

CHAPTER 20
ENFORCEMENT AND COMPLIANCE (E&C) - CBP COMMUNICATIONS

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E&C interacts with U.S. Customs and Border Protection (CBP) on a daily basis. Generally, the interaction with CBP surrounds communication of E&C’s case decisions to CBP. While E&C administers the U.S. AD/CVD laws, CBP enforces these laws at U.S. borders. E&C also interacts with U.S. Immigration and Customs Enforcement (ICE). ICE protects U.S. national security by deterring, interdicting, and investigating threats arising from the movement of people and goods into and out of the United States. Although on a more limited basis, E&C interacts with ICE on AD/CVD cases involving fraud allegations.

Given the interdependent relationship between E&C and CBP, this chapter of the manual is dedicated to understanding the modes of communication E&C uses to relay its case information to CBP. This chapter also covers the commercial aspects of E&C’s case decisions on merchandise that is ultimately imported into the United States. Additionally, this chapter touches upon concepts that analysts may encounter during the various stages of communication of E&C’s case decisions to CBP.

I. A CLOSER LOOK AT CBP

CBP is the unified border agency within the Department of Homeland Security. Its role is wide-ranging with a focus on ensuring that imports and exports comply with U.S. laws and regulations. CBP is involved in many activities under its umbrella including the assessment and collection of duties, taxes and fees on imported merchandise, customs clearance and other enforcement matters. On a regular basis, E&C interacts with several different offices of CBP, an identification and description of which follows.

With regard to AD/CVD, CBP monitors data quality, trade trends and patterns of circumvention and noncompliance, and develops strategies to address noncompliance through its Office of Strategic Trade. CBP's Office of Investigations coordinates enforced compliance activities through its AD/CVD liaison at its South Florida Strategic Trade Center. Further, CBP implements instructions issued by E&C and communicates daily with E&C on a variety of issues, such as those that arise with respect to email instructions and requests for entry documentation, through its Office of Field Operations (OFO). CBP's OFO includes its 317 ports, which serve as the first point of contact when shipments of merchandise, including merchandise subject to AD/CVD duties, arrive at U.S. ports. Additionally, CBP assists in defining and identifying the appropriate Harmonized Tariff Numbers to support informed and enforcement compliance initiatives through its coordinated National Import Specialists. Given CBP's activities surrounding entry of merchandise subject to the U.S. AD/CVD programs, the relationship between E&C and CBP is vital in the administration of U.S. AD/CVD laws. You may obtain additional information about CBP's organization and functions, at <http://www.cbp.gov>. A copy of CBP's organization chart can be accessed at the following web address:

<http://www.cbp.gov/sites/default/files/documents/CBP%20Org%20Chart%20Feb2014.pdf>

II. THE MEMORANDUM OF UNDERSTANDING

The interaction between E&C and CBP is governed by an agreement made by the two agencies, which is referred to as the Memorandum of Understanding (MOU). This MOU requires a continual and timely communication between both agencies with respect to case decisions during various stages of a proceeding. The MOU addresses the communication of E&C case decisions to CBP within an automated system known as the Automated Commercial System (ACS), which is described below. In accordance with the MOU, E&C is responsible for updating an aspect of this system (the AD/CVD module) with case information and for the transmission of email instructions from E&C to CBP, which are accomplished through ACS.

III. THE AUTOMATED COMMERCIAL SYSTEM

Updating the AD/CVD module (the module), transmitting email instructions to CBP and performing data queries are carried out via the Automated Commercial System. The ACS is CBP's highly-integrated computer environment that uses a central database to track, control and process most goods imported into the United States. This system consists of numerous applications including an Automated Broker Interface (ABI) for filing importers' CBP declarations and an Automated Manifest System (AMS) for filing carriers' import cargo manifests. ACS serves as the conduit for collecting and disseminating entry declaration and related data electronically between entry filers and certain federal agencies.

