

**CHAPTER 2**  
**ANALYSIS OF PETITIONS AND INITIATIONS OF INVESTIGATIONS**

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**References:**

- The Tariff Act of 1930, as amended (the Act)
  - Section 339 - technical assistance to eligible small businesses
  - Section 732 - initiation
  - Section 733(e) - critical circumstances
  - Section 734(a)(1) - withdrawal of petition
  - Section 771(4) - industry
  - Section 771(9) - interested parties
  - Section 771 (10) - domestic like product
  - Section 773(b) - sales at less than cost of production
  - Section 773(d) - multinational corporations
- Department of Commerce (the Department) Regulations
  - 19 CFR 351.102 - domestic interested parties
  - 19 CFR 351.201 - self-initiated investigations
  - 19 CFR 351.202 - petition requirements
  - 19 CFR 351.203 - sufficiency of petition

- 19 CFR 351.206 - critical circumstances
- 19 CFR 351.207 - termination of investigation
- Statement of Administrative Action (SAA)
  - Section C.3 - initiation and subsequent investigation (p. 860 et. seq.)
- Antidumping Agreement
  - Article 2.2.1 - sales at less than cost
  - Article 4 - definition of domestic industry
  - Article 5 - initiation and subsequent investigation
  - Article 12.1.1 - public notice of initiation

## INTRODUCTION

This chapter explains the initiation process for antidumping duty (AD) investigations. It includes detailed information on the following items: 1) treatment of draft petitions; 2) analysis of official filings; 3) allegations for special situations such as sales below cost of production (COP) and multinational corporations; and 4) the preparation of initiation packages. For information on the initiation of AD order administrative reviews, see Chapter 18.

### I. DRAFT PETITIONS

All inquiries on the filing of draft petitions or requests for technical assistance in preparing an antidumping petition by U.S. businesses, as defined in section 339 of the Act, should be referred to the Manager of the AD/CVD Petition Counseling and Analysis Unit (PCAU), Import Administration (IA), International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, D.C. 20230. You can also refer them to the PCAU hotline at (202) 482-1255 and website: <http://www.trade.gov/ia>. The PCAU counsels potential petitioners and reviews draft petitions. The Manager of the PCAU will inform the Deputy Assistant Secretary (DAS) for Operations, DAS for Policy and Assistant Secretary (AS) once the Department is informed that the submission of a petition is imminent so that the case is appropriately assigned.

When draft petitions are received, we usually require a minimum of five business days to review the draft and give substantive comments to the potential petitioner or its counsel. By law, draft petitions are not discussed with anyone outside IA, the Office of the Chief Counsel for Import Administration (CCIA), and the International Trade Commission (ITC), other than the petitioner. See Section 732(b)(3)(C) of the Act. Any inquiries concerning possible filings of petitions should be responded to with a statement that no petition has been officially filed on the product. Only when a petition has been filed officially can we indicate that the Department is considering a petition on the product. At the time of filing the draft, the PCAU will ask the petitioner what schedule, if any, it has for filing the official version of the petition. If you receive this information, it should be given to your supervisor or program manager (PM) and the Manager of IA's PCAU immediately.

Where possible, the PCAU will assign a draft petition to an Operations team early enough to allow the team to review the petition prior to the proposed official filing date. The petitioner should furnish four copies of the draft per country (five, if COP or constructed value (CV) is involved) including all supporting documentation. Copies should be sent to the attention of the PCAU. In the event a party informs you of its intention to submit a draft, refer the party to the PCAU. The Office of Accounting (OA) should receive a copy of the draft if it contains COP or CV data. Potential petitioners should be encouraged to appropriately bracket the proprietary information in the draft petition in accordance with the Department's APO regulations. When distributing a draft petition, indicate: 1) that it is a draft; 2) who in your office is reviewing it; and 3) that the team will meet to discuss its adequacy approximately three business days later. After meeting with the operations team, a summary of the petition and the problems found should be prepared and a meeting should be scheduled with the Office Director (OD) and PCAU. All team members should be present at that meeting.

Draft petitions should be reviewed as thoroughly as an officially filed petition. One of the most important parts of any draft petition is the price and/or cost information used to establish alleged sales at less than fair value (LTFV). Current price information (from the anticipated period of investigation (POI), or more recent) is always necessary to support the U.S. sales side of the LTFV allegation. A petitioner can obtain price information from sources such as price lists, actual invoices, written quotations, firsthand affidavits attesting to oral quotations or knowledge of actual prices, salespersons' "call reports," market research information supplied by a market research firm, or, in some instances, from average per-unit prices from the Harmonized Tariff System of the United States (HTSUS) statistics for products that are classified under very specific product categories. For the exporting country side of the LTFV sales allegation, the petitioner may supply price information (e.g., price lists, invoices, facsimiles, etc.). If prices are used, support documentation could be the same as for U.S. sales prices.

