A Primer for Importers & Brokers

Overview of U.S. Antidumping & Countervailing Duty Laws & Regulations

GEORGE R. TUTTLE, III
TUTTLE LAW
PHONE (415) 986-8780
FAX (415) 986-0908
EMAIL: GEO@TUTTLELAW.COM
WEB: WWW.TUTTLELAW.COM

CINDY DELEON
SENIOR TRADE AUDITOR
DELEON TRADE LLC
MOBILE (708) 533-5224
OFFICE (281) 466-2026
WWW.DELEONTRADE.COM
CINDY@DELEONTRADE.COM
About your Speakers

CINDY DELEON

Before forming Deleon Trade, Cindy served for 12 years as a Senior Auditor and Assistant Field Director of U.S. Customs and Border Protection’s Regulatory Audit Division in Chicago.

While working at U.S. Customs she conducted and supervised multiple focused assessment audits, quick response audits, fraud investigations, free trade agreement reviews, drawback audits, NAFTA audits, and prior disclosure reviews of Fortune 500 and midsize companies.

In addition, she designed and led the mentoring and recruiting programs for the Chicago field office and conducted advanced training sessions on technical audit issues and special trade program audits.

Additional information about Ms. Deleon and Deleon Trade is located at http://www.deleon-trade.com/

GEORGE TUTTLE

George Tuttle is an attorney with the San Francisco Bay Area law firm of George R Tuttle Law Offices.

He has been in practice for over 30 years. His practice emphasis is on Customs, international trade regulation, and export compliance and related matters.

He assists companies with compliance audits and to develop effective compliance programs; determine correct customs duties, values, product classifications, and duty preference eligibility; obtain rulings, file protests; and resolve penalty, seizure and enforcement cases. He also litigate trade cases before the United States Court of International Trade and the CAFC.

Mr. Tuttle has written and contributed to several articles and books published by the American Bar Association’s International Law Section, including Chapter 9 of the recently revised “Customs Law Handbook” pertaining to Customs Audits.

Additional information about Mr. Tuttle and the firm can be found at www.tuttlelaw.com.
Why is AD CVD important?
TUTTLE LAW OFFICES

U.S. Customs and Border Protection

AD/CVD Trade Outreach

AD/CVD Update
- July 2015
- June 2015
- April 2015
- February 2015
- January 2015
- December 2014

Commodity Specific Outreach
- Information on AD/CVD orders on Aluminum Extrusions
- NTS Presentation for Aluminum Extrusions Webinar
- Department of Commerce Scope Rulings on Aluminum Extrusions From China

AD/CVD Enforcement Results
- Father and Son Sentenced For Defrauding The United States (09/08/15)
- Two Individuals Agree to Pay $436,600 to Settle False Claims Act Suit Alleging Evaded Customs Duties (09/04/15)
- Three Importers to Pay Over $3 Million to Settle False Claims Act Suit Alleging Evaded Customs Duties (02/12/15)
- Houston HS sells 650 units of illegally imported honey (01/13/15)
- Father and Son Plead Guilty to Chinese Magnesium Scheme (01/12/15)
- Former officer of Cranberry, N.J., furniture importer admits false statements to Customs authorities (09/09/14)
- 8 Defendants plead guilty to smuggling aluminum extrusions (08/22/14)
- Texas honey broker sentenced in Illinois to 3 years in prison for evading nearly $36 million in tariffs on Chinese-origin honey (11/13/13)

December 2014

AD/CVD UPDATE

Selected Fiscal Year 2014 Highlights
- CBP collected $508.5 million in AD/CVD cash deposits, a 12 percent increase from FY 2013.
- CBP conducted 78 audits of importers of AD/CVD commodities identifying AD/CVD discrepancies with a value of $14.5 million, and plus $10.1 million in disclosures, penalties and interest; CBP collected $8.5 million. Commodities involved in the audits include aluminum extrusions, bearings, candles, nails, lock washers, pencils, plastic bags, ribbons, shrimp, solar cells, steel pipe, tires, tissue paper, uncovered innerspring mattress units, wooden bedroom furniture, and wood flooring.

