industry, the foreign producer, the U.S. Importer) have a right to file a suite in court to challenge the correctness of ITA's determinations which result in the ordering of liquidation. Along with this suite the party challenging ITA can also ask the court to issue an injunction ordering ITA and Customs not to liquidate the entries subject to the challenged determination until the court either corrects the ITA calculations or determine that ITA was correct. When the court issues its final decision, the injunction lifts and, if ITA was upheld, it can order Customs to collect duties. If ITA's rate was changed by the court decision then ITA must publish a Federal Register Notice (Timken Notice) and wait until after any appeals before ordering liquidation at the rate approved by the court. Because of possible injunction, no orders to Customs to liquidate entries should ever be issued until the CCIA attorney assigned to the case tells you that there are no injunctions on the particular entries. Injunctions can be placed on entries after a final in an investigation and can prevent automatic liquidation at the deposit rate so always check for injunction almost never prevent the collection of the cash deposits. Send instructions to Customs to change or begin collecting the cash deposit rate as soon as you issue your final determination without waiting to see if a party files suite on the determination.

COURT RECORDS AND LITIGATION**Attachment 19-1****CCIA Notification Forms**

An explanation of the CCIA's notification forms follows. These forms notify IA of court decisions, of actions that we have to take in response to court orders (remands, order liquidation, etc.), of administrative records that must be prepared for filing with the Court and of court briefs which require our input and approval.

You will notice that the new forms circulate all litigation information to the DAS group level. This is being done so that all substantive litigation information and deadlines can be circulated from the group level down to all levels of the office with the result that the DASs can manage the workloads and assignments of their staffs by having information on the litigation work and deadlines that are being imposed on their offices by the litigation requirements of our work.

The three types of litigation notification forms are:

1. Administrative Record Notification Form

This form is sent to the DAS whose group did the investigation, review, or scope determination being challenged in the Court. The form is sent as soon as the CCIA receives notice of a suit (by either a summons or a summons and complaint filed together). Work must begin immediately even if only a summons is filed. If we wait until a complaint is filed, the allowable 45 days from filing (a complaint may be filed any time up to 30 days after a party files its summons) is never enough time to compile, copy and file a record. This form will be printed on green paper so that it will stand out from other paper work. So that the CCIA will know the names of the assigned analysts to contact about a record, the receipt attached to the record notification form should be filled in, folded with the return address showing, stapled, and returned to CCIA by the analyst or supervisor or PM who is assigned the record compilation task.

2. Court Brief Assistance Request Form

When the CCIA receives a brief from a party challenging an IA determination, it will forward a copy of the brief to the DAS whose group issued the determination. Copies of the brief should be forwarded by the DAS to the analysts and supervisors or PMs who did the work on the challenged determination and who will have the responsibility for giving guidance on and approving the final DOC response brief.

3. Report Of Court Decision Form

When the CCIA receives the Court's decision, order, slip. op., and/or judgement, it reports and distributes the Court decisions and orders to IA using a four-part form. Page 1 of the form is a cover memo which distributes the court opinion to the AS, all DASs, the Director for Policy and Analysis, the Office of Accounting, and to each of the nine ODs. Because of the mix of cases in each group, each DAS usually requires that all ODs setup a system for distributing and tracking

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all court opinions on all cases so that all analysts and managers are aware of the current state of the law.

Page 2 is a cover memo which is printed on green paper and which notifies the specific DAS, OD, supervisor or PM, and analyst that a case has been remanded to them for action or has been finalized and requires a corrected publication of a notice and liquidation instructions. Four copies of the Court decision form covered by the green memo will be sent to you at the DAS group level. Once the analysts and supervisor or PM receive this copy they should follow any specific directions typed on this green cover memo and any general directions on page 3 of the form.

Page 3 gives the general information about what type of decision has been issued and what IA action is now required. This information is of particular interest to the DAS group staff who receive the green action cover memo described in the paragraph above and to anyone in the DAS's office who is tracking deadlines, remands or other litigation actions.