If home market prices are not available, the petitioner should document its attempts to obtain third country prices. See [Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam](#), 69 FR 3876 (Jan. 27, 2004); [Notice of Initiation of Antidumping Duty Investigations: Certain Color Television Receivers From Malaysia and the People's Republic of China](#), 68 FR 32013 (May 29, 2003); and [Initiation of Antidumping Duty Investigations: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China](#), 65 FR 68121 (Nov. 14, 2000). If third country prices are also unavailable, CV should be used as a proxy for normal value (NV). In the petition, CV may be based on the petitioner's own factors of production, but adjusted for known differences in the exporting country for such things as materials, labor rates, and energy costs. Cost information may also come from a market research report on the product in the exporting country prepared by a market research firm. Whether prices or costs are employed in an allegation, various adjustments are usually necessary to calculate ex-works prices or to adjust prices or costs for differences in circumstances of sale (see Chapters 6, 7, and 8 for detailed information on the

calculation of U.S. and exporting country prices or costs that form the bases for a sales-at-LTFV comparison).

As you analyze the prices or costs used to support an allegation of sales at less than fair value, particular attention should be paid to the support documentation for the alleged prices or costs and any adjustments claimed, as the petition must be “reasonably supported by the facts alleged,” H.R. Rep. No. 317, 96th Cong., 1st Sess. 51 (1979) (HRR). See also SAA at 861. This means that the mere furnishing of documentation is not necessarily sufficient and that the Department should be able to seek additional data where support for a specific allegation is weak or the information appears aberrational. Support documentation should include the identification of sources and an explanation of how the information was obtained. For example, an affidavit from a sales representative reporting lost sales in the United States may be used to support U.S. price data. Affidavits supporting either U.S. or home market prices should be from the people who directly obtained the pricing information. Price lists used should include effective dates or be supported with a statement indicating the time period covered by the price lists. Price data should be as current as possible, usually within the anticipated POI or more recent. Prices used as the bases for NV and export price (EP) and constructed export price (CEP) should fall within the POI. Currency-conversion rates used should be included and the source of these rates should be given. The appropriate currency conversion rates for the petition can be found at <http://ia.ita.doc.gov/exchange/index.html>. See the AD initiation checklist in section VII of this chapter for a complete listing of all areas that need to be analyzed.

Statistical data on imports should be checked. The computer support team for your office should be asked to develop up-to-date import statistics from the country(ies) named in the petition. You can also check publicly available import statistics at <http://dataweb.usitc.gov>. The products covered should be described clearly and HTSUS numbers should be included. You should check these numbers in order to ensure that they are correct.

Industry support is another very important part of a draft petition. Therefore, the draft must identify the U.S. industry in its entirety. Specifically, it should contain the names and addresses of the petitioner(s) and other producers in the industry, as well as information relating to the degree of industry support for the petition, including: 1) the total volume and/or value of U.S. production of the domestic like product, regardless of sales destination; and 2) the volume and value of the domestic like product produced by each petitioning company or supporter of the petition. This information should also cover the last completed calendar year (see section III of this chapter). If the petitioner wishes to provide this information for a different period, it must provide a justification for doing so. See Notice of Initiation of Antidumping Investigation: Certain Processed Hazelnuts From Turkey, 68 FR 68032 (Dec. 5, 2003).

The last very important part of a draft petition involves the product description or scope. You and your team members should carefully review the product description to ensure that it covers what the petitioner intends to cover and that it will be easily understood throughout the various

segments of the antidumping proceeding (see section IV of this chapter). In general, the Department tries to avoid defining the scope of an investigation by the end use of the products. It is important that the scope be defined as accurately as possible to minimize future questions about product coverage and potential circumvention. We also want to avoid unintentional product coverage (i.e., ensuring that the scope of the investigation (and any order that may result) does not include products in which the petitioner has no interest). You should consider whether the prospective petitioner has unintentionally included products that are not produced domestically. In addition, we avoid references to “end use” provisions (i.e., statements regarding the final use of the imported merchandise) in the scope.

The draft should be discussed with analysts in the PCAU and the analyst at the ITC in order to determine whether the ITC has found any deficiencies. The primary focus of this discussion should be on the scope language, like product argument, and the material injury aspects of the filing (see section IV of this chapter).

After you review the draft petition, you should meet with your team and PM to discuss any issues you have found. Subsequently, you will meet with the PCAU staff to discuss the issues and coordinate deficiency comments to be presented to the petitioner. In communicating with the petitioner, the PCAU will indicate that the list of problem areas is advisory and that additional problems, if found after the petition is officially filed, will have to be corrected during the 20-day statutory initiation period. It is important to note that 19 CFR 351.202(b) specifies that information supplied in a petition must be “reasonably available” to the petitioner.