TUTTLE LAW OFFICES
Understanding AD & CVD

Key take-a-ways from CBP “2014 AD/CVD update”

- $508.5 million in ADD/CVD deposits collected in 2014-- a 12 percent increase from the previous year.
- Increase resulted primarily from audits of importers of ADD/CVD commodities and CBP’s enhanced targeting program.
- In 2014, CBP conducted 78 audits of importers of AD/CVD commodities
  - identified ADD/CVD discrepancies with a value of $14.5 million, plus $10.1 million in disclosures, penalties and interest.
  - Commodities involved in the audits include aluminum extrusions, bearings, candles, nails, lock washers, pencils, plastic bags, ribbons, shrimp, solar cells, steel pipe, tires, tissue paper, uncovered innerspring mattress units, wooden bedroom furniture, and wood flooring.
Importance Of Understanding AD & CVD

U.S. Customs and Border Protection

AD/CVD

FY 2015 First Quarter – AD/CVD Audits

Number of Audits Completed ........ 14
Discrepancy Value Identified.........$21,968,843
Revenue Collected To Date ..........$177,517

AD/CVD Enforcement: 19 U.S.C. § 1592 Penalties

In Fiscal Year 2015, CBP issued 11 penalties under 19 USC 1592 for Antidumping and Countervailing Duty (AD/CVD) violations for $3,221,913. The following commodities were affected: Bedroom furniture; electro hydraulic units; citric acid and sodium citrate (2 cases); seamless carbon and alloy Steel; mattress spring coils; aluminum profiles; tires (2 cases); and, carbon corrosion resistant steel.
Resources

Reference Material
- Introduction to Trade Remedies
- Glossary of AD/CVD Terms
- Antidumping Procedures Manual
- Laws and Regulations
- Policy Bulletins
- Trade Agreements
- Foreign Trade Remedy Activity
- Success Stories
- Program Videos
- Links to External Trade Sites
- Index of Public Comments

AD/CVD Case Information
- ACCESS (case files)
- User Login
- Federal Register Notices
- Remand Redeterminations
- Section 129 Decisions (URAA)
- Products currently subject to AD/CVD Orders
- Administrative Protective Orders
- Document Filing Instructions

Contact Information
- Enforcement and Compliance
  (202) 482-9063
  ECCommunications@trade.gov

http://trade.gov/enforcement
Antidumping Manual

http://enforcement.trade.gov/admanual/

Chapter 12: Critical Circumstances
Chapter 13: Preliminary and Final Determinations
Chapter 14: Postponements of Determinations
Chapter 15: Verifications
Chapter 16: Hearings and Briefs
Chapter 17: Terminations and Suspensions of Investigations
Chapter 18: International Trade Commission (ITC) Injury Determinations
Chapter 19: Suspension of Liquidation and Antidumping Orders
Chapter 20: EC-CSP Communications
Chapter 21: Administrative Reviews and Other Activities
Chapter 22: Differences Between Conducting Investigations and Administrative Reviews
Chapter 23: Changed Circumstances Reviews
Chapter 24: New Shipper Reviews
Chapter 25: Section 751(c) Five-Year (“Sunset”) Reviews
Chapter 26: Scope Determinations and Circumvention
Chapter 27: Revocations
Chapter 28: Litigation
Chapter 29: International Agreements
Glossary of Terms
Antidumping and Countervailing Duty Investigations

The USITC and the U.S. Department of Commerce (Commerce) are responsible for determining whether the U.S. industry is materially injured or threatened with material injury by reason of the imports under investigation. If both Commerce and the USITC reach affirmative findings on their individual questions, then Commerce will issue an antidumping duty order to offset the dumping or a countervailing duty order to offset the subsidy.

AD/Countervailing Duty (Sunset) Reviews

The Department of Commerce must revoke an antidumping or countervailing duty order, or terminate a suspension agreement, after five years unless Commerce and the USITC determine that doing so would be likely to lead to continuation or recurrence of dumping or subsidies (Commerce) and/or material injury (USITC) within a reasonably foreseeable time.

Each agency conducts reviews on its separate question. If either agency makes a negative determination, the antidumping or countervailing duty order will be revoked. If both agencies make affirmative determinations, the antidumping or countervailing duty order will remain in place.

Global and Special Safeguard Investigations

The USITC is responsible for conducting global safeguard (escape clause) and market disruption investigations under the Trade Act of 1974. Under the U.S. global safeguard law (section 201 of the Trade Act of 1974), if the USITC determines that an article is being imported into the United States in such increased quantities as to be a
PART I: The petition process

Overview
Preparation of a petition
Introduction
General information
Description of imported and domestic like products, exporters, and importers
Subsidy information and/or LTFV price information
Critical circumstances information
Injury information
Conclusion

PART II: The investigation process

Chronology of events
Filing of the petition and initiation of an investigation
Preliminary phase of the Commission’s investigation
Institution of the investigation and scheduling of the preliminary phase
Questionnaires
Staff conference and briefs
Staff report and memoranda
Briefing and vote
Determination and views of the Commission
Preliminary phase of Commerce’s investigation
Final phase of Commerce’s investigation
Final phase of the Commission’s investigation
Scheduling of the final phase
Questionnaires
Prehearing staff report
Hearing and briefs
Final staff report and memoranda
Closing of the record and final comments by parties
Briefing and vote
Determination and views of the Commission
Business proprietary information
The administrative protective order process
Overview

- Antidumping and countervailing duty provisions are a part of U.S. laws intended to combat “unfair trade practices” that injure or harm U.S. industry and its workers.