Page 4 is the summary of the issues decided by the Court. This page will be updated in court decision notices of later decisions on remands of the same case. It will finally be distributed on green paper when the issues have become final and conclusive due to no appeal of a final court decision or because the Appeals Court has issued a final decision on the issue. You should set up a system to save and track tentative (white) and final (green) issues pages for use by your office.

COURT RECORDS AND LITIGATION**Attachment 19-2****List of Documents for the Administrative Record****I. INVESTIGATIONS****A. Documents that Are Always Part of the Record of an Investigation**

1. Petition
2. Memo recommending initiation and signed FR notice
3. Published FR notice of initiation
4. Cables to embassies notifying of initiation
5. Questionnaires
6. Responses (public and business proprietary versions)
7. Any “Applications for Disclosure under Administrative protective order” and the administrative protective orders
8. Memo recommending preliminary determination and signed FR notice
9. Published FR notice of preliminary determination
10. E-mails to Customs advising of preliminary determination
11. Memos and calculations, if any, for consideration of ministerial error claims
12. Preliminary ITC injury determination
13. Records of any ex-parte meetings
14. Verification documents (exhibits and reports)
15. Any requests for hearings, pre-hearing briefs, rebuttal briefs, transcript of hearings, or supplemental submissions
16. Memo recommending final determination (or termination of investigation or suspension of investigation) and signed FR notice
17. Published FR notice of final determination (or termination of investigation or suspension of investigation)
18. Memos and calculations, if any, for ministerial error claims

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B. Documents that Are Part of the Record of an Investigation if They Exist

1. All incoming and outgoing correspondence relating to the proceeding
2. Memos to the file regarding telephone conversations and meetings
3. Inter and intra-agency memoranda relating to the proceeding
4. Interested party and party to the proceeding lists
5. Excerpts from publications relied upon
6. Cables containing information obtained from overseas
7. Signed suspension agreement
8. All memos and FR notices relating to the proceeding (postponements, extensions, corrections, extraordinarily complicated determinations)

C. Documents that May be Included in a Record of an Investigation in Some Cases - Consult Your Staff Attorney

1. Letter notifying DOC of ITC final injury determination
2. Memo recommending antidumping duty order and signed FR notice of order
3. Published FR notice of order

II. REVIEWS

A. Documents that Are Always Part of the Record of an Administrative Review

1. FR notice of “Opportunity to Request Administrative review”
2. Letters requesting a review
3. Notice of initiation of review
4. Written request for information for review (questionnaire)
5. Responses to questionnaires (public and business proprietary versions)
6. Any “Applications for Disclosure under Administrative protective order”, and the administrative protective orders
7. Signed FR notice of preliminary results
8. Published FR notice of preliminary results

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9. Any requests for hearings, pre-hearing briefs, rebuttal briefs, or transcripts of hearings
10. Records of any ex-parte meetings
11. Signed FR notice of final results of administrative review
12. Published FR notice of final results

B. Documents that Are Part of the Record of an Administrative Review

1. All incoming and outgoing correspondence relating to the particular segment of the proceeding
2. Memos to the file regarding telephone conversations and meetings
3. Inter-agency and intra-agency memoranda relating to the particular segment of the proceeding
4. Interested party and party to the proceeding lists
5. Excerpts from publications relied upon
6. Cables containing information obtained overseas
7. Verification documents (exhibits and reports)
8. Application for revocation and signed assurance letter

COURT RECORDS AND LITIGATION**Attachment 19-3****Analyst's Certification that Record Is Complete**

UNITED STATES COURT OF INTERNATIONAL TRADE

_____:
Plaintiff,
— v. —
UNITED STATES,
Defendant.

XXXXXXXXXXXXXXX & _____, Inc.