## **II. OFFICIAL FILINGS**

When a petition is officially filed, a determination on whether or not to initiate an investigation is usually made within 20 days after the date of filing, as specified in section 732(c) of the Act and 19 CFR 351.203. It should be noted that the day after the petition is filed begins the statutory 20 day period (e.g., if the petition is filed on March 1, day one of the initiation period will be March 2). The petitioner must also file copies of the petition and any amendments (see 19 CFR 351.202(c) and (e)) with the ITC and the Department on the same day and so certify in submitting the petition. Petitions filed at the ITC after 12:00 PM are considered filed on the following business day. See 19 CFR 207.10(a) of the ITC’s amended regulations. When a petition is filed with the respective agencies on different dates, the latter of the two dates is the official date of filing because the Act requires simultaneous filing of petitions with the respective agencies. See the memorandum from Edward Yang to Barbara Tillman entitled, “Decision Memo Concerning Petition Filing Date and Period of Investigation,” dated April 7, 2005, which is on file in the Central Records Unit (CRU), room B-099, of the main Department building in the case file of the less-than-fair-value investigation of Certain Artist Canvas From the People’s Republic of China (A-570-899). A petition can be filed prior to 12:00 PM at the ITC, and after 12:00 PM at the Department on the same day, and still be considered simultaneously filed.

Everything that is submitted during the initiation period by the petitioner is collectively considered “the petition.” Hence, all documents must be filed at both agencies during the initiation period pursuant to 19 CFR 351.303. During the 20-day pre-initiation period, we will not accept oral or written communication from interested parties regarding a petition except inquiries concerning the status of the proceeding and the issue of industry support (and by extension the issues of scope and like product). Notices of appearance (*i.e.*, letters from law firms notifying us about whom they are representing in the investigation) are also acceptable. In situations where the Department must poll or “otherwise determine” the domestic industry (see section IV of this chapter), a maximum of 40 days may be taken to make the initiation determination. The petition should be immediately distributed to the appropriate IA offices (the PCAU and OA, if applicable) and the CCIA for review. It is your responsibility to see that this distribution occurs. A public version of the petition is delivered immediately to the embassy of the country in question by the IA CRU.

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

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

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

- General information about the research company (e.g., how long it has been involved in this kind of work, whether work has been done for the petitioner or petitioner's counsel before, whether it has previously conducted research regarding this product, etc.);
- Professional qualifications of the researcher;
- Who requested the information and what type of information was requested;
- Did the researcher/research company prepare the research submitted with the petition or contained in the petition in support of EP, CEP, or NV? If not, who did? What is their relationship to the preparer? Has the company used this preparer in the past?;
- What methodologies or procedures did the company employ to gather the data? How was the information verified/corroborated?;
- What did the researcher/research company provide to the petitioners (written report, price lists, e-mail communication, etc.)?

A petitioner is permitted, pursuant to 19 CFR 351.304, to claim proprietary treatment for certain information in its filing (e.g., in certain instances, market researcher names, customer names, etc.). This information is typically enclosed in single brackets (i.e., [XXX]) and must be accompanied with an explanation as to why each item of bracketed information is entitled to proprietary treatment. A person requesting proprietary treatment must also include an agreement to permit disclosure an administrative protective order, unless the party claims that there is a clear and compelling need to withhold the information from disclosure. If there is a need to withhold the information from disclosure under the APO as well, the party must enclose the proprietary information in double brackets (i.e., [[XXX]]), and provide a full explanation for the claim.

Next, the PCAU and the team should coordinate with the ITC on the product description and the ITC's review of the petition. We should make every effort to reach agreement with the ITC on the product description. However, you should keep in mind that the Department determines the scope of an investigation, and is the administering authority for the whole initiation.

Every effort is made to have the same analyst review the draft and subsequently filed petition. However, when a different reviewer is involved, the new analyst should always coordinate with the analyst who handled the draft in order to determine whether problem areas have been corrected. If the analyst finds additional problems with the petition, these should not be discussed with the petitioner until they have been reviewed internally and a meeting has been

held with the PCAU, PM, and OD. This meeting should take place no later than seven days after the petition is filed.

After meeting with the PCAU, PM, and OD to discuss petition problems, the petitioner should be notified in writing of areas in the petition which need further support or information. Once the requested revisions are received, they should be analyzed immediately to determine if they are complete. If the revised petition still requires further support or information, see your supervisor or PM immediately.

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

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

### **III. INDUSTRY SUPPORT**

#### **A. General Information**

Petitions must be filed by an interested party who has the support of the industry producing the domestic like product in the United States. Although the ITC is the agency which determines domestic like product for injury purposes, the Department must make a determination with respect to like product during the initiation for purposes of calculating industry support. Since the domestic like product is the domestic product most like the subject merchandise, typically the domestic like product is identical to the scope.