- Antidumping duties make up for the difference in price of imports that are sold in the United States and the price they are sold for in producer’s home country (the “normal value”*) ("dumped") (Sold at “Less Than Fair Value”)

- Countervailing duties offset the benefit gained by foreign exporters from subsidies provided by a foreign government on export merchandise that is sold in the United States

* “normal value” prices may be prices in the producer’s home country, other third country markets, constructed value, or in cases involving nonmarket economy countries, factors of production.
What is Dumping?

- Dumping occurs when a **foreign exporter/producer**:
  - sells a product to the United States ("export price" (EP) or "constructed export price" (CEP))
  - at a price that is **below the “normal value”** in the country of origin ("home market"), a 3rd country or at a price that is **lower than the cost of production**.
  - And **domestic industry of a like product** is suffering **“material injury” or threatened with material injury** as a result of imports of the dumped products
  - **“normal value (NV)”** is the price at which the foreign like product **is first sold** for consumption in the exporting country (EC).

- Difference between the home market price (or cost) and the export price to the U.S. is the **“dumping margin.”**
Sample Ad Valorem Margin Calculation

- Normal Value: $16.00
- U.S. Price: $12.00
- Difference Attributable to Dumping: $4.00

**Ad Valorem Dumping Margin** = $4.00 / $12.00 = 33.3%
Questionnaires sent to foreign producers enable Commerce to collect information from foreign producers and their affiliated importers. Request information on:

- the company's structure and business practices,
- quantity and value of sales of merchandise in the United States and in the market being used for comparison purposes.
- Under certain conditions, the company’s production costs.
Where Cases come from . . .

AD/CVD Orders In Place – as of July 13, 2015

CBP enforces over 320 AD/CVD Orders on approximately 130 commodities from 41 countries.

AD/CVD Orders by Country (top ten):

<table>
<thead>
<tr>
<th>Country</th>
<th>AD</th>
<th>CVD</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>100</td>
<td>31</td>
<td>131</td>
</tr>
<tr>
<td>India</td>
<td>15</td>
<td>8</td>
<td>23</td>
</tr>
<tr>
<td>Taiwan</td>
<td>20</td>
<td>1</td>
<td>21</td>
</tr>
<tr>
<td>Korea</td>
<td>14</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>Japan</td>
<td>15</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Indonesia</td>
<td>8</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>Mexico</td>
<td>10</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Vietnam</td>
<td>8</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Brazil</td>
<td>7</td>
<td>2</td>
<td>9</td>
</tr>
</tbody>
</table>

Source: United States International Trade Commission
# Treatment of NME Countries (i.e., China)

- **Separate Rate Applications (Section A rate)**
  - Exporters in NMEs can be accorded company-specific margins if they can provide sufficient proof of absence of government control with respect to export activities.
  - In NME cases exporters must pass a **separate rate test** to receive a rate that is separate from the NME-wide rate.
  - Separate rates in NME cases apply only to exporters.
  - Countries currently designated as NMEs are China and Vietnam, as well as nine former Soviet states: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan (2014, Cato Institute).
Treatment of NME Countries

- Four part test to evaluate whether a respondent is subject to governmental control of its export functions:
  - (1) whether the export prices are set by, or subject to the approval of, a governmental authority;
  - (2) whether the respondent has authority to negotiate and sign contracts and other agreements;
  - (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and
  - (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses
the activities referenced in the license, we noted no restrictive stipulations associated with the license. In addition, in previous cases, the Department has analyzed the “Company Law of the People’s Republic of China” and found that it establishes an absence de jure control. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People’s Republic of China, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence de jure control for these companies.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent reports to or complies with an appropriate government entity; and (4) whether the respondent is under the direct or indirect control of a government entity.” See Bicyclic Technologies, Inc., 73 FR 6942, 6949 (February 11, 2008). Although the Department has not found any known PRC exporters located in NME countries to be de facto controlled, we do not have all the facts present in the case.