COURT NO. 00-0-0001

1. I, XXXXXXXXXXXXXXXXXX, Import Compliance Specialist or Financial Analyst, Department of Commerce, do hereby certify that I have legal custody and control of all documents constituting the administrative record of the investigation of XXXXX from XXXXX, which is the subject of the above captioned case. The notice of final determination of sales at less than fair value was published in the Federal Register on XXXXX (XX Fed. Reg. XXXX).
2. To the best of my knowledge, I have included in this record all documents relating to this investigation presented to or obtained by the Secretary of Commerce and his delegates.
3. Pursuant to Rule 71 of the United States Court of International Trade, I have prepared and hereby transmit to the Clerk of the Court a true and complete copy of this administrative record, which is attached to this affidavit.
4. The attached index is a complete list of the documents in this administrative record.

I affirm, under the penalties of perjury, that the foregoing is true and correct.

XXXXXXXXXXXXXXXXXXXXXXX

Import Compliance Specialist or Financial Analyst
 Import Administration
 Department of Commerce

(Date)

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
DOC	DEPARTMENT OF COMMERCE
DSB	DISPUTE SETTLEMENT BOARD
DSU	DISPUTE SETTLEMENT UNDERSTANDING
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
IA	IMPORT ADMINISTRATION
ITC	INTERNATIONAL TRADE COMMISSION
NAFTA	NORTH AMERICAN FREE TRADE AGREEMENT
SAA	STATEMENT OF ADMINISTRATIVE ACTION REGARDING THE URUGUAY ROUND AGREEMENTS ACT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED
U.S.- CANADA FTA	UNITED STATES - CANADA FREE TRADE AGREEMENT
WTO	WORLD TRADE ORGANIZATION
WTO AGREEMENT	THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

CHAPTER 20

INTERNATIONAL AGREEMENTS

References:

The Tariff Act of 1930, as amended
Section 516A - binational panel reviews under U.S. -
Canada Agreement and the North American
Free Trade Agreement (NAFTA)
Sections 751(c)(6)(C) and (D) - transition orders and the World
Trade Organization (WTO)
Section 771(7)(F)(iii) - effect of dumping in third country markets
Sections 771(21)(22)(29)(30) and (31) - definitions of U.S.- Canada Agreement,
NAFTA, WTO Agreement, WTO member, and General Agreement on
Tariffs and Trade (GATT)
Section 777(f) - disclosure of proprietary information
under U.S.- Canada Agreement and NAFTA
Section 783 - the WTO and antidumping (AD) petitions by
third countries
Department of Commerce (DOC) Regulations
None
SAA
Section A - summary of provisions of Article VI of the GATT 1994
Sections B. and C. - various references to agreements throughout the text
Agreement Establishing the World Trade Organization
Annex 1A: Multilateral Agreements on Trade in Goods
Antidumping Agreement
All Articles and Annexes

I. OVERVIEW OF THE WTO AGREEMENT AND THE GENERAL AGREEMENT ON TARIFFS AND TRADE

When we impose AD duties, we are taking a measure against an internationally recognized unfair trade practice on the basis of internationally agreed upon principles, rules and procedures. Since the entry into force of the General Agreement on Tariffs and Trade (GATT) in 1948, these rules and procedures have been embodied in Article VI of the GATT. The provisions of Article VI continue to form the basis of the international rules on antidumping, but Article VI is now modified and interpreted by the WTO Agreement on Implementation of Article VI of GATT 1994, known as the AD Agreement. The AD Agreement, as well as the current version of the GATT (known as

“GATT 1994”) are two of the multilateral agreements on trade in goods which are incorporated into the Agreement Establishing the World Trade Organization, known as the WTO Agreement. The relationship between these agreements is discussed in further detail below.

As is the case throughout the WTO Agreement, Article VI and the AD Agreement each involve a balance of rights and obligations for every contracting party or signatory. Neither the AD

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Agreement nor Article VI prohibit dumping. However, Article VI of GATT 1994 recognizes that injurious dumping is to be "condemned," and may be countered, if dumped imports cause or threaten material injury or materially retard the establishment of an industry within the importing country. Article VI as interpreted by the AD Agreement therefore allows for the imposition of AD duties in such cases where injury as described above is determined.