A petition meets the minimum requirements if the domestic producers or workers who support the petition account for: 1) at least 25 percent of the total production of the domestic like product; and 2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition (see Section 732(c)(4) of the Act, and [Initiation of Antidumping Duty Investigation: Certain Lined Paper Products From India, Indonesia, and the People's Republic of China](#), 70 FR 58374 (Oct. 6, 2005)).

Section 732(c)(4)(A) of the Act recognize that industry support for a petition may be expressed by either management or workers. See also Section 732(c)(5) of the Act. If the management of a firm expresses a position in direct opposition to the views of the workers in that firm, the SAA directs us to treat the production of that firm as representing neither support for nor opposition to



the petition. See SAA at 862. Therefore, the two positions offset one another. Under current practice, the views of workers may be submitted by unions, other employee organizations, or ad hoc groups of workers. In situations where the views of management and workers negate each other, the production of the company is included as part of the total production of the domestic like product for purposes of applying the 25 percent threshold. (See [Antidumping Duties; Countervailing Duties: Final Rule](#), 62 FR 27296, 27308 (May 19, 1997)). Please note that the methodologies used to determine industry support may vary from industry to industry.

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

The information supporting the industry support submitted by the petitioner(s) must always be reviewed. We normally will determine the existence of industry support based on the volume or value of production. In most instances we base this determination on volume. See, e.g., [Initiation of Antidumping Duty Investigation: Chlorinated Isocyanurates from the People's Republic of China and Spain](#), 69 FR 32488 (June 10, 2004). However, in some cases, such as [Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea](#), 70 FR 35625 (June 21, 2005) ([Sawblades from the PRC and Korea Initiation](#)), we based our determination on value. Sometimes, if it is necessary to corroborate the data, we look for publicly available independent information (e.g., the internet). Sometimes we call non-petitioning, domestic producers to determine their production. See the memorandum entitled, "Initiation Checklist: Antidumping Duty Petitions on Certain Color Television Receivers from Malaysia and the People's Republic of China," dated May 22, 2003. However this should be considered an absolute last resort and does not constitute polling the industry. If this type of call is necessary, consult with your supervisor or PM, as well as the PCAU. A memo of any such calls must be included in the record.

We normally will review production figures over the most-recently completed calendar year. However, we recognize that there may be circumstances in which a twelve-month period may not be appropriate. In those instances, we would identify the appropriate period on a case-by-case basis. See 19 CFR 351.203(e)(1). If actual production data for the relevant period are not available, production levels may be established on the basis of alternative data that the Department determines to be indicative of production levels. For example, for some industries or firms, shipment data may correspond directly with production data, and, thus, be a reliable alternative.

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry for the like product supports an antidumping duty petition. In making this determination, the Department and the ITC must

both apply section 771(10) of the Act which defines “domestic like product,” but they do so for different purposes and pursuant to separate and distinct authority. Furthermore, the Department’s determination is subject to limitations of time and information. This may result in different definitions of the like product, but such differences do not render the decision of either agency contrary to law (compare [http://www.usitc.gov/publications/701\\_731/pub3748.pdf](http://www.usitc.gov/publications/701_731/pub3748.pdf), Investigations Nos. 731-TA-1063--1068 (Final), ITC Publication 3748 (Jan. 2005) at 9 with [Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People’s Republic of China and the Socialist Republic of Vietnam](#), 69 FR 3876, 3877 (Jan. 27, 2004)).

During the pre-initiation review period for a petition, interested parties other than the petitioners may only comment on the question of industry support, and scope or like product as they relate to the calculation of industry support (see Part B below). If we receive substantive information on any subject other than industry support, we would consider it to be inappropriately filed and will return it to the party that filed it. See Section 732(b)(3)(B) of the Act.

## **B. Challenges to Industry Support**

When a member of the domestic industry challenges the assertion of the petitioner that it has filed with support of the domestic industry, the burden is on the petitioner to establish that it meets the above requirements. Challenges to industry support should be brought to the immediate attention of the PCAU, your team members, and your supervisor. If the petitioner accounts for less than 50 percent of total production, the Department must poll or otherwise determine industry support. If a petitioner does not have the requisite levels of industry support after polling, the Department will dismiss the petition. See [Dismissal of Antidumping and Countervailing Duty Petitions: Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela](#), 64 FR 44480 (Aug. 16, 1999).

We may disregard the opposition of domestic producers related to potential respondents “unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected.” See Section 732(c)(4)(B)(i) of the Act and 19 CFR 351.203(e)(4). This puts the burden of demonstrating such an effect on those producers. In addition, we may also disregard the views of domestic producers who are also importers of the subject merchandise and domestic producers who are related to such importers. See Section 732(c)(4)(B)(ii) of the Act and 19 CFR 351.203(e)(4)(ii). In evaluating whether to disregard such producers, the Department may consider the import levels and percentage of ownership common to other members of the domestic industry.

