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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

LIST OF ACRONYMS & ABBREVIATIONS

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:

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

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

c. 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.

d. 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.

e. 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
67 days	Section B, C, D, and E responses	351.301(c)(2)(ii) and (iii)

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

²This 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
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)

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

DEADLINES FOR PARTIES IN AD INVESTIGATIONS		
DAY	EVENT	REGULATION
215 days	Request for postponement of the final determination	351.210(e)
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)

¹This 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
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)
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)

DEADLINES FOR PARTIES IN ANTIDUMPING ADMINISTRATIVE REVIEWS		
DAY	EVENT	REGULATION
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
COMPARISON OF PRIOR AND PRESENT REGULATIONS PART 353 -- ANTIDUMPING DUTIES		
PRIOR	PRESENT	DESCRIPTION
353.44	Removed	Sales at varying price
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
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COMPARISON OF PRIOR AND PRESENT REGULATIONS PART 353 -- ANTIDUMPING DUTIES		
PRIOR	PRESENT	DESCRIPTION
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
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

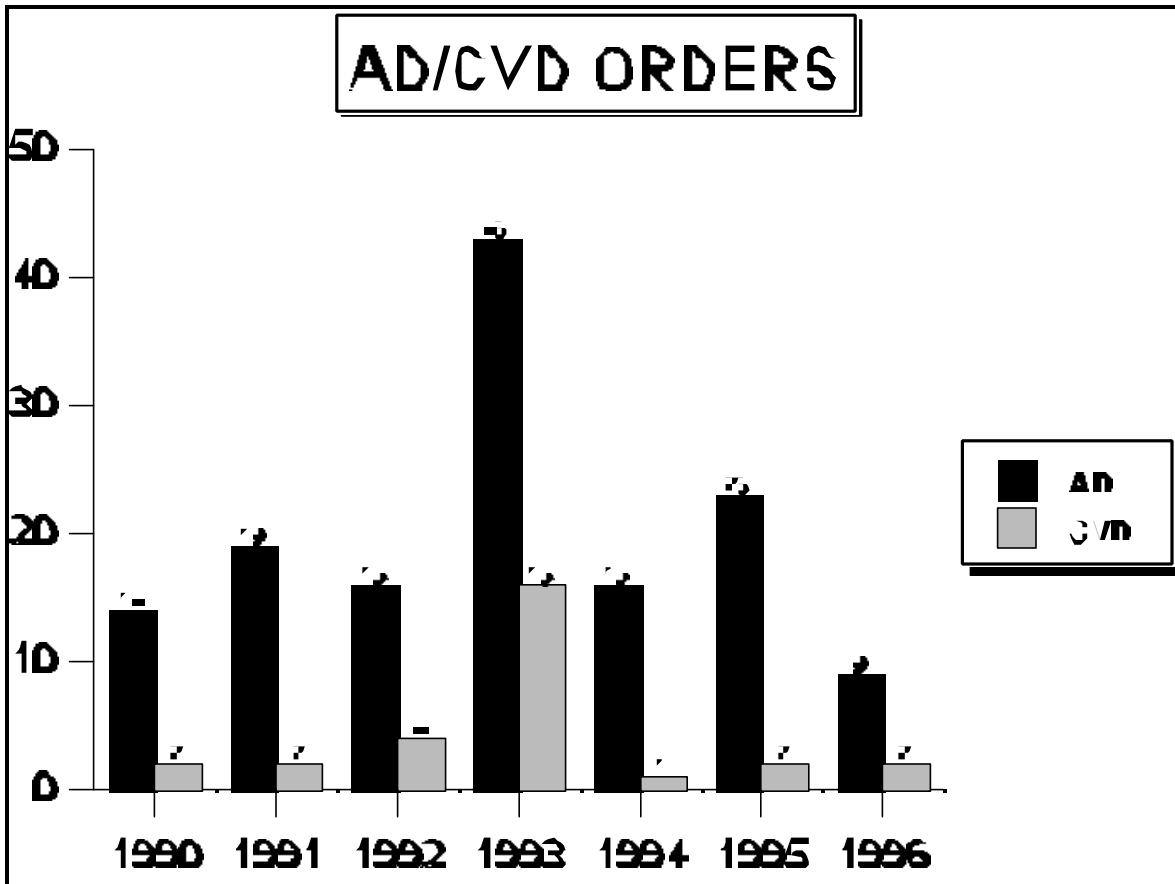
Many key AD phrases and terms changed as a result of the 1994 amendments to the Act. This chart allows you to compare old and new terminology.

