



Antidumping/Countervailing Duties: A Priority Trade Issue

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**Randy Rucker
Drinker Biddle & Reath
191 N. Wacker, Suite 3700
Chicago, Illinois 60606
(312) 569-1157
randy.rucker@dbr.com**

**Christy McMunn
Senior Manager, Customs Compliance
Whirlpool Corporation
Christy_McMunn@whirlpool.com**



Drinker Biddle

U.S. Antidumping/Countervailing Duty Law

- ∅ U.S. antidumping (ADD) and countervailing (CVD) duty law is designed as a trade remedy to help U.S. companies compete with foreign industry.
- ∅ Intended to “level the playing field.”
- ∅ Government has the right to impose antidumping and/or countervailing duties in order to provide relief to domestic industries injured by unfair import competition.



What Is Dumping?

- ∅ “Dumping” occurs when imported merchandise is sold at less than fair value and causes material injury, or threatens to cause material injury, to the domestic industry producing a comparable product.
 - ∅ Goods sold at a price that is below that producer’s sales price in its home market or lower than its cost of production).



What Triggers Countervailing Duties?

- ∅ Countervailing duties are imposed when foreign producers receive governmental subsidies, and when the importation of their subsidized goods causes material injury, or threatens to cause material injury, to the domestic industry producing a comparable product.
 - ∅ Financial assistance provided to foreign producer to benefit production, manufacture or exportation.



ADD/CVD Investigation Overview

- ∅ The U.S. can respond to these unfair trade practices by imposing additional duties to offset the amount by which the imported merchandise has been dumped or subsidized.
- ∅ U.S. industry may request the imposition of ADD or CVD by filing a petition with both the Department of Commerce ("Commerce") and the United States International Trade Commission ("ITC").
- ∅ Upon the filing of a petition, Commerce and the ITC will investigate foreign producers and exporters to determine whether dumping or subsidies have occurred and the extent of injury.



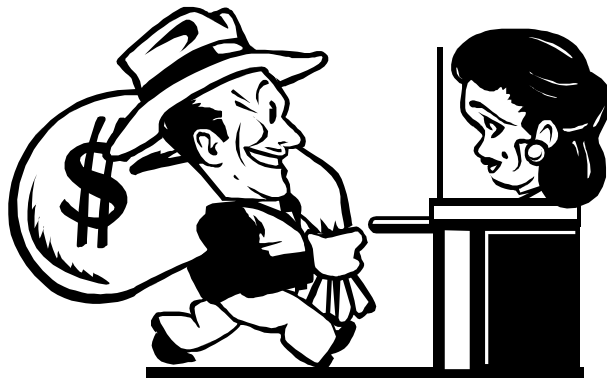
ADD/CVD Investigation Overview (cont).

- ∅ Two phase process:
 - Commerce reviews prices to determine dumping or subsidies
 - ITC determines whether there is material injury or a threat of material injury to the domestic industry.
- ∅ If both Commerce and the ITC make affirmative findings of dumping and injury, Commerce instructs Customs to assess ADD/CVD duties against importations of the subject merchandise.
- ∅ ADD/CVD duties are an offset of the amount by which the imported merchandise is dumped or subsidized.



Deposit Requirements

- ∅ After an ADD/CVD Order is issued, **IMPORTERS** must make cash deposits in the amount of *estimated* ADD/CVD liability on entries of the subject merchandise.
- ∅ Foreign producers/exporters are not liable for the payment of antidumping or countervailing duties.



Why Is ADD/CVD a PTI?

- ∅ Customs is responsible for enforcing ADD/CVD law and collecting revenue.
- ∅ This includes antidumping and countervailing duties.
- ∅ Customs faces a challenge because ADD/CVD are deposited at entry, but not finally calculated until year/s later.
- ∅ Customs bills may go unpaid due to inability or unwillingness to pay.



What Are Customs' Priorities With Respect to ADD/CVD?