The module and email instructions serve as the primary modes of communication used to disseminate information surrounding case decisions. In addition to the above-mentioned

systems, ACS also contains the module, which is an electronic database that contains case- and company-specific information, including effective dates underlying the AD/CVD less-than-fair-value (LTFV) investigation and cash deposit rates. ACS also contains electronic versions of E&C email instructions. Email instructions serve to confirm and explain information contained in the module; they are also used to instruct CBP on other suspension and liquidation matters. Email instructions are transmitted from E&C to CBP and vice versa via ACS. ACS is also used by E&C for purposes of conducting data queries on entries of subject merchandise specific to an AD/CVD case for which additional information is sought.

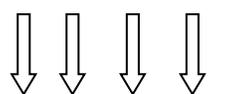
A new system, the Automated Commercial Environment (ACE), is under development by CBP, and will eventually replace ACS. This new government-wide system will modernize CBP's current entry and cargo system for the electronic collection, use, and dissemination of trade and transportation data. All federal agencies that interact with CBP data in some manner participate in the development of ACE. E&C remains active in ACE development and has significantly contributed to the development of the new AD/CVD module, communication system, and data downloads within ACE.

A. The AD/CVD Module

The module is one of the most important tools for communicating case facts and cash deposit rates to CBP. It consists of various screens or pages that convey the active status of a case, the type of duty deposit applicable, and effective dates and duty rates (or per-unit amounts) owed on subject merchandise upon entry into the United States, as well as other case-specific information. While the module contains cash deposit information, it does not contain assessment (also known as Aliquidation@) rates, which are instead communicated to CBP via an email instruction.

For every case number in the module, there is a profile that consists various pages with both case- and company-specific information contained therein. Each profile is designated by an alphanumeric code; that is, a nine-digit number preceded by an "A" or "C", depending on whether it is an antidumping or countervailing duty case. The nine-digit case number is used to identify the country (first three digits), product (second three digits), and company (last three digits). For instance, consider the following case number:

A-588-807-001



1 2 3 4

1. Antidumping duty case
2. Country: Japan
3. Product: Industrial Belts

4. Company: Japan Works Belts, Ltd.
(Company name is used for illustration purposes only)

E&C, CBP, and the trade community rely heavily upon the case number and the corresponding information maintained in the respective module profile. Accordingly, E&C staff should ensure that the module is timely and accurately updated.

There are certain screens, or pages, within the module with which an analyst should become familiar for purposes of obtaining and updating historical and current case information affecting the commercial interests of the imported merchandise. The following module screens or pages are relevant for E&C purposes:

1. Header Page

The Header Page provides both case and company-specific information. It is used to identify the manufacturer and/or exporter whose merchandise is or may be subject to AD/CVD duties. In addition, this page specifies whether a bond and/or cash deposit is applicable for estimated duties upon suspension of liquidation of merchandise that is under investigation or review. Also listed on the Header Page are the effective dates of case decisions (*e.g.*, the preliminary and final determination) including when suspension of liquidation occurs in the less-than-fair value investigation. The information contained in this page can be accessed by CBP and licensed brokers.

2. Harmonized Tariff Schedule (HTS) Page

The HTS Page is case-specific; it contains the relevant harmonized tariff numbers associated with the scope description of a case. E&C relies upon the scope description of the product for determining whether a product is covered by the case; E&C does not rely upon HTS numbers for this purpose. Although the scope description is dispositive, HTS numbers are attributed to an AD/CVD case for convenience and Customs purposes. These numbers serve to notify the trade community (*i.e.*, filers) that merchandise entered under one of the HTS numbers listed in the module may be subject to AD/CVD duties. Should merchandise be entered under a harmonized tariff number that is listed in the module, additional information should be sought to determine whether an AD/CVD duty is applicable, including a further understanding of the written scope description associated with the case in question. The information contained in this page can be accessed by CBP and licensed brokers.