Article VI of the GATT and the AD Agreement address the principle of trade on the basis of fair competition, laying down conditions under which AD duties may be imposed to reestablish a reasonable competitive balance in the face of dumped or subsidized imports which injure a domestic industry. The rules are designed to allow WTO members to offset the effects of unfair trade in their domestic markets while guarding against the use of AD measures as substitutes for tariff protection.

A. GATT and WTO as Institutions

The WTO is an inter-governmental organization with headquarters in Geneva, Switzerland which administers the WTO Agreement. The WTO is the successor organization to the GATT, which was an ad hoc organization formed to administer the General Agreement on Tariffs and Trade. Established in 1995, the WTO now has over 120 members with a number of countries in the accession process.

The WTO Agreement establishes five functions for the WTO:

1. To facilitate the implementation, administration and operation of the WTO Agreement.
2. To provide a forum for multilateral trade negotiations.
3. To administer the WTO Dispute Settlement Understanding which governs disputes arising out of the WTO Agreement.

To administer the Trade Policy Review Mechanism which reviews and publishes summaries of the trade policies of member states.

To cooperate with the International Monetary Fund and other agencies to achieve greater coherence in global economic policy making.

B. The GATT and WTO Agreements

The preamble to the WTO Agreement lists the goals of the parties to the agreement. These goals included the continuation and improvement of the GATT Agreement:

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations.

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The WTO Agreement is the successor to the GATT Agreement, which is now known as “GATT 1947.” U.S. acceptance of the WTO Agreement was approved by Congress in the Uruguay Round Agreements Act. Unlike the GATT system which it replaced, the WTO Agreement is a set of multilateral agreements which are a “single undertaking.” In other words, in order to receive the benefits under one of the agreements, a country must agree to be bound by the rights and obligations of all of the agreements. Countries are not obligated to have or enforce antidumping laws, but must follow the Antidumping Agreement rules if they do. The individual agreements are included in annexes of the WTO Agreement. Thirteen multilateral agreements on trade in goods are included in Annex 1A, including the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Agriculture. The “GATT 1994” is also incorporated by reference into Annex 1A. “GATT 1994” consists of the text of “GATT 1947” as “rectified, amended or modified by the terms of legal instruments which entered into force before the date of entry into force of the WTO Agreement.” See GATT 1994 in Annex 1A of the WTO Agreement.

In addition to the multilateral agreements which relate to trade in goods included in Annex 1A, the WTO administers the General Agreement on Trade in Services (GATS) contained in Annex 1B and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) in Annex 1C of the WTO Agreement. There are also four “plurilateral” agreements (the Agreements on government procurement, civil aircraft, dairy, and bovine meat) which countries can choose whether or not to sign.

C. The relationship between GATT 1994 and the WTO Antidumping Agreement

The antidumping provisions of Article VI of the GATT 1994 are not replaced by the WTO AD Agreement. Rather, Article VI is implemented and interpreted by the WTO AD Agreement. Article 18.1 of the AD Agreement provides that “no specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.” The relationship between the GATT 1994 and the AD Agreement or other agreements included in Annex 1A of the WTO Agreement was clarified in the “General interpretative note to Annex 1A.” Under these rules, in the event of a conflict between a provision of the GATT 1994 and the AD Agreement, the terms of the AD Agreement “shall prevail to the extent of the conflict.”

D. The WTO Dispute Settlement Understanding

One of the most significant innovations of the WTO Agreement over the GATT 1947 is the creation of a binding dispute settlement mechanism. Under the prior system, there was no binding method of enforcing the decisions of the GATT panels which heard disputes between trading partners. Article 2 of the WTO Dispute Settlement Understanding (DSU) establishes a Dispute Settlement Body (DSB) which is comprised of representatives from all the member states and has the “authority to establish panels, adopt panel and Appellate Body Reports, maintain surveillance and implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements.”

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The first stage of the dispute settlement process calls for consultations between the governments involved. If the consultation process does not lead to a mutually acceptable solution, the complaining party may request that a panel be formed to resolve the dispute. Generally a party must wait 60 days after the request for consultations is made before requesting the formation of a panel. Generally, the panel will complete its work within six months. The panel decision can then be appealed to the Appellate Body. The Appellate Body will generally reach a decision in 60 days.

