

**CHAPTER 1:
INTRODUCTION**

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Statute and Regulations:

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

Department of Commerce Regulations

Statement of Administrative Action (printed in U.S. House of Representatives Document 103-316, vol. 1) (SAA)

WTO Antidumping Agreement (printed in U.S. House of Representatives Document 103-316, vol. 1, at 1453)

I. CONTENT AND DISCLAIMER STATEMENTS

This edition of the “Enforcement and Compliance Antidumping Manual” incorporates references to relevant statutes, regulations, and agreements as of the date of publication. Included in the manual is content related to Title VII of the Tariff Act of 1930 (the Act) as amended by legislation through the Uruguay Round Agreements Act (URAA) of December 8, 1994. The manual also discusses procedural and technical information from the Statement of Administrative Action (SAA), as well as Section 351 of the Department of Commerce’s (DOC) antidumping regulations. This manual is for the internal training and guidance of Enforcement and Compliance (E&C) personnel only, and the practices set out herein are subject to change without notice. This manual cannot be cited to establish DOC practice.

II. ACRONYMS, ABBREVIATIONS, AND FEDERAL REGISTER CITATIONS

A. All acronyms and abbreviations are defined in Appendix I. A glossary of relevant terms is included in Appendix II. Appendices I and II are included at the end of this manual.

B. The Federal Register is a government publication that records the administrative decisions and regulatory changes made by U.S. federal government agencies and departments. Many

E&C decisions and notices are published in the Federal Register. Federal Register notices can be researched online using either the Westlaw or the Lexis Nexis websites or at www.gpoaccess.gov. The following convention has been used for Federal Register citations: ## FR ##### (e.g., the citation 19 FR 21213 corresponds to the 19th edition of the Federal Register at 21213.)

III. AN OVERVIEW OF THE INTERNATIONAL TRADE ADMINISTRATION

The mission of the International Trade Administration (ITA) is to create prosperity by strengthening the competitiveness of the U.S. industry, promoting trade and investment, and ensuring their trade and compliance with trade laws and agreements.

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

- E&C, which enforces the Antidumping and Countervailing Duty laws to help ensure fair competition in the international market.
- The U.S. & Foreign Commercial Service (FCS), which provides business counseling to small and mid-size U.S. companies to help them sell in international markets. The FCS maintains 107 U.S. Export Assistance centers domestically, and 150 offices overseas. In 2005, the FCS facilitated \$23 billion in U.S. exports and conducted almost 150,000 counseling sessions.
- Manufacturing and Services, which undertakes industry trade analysis and evaluates the impact of domestic and international economic and regulatory policies on U.S. manufacturing and service industries.
- Market Analysis and Compliance (MAC), which provides market analyses to U.S. businesses and monitors trade agreements to ensure compliance.

In addition, ITA's Office of Public Affairs advises on public affairs and information service matters, and maintains liaison with the news and trade media, providing press releases, copies of speeches, and information about ITA's programs. The Office of Legislative and Intergovernmental Affairs provides Congressional liaison for ITA.

New analysts should refer to the ITA home page to keep informed of current ITA events (<http://trade.gov/>).

IV. ENFORCEMENT AND COMPLIANCE

A. Antidumping and Countervailing Duty Enforcement

The primary responsibility of E&C's Office of Operations 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 E&C in the implementation of AD and CVD trade remedies. A brief summary of the types of data collected by E&C is presented as an illustration of the functions of E&C 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 remedies are in full accordance with internationally agreed upon rules and principles which are codified in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) (the Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). These Agreements were developed during the Uruguay Round of Multilateral Trade Negotiations under the World Trade Organization (WTO). 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. 1671-1677n); the legislative history to amendments of the 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 E&C's regulations (Section 351 of the Department's Regulations). In May, 1997, E&C published a comprehensive set of AD regulations to reflect the changes made by the URAA. The CVD regulations were revised and published in November, 1998 (Section 351 of the Department's Regulations). E&C'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 may be subject to review by NAFTA panels acting in the place of the Court of International Trade. The statute, legislative history, regulations, and court opinions provide detailed guidance on how to administer the AD and CVD laws.

1. The Antidumping Law

The U.S. AD law is designed to counter international price discrimination, commonly referred to as "dumping." Dumping occurs when a foreign firm sells merchandise in the U.S. market at a price lower than the "normal value" (NV) of the merchandise; generally, this is the price the foreign firm charges for a comparable product sold in its home market. Under certain circumstances, dumping may also be identified by comparing the foreign firm's U.S. sales price

to the price the foreign firm 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 its factors of production, as valued by use of a "surrogate" country. The amount by which NV exceeds the U.S. price is the "dumping margin." A weighted average dumping margin is calculated for each producer or exporter as a percentage of the value of the U.S. prices of that producer or exporter.

2. The Countervailing Duty Law

Under the CVD law, E&C 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. This manual does not address countervailing duties.

3. AD and CVD Investigations

AD and CVD investigations are almost always initiated in response to petitions filed by an affected U.S. industry, although E&C may also self-initiate a case. Under the statute, petitions must 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, E&C normally has 20 days to evaluate the petition and to determine whether it will initiate an investigation.

While E&C 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 the 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 E&C 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, E&C instructs the U.S. Customs and Border Protection (CBP) 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.