3. Rates Page

The Rates Page contains cash deposit rates required upon entry of merchandise into the United States. This page can be company-specific for those companies for which a cash deposit rate has been assigned or general for companies for which no company-specific cash deposit rate has

been assigned. Companies for which a cash deposit rate has been assigned will have their own profile in the module (at the nine-digit level from the -001 suffix and above), which identifies their respective applicable rate and a date that indicates when that rate became effective. Absent the assignment of a company-specific rate, merchandise must enter under a general profile in the module (usually designated with the -000 suffix). If per-unit amounts are calculated instead of an ad valorem cash deposit rate, such amounts are listed in the Special Instructions Page. The rates page is accessible by CBP and licensed brokers.

4. Special Instructions Page

The Special Instructions Page is used to identify the applicable scope description of the case and allows for explanation of information that is necessary to convey to CBP or for E&C purposes. The space in which information on this page can be entered is limited to only a few lines. Therefore, the Special Instructions page should only be used for case notes when there is a definite need for explanation, such as communicating per-unit rates and units of measure or for short explanations regarding changed circumstances about a company. Information entered into the Special Instructions Page can be accessed only by CBP and cannot be accessed by broker

B. E-Mail Instructions

The email instructions that E&C transmits to CBP range in type and format. Email instructions serve to confirm information contained in the module and to provide case-related information to CBP that is otherwise not communicated via the module. For instance, much of the information contained in a cash deposit instruction is also contained in the module. However, the majority of information contained in a liquidation instruction (e.g., assessment rates) is not housed within the module. A list of E&C boilerplate email instructions can be obtained from E&C's website at <http://enforcement.trade.gov/download/custboil.htm>.

Although email instructions are posted on the E&C website, these instructions serve only as boilerplate or sample instructions. They should be used as a base for preparing your instruction and should be tailored to your case- and company-specific facts. The boilerplate instructions posted on the E&C website may change as a result of periodic updates. Accordingly, analysts should always refer to the respective boilerplate instruction on the E&C website as their base instruction and starting point rather than updating a previously transmitted instructions obtained from an earlier segment of the proceeding or from another AD/CVD case.

Certain types of instructions, particularly liquidation and injunction instructions, require review and concurrence by E&C's Office of Chief Counsel (OCC), in addition to the program manager and office director. Given the myriad of instructions that may be applicable to your case, it may be difficult to ascertain which types of instructions need concurrence by OCC. If you are unsure as to which type of instruction requires concurrence beyond your program manager, you should consult your program manager.

In addition, you should be aware that certain types of instructions are released to outside parties in draft form at, for instance, the preliminary stage of a review. The release of instructions to outside parties provides the opportunity for them to review and comment on the content of the instruction. Depending on whether your instruction is public or proprietary, it may need to be released under administrative protective order. You should consult your program manager as to whether a draft copy of an instruction should be released to outside parties.

CBP maintains a website that lists instructions that are issued to its ports. This website can be accessed at <http://adcvd.cbp.gov/>. This website contains only public instructions. Certain email instructions are proprietary in nature and are therefore not posted on the CBP website. Instructions that contain proprietary information cannot be released to the public, unless a party to the proceeding has an Administrative Protective Order. Liquidation instructions for instance, are usually proprietary in nature. Proprietary instructions can be retrieved from ACS.

Every instruction includes as a disclosure statement that specifies whether the instruction is public or proprietary. If you are unsure as to whether your instruction should be designated as proprietary or public, you should consult with your program manager.

IV. ASSIGNMENT OF DUTIES—CASH DEPOSIT AND ASSESSMENT RATES

The cash deposit rate serves as estimated duties owed on subject merchandise imported into the U.S. on a prospective basis. The cash deposit rate is applicable to subject merchandise that enters into the U.S. from the effective date forward. The assessment rate is retrospective and serves as the actual rate due on subject merchandise that has already entered into the U.S. during a specified period of time. Generally, the cash deposit rate is assigned to merchandise that is either produced and/or exported by a specific company from a specific country. The importer of record is responsible for paying the cash deposit amount owed on subject merchandise entered into the United States. The assessment rate is calculated and assigned on an importer- or customer-specific basis. Similarly, the importer of record is responsible for the actual duties owed on the imported merchandise.