If a party does not comply with the recommendations of the DSB, (i.e., by modifying its practices or amending its laws) the country that filed the complaint with the DSB may retaliate by suspending trade concessions equivalent to the trade benefit it has lost. Since the inception of the DSU process, the United States has been a complaining party, a defending party, and an interested third-party participant in a number of panel proceedings.

The WTO dispute settlement procedure applies, with certain modifications, to the AD Agreement. Specifically, the AD Agreement contains a special standard of review to be applied by WTO panels in resolving AD and CVD disputes.

The standard of review of Article 17.6 of the Agreement requires panels to uphold authorities determinations if:

- (i) establishment of the facts was proper and if the evaluation of those facts was unbiased and objective, and
- (ii) If the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, and the authorities interpretation rests upon one of those permissible interpretations.

In addition, panels are instructed to examine a case based on the facts made available to the authorities (DOC and ITC) in the proceeding at issue. Thus a panel proceeding is not the place to introduce new facts.

Dispute settlement procedures are designed to resolve procedural disputes among governments concerning the operation of domestic laws and their consistency with the Agreement. In other words, a WTO panel can only determine whether a country's laws and the manner in which those laws are implemented are consistent with the Agreement. The WTO dispute settlement process does not decide whether dumping or injury is occurring.

E. The relationship between the WTO Agreement and U.S. Law.

At the conclusion of various rounds of GATT trade agreement negotiations, the U.S. has agreed to make changes in its laws as needed to conform with the agreements that were concluded. These changes were implemented through legislation, such as the URAA, and through subsequent amendments to administrative regulations. The URAA establishes the relationship between the WTO Agreement and U.S. law. Section 102(a)(1) of the URAA provides: "No provision of any of the Uruguay Round Agreements, nor the application of any such provision to

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any person or circumstance, that is inconsistent with any law of the United States shall have effect.” In other words, U.S. laws prevail even if they are inconsistent with a provision of the Agreement. In DOC proceedings, parties may make legal arguments premised upon alleged inconsistencies between U.S. law and the WTO Agreement. While arguments regarding the WTO Agreement may provide insight into the intent of U.S. law, such arguments must be considered in light of the clear language of Section 102 of the URAA.

II. CURRENT ANTIDUMPING AGREEMENT

The AD Agreement was developed during the Uruguay Round of multilateral trade negotiations (1986-1993) under the GATT. Together with the rest of the WTO Agreement, it entered into force on January 1, 1995, replacing a similar agreement negotiated in 1979 as part of the Tokyo Round of multilateral trade negotiations.

The AD Agreement picks up where Article VI leaves off, specifying the basis for the imposition, collection and duration of AD duties and allowing for negotiated agreements, called price undertakings, between relevant parties. (These undertakings are known under U.S. law as suspension agreements.) The AD Agreement defines such terms as dumping and injury, and outlines the procedures to be followed during an AD investigation. Most notably, the Agreement requires that both dumping and injury investigations be conducted simultaneously and, except in special circumstances, be completed within one year. It also details petition requirements, describes rules of evidence, provides for public notice of the determinations of the investigating parties and requires that evidence of a nonconfidential nature be made public, and specifies the conditions under which investigations may be suspended or terminated.

The Agreement permits "provisional measures" (i.e., suspension of liquidation and provisional imposition of duties) to be imposed to offset the injurious effect of dumping during the investigation period. These measures may be taken no sooner than 60 days after initiation of the case and only after affirmative preliminary determinations of dumping and injury and, in most cases, may be imposed for no longer than four months. The Agreement also permits under certain circumstances the imposition of provisional duties on imports entered not more than 90 days prior to application of provisional measures. The U.S. analogue for this measure is the critical circumstances provision under our AD law.