Margins for Cooperative Exporters Not Selected

To those exporters: (1) who submitted a timely response to section A of the Department’s questionnaire, but were not selected as mandatory respondents, and (2) for whom the section A response indicates that the exporter is eligible for a separate rate, we assigned a weighted-average of the rates of the fully analyzed companies, excluding any rates that were zero, de minimis, or based entirely on facts available. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People’s Republic of China, 67 FR 36570, 36571 (May 24, 2002) (Welded Steel Pipe). Companies receiving this rate are identified by name in the “Suspension of Liquidation” section of this notice.

The PRC-Wide Rate

In all NME cases, the Department issues a PRC-wide rate applicable to all exporters located in NME countries. The PRC-wide rate is equal to the highest weighted-average rate of the fully analyzed companies, excluding any rates that were zero, de minimis, or based entirely on facts available. In applying facts otherwise available in the record, the Department shall use, sections 782(d) and (e) of otherwise available in respect of applicable determination.

The failure of these exporters significantly impedes this Thus, pursuant to section of Act, in reaching our preli determination, we have to use a wide rate on total facts available.

In applying facts otherwise available in the record of the Department finds that the interested party “has failed by not acting to the best of its knowledge and ability to comply with a request for the Department may use those facts that is adverse to the interested party as facts otherwise available in the record. Adverse inferences may be drawn if the Department cannot reasonably determine the export price, normal value or other facts necessary to make an affirmative finding.

<table>
<thead>
<tr>
<th>Manufacturer/exporter</th>
<th>Border Protection (GBP) to suspend</th>
<th>Weighted-Average Margin (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Since Hardware (Guangzhou) Co., Ltd.</td>
<td>7.68</td>
<td></td>
</tr>
<tr>
<td>Shunde Yongjian Housewares Co., Ltd.</td>
<td>153.76</td>
<td></td>
</tr>
<tr>
<td>Forever Holdings Ltd.</td>
<td>69.59</td>
<td></td>
</tr>
<tr>
<td>Harvest International Housewares Ltd.</td>
<td>69.59</td>
<td></td>
</tr>
<tr>
<td>Gaoming Lhe Daily Necessities Co., Ltd.</td>
<td>69.59</td>
<td></td>
</tr>
<tr>
<td>PRC-Wide Rate.</td>
<td>153.76</td>
<td></td>
</tr>
</tbody>
</table>

The PRC-wide rate applies to all NME countries. Rebuttal briefs, the content of which is to include address, and telephone number; (2) the
What is a Subsidy?

- Foreign governments **subsidize** industries when they provide:
  - financial assistance to benefit the production, manufacture or exportation of goods.

- Subsidies can take many forms, such as:
  - direct cash payments, credits against taxes, and
  - loans at terms that do not reflect market conditions

- In most cases, the domestic industry is suffering **material injury** as a result of imports of the subsidized products.

- The amount of subsidies the foreign producer receives from the government is the basis for the **subsidy rate** by which the subsidy is offset, or "countervailed," through higher import duties.
The Investigation Process

- The USITC and Commerce both have roles in investigations

- Each agency addresses a different question:
  - Commerce determines whether the alleged dumping or subsidizing is happening, and if so, the margin of dumping or amount of subsidy.
  - USITC determines whether the U.S. industry is materially injured or threatened with material injury by reason of the imports under investigation.
  - If both reach affirmative final determinations on their individual questions
  - Commerce issues an antidumping duty order to offset the dumping or a countervailing duty order to offset the subsidy.

- CBP implements the order to assess and collect antidumping and countervailing duties on subject merchandise.
General Timeline For Investigations

General Information: Timing of Events in Antidumping Investigations

1. Petition
2. Initiation
3. ITC Preliminary Injury Determination
   - 20 Days from Petition*
4. DOC Preliminary Dumping or Subsidy Determination
   - 45 Days from Petition
5. DOC Final Dumping or Subsidy Determination
   - 140 Days from Initiation*
6. ITC Final Injury Determination
   - 75 Days from DOC Prelim*
7. Final Action
   - 45 Days from DOC Final

*T indicates milestones in the timeline.
General Timeline For Investigations

General Information:
Timing of Events in Countervailing Duty Investigations

1. Petition
   - 20 Days from Petition*
2. Initiation
3. ITC Preliminary Injury Determination
   - 45 Days from Petition
4. DOC Preliminary Dumping or Subsidy Determination
   - 65 Days from Initiation*
5. DOC Final Dumping or Subsidy Determination
6. ITC Final Injury Determination
   - 45 Days from DOC Final