V. ENTRY OF SUBJECT MERCHANDISE

Various parties in the trade community may be involved with the entry of subject merchandise into U.S. Customs Territory for consumption. These parties include the importer of record (IOR), customs broker, surety company, and counsel for the importer. The analyst is likely to encounter these parties during the administrative segment of the proceeding and/or the subsequent enforcement matters that involve the collection of cash deposits or liquidation of subject merchandise. A brief description of each of these parties is provided below.

Importer of Record:

The IOR can be either the owner or purchaser of the entered merchandise or a licensed customs broker. The IOR is the party responsible for entering the merchandise into the United States. Specifically, this party is responsible for all entry information and documentation required by CBP and is also responsible for the payment of duty (e.g., AD/CVD) and other import obligations.

Customs Broker:

The customs broker is an individual or firm licensed by CBP to act as the agent on behalf of an importer in the transaction of its Customs-related matters, including the following: making entry on behalf of the importer; completing and submitting all entry documentation; arranging for payment of duties and other charges; filing protests, etc. Often, an importer hires a broker on its behalf to handle entry matters.

Surety Company:

Surety companies issue bonds - those permitted during the provisional measures period (i.e., during the LTFV investigation) and those provided in connection with all entries (in the event that duties and/or other charges are not paid by the importer¹. The surety charges the importer a fee for this service and has the right to seek reimbursement from the non-paying importer.

Counsel for Importer (or Other Party):

While counsel is often hired to represent the manufacturer or exporter under review, counsel may also be employed for legal matters that arise with respect to the entry of merchandise itself. For instance, an attorney may be hired to represent the importer in protest litigation subsequent to the review underlying the entry in question.

All AD/CVD orders have a description of the merchandise covered by the order. This description is referred to as the scope of the order. The scope generally contains a written description of the goods, which is dispositive, and a numeric categorization of the goods, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS numbers are provided for convenience purposes to assist CBP and the trade community with identifying a particular product and determining whether goods are covered by E&C's AD/CVD case or order.

For entry of goods into the United States, importers or their brokers submit, or file, an entry package to CBP. The entry package includes the Customs Form 7501 and various commerce-related documents, such as commercial invoices, purchase order, bill of lading, etc. These documents contain descriptions of the goods in question and their respective HTS

¹ Bonds are also permitted for new shippers. However, bonding privileges for new shippers continue to be suspended pursuant to the Pension Protection Act of 2006, dated August 17, 2006.

numbers. CBP forms such as the Customs Form 7501 (the Entry Summary), along with an explanation of each block for which information is requested, can be accessed on CBP's website at <http://www.cbp.gov/xp/cgov/toolbox/forms/>.

Should the filer determine that the merchandise falls within the scope of an order, it will designate the entry as an AD/CVD entry (Type 3) rather than as a normal consumption entry (Type 1) on the entry summary. If the entry was filed as a Type 3 entry then the entry summary will indicate the amount of AD/CVD duties paid. If however, the entry was filed as a Type 1 entry and thus not subject to AD/CVD duties then the entry summary will not include an indication that AD/CVD duties were paid. In addition to an indication of the entry type on the entry summary itself, you can also obtain the type of entry for the merchandise at issue on the output of a data query under a particular case and company.

VI. SUSPENSION OF LIQUIDATION

If the entry in question is a Type 3 entry and thus subject to AD/CVD duties, then suspension of liquidation occurs. When suspension of liquidation takes place, CBP creates a temporary financial liability in its records against the importer for the AD/CVD entry in question. CBP will suspend liquidation of an AD/CVD entry pursuant to the issuance of instructions by E&C to CBP or if required by a court order or if required by NAFTA proceedings over an administrative review. The suspension of liquidation remains in effect until the underlying AD/CVD issue is resolved and E&C has issued an instruction to CBP instructing CBP to lift the suspension (*i.e.*, liquidation) of an entry.