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

Section 732(c)(4)(E) of the Act states that before a determination with respect to initiating an

investigation is made, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. However, after a determination is made with respect to initiating an investigation, the determination regarding industry support will not be reconsidered.

### **C. Polling**

If the petition does not establish the support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, we will poll or otherwise determine whether the industry supports the petition. See Section 732(c)(4)(D) of the Act and 19 CFR 351.203(b)(2). We will normally initiate an investigation within the initial 20 days of the filing of the petition. However, section 732(c)(1)(B) of the Act provides for an extension of up to 20 additional days after the filing of a petition in exceptional circumstances when we cannot establish whether the requisite industry support exists within 20 days. In cases where we need to extend the deadline for initiation in order to poll the industry, or “otherwise determine” industry support, we will notify the public of our intention via Federal Register notice. See, e.g., Notice of Request for Information and Extension of Time: Certain Orange Juice From Brazil, 70 FR 3510 (Jan. 25, 2005); and Notice of Request for Information and Extension of Time: Wooden Bedroom Furniture from the People’s Republic of China, 68 FR 65875 (Nov. 24, 2003). Note that the SAA at 863 and the legislative history of the Uruguay Round Agreements Act are clear in stating that the Department will not go beyond 20 days in considering the industry support element of a petition in the vast majority of cases.

In conducting such a poll, the PCAU and the team will draft a questionnaire specific to the industry in question and send the questionnaire to all potential producers of the domestic like product, including the petitioners themselves. In most cases, the polling questionnaire requests that producers provide information regarding the quantity of their production during the most recently completed calendar year, relationships with foreign producers of the subject merchandise in the countries named in the petition, and imports of the subject merchandise from the countries named in the petition. In cases involving a large number of producers, the Department may work with trade and business associations to disseminate the poll and obtain production information. The Department will use the polling questionnaire responses to calculate industry support. In the event that the Department does not receive a response from a producer, that producer will be deemed neutral.

### **D. Regional Industry**

Section 732(c)(4)(C) of the Act establishes a special rule for determining industry support if the petition is filed on behalf of a regional industry. In such situations, we apply the same 50 and 25 percent domestic-industry-support requirements on the basis of production in the alleged region. Thus, a petitioner need only show that domestic producers or workers in the relevant region, as opposed to the entire United States, support the petition (see Initiation of Antidumping Duty

[Investigation: Certain Steel Concrete Reinforcing Bars from Turkey](#), 61 FR 15039 (Apr. 4, 1996)).

### **E. Agricultural Provision**

For petitions involving a processed agricultural product that is produced from a raw agricultural product, section 771(4)(E) of the Act provides that the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if: 1) the processed agricultural product is produced from the raw agricultural product through a continuous line of production; and 2) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may include price, added market value, or other economic interrelationships. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to growers, processors, and workers who produce the domestic like product. See the memorandum to Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, from the Team entitled, “Antidumping Duty Petition on Certain Orange Juice from Brazil: Domestic Like Product Analysis and Calculation of Industry Support,” dated February 7, 2005.

## **IV. SCOPE OF THE INVESTIGATION AND LIKE PRODUCT DETERMINATIONS**

### **A. Scope of the Investigation / Like Product**

When filing a petition, the petitioner is required to include a detailed description of the merchandise that will be covered under the investigation. This detailed description generally defines the scope of the investigation and should include the technical characteristics and uses of the merchandise and its current HTSUS classification number. A single investigation involves a single like product. The focus of the scope should be on the physical characteristics of the merchandise, rather the end use of the merchandise.

In evaluating the petition’s proposed scope language, the Department attempts to ensure that the scope of an investigation is defined as accurately as possible, and that products in which the affected industry has no interest are removed, or not included in the scope of the investigation. The Department undertakes two procedures, which were adopted in the Department’s current regulations, when analyzing a proposed scope:

- (i) If the petitioner seeks pre-petition filing consultations, the Department will ensure that the proposed scope of the petition is an accurate reflection of the product for which the domestic industry is seeking relief.
- (ii) The Department designates a period early in the investigation for interested parties to

raise issues regarding product coverage. Usually, this comment period is the 20-day period following publication of the Notice of Initiation in the Federal Register. See, e.g., [Sawblades from the PRC and Korea Initiation](#).

In addition to reviewing whether a petition's proposed scope language is over inclusive, the Department also tries to ensure that the description of the merchandise is not so narrow that obvious circumvention issues could arise in the future should an order be imposed.

Additionally, the Department checks to make sure that the merchandise is not being defined in an artificially narrow manner for industry support purposes or that it is covered by an existing antidumping duty order. See, e.g., [Notice of Initiation of Antidumping Duty Investigation: Certain Orange Juice From Brazil](#), 70 FR 7233 (Feb. 11, 2005).