*Denotes the date from which the timeline begins.
Assessment of AD/CV Duties

- **Suspension of Liquidation**
  - Once an investigation is commenced and an affirmative preliminary determination by Commerce is made, CBP is instructed to withhold liquidation on entries of the subject merchandise and to collect AD/CVD duties (cash deposits).
  - If the entry in question is a **Type 03 entry** and subject to AD/CVD duties, then suspension of liquidation occurs.
  - **Suspension of liquidation** remains in effect until the underlying AD/CVD issue is resolved and affirmative final determination is issued.
  - Commerce then issues instructions to CBP to lift the suspension and liquidate the entries.
  - **Suspension of liquidation** can remain in effect while case is under judicial review.
Assessment of AD/CV Duties

- Posting of Cash Deposits for AD/CVD duties
  - CBP collects the cash deposit at the time of entry summary filing
  - Cash deposit rate remains in effect pending a Final Affirmative Determination by Commerce
    - Watch for “gap period” between preliminary and final determinations!
  - In the Final Affirmative Determination by Commerce the AD/CVD rate can change.
  - Following the Final Affirmative Determination by ITC, Commerce issues instructions to CBP to liquidate the suspended entries at the final designated rates

- Critical Circumstances
  - Retroactive suspension of liquidation and assessment of cash deposits
  - 90 days prior to date of preliminary affirmative determination
  - Separate allegation is required. May occur any time up to 20 days before final determination
Assessment of AD/CV Duties

- Posting of Cash Deposits for AD/CVD duties (Investigation phase)
  - If final rate is higher than the preliminary deposit rate, CBP is to disregard the difference (prelim period only)
  - If final rate is lower than preliminary deposit rate, CBP will liquidate with duty refund.
  - If Final Determination by Commerce is negative, CBP will liquidate with refund of deposit.
  - Subsequent legal challenge will suspend final action pending court decision and any appeals (may take years to resolve)

- Final Orders – Lifting of Suspension of Liquidation
  - CBP has 180 days from date of order to liquidate a suspended entry (refund or increase) based on instructions from Commerce
  - After 180 days entry will be “deemed liquidated” as entered if no action taken.
  - Importer has 180 days to file protest following deemed liquidated date if entry is not liquidated with refund
Administrative (Annual) Reviews

- Subsequent assessment of AD/CVD duties
  - Each AD/CVD order covers a specific period of time (generally one year)
  - During the Anniversary month of the final affirmative order, interested parties (importers, exporters, foreign manufacturers and domestic parties) may request a review of the deposit rates.
    - If a review is requested, Commerce will conduct a review of the rates and issue a new rate for the foreign manufacturer/ exporter, which will then apply to imports for the POR
    - New rate will be the deposit rate for the next period.
    - If no annual review is requested, deposit rate will remain the same and the entries are liquidated.
  - Requests for administrative reviews must be received by the last day of the anniversary month of the publication of the respective AD or CVD order
Administrative Reviews

- If not practicable to examine all known exporters/producers, review will be limited to a reasonable number, based on either
  - A sample of exporters, producers, or types of products that are statistically valid or
  - Exporters and producers accounting for the largest volume

- When the number of exporters or producers to be reviewed is limited, Commerce may accept voluntary respondents.

- Voluntary respondents are those exporters or producers that participate in a review although they were not selected as mandatory respondents.

- May calculate an individual weighted-average dumping margin for any exporter or producer not initially selected for a review who submits the information requested from exporters or producers.
“Changed Circumstances” Reviews

- In addition to an administrative review (AR), interested parties may request a changed circumstances review.

- A changed circumstances review addresses questions about the applicability of the order.
  - For example, “no interest revocations,” where partial or total revocation of the order is warranted because domestic parties are no longer interested in covering certain products.

- Changed circumstances reviews may also address the applicability of cash deposit and assessment rates after there have been changes in the structure of a respondent, such as a merger or spinoff ("successor-in-interest," or "successorship," determinations).

- Most common changed circumstances sufficient to warrant a review are the “no interest” revocations and company restructurings.
New Shipper Reviews

- Act provides for new shipper reviews upon request from exporters or producers if:
  - (1) they did not export subject merchandise to the United States during the POI; and
  - (2) they are not affiliated with any company that exported merchandise to the United States during the POI.

- A company that meets requirements gets the benefits of:
  - (1) an accelerated review schedule;
  - (2) an individual dumping margin or countervailing duty rate at the completion of the review; and
  - (3) when applicable, posting of a bond or security, at the option of the importer, in lieu of a cash deposit on imports while the review is being conducted.