A. Cash Deposits

When an entry is suspended, the IOR must remit payment of estimated duties to CBP. The cash deposit serves as a financial guarantee that the duty obligation will be fulfilled. Cash deposit amounts normally are determined on the basis of the entered value and the weighted-average dumping margins generated by E&C in a given case. E&C informs CBP of the required cash deposit via the module and email instructions.

B. Bonds

Bonds are permitted in lieu of cash deposits only during certain stages of a case proceeding. A bond may be permitted in place of a cash deposit should the preliminary determination in a LTFV investigation result in an affirmative finding.

VII. LIQUIDATION

Liquidation is the final computation by CBP of the actual duties owed on the entered merchandise. This process essentially removes the suspension of the AD/CVD entry. E&C

instructs CBP of the need to liquidate an entry by transmitting an email instruction to CBP. This type of email message to CBP is called a liquidation or assessment instruction. Such instructions are sent to CBP at the end of each administrative review. (In the case of a final determination in a LTFV investigation, E&C does not issue liquidation instructions to CBP). This type of company-specific liquidation instruction differs from an automatic liquidation instruction (ALI), which is normally issued at the outset of a market-economy review or at the end of a non-market-economy review. Unlike the company-specific liquidation instruction, the ALI requires the liquidation of suspended entries specific to companies that are not participating in the administrative review.

Once the instructions have been received by CBP and any questions regarding the exact actions E&C requires of CBP have been resolved, CBP carries out E&C's instructions by commencing assessment. Any entry not liquidated by the CBP within 6 months from receiving notice either from publication of results in the *Federal Register* or the instruction itself (e.g., pursuant to litigation that does not require publication of amended results in the *Federal Register*) is "deemed liquidated" by operation of law at the AD/CVD rate asserted at the time of entry. Given the limited period that CBP has to liquidate entries, it is imperative that liquidation instructions are transmitted to CBP on a timely basis in accordance with current Department practice – consult your program manager or team attorney regarding the appropriate deadline. However, in NAFTA cases, instructions cannot be issued until the 41st day after the final results are published in the Federal Register.

Depending on the outcome of the review, additional monies, which may include interest, may be owed by the importer of record. This would occur if the assessment rate is higher than the cash deposit rate at the time of entry of the merchandise. Conversely, if the assessment rate is lower than the cash deposit rate at the time of entry of the merchandise, the U.S. government must reimburse the IOR.

A. Interest

All liquidation instructions sent to CBP contain an interest paragraph. In general, interest accrues from the date the importer is required to deposit estimated duties. Interest is not applicable during the LTFV investigation. It is only applicable once the AD/CVD order is in place. If the calculated assessment rate is higher than the cash deposit rate at the time of entry of the subject merchandise, the importer must, in addition to the duty itself, remit an additional sum reflecting the interest that accrued during the period between entry and assessment. If however, the assessment rate is lower than the cash deposit rate, the U.S. government must refund to the importer of record the accrued interest in addition the difference in duties originally deposited.

B. Reimbursement

Liquidation instructions pursuant to an antidumping review also require the inclusion of a reimbursement statement. An IOR must submit a statement certifying that it did not enter into any agreement for the payment or refund of any part of the AD/CVD duties on the entered merchandise. This statement is filed with CBP in a reimbursement certificate. Should CBP find that the IOR was reimbursed for AD/CVD duties or if the IOR does not file such a certificate prior to liquidation, CBP will double the antidumping duty liability.