## **B. Like Product Determinations**

In accordance with section 732(c)(4)(A) of the Act, the Department is required to determine whether a petition has been filed by or on behalf of a domestic industry. "Industry" is defined by the statute as "the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product." See Section 771(4)(A) of the Act. Therefore, in order to determine whether there is adequate industry support for the petition, it is necessary to identify the domestic like product and then examine that industry's production. The statute defines the "domestic like product" as a product which is like or most similar in characteristics and uses with the subject merchandise. See Section 771(10) of the Act.

Unless the Department finds the petitioner's definition of the domestic like product to be inaccurate, the agency will adopt the domestic like product definition set forth in the petition. This is consistent with the Department's broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition. See [Fujitsu Ltd. v. United States](#), 36 F. Supp. 2d 394 (CIT 1999) (citing [Kern-Liebers USA, Inc. v. United States](#), 881 F. Supp. 618, 621 (1995) (citation omitted)). The petitioner should provide a detailed analysis demonstrating that the subject merchandise constitutes a single like product. While the statute defines the "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation," in some instances the petitioner will present the Department with detailed information pertaining to the six factors the ITC traditionally analyzes in order to provide a more comprehensive analysis.

While the Department is not bound by the criteria used by the ITC to determine the domestic like product in answering this question, in some instances we have reviewed these six factors when presented by the petitioner. See [Antidumping Investigation Initiation Checklist: Hydraulic Magnetic Circuit Breakers from South Africa](#) (May 5, 2003). They are: 1)

physical characteristics and uses; 2) interchangeability; 3) channels of distribution; 4) customer and producer perceptions; 5) common manufacturing facilities, processes, and employees; and 6) price. *See Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (CIT 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991).

While the Department makes a like product determination at the time of initiation for purposes of accurately calculating industry support, the ITC makes domestic like product determinations in determining whether or not there is material injury or threat of material injury to the domestic industry, *i.e.*, it determines which product manufactured in the United States is most like the merchandise being imported. If, during the course of the investigation, the ITC determines that some domestic like products are not being injured by corresponding imports within the scope of the investigation, the investigation terminates on those imported products. This is the case at both the preliminary and final stages of the ITC's investigation.

An example of a case where the ITC found more narrow like product categories than the Department is [http://www.usitc.gov/publications/701\\_731/pub3748.pdf](http://www.usitc.gov/publications/701_731/pub3748.pdf); *see also* [Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand](#), 70 FR 5145 (Feb. 1, 2005), and the accompanying [Unpublished Clerical/Ministerial Errors Memorandum](#).

## V. SPECIAL ALLEGATIONS

### A. Sales at Less Than Cost

By making a sales-below-cost allegation, a petitioner hopes to eliminate some or all low priced exporting country sales during the period of investigation as the basis for NV. When a sales-below-cost allegation is contained in the petition, the standard for initiating an investigation into that allegation is the same as the standard for initiating a LTFV investigation (*see* sections I and II of this chapter). Usually, petitioners construct a cost allegation using their own factors of production with adjustments for known differences in significant inputs in the potential respondents' country. However, in the event the petitioner files a cost allegation subsequent to the initiation of an investigation, all available data on the record must be considered and used, if appropriate. For example, once a respondent submits its questionnaire response, there may be newly available cost data on the record that petitioner would have access to and could use in a cost allegation. Sales-below-cost allegations can be made either on a company-specific or a country-wide basis. *See* Section 773(b)(2)(A) of the Act. The allegations always consist of a comparison of the home market or third country prices (depending on the basis for NV) with the estimated cost of production.

The time limits for an allegation of sales at prices below the cost of production made by the petitioner or other domestic interested party are generally: 1) on a country-wide basis, 20 days after the date on which the initial questionnaire was sent to the respondents; and 2) on a company-specific basis, 20 days after a respondent files the response to the relevant section



of the questionnaire (*i.e.*, section B). In some cases, these dates can be extended. If you receive a request for extension, you should discuss it with your PM. See 19 CFR 351.301(d)(2)(i).

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

## **B. Critical Circumstances**

Critical circumstances are alleged if a petitioner thinks that an exporter or producer has started to export abnormally high volumes of merchandise as soon as it is known that an antidumping petition has been filed or an investigation is underway. See Section 732(e) of the Act; 19 CFR 351.206; and [Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil](#), 70 FR 49557 (Aug. 24, 2005). See also [Policy Bulletin 98/ 4](#), 63 FR 55364, (Oct. 15, 1998). An exporter or producer could be doing this to blunt the effects of a preliminary affirmative determination of sales at LTFV and the potential for dumping duty liabilities on entries filed after that date (see Chapter 18). If the petition contains a critical circumstances allegation or the allegation is filed at least 20 days before the preliminary determination, we must make a determination relative to this allegation either before or in the preliminary determination.