4. Administrative Reviews

Each year, an administrative review may be requested to determine (1) whether the extent of dumping or subsidization has changed since the order went into effect or since the prior review period, and (2) the actual amount of antidumping or countervailing duties to be assessed on the imports of subject merchandise from each producer or exporter being reviewed. Depending on its findings in an administrative review, E&C will adjust the AD or CVD cash deposit rates so they reflect the actual amount of dumping or subsidization that occurred for the reviewed period. CBP is then notified of the change and appropriate refunds of prior duty deposits or additional duty collections are made, with interest. The new weighted average margins of dumping calculated in the review will serve as the cash deposit rates for future entries. If a review is not requested, duties are assessed at the deposit rate applicable at the time the merchandise was entered.

5. The Information Collected in an Antidumping Case

In an investigation or an administrative review, E&C issues questionnaires to foreign producers and their affiliated importers regarding sales made, generally, during a 12-month period of investigation (POI) for market-economy cases and a 6-month POI for NME cases, or a 12-month period of review (POR). The questionnaire requests information on, among other things, the investigated company's corporate structure and business practices, the quantity and value of sales of the merchandise being investigated in all markets and very specific information about the company's sales in the United States and in the market being used for comparison purposes. Under certain conditions, the Department will ask for the company's production costs. To establish that the responses are complete and reliable, during the investigation Commerce conducts verifications at facilities of foreign producers and U.S. importers.

If the responding firms fail to provide requested data, E&C uses other facts available in place of the missing information. Under the statute, if the respondent has not cooperated to the best of its ability in supplying information, E&C can make an adverse inference in choosing which facts to use. The potential use of adverse facts available gives respondents incentive to cooperate fully in providing the information requested by E&C.

In addition to the questionnaires issued by E&C, the record in an investigation or administrative review contains numerous documents submitted by the domestic and foreign interested parties to the proceeding. The types of documents submitted by petitioners and respondents include: submissions of factual information, comments on E&C's methodology, legal arguments, case briefs and rebuttal briefs. Throughout the proceedings, counsel to the parties may request meetings with the analysts and the managers in E&C to discuss issues as they develop. When E&C analysts and/or managers meet with outside parties, a memo is written to document what issues are discussed. 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 E&C to make a comparison between the prices of imports and NV. To make certain that its comparisons are not distorted by factors extraneous to the central issue of price discrimination between markets, E&C adjusts the “starting” prices to account for any differences in physical characteristics, quantities sold, levels of trade, circumstances of sale, applicable taxes and duties, and packing and delivery costs. The comparisons between the foreign firm’s NV and its prices in the United States in an investigation are normally done by creating a computer program which compares model-specific weighted average prices. In a review, the comparison is normally between a weighted average NV calculated on a monthly basis and individual U.S. prices. In simple terms, the amount by which NV exceeds the U.S. price is the dumping margin. Dumping margins are then aggregated and expressed as a percentage of the total value of all U.S. prices for each producer or exporter who participated in the investigation or review. In investigations, a weighted average “all others rate” is calculated and applied to firms that were not chosen by the Department to receive their own calculated dumping margin 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.

6. The Organization of E&C

E&C’s AD/CVD Operations is headed by the Deputy Assistant Secretary for AD/CVD Operations. There are three clusters with the case work divided among them. The clusters have two to three offices in them. Some of these offices primarily handle market economy cases, while others primarily handle NME cases.

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

In addition to administering the AD and CVD laws, E&C assists domestic industries, especially small businesses, 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.

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

B. 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.

C. Statutory Import Programs

The Statutory Import Programs Staff (SIPS) administers the Florence Agreement Program and the Insular Possessions Watch and Jewelry Program. The Florence Agreement Program covers the duty free importation of scientific instruments and apparatus by qualified nonprofit institutions. The Insular Watch and Jewelry Program addresses the duty free import of watches, watch movements, and jewelry assembled in the U.S. insular possessions. In addition, SIPS collects data on imports of articles for the handicapped under Annex E(ii) of the Nairobi Protocol.

D. Office of Textiles and Apparel (OTEXA)

OTEXA administers textile safeguards and negotiates textile provisions in free trade agreements (FTAs). OTEXA also assists U.S. exporters by providing information on overseas requirements and regulations, working with U.S. companies to eliminate trade barriers, and promoting U.S. textile products and apparel products overseas.

V. TOOLS FOR THE NEW ANALYST

We encourage new analysts to do the following during their first weeks at E&C:

1. Become familiar with the DOC's Law and Main Libraries.
2. Visit the E&C home page at <http://trade.gov/enforcement/>.

3. Become familiar with the following websites:

www.gpoaccess.gov	posts Federal Register notices, generally on the day of publication
adcvd.cbp.dhs.gov	posts copies of public Customs instructions sent, the Harmonized Tariff Schedule of the United States (HTSUS), and other useful information
www.usitc.gov	provides information on AD/CVD and other trade remedy proceedings at the ITC
www.cit.uscourts.gov	posts decisions of the U.S. Court of International Trade
www.cafc.uscourts.gov	posts decisions of the U.S. Court of Appeals of the Federal Circuit

4. Become familiar with the AD and CVD law and regulations: Title VII of the Tariff Act; Section 351 of the Department's Regulations; 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); and the Antidumping Agreement.
5. Attend as many E&C and ITA training sessions as possible (particularly SAS). Many classes are mandatory.
6. Attend a case hearing at the DOC and the ITC.
7. Attend as many case-related meetings as possible.
8. Obtain a Lexis account and/or a Westlaw account.
9. Visit the E&C Central Records Unit in Rooms B-099 and 1870 and the Administrative Protective Order (APO) Office in Room 1870. Attend APO training.
10. Become familiar with E&C's databases available on Lotus Notes, particularly AD/CVD Case Management, and the E&C Training Calendar.
11. Become familiar with the time line for your proceeding as described in the Department's regulations. See 62 FR 27296, 27418-27419.