- As with regular administrative reviews, the results of new shipper reviews serve as the basis for assessment for merchandise entered during the review period and for prospective cash deposits.

### ADD/CVD orders are issued for specific commodities by manufacturer and country of origin. A list of open orders can be obtained from the ITC web site at www.usitc.gov.

#### 2.1 EXAMPLES OF RED FLAGS

The following examples are conditions that may indicate a potential problem in ADD/CVD.

- Company has insufficiently documented, poorly defined, or no internal controls for accurately declaring ADD/CVD. **Examples:**
  - Company does not monitor or interact with the broker on ADD/CVD issues.
  - Company relies on one employee to handle ADD/CVD issues, and there are poor or no management checks or balances over this employee.
  - Company’s Customs staff lacks knowledge of ADD/CVD issues.
  - Company offers unreasonable explanations to Customs.
ANTIDUMPING/COUNTERVAILING DUTIES – Internal Controls

- Tariff Classification & ADD/CVD Procedures
- New Product ADD/CVD Determination Procedures
- Broker Management Controls
- ADD/CVD Post Entry Audit Controls
ADD/CVD: Importance of Classification

HTS accuracy is critical in managing ADD/CVD compliance. Imports of the subject merchandise are provided for under the following HTS numbers.
ADD/CVD Broker Management Controls (Example)

Brokers should be required to enter merchandise in accordance with a HTS and ADD/CVD Database provided by the Importer.

Brokers should be required to inform Importer of any ABI or ACE alerts with respect to ADD/CVD so that the Importer can determine if the product is subject to ADD/CVD orders.

If ADD/CVD is applicable, the broker will enter the importation under the appropriate ADD/CVD case numbers on entry.
If ADD/CVD is not applicable, the broker will proceed to file the entry without applying ADD/CVD.
ANTIDUMPING/COUNTERVAILING DUTIES – POST ENTRY AUDITS & RISK ASSESSMENT

Verify whether the goods are subject and that the ADD/CVD case numbers reported match the case numbers recorded in the company’s database.

Verify that the correct ADD/CVD case numbers are assigned based on the producer identified in the entry package.

Ensure the correct ADD/CVD deposit rates were identified on the entry.

Verify that there is a valid non-reimbursement statement on file for ADD/CVD for that port/vendor/case combination (per 19 CFR § 351.402(f)(2)).
ADD/CVD Standard Operating Procedure (Example)

TRADE COMPLIANCE MANAGER RESPONSIBILITIES:

• Developing a program for identifying merchandise actually or potentially subject to ADD/CVD,
• Managing customs brokers selected by the company,
• Ensuring team members have adequate knowledge in order to carry out ADD/CVD specific tasks,
• Facilitating interdepartmental communication,
• Developing and maintaining records to substantiate all case numbers assigned to imports,
• Records -- Maintaining current non-reimbursement statements for all subject products,
• Performing quarterly post entry audits of entries to ensure internal controls with respect to ADD/CVD are adequate and being followed.
How to Prepare for a CBP Audit Survey / FA / QRA

*Recommendations from a Former CBP Auditor...*

1. Using your Customs ACE entry data Conduct a risk assessment of your import activities.
   • Identify risk areas (ADD/CVD, Value, HTS, FTA, CH98, IPR, etc.)
   • Assess internal controls for each risk area,

2. Conduct an internal review of your import activities:
   • Conduct limited self-testing in risk areas to determine how compliant your entries really are
   • Consider a Prior Disclosure if you discover issues to reduce or eliminate potential penalty exposure.

3. Determine the status of your overall system of internal controls
   • Do you have a written compliance manual that would pass muster?
   • Can you document that your controls are implemented, effective, and cover all risk areas?

4. If you are not completely comfortable conducting any of the recommended tasks above, consider getting external assistance.
Are my Goods Subject to AD or CVD orders?

- **Monitoring for new cases**
  - Must monitor Websites (ITA or ITC) or Federal Register for notices of initiation of investigation
  - Section 701 (countervailing duty) & 731 (antidumping duty) petition published by ITC
  - [http://www.usitc.gov/petitions_and_complaints/index.htm](http://www.usitc.gov/petitions_and_complaints/index.htm)
  - Commerce will publish a Notice of Initiation in the Federal Register.
CBP Website: adcvd.cbp.dhs.gov