If the allegation is filed less than 20 days prior to the due date for the preliminary

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

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

### **C. Multinational Corporations**

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

1. Subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in one or more third countries;
2. The exporting country market, i.e., the market in the country from which the merchandise is exported to the United States, is not viable (see Chapter 8). That is: (a) the foreign like product is not sold for consumption in the exporting country; (b) the aggregate quantity (or value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States; or (c) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price; and
3. The NV of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the NV of the foreign like product produced in the facilities located in the exporting country.

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

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

At this time, we are following the deadline for filing a company-specific, sales at less-than-COP allegation for the filing of an MNC allegation, which is 20 days after a respondent files



its response to the relevant sections of the antidumping questionnaire. For the most recent of the Department's positions on the acceptance of MNC allegations, see [Initiation of Antidumping Investigations: Melamine Institutional Dinnerware Products from Indonesia, the People's Republic of China, and Taiwan](#), 61 FR 8039 (Mar. 1, 1996) and [Preliminary Determination of Sales at Less Than Fair Value: Color Negative Photographic Paper and Chemical Components Thereof from the Netherlands](#), 59 FR 16181 (Apr. 6, 1994). Note that these cases used the home market viability test in which home market sales had to meet the five percent of third country sales standard. The home market viability test was revised in the preamble to the Department's current regulations. See [Antidumping Duties: Countervailing Duties: Final Rule](#), 62 FR 27296, 27356 (May 19, 1997). Always consult with your PM if you are involved in an MNC allegation analysis.

## **VI. PREPARATION OF INITIATION PACKAGES**

### **A. Pre-Initiation Requirements**

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

1. Insert appropriate information into the Lotus Notes case tracking system.
2. Check with the PCAU, and, if necessary, the ITC analyst to determine that the petition was filed on the same date with both agencies.
3. Determine the names of your team members from the PCAU, CCIA, and, if appropriate, OA. Ensure that they all have a copy of the petition, and advise them of the date for the team discussion of petition problems.
4. Ensure that the Office of Communications receives a public version of the petition and any petition amendments in order to develop the "Fact Sheet."
5. Analyze the petition using the "Antidumping Investigations Initiation Checklist" found in section VII of this chapter. Also, do a like product analysis as described in part B of section IV of this chapter. See, e.g., the Industry Support Attachment to the Initiation Checklist: Certain Lined Paper Products from India, Indonesia, and the People's Republic of China (A-533-843, A-560-818 and A-570-901; October 2005).
6. If a draft petition was previously filed and reviewed by another analyst, determine whether problems identified at the draft stage have been corrected.
7. Meet with your team members to discuss problem areas in the petition.

8. Arrange a meeting for the team with your PM, and the PCAU, to review problem areas in the petition. Determine what issues need to be brought to the attention of the OD.
9. Set up a meeting with the OD to discuss significant problem areas.
10. Prepare a memo outlining the significant problem areas for the OD meeting. Have the memo approved by your PM, and submit it to the OD the day before the scheduled meeting.
11. After the OD meeting, advise the petitioner in writing of all deficiencies that need to be corrected. Set a due date for submission of supplemental information that will allow enough time for analysis and concurrence meetings with the OD and DAS.
12. Begin to prepare the initiation package as described below.
13. Give the initiation package to your team members and PCAU staff for comments and then to your PM once the team's comments are incorporated.
14. Incorporate your PM's comments and set up separate meetings with the OD and DAS. Sometimes the OD will combine his/her meeting with the DAS's meeting. Check with your supervisor to determine if this is appropriate.
15. Place the initiation package in the formal review chain (see Chapter 11 for review chain information).
16. If it is determined that the petition is not adequate and a dismissal is warranted, see section VIII of this chapter.

### **B. Contents of the Initiation Package**

1. The Federal Register Notice (FR) Always check the last several initiation notices that were published. The PCAU can provide you with examples. In general, the FR notice should contain the following information:
  - a. Identification of the petitioner.
  - b. A description of the basis for the calculation of the EPs and/or CEPs and NVs contained in the petition.
  - c. Any adjustments the Department makes to the submitted EPs and/or CEPs and NVs.
  - d. If sales below cost or critical circumstances are alleged, this should be stated.

- e. Range of estimated margins as presented or corrected.
- f. A statement on industry support for the petition.
- g. A detailed description of the scope of the merchandise under investigation, including the HTSUS numbers, and a statement regarding consultations with parties on the scope of the investigation.
- h. The due dates for ITC and Department preliminary determinations.

## 2. Other Documents

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

- a. The “Antidumping Investigations Initiation Checklist,” which should include both the industry support and injury attachments.
- b. A like product analysis memo, if necessary.
- c. A Customs e-mail message to announce the initiation.
- d. The ITC action request regarding the initiation of the investigation.
- e. Interested party letters announcing the initiation of the investigation.