1. Facilitate Legitimate Trade

- Ensure compliance with trade laws
- Timely transit of goods
- Focus will be on post-entry

2. Anti-circumvention

- Proper classification, valuation, origin
- Collect accurate revenue

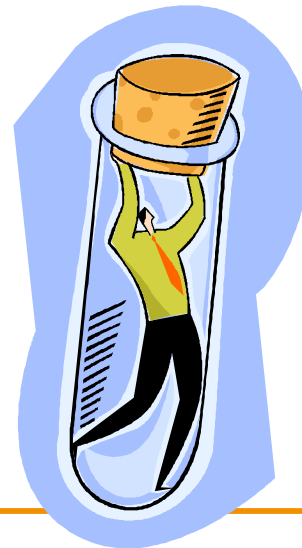
3. Liquidation

- Timely
- Accurate



Are My Products Subject to ADD/CVD?

- ∅ Check active ADD/CVD Orders.
 - Country
 - Product
- ∅ Covered products are defined in the scope language of the Orders.
- ∅ The scope of ADD/CVD Orders are intentionally drafted with broad language.
- ∅ HTSUS tariff classification numbers are provided for reference.
- ∅ Written language controls.



Scope Language Example

Ø Scope of Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Carbon Steel Flat Products from South Korea

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000.

Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") -- for example, products which have been bevelled or rounded at the edges. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these investigations are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Translate the Scope Language to a Manageable Test/Checklist

∅ Focus on specific characteristics of the products subject to the ADD/CVD Order:

- 1) carbon steel made in Korea;
- 2) flat rolled;
- 3) rectangular shape;
- 4) clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys; and
- 5) in coils (0.5 inch or greater in width) or in straight lengths:
 - < 4.75 millimeters thick with a width (of 0.5 inch or greater) that is at least 10 times the thickness; or
 - > 4.75 millimeters thick with a width exceeding 150 millimeters and measuring at least twice the thickness).

∅ Make a note of specific inclusions or exclusions, for example:

- Products that are plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating are EXCLUDED.



Scope Rulings

- ∅ If an importer is unsure whether a product is subject to an ADD/CVD Order they may file a scope ruling request with Commerce.
- ∅ Intended to answer the question whether a particular product was originally intended to be included within the scope of an ADD/CVD Order.
- ∅ Commerce may answer question simply on the basis of the information contained in the scope ruling request and the language of the ADD/CVD petition and determinations.
 - This review could take less than 2 months.
- ∅ Some cases may require further investigation and additional fact finding to review:
 - physical characteristics of the product,
 - the expectations of ultimate purchasers,
 - the ultimate use of the product,
 - the channels of trade in which the product is sold, and
 - the manner in which the product is advertised and displayed.
- ∅ This type of formal scope inquiry could take more than 6 months.



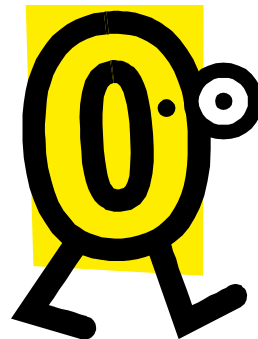
What is the ADD/CVD Rate?



- ∅ The cash deposit rate will be based on instructions in the ADD/CVD Order and will depend on who made or exported the goods.
- ∅ For example, the cash deposit instructions for the case of Corrosion-Resistant Steel from Korea provides for determination of the rate by one of the following methods:
 - 1) If the merchandise is exported by the manufacturer, the following rules apply:
 - a) If the manufacturer has its own rate, the cash deposit rate will be the manufacturer's rate; or
 - b) If the manufacturer does not have its own rate, deposit shall be made at the "all others" rate.
 - 2) If the merchandise is exported by a firm other than the manufacturer, the following rules apply:
 - a) If the exporter of the subject merchandise has its own rate, the cash deposit rate will be the exporter's rate;
 - b) If the exporter of the merchandise does not have its own rate, but the manufacturer has its own rate, the cash deposit rate will be the manufacturer's rate; or
 - c) Where neither the exporter nor the manufacturer currently has its own rate or the manufacturer is unknown, use the "all others" rate.
- ∅ Typically, the "all others" rate is significantly higher than the rates assigned to a specific manufacturer.

ADD/CVD Rates (cont.)

- ∅ Be careful not to confuse a 0% ADD/CVD rate with excluded goods.
- ∅ Goods with 0% ADD/CVD rate do not require deposit, but are still subject.
- ∅ If 0% ADD/CVD rate - Need to enter as Type 03 entry and report case number.
- ∅ If excluded - enter as Type 01 entry with no case number.



