

CHAPTER 17

PREPARATION OF ANTIDUMPING ORDERS

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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

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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.

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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 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

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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

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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

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.