## C. Post-Initiation Requirements

Post-initiation activities are as follows:

- 1. Take the original, signed FR notice and four copies to the CRU in Room B-099 with a cover letter addressed to the FR and a diskette containing the FR. The CRU will take care of publication of the document.
- 2. On the day after initiation, make phone calls to the petitioner or its counsel and counsel for potential respondents, if known. Send letters regarding the initiation to the ITC and the embassies of the foreign countries in question.
- 3. See Chapter 4, “Questionnaires,” for a description of the next activities you will have to undertake.

## VII. ANTIDUMPING INVESTIGATIONS INITIATION CHECKLIST

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

The PCAU can provide you with an Initiation Checklist from a recent initiation. The checklist is a standard format. No changes should be made to the format of this document without the approval of the PCAU, your PM, and your OD. A copy of the current check list follows:

### **ANTIDUMPING INVESTIGATIONS INITIATION CHECKLIST**

SUBJECT: (insert case name)

CASE NUMBER: (insert case number)

PETITIONER(S):

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

COUNSEL:

(insert name of law firm)

RESPONDENT(S):

(insert name(s))

SCOPE:

(insert the scope of the investigation)

IMPORT STATISTICS:

(insert the volume and value of imports for the most recently completed three calendar years)

CASE CALENDAR:

Petition Filed:  
 Initiation Deadline:  
 ITC Preliminary Determination:  
 ITA Preliminary Determination:  
 ITA Final Determination:  
 ITC Final Determination:  
 Order:

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

Yes

No

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

Yes

No - do not initiate

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

Was there opposition to the petition?

Yes

No

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

Yes

No

INJURY ALLEGATION:

We have received a copy of the action from the Director of the Office of Investigations, International Trade Commission. It indicates that the ITC has instituted an investigation to determine whether there is a reasonable indication that the (blank) industry in the United States is materially injured or threatened with material injury. (*See Attachment XX*).

(NOTE: You should attach a copy of the action request to the checklist as well)

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

- volume and value of imports (see page (insert #) of the petition)
- U.S. market share (i.e., the ratio of imports to consumption) (see page (insert #) of the petition)
- actual pricing (i.e., evidence of decreased pricing) (see page (insert #) of the petition)
- relative pricing (i.e., evidence of imports underselling U.S. products) (see page (insert #) of the petition)

**PETITION REQUIREMENTS:**

Does the petition contain the following:

- the name and address of the petitioner
- the names and addresses of all known domestic producers of the domestic like product
- the volume and value of the domestic like product produced by the petitioner and each domestic producer identified for the most recently completed 12-month period for which data is available

Was the entire domestic industry identified in the petition?

- Yes
- No

Does the petition also contain the following:

- a clear and detailed description of the merchandise to be investigated, including the appropriate HTSUS numbers.
- the name of each country in which the merchandise originates or from which the merchandise is exported.

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

- Yes
- No

- an adequate summary of the proprietary data was provided.

- a statement regarding release under administrative protective order.
- a certification of the facts contained in the petition by an official of the petitioning firm(s) and its legal representative (if applicable).
- import volume and value information for the most recent two-year period.

#### LESS-THAN-FAIR-VALUE ALLEGATION:

##### Export Price/Constructed Export Price

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

Does the petition contain the following:

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

##### Normal Value

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

Does the petition contain the following:

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

ESTIMATED MARGINS:

(insert the range of estimated dumping margins)

OTHER ISSUES:

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

RECOMMENDATION:

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

### **VIII. DISMISSALS**

If deficiencies in the petition cannot be corrected, the petitioner must be given an opportunity to withdraw the petition. If the petition is not withdrawn, a FR notice of dismissal is prepared instead of an initiation notice. See, e.g., [Dismissal of Antidumping and Countervailing Duty Petitions: Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela](#), 64 FR 44480 (Aug. 16, 1999). Such a notice must contain a detailed statement of the reasons for dismissing the petition. The preparation and review process is the same as that for an initiation.



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

## **IX. POST-INITIATION WITHDRAWAL**

If a petition is withdrawn after the initiation of an investigation, a public interest memorandum must be prepared indicating that the termination of the investigation is in the public interest. Additionally, the ITC must be consulted and all parties must be notified. A FR notice must be prepared and sent through the normal review channels. The notice should include the scope of the investigation, the reasons for the termination and instructions regarding the termination of the suspension of liquidation if the investigation has proceeded to that point. See 19 CFR 351.207.

After terminating an investigation, you should notify the interested parties and the embassy(ies). You should also prepare e-mail instructions to Customs regarding the termination of the proceeding and/or the termination of suspension of liquidation (where applicable).

Recent cases where we have terminated the investigation after initiation include [Termination of Antidumping Duty Investigation: Certain Carbon and Alloy Steel Wire Rod from Belgium](#), 59 FR 39324 (Aug. 2, 1994); and [Termination of Antidumping Duty Investigation: Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan](#), 59 FR 40865 (Aug. 10, 1994).