"Reseller" Rule for ADD Cases

- ∅ In the past, goods with an established manufacturer's rate automatically liquidated at that rate (when no administrative review was requested) or at the manufacturer's rate established through an administrative review.
- ∅ Commerce clarified automatic-liquidation regulation for entries where a reseller is involved in the chain of commerce.
- ∅ Products imported from a reseller may now be liquidated at the "all others" rate if an administrative review of the manufacturer is conducted, and:
 - No company-specific review of the reseller.
 - Goods not included by manufacturer when reporting its U.S. sales figures to Commerce.
- ∅ To avoid the potential negative effects of the "reseller" rule, the reseller or importer should establish that the subject goods are destined for the U.S. at the time of production.



Administrative Review in ADD/CVD Cases

- ∅ Final AD duty liability on entries of subject merchandise is calculated in a proceeding known as an administrative review.
- ∅ Domestic producers, foreign producers, or importers can request an administrative review in an AD case.
 - Domestic producers – review of all foreign producers and/or importers.
 - Foreign producers - own sales, entries, or exports.
 - Importers - own sales, entries, or exports.
- ∅ If no request received, Commerce will order Customs to liquidate that party's entries at the entered rate and deposit rate remains the same.
- ∅ Final rates may go up or down as result of administrative review.
- ∅ Rates calculated in an administrative review will serve as the new cash deposit rates for future entries.



Deemed Liquidation

- ∅ The liquidation of antidumping entries is suspended until final instructions are received from Commerce.
 - If an administrative review is conducted liquidation is suspended during review.
- ∅ Publication of the final results in the Federal Register triggers the lifting of suspension of liquidation for such entries.
 - Commerce will issue liquidation instructions to Customs based on the Federal Register Notice.
- ∅ Pursuant to 19 U.S.C. § 1504(d), Customs must liquidate antidumping entries within six months of the withdrawal of suspension or the entries are “deemed liquidated” at the entered antidumping duty rate.



Reimbursement Certificates

- ∅ Foreign producer/supplier cannot reimburse an importer for ADD/CVD paid on imported goods.
- ∅ Importer must provide certification that it has not been reimbursed for ADD.
 - Currently no requirement to provide CVD Reimbursement statement.
- ∅ Certification must contain certain information and be provided prior to liquidation.
- ∅ Penalty for failure to comply is double ADD duties.
- ∅ No more “courtesy” notice from Customs that certificate is not on file or is insufficient.
- ∅ Reimbursement certificates may be supplied on an individual or blanket basis.
 - Language for individual certificate is contained in the Customs Regulations at 19 CFR § 351.402(f)(2). Sample blanket certificate is on Customs’ website at www.cbp.gov.



Circumvention of ADD/CVD

- ∅ Trade practice to avoid imposition of ADD/CVD.
- ∅ May be accomplished by:
 - Altering imported product.
 - Moving production to another country.



U.S. Anti-Circumvention Law

Four scenarios under 19 U.S.C. § 1677j.

- ∅ Merchandise that is same class or kind as merchandise currently subject to ADD/CVD that is:
 1. Completed or assembled in United States; or
 2. Completed or assembled in other foreign countries.
 - Components from country that is subject to ADD/CVD.
 - Assembly operation is “minor or insignificant”.
 - Value of assembled components is significant portion of total value of good.



Anti-Circumvention (cont.)

3. Minor alteration.

- ∅ Applies to subject merchandise that is altered in “minor respects”.
- ∅ Tariff classification change is irrelevant.

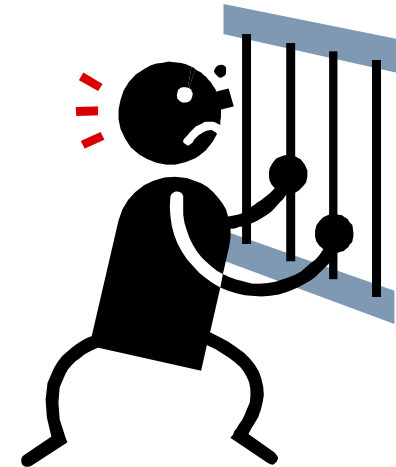
4. Later-developed merchandise.