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

IV. STATISTICS ON INVESTIGATIONS AND ADMINISTRATIVE REVIEWS

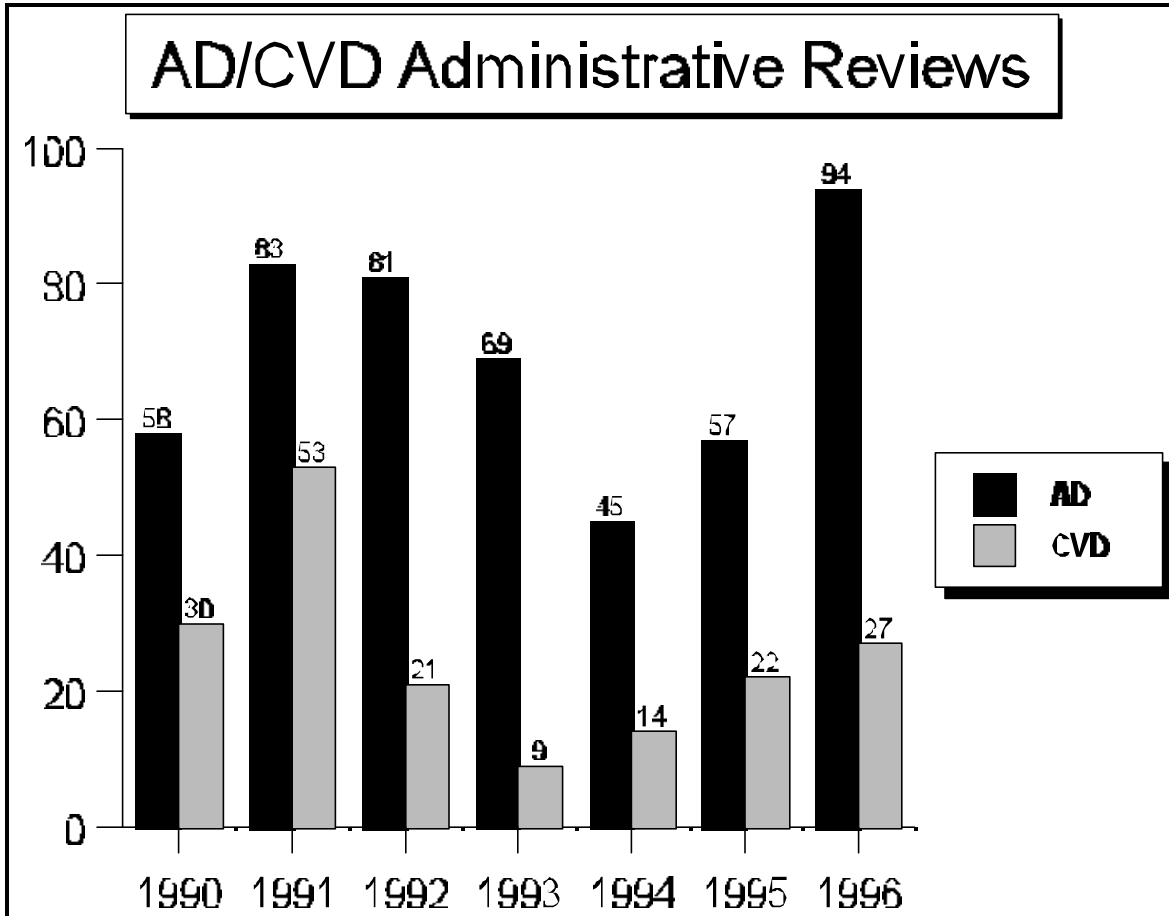
A. Investigations

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 at 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 preceding 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.)