Appendix A: Message Types

- ARF – Admin Review Final
- ARP – Admin Review Prelim
- ENF – Enforcement
- FIN – Final Determination
- FNO – Final Det w/Order
- INF – Information Notice
- INI – Initiation of Review
- INJ – Injunction
- INQ – Inquiry
- LIQ – Liquidation
- NSR – New Shipper Review
- ORD – Order
- OTH – Other
- PRE – Preliminary
- REV – Revocation
- SCO – Scope
- TER – Termination Notice
- WRIT – Writ of Mandamus
<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Period</th>
<th>Message</th>
<th>Cat</th>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-570-504</td>
<td>10/18/2014</td>
<td>08/01/2013 to 07/31/2014</td>
<td>4280310</td>
<td>ADA</td>
<td>LIQ</td>
<td>Automatic liquidation instruction for petroleum wax candles from The People's Republic of China for the period 08/01/2013 through 07/31/2014 (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>08/01/2014</td>
<td>07/23/2014</td>
<td>4212306</td>
<td>ADA</td>
<td>SCO</td>
<td>Scope determination on antidumping duty order on petroleum wax candles from the People's Republic of China (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>02/19/2014</td>
<td></td>
<td>4050301</td>
<td>ADA</td>
<td>LIQ</td>
<td>Antidumping duty scope determination on petroleum wax candles from the People's Republic of China (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>11/01/2013</td>
<td>08/01/2011 to 07/31/2012</td>
<td>3305311</td>
<td>ADA</td>
<td>LIQ</td>
<td>Non-review liquidation instruction for petroleum wax candles from the People's Republic of China for the period 08/01/2011 through 07/31/2012 (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>11/01/2013</td>
<td>08/01/2010 to 07/31/2011</td>
<td>3305316</td>
<td>ADA</td>
<td>LIQ</td>
<td>Non-review liquidation instruction for petroleum wax candles from the People's Republic of China for the period 08/01/2010 through 07/31/2011 (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>10/25/2013</td>
<td>08/01/2012 to 07/31/2013</td>
<td>3286313</td>
<td>ADA</td>
<td>LIQ</td>
<td>Non-review liquidation instruction for petroleum wax candles from The People's Republic of China for the period 08/01/2012 through 07/31/2013 (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>09/12/2013</td>
<td></td>
<td>3265303</td>
<td>ADA</td>
<td>LIQ</td>
<td>Antidumping duty scope determination on petroleum wax candles from the People's Republic of China (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>09/05/2013</td>
<td>08/27/2013</td>
<td>3248301</td>
<td>ADA</td>
<td>SCO</td>
<td>Scope determination on antidumping duty order on petroleum wax candles from the People's Republic of China (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>09/22/2013</td>
<td>04/30/2013</td>
<td>3142302</td>
<td>ADA</td>
<td>SCO</td>
<td>Scope determination on antidumping duty order on petroleum wax candles from the People's Republic of China (A-570-504)</td>
</tr>
<tr>
<td>A-570-504</td>
<td>04/28/2013</td>
<td>06/04/2012</td>
<td>3118304</td>
<td>ADA</td>
<td>SCO</td>
<td>Correction of message 3078303 dated 03/19/2013 concerning the antidumping duty order on petroleum wax candles from the People's Republic of China (A-570-504)</td>
</tr>
</tbody>
</table>
Introduction
The Department of Commerce (Commerce) is responsible for conducting antidumping/countervailing duty (AD/CVD) investigations.

Scope Questions & Determinations

- Petition initially determines the scope of the products that are the subject of the investigation
  - petitioner is required to include a detailed description of the merchandise
  - includes the physical and technical characteristics and uses of the merchandise and its current HTSUS classification number.

- Interested parties are able to raise issues regarding scope within the 20 days of the notice of initiation.

- Commerce is responsible for describing the good subject to the investigation/orders, and

- interpreting the AD and CVD orders and determining whether products fall within the scope of the order.
Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (i.e., without any coating or further finishing), brushed, buffed, polished, anodized (including bright dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, i.e., prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including [30651] but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise unless imported as part of the finished goods kit defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: Aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight. Aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight, and aluminum extrusions made from aluminum.
Scope Questions & Determinations

- CBP Assessment of ADD/CVD
  - When merchandise is within Target HTSUS
  - Or scope description

- Port can require importer to:
  - File type 03 entry and
  - Post cash deposit

- Importer Options
  - Scope request to commerce
  - File a Protest (19 USC 1514)?