C. Distribution of AD/CVD Duties by CBP to U.S. Industry

The Continued Dumping and Subsidy Offset Act (CDSOA) (also called the “Byrd Amendment”) was enacted on October 28, 2000, and covers all antidumping and countervailing duty orders in effect on or after January 1, 1999. The law, which amended section 754 of Title VII of the Tariff Act of 1930, is codified at 19 U.S. C. 1675c. This section of the Act requires CBP to distribute duties assessed pursuant to AD/CVD orders as a continued dumping and subsidy offset to eligible, domestic manufacturers. Although Congress repealed this law in February 2006, the repeal does not affect entries of goods made before October 1, 2007. As a result, the law continues to apply to entries made before October 1, 2007 and to the payment of assessments from such entries, whenever the assessments occur.

D. Legal Remedies

Injunction: Only a court-ordered injunction can enjoin or prevent CBP from liquidating entries pursuant to an instruction issued by the IA, except in NAFTA proceedings, which have special rules for administrative suspensions. The court may enjoin the liquidation of some or all entries covered by certain types of determinations that are subject to litigation before a court (e.g., U.S. Court of International Trade (CIT) or the U.S. Court of Appeals for the Federal Circuit (CAFC)). Absent an injunction, however, present law requires that entries must be liquidated within prescribed time limits regardless of whether a lawsuit has been filed with a court.

Administrative Protests: When an importer disagrees with CBP’s assessment or other import decisions, the importer may raise such issues with CBP. After liquidation, an importer may still pursue claims for an adjustment or refund by filing a protest with the port within 180 days after liquidation. If the port denies the protest, and if the importer has previously submitted an Application for further review@, then the port’s ruling will be reviewed again at CBP Headquarters. If the protest is denied, an importer has the right to litigate the matter by filing a summons with the CIT within 180 days after denial of the protest.

Liquidation of an entry is not final until any protest which has been filed against it has been decided. Similarly, the administrative decision issued on a protest is not final until any litigation filed against it has become final.

Litigation of Administrative Protests: After CBP issues its administrative decision through the protest procedure, a losing party can challenge the protest in the CIT and argue that it be reversed.

VIII. CUSTOMS FRAUD

Generally, in accordance with Section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), any person who, by fraud or negligence, enters merchandise into the United States by means of false data, statement, document, act, or omission, is subject to penalty. CBP is empowered to seize merchandise to ensure payment of duties. If the penalty is not paid, the merchandise may then be forfeited in lieu of payment.

Customs fraud may result in both civil and criminal penalties. The civil fraud penalty statute has been applied by CBP and ICE in cases involving individuals and companies in the United States and abroad who have negligently or intentionally provided false information concerning imports. The criminal fraud penalty statute is enforced by ICE and covers the same activities and provides for fines and/or imprisonment for violations. Both the civil and criminal fraud statutes are intended to discourage persons from evading payment of lawful duties.

During the course of an administrative or new shipper review, the case team may encounter information or documentation that may lead the team to suspect the existence of a fraud scheme. At that point, the case team should contact the Customs Unit and generally follow the steps outlined in the Procedures Manual.

IX. DISCLOSURE OF INFORMATION

While the release of business proprietary information is covered under a different section of this manual, this topic is also relevant to the release of information by E&C to CBP. The need to disclose business proprietary information to CBP may occur with respect to requests for entry documentation by E&C to CBP or, it could occur when E&C needs to provide information to CBP on a case-related issue. Should the need arise to provide such information to CBP, disclosure must be made in accordance with our statute and regulations. See 19 U.S.C. 1677(f) and section 351.105 of the regulations. 19 U.S.C. 1677(f) provides for the release of business proprietary information within certain parameters. You should become familiar with this provision as the need may arise during the proceeding on one of your cases, which calls for the release of information to CBP.

CBP may also provide information to E&C, which is most typical when CBP provides information in response to E&C's request for entry documentation. When it releases information to E&C, CBP also provides a written disclaimer stating its authority for and conditions of the exchange of information between the two agencies. CBP will only release such information to E&C under the condition that this information is used exclusively for AD

and/or CVD case proceedings and can only be released to the official records of the AD or CVD case, subject to APO protections.