Following final determinations of dumping and injury, the Agreement permits the retroactive collection of AD duties from the date provisional measures became effective but only for certain conditions of injury. Here the AD Agreement distinguishes between actual injury, threat of injury and material retardation of the establishment of an industry, and caps assessment at the rate found in the preliminary determination for entries made before the final determination.

A. Changed Circumstances Reviews and Sunset Reviews

The AD Agreement also stipulates that AD duties shall remain in force only as long as and to the extent necessary to counteract dumping that is causing injury. The investigating authorities shall review the need for continuing duties, where warranted, upon their initiative or if an interested party submits positive evidence substantiating the need for review. In U.S. law, these reviews

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are known as “changed circumstances reviews.” Finally, orders are also reviewed, both by DOC and the International Trade Commission (ITC), no later than five years after the order is put in place to determine whether revocation of the order, or termination of the suspended investigation, would be likely to lead to continuation or recurrence of dumping and injury. These so-called “sunset” reviews are a new provision of the law required by the AD Agreement. Old law orders, those orders in effect before January 1, 1995, are deemed for purposes of these reviews to enter into effect as of that date. The sunset reviews for these orders are scheduled to begin in July of 1998.

III. IMPORT ADMINISTRATION’S ROLE IN TRADE NEGOTIATIONS

The Assistant Secretary for Import Administration (IA) and representatives from the Office of Policy and the Office of the Chief Counsel for IA comprise part of the U.S. delegation to meetings of the Committee on AD Practices. The Committee's job is to ensure the transparency and consistency of signatory countries' practices by requiring full notification of AD actions and regularly reviewing each signatory's AD laws and regulations.

IA is therefore integrally involved in the provision of information and explanations in fulfillment of these notification and surveillance requirements.

IV. THE NORTH AMERICAN FREE TRADE AGREEMENT

NAFTA largely concerns judicial type of review of administrative determinations. Under Chapter 19 of the NAFTA, an interested party may request that a binational panel review a NAFTA country’s final determination in an AD or CVD administrative proceeding that involves imports from another NAFTA country if an interested party requests it. In the United States this can replace review by the Court of International Trade.

The binational panels consist of five individuals drawn from a roster, established by the three countries and comprised of judges or former judges, “to the extent practicable,” and trade experts. Each panel must include at least one lawyer because the chair must be a lawyer. Each government involved in a dispute can select two panelists and together select the fifth panelist. The agreement also provides for selection of the fifth panelist by lot if the two governments can not reach a consensus on the fifth panelist.

The panels are supposed to determine whether a determination by an administering authority was in accordance with the AD or CVD law of the importing country. In other words, a panel reviewing a U.S. action against imports from Mexico or Canada will determine whether the actions taken by the DOC or the ITC, as appropriate, were consistent with U.S. law. The panel review process is designed to take no more than 315 days.

The NAFTA does not provide private parties with the right to appeal the decision of a panel. However, a government, which is a party to a dispute, can request that a panel decision be reviewed by an extraordinary challenge committee. The agreement provides three grounds upon which the request for an extraordinary challenge can be based. The three grounds are (1) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or

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otherwise materially violated the rules of conduct, (2) the panel seriously departed from the fundamental rule of procedure, or (3) the panel manifestly exceeded its powers, authority or jurisdiction set out in Chapter 19 of the NAFTA, for example by failing to apply the appropriate standard of review. Finally, the action which serves as the basis of the request must materially affect the panel's decision and threaten the integrity of the bi-national review process.

V. THE UNITED STATES-CANADA FREE TRADE AGREEMENT

The United States-Canada Free Trade Agreement (U.S.-Canada FTA) was entered into in 1988, and created what at the time was the most comprehensive bilateral agreement ever negotiated. The U.S.-Canada FTA created the world's largest internal market for goods and services.

The NAFTA incorporates or otherwise carries forward most provisions of the U.S.-Canada FTA, or supersedes the bilateral agreement in certain areas such as rules of origin to receive NAFTA treatment benefits. The United States and Canada suspended the operation of the bilateral agreement upon entry into force of the NAFTA for the two countries for such time as the two governments remain parties to the NAFTA.

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