- ∅ “New” merchandise that has same/similar physical characteristics, purchaser expectations, use, channels of trade, and advertising as the subject merchandise



What if We Discover Failure to Pay ADD or CVD on Subject Goods?

- ∅ What was reason?
 - Misclassification.
 - Origin issue.
- ∅ How long?
 - Post-entry amendment.
 - Prior Disclosure.
- ∅ How much?
 - Applicable rates.
 - Any potential duty overpayment (if misclassified).
- ∅ Are we sure that goods are subject to order?
 - Scope ruling.
- ∅ Future plans
 - Sourcing.
 - Rate concerns.



ADD/CVD Tips



Investigation Stage

- ∅ Make sure suppliers participate.
- ∅ If not a mandatory respondent, may need to file Separate Rate Application (NME).
- ∅ Consider joint representation with suppliers.
- ∅ Respond to questionnaires from ITC (lost sales, importer).
- ∅ Consider submitting comments on scope of investigation to Commerce.

ADD/CVD Tips



Post-Order Stage

- ∅ Prepare and file reimbursement certificates prior to liquidation.
- ∅ Watch for application of reseller rule.
- ∅ Consider administrative review to establish own rate when purchasing from reseller.
- ∅ Seek scope ruling if unclear whether product is covered by ADD/CVD Order.
- ∅ Assert “deemed liquidation” for entries not timely liquidated.



Every home...Everywhere

Priority Trade Issue 5: Antidumping / Countervailing Duties

- **Importer's Perspective**
- Handling and Managing AD/CVD Entries
- Establishing AD/CVD Procedures





PTI 5: Handling and Managing AD/CVD Entries

How do I know if my product is subject to antidumping or countervailing duties?

- Get as far upstream in the sourcing decision as possible
 - Review during landed cost analysis
- All orders, deposit rates and final rates are published in the Federal Register
- Order specific to the commodity, country of origin and manufacturer / shipper





PTI 5: Handling and Managing AD/CVD Entries

- ITC website provides list of active investigations, open orders and other information

- United States International Trade Commission

- www.usitc.gov

The screenshot shows the homepage of the United States International Trade Commission (USITC). The header features the USITC logo and the text "UNITED STATES INTERNATIONAL TRADE COMMISSION". Below the header is a navigation bar with a search box, a "Home" link, and a "Site Map" link. The main content area is divided into several sections:

- Trade Remedy Investigations:** This section is circled in red and lists "Antidumping and countervailing duty investigations", "Intellectual property infringement and other unfair acts (section 337 investigations)", and "Global and special safeguards".
- Industry and Economic Analysis:** Lists "Ongoing Investigations" and "Research & Analysis".
- Other Statutory Determinations**
- Tariff Information Center:** Lists "Official Harmonized Tariff Schedule" and "Other Related Information".
- News Releases**
- Notices**
- Archive**
- Publications**
- Employment Center**
- Help/Contact Us**

The right side of the page features a "TODAY'S ACTIVITIES" section for Wednesday, November 05, 2008, stating that the Commission has no meetings, hearings, or votes scheduled today. Below this is a "RECENT RELEASES" section with three items:

- Commission Vote:** Adequacy Determination -- Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine [11/04/2008]
- News Release:** ITC to Monitor Chinese Textile and Apparel Imports [10/31/2008]
- Commission Vote:** Certain Lightweight Thermal Paper from China and Germany [10/30/2008]

At the bottom of the page, there is a "Subscribe To Free E-mail Updates" button, a "News Releases" button, a "Notices" button, an "Archive" button, and a "Service Lists" button. The footer contains contact information for the USITC, including the address (500 E Street, SW, Washington, DC 20436), telephone number (202-205-2000), and links to "Privacy, Accessibility, Freedom of Information, and other Website Policies and Important Links". The USA.gov logo is also present in the bottom right corner.



PTI 5: Handling and Managing AD/CVD Entries



UNITED STATES INTERNATIONAL TRADE COMMISSION

Search:

Trade Remedies | **Industry & Economic Analysis** | **Tariff Information Center**

> Antidumping & Countervailing Duties | > Intellectual Property | > Global and special safeguards

TRADE REMEDY INVESTIGATIONS

Antidumping and Countervailing Duty Orders

Below are links to lists of AD and CVD orders currently in place, sorted by country, date of order, general product group, and the case grouping that will tentatively be used for conducting five-year (sunset) reviews.