- Generally – determination of whether merchandise is in-scope is responsibility of Commerce

- If CBP acts unilaterally to assess ADD/CVD

- Importer may protest action

  - Court concludes that Customs' determination that merchandise was not excluded from the scope of the Orders is a protestable decision of the type specified in § 1514(a)(2).
  - Where the determination at issue is one made by Commerce pursuant to § 1516a(a)(2)(B)(vi), no protest is available.
  - Where, as in Xerox, the determination is a factual application of the scope of an order by Customs, a protest is available.
  - “Customs finds facts regarding what the product is, reads the order, and applies the order to the facts if appropriate. If Customs makes a mistake in these two tasks, as done here, that is a protestable decision.”
Scope Rulings & Requests

- **scope rulings** are often necessary when **importers** and other interested parties need clarification as to whether their products fall under the order.

- **§ 351.225** Contains
  - rules regarding scope rulings,
  - requests for scope rulings,
  - procedures for scope inquiries, and
  - standards used in determining whether a product is within the scope of an order or suspended investigation.
Scope Rulings & Requests

- Request should contain:
  - A detailed description of the product, including its technical characteristics and uses, and its current U.S. Tariff Classification number;
  - A statement of the interested party's position as to whether the product is within the scope of an order, including:
    - (A) A summary of the reasons for this conclusion,
    - (B) Citations to any applicable statutory authority, and

- Any factual information supporting position, including excerpts from Commerce's or the Commission's investigation, and relevant prior scope rulings.

- Commerce has 45 days to issue a determination

- May be extended in 45 day increments
AD/CVD Non-Reimbursement Statements

- Special requirements for imports subject to AD/CVD duties
- The importer is required to file a certificate advising whether it has entered into an agreement or otherwise has received reimbursement of AD duties.
- May be individual or blanket certification statements
- If an importer fails to provide a statement of reimbursement prior to liquidation, CBP will presume reimbursement and double the duties.
- Importers may file non-reimbursement statements through ACE.
- For more information on reimbursement certificates, see http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/add_cvd/program_guidelines/guidance_for_cert.pdf.
Post-Summary Correction where AD/CVD Duty is Due


- CSMS# 15-000743 -10/05/2015

- Importer of record must deposit estimated Antidumping and Countervailing Duties (AD/CVD) at the time a Post-Summary Correction (PSC) or Post-Entry Amendment (PEA) is filed when the PSC/PEA is submitted to amend the following:
  - An entry type 01 is changed to correctly identify the AD/CVD entry type 03;
  - A change/correction is made to an entry type 03 that results in additional AD/CVD being owed.
  - The importer’s failure to deposit AD/CVD may result in a claim for liquidated damages.
Post entry disclosures and investigations

- CBP and Reg Audit actively investigate importers for merchandise possibly subject AD/CV Duties
  - Failure to declare or report AD/CV duty merchandise
  - Use of wrong AD/CVD case number/ rate

- If the entries are unliquidated CBP can reject type 01 entry and require importer to refile as type 03, and deposit AD/CV duties, and suspended pending a final order or liquidation instructions for the review period

- CBP can assess 19 USC 1592 penalties (fraud, gross negligence, negligence) on liquidated and unliquidated entries!

- If entries are liquidated CBP can only collect AD/CV duties and assess penalties if the importer was culpable for error (i.e., failure to use reasonable care)
Post entry disclosures and investigations

- Importers and brokers need to watch for *unintended disclosures* related to possible AD/CVD merchandise
  - CF 28 – Request for Information
  - CF-29 – Notice of Action

- Importer Options
  - Submission of *scope request* if it is unclear whether goods are covered
  - Consider submission of *Prior Disclosure* to limit exposure to liability for penalties or 1592(d) duties
  - File *Prior Disclosure concurrently with PEA/PSC* if goods are clearly within scope
Parting Thoughts

- Be involved! Importers and brokers should be aware of initiation of investigations!
- Importers can comment on “scope of investigation”
- Consider if supplier should request section A separate rate or voluntary respondent
- Liability starts at preliminary affirmative finding, or sooner if critical circumstances is found!
- Consider submission of “scope request” if question exists!
- Can exporter apply for a “new shipper” review?
- Will supplier support request for “annual review”? 
- Watch out for unintended disclosures to CBP of merchandise subject to AD/CVD. Consider benefits of Prior Disclosure and limitations penalties and possibly 1592(d) duties.
Thank You! Any Questions?

George R. Tuttle, III  
Attorney, Tuttle Law  
Phone: (415) 986-8780  
Email: geo@tuttlelaw.com  
www.tuttlelaw.com

Cindy Deleon  
Senior Trade Auditor  
Former Customs Auditor & AFD  
DELEON TRADE LLC  
phone: (281) 466-2026  
Email: cindy@deleontrade.com  
www.deleontrade.com