AD/CVD Orders in place :

- By Country [PDF]
- By Date of Order [PDF]
- By Product Group [PDF]
- By Five-Year Sunset Review Sequence Group [PDF]

Information above in spreadsheet format [XL] , including revocations since January 1, 2006

INVESTIGATIONS

- Active Investigations
- Completed Investigations
- Sunset Review Database
- Antidumping and Countervailing Duty Orders
- Byrd Amendment **AD and CV duty orders**
- Calendar for Conferences and Hearings
- Recent Petitions
- Opinions and Reports
- Questionnaires

RELATED

- EDIS and Electronic Docket
- Antidumping and Countervailing Duty Handbook
- Historical Case Statistics
- Law: 19 U.S.C. 1671-1677
- ITC Rules of Practice and Procedure
- Statutory Timetables
- Import Administration at Commerce

Trade Remedy Investigations

- Antidumping and countervailing duty investigations
- Intellectual property infringement and other unfair acts (section 337 investigations)
- Global and special safeguards

Industry and Economic Analysis

- Ongoing Investigations
- Research & Analysis

Other Statutory Determinations

Tariff Information Center

- Official Harmonized Tariff Schedule
- Other Related Information

News Releases

Notices

Archive

Publications

Employment Center

Help/Contact Us





PTI 5: Handling and Managing AD/CVD Entries

- ITA website provides dumping-related materials, including some scope rulings, relevant Federal Register notices, and antidumping case summaries
- International Trade Administration
- www.trade.gov/ia





PTI 5: Handling and Managing AD/CVD Entries

- If you determine the product is subject to antidumping or countervailing duties:
 - Ensure non-reimbursement statements are on file at each port of entry
 - Signed by an officer of the company
 - Updated for each review period
 - Notify your broker
 - Flag subject parts in parts database
 - Include case number
 - Scan copies of non-reimbursement letter
 - Provide detailed instructions – the Importer is ultimately responsible for accurately flagging / reporting
 - Monitor liquidation
 - Liquidation of entries subject to ADD/CVD is suspended until final rates for the period are determined
 - Review and assess the need for participation in the annual administrative review of relevant ADD / CVD cases





PTI 5: Handling and Managing AD/CVD Entries

- If you are unsure if the product is subject to antidumping or countervailing duties:
- Have a designated process in place to resolve uncertainty
- Contact one or all of the licensed Customs brokers on staff, including the Customs Compliance Manager
- Contact the internal Government Affairs personnel who specialize in international trade
- Consult external and/or internal legal counsel / expert consultants
- File a request for scope determination with the Department of Commerce if appropriate





PTI 5: Establishing AD/CVD Procedures

- Best Practices for internal controls:
- In writing
- Have management oversight
- Communication between various functional groups
- Include procedure for post entry review
- Process to request assistance from CBP, ITC or Dept of Commerce when needed
- Instructions clearly communicated to brokers





PTI 5: Establishing AD/CVD Procedures

- Example areas to be covered in an AD/CVD procedure
- Scope
 - Background
- Organizational Responsibility
 - Department / Management / Staff
- Processes
 - Determining and assigning case numbers
 - Internal Audits
 - Add / CVD Uncertainty
 - Record Keeping Requirements
 - Broker responsibility / Communication
- References
- Attachments
- Management Approval





Priority Trade Issue 5 : Antidumping / Countervailing Duties

- Helpful Websites

- International Trade Commission homepage
 - www.usitc.gov
- Summary information of pending ADD/CVD cases posted to USITC website
 - http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/active/index.htm
- International Trade Administration homepage
 - www.trade.gov/ia
- Federal Register GPO Access
 - www.gpoaccess.gov/fr
- Customs & Border Protection homepage – several related links under Trade
 - www.cbp.gov
- Antidumping & Countervailing Duty Online Search System (similar to CROSS)
 - <http://addcvd.cbp.gov>
- Customs Focused Assessment Program – Pre Assessment Survey
 - http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/audits/focused_assessment/fap_documents/exh5j.ctt/exh5j.pdf





Any Questions

