

CHAPTER 1

ANALYSIS OF PETITIONS AND INITIATIONS OF INVESTIGATIONS

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LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
APO	ADMINISTRATIVE PROTECTIVE ORDER
CCIA	CHIEF COUNSEL FOR IMPORT ADMINISTRATION
CEP	CONSTRUCTED EXPORT PRICE
COP	COST OF PRODUCTION
CS	THE COMMERCIAL SERVICE
CV	CONSTRUCTED VALUE
CRU	CENTRAL RECORDS UNIT
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
HRR	H.R. REP. No. 317, 96TH CONGRESS, 1ST SESSION 51 (1979)
HTSUS	HARMONIZED TARIFF SYSTEM OF THE UNITED STATES
IA	IMPORT ADMINISTRATION
ICA	IMPORT COMPLIANCE ASSISTANT

AD Manual

Chapter 1

LIST OF ACRONYMS & ABBREVIATIONS

January 22, 1998

ITC	INTERNATIONAL TRADE COMMISSION
MAC	MARKET ANALYSIS AND COMPLIANCE
MNC	MULTINATIONAL CORPORATION
NV	NORMAL VALUE
OA	OFFICE OF ACCOUNTING
OD	OFFICE DIRECTOR
OP	OFFICE OF POLICY
PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

January 22, 1998

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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) - withdrawal of petition
 - Section 771(9) - interested parties
 - Section 771 (10) - like product
 - Section 773(b) - sales at less than cost
 - Section 773(d) - multinational corporations
- Department of Commerce (DOC) 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 - withdrawal of petition
- Statement of Administrative Action (SAA)
 - Section C.3 - initiation and subsequent investigation
- Antidumping Agreement
 - Article 2.2.1 - sales at less than cost
 - Article 4 - definition of domestic industry
 - Article 5 - initiation
 - Article 12 - public notice of initiation

INTRODUCTION

This chapter explains the initiation process for antidumping investigations. It includes detailed information on the following items: treatment of draft petitions; analysis of official filings; allegations for special situations such as less than cost sales and multinational corporations; and the preparation of initiation packages. For information on the initiation of antidumping duty order **administrative reviews**, see Chapter 18.

I. DRAFT PETITIONS

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All contacts on the filing of draft petitions or requests for technical assistance in preparing an antidumping petition by small businesses, as defined in section 339 of the Act, should be referred to the Director for Policy and Analysis, Import Administration (IA), International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, D.C. 20230. The Director for Policy and Analysis will assign draft petitions and requests for assistance to one of the Deputy Assistant Secretaries in IA.

When draft petitions are received, we usually require a minimum of five business days to review the draft and to give substantive comments to the potential petitioner or its counsel. 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. Any inquiries concerning possible filings of petitions should be responded to with a statement that no petition has been filed on the product. Only when a petition has been filed officially can we indicate that the DOC is considering a petition on the product. At the time of filing the draft, it is appropriate to 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 director of IA's Office of Policy and Analysis immediately.

The petitioner should furnish four copies of the draft (five if **cost of production** (COP) or **constructed value** (CV) is involved) including all support documentation. Copies should be distributed to the Office of Policy (OP) and the CCIA's office. 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 file drafts of the non-proprietary version along with the proprietary version. When distributing a draft petition, indicate that it is a draft, who is reviewing it in your office, and that the team will meet to discuss its adequacy three business days later. After meeting with the team, a summary of the petition and the problems found should be prepared and a meeting should be scheduled with the Office Director (OD). All team members should be present at that meeting.

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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 or cost information used to establish alleged less than fair value sales. Current price information (usually no more than one- year old) is always necessary to support the U.S. sales side of the less than fair value allegation. A petitioner can obtain price information from sources such as price lists, actual invoices, written quotations, 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 sales at less than fair value allegation, the petitioner may supply price information. If prices are used, support documentation could be the same as for U.S. sales prices. If prices are not available, a cost based surrogate for prices that uses the petitioner's own **factors of production**, but incorporates values from the exporting country for such things as materials, labor rates, and energy costs, can be used. 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 net prices back to the producers' or exporters' doors 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 less than fair value 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 Congress, 1st Sess. 51 (1979) (HRR). This means that the mere furnishing of documentation is not necessarily sufficient and that the DOC 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 company official describing call reports from sales representatives reporting lost sales in the United States may be used to support United States price data. 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 a year of the anticipated filing date. Prices used as the bases for **normal value** (NV) and export price (EP) and **constructed export price** (CEP) should reflect contemporaneous periods of time. Currency-conversion rates used should be included and the source of these rates should be given. See the antidumping (AD) initiation checklist

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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 named in the petition. 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. Accordingly, the draft should identify the industry on behalf of which the petitioner is filing. It should also contain the names and addresses of other persons in the industry as well as information relating to the degree of industry support for the petition, including: (i) the total volume and value of U.S. production of the domestic like product, regardless of sales destination; and (ii) the volume and value of the domestic like product produced by the petitioner and each domestic producer identified, regardless of sales destination. This information should cover the last completed calendar year and, if available, the 12 months prior to the month of the filing of the draft (see section III of this chapter).

It is important that the scope be defined as accurately as possible to minimize future questions about product coverage. We also want to avoid unintentional product coverage. We wish to ensure that the scope of the investigation (and any order that may result) does not include products in which the petitioner has no interest. Attention should be given especially to whether the prospective petitioner has unintentionally included products that are not produced domestically.

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 wants to cover and that it will be as easily understood as possible throughout the various segments of the antidumping proceeding (see section IV of this chapter).

The analyst should call the Office of Investigations at the ITC at 205-3160 to determine whether or not the draft was filed there. The draft should be discussed with the analyst at the ITC in order to determine whether the ITC has problems with it. The primary focus of this discussion should be on the scope language and the industry-support aspects of the filing (see sections III and IV of this chapter).

After the team meeting with the OD, you should inform the petitioner of all problems found as result of our review. You should state that the listing of problem areas is advisory and that additional problems,

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if found after the petition is officially filed, will have to be corrected during the 20-day statutory initiation period. Remember that 19 CFR 351.202(b) specifies that information supplied in a petition must be “reasonably available” to the petitioner. There is no exact interpretation of this term, however, the size of the petitioning firm and the type of information in question should be considered when these types of judgements are made.

II. OFFICIAL FILINGS

When a petition is filed officially, 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. 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. Notices of appearance (i.e., letters from law firms notifying us about whom they are representing in the investigation) are also acceptable. In situations involving polling of 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 and the CCIA for review. It is the analyst’s responsibility to see that this distribution occurs. A public version copy of the petition is delivered immediately to the embassy of the country in question by the IA Central Records Unit.

In reviewing the petition, the analyst should cover all areas indicated in the discussion of the review of draft petitions in section I of this chapter even if a draft of the petition has been checked previously. If a draft was filed 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 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. The analyst should also check whether there is a proper summary of any business **proprietary information** relating to the allegation of sales at less than fair value and whether there is a statement indicating the petitioner's position on **administrative protective order** (APO) release of the proprietary information relating to the allegation of sales at less than fair value to counsel for other interested parties under a properly filed request (see chapter 3 of this manual for more information on proprietary submissions

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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 market research, the research document should be submitted for the record as part of the official petition. The petitioner should be contacted in order to receive clearance to communicate with the market-research preparers 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.

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

- o 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, etc.

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- o Did they 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? Have they used this preparer in the past?
- o What methodologies or procedures did the company employ to gather the data? How was the information verified?

When a valid request to exclude the name and address of the preparer is received, the following paragraph may be used to introduce the memorandum:

"Because of the extreme sensitivity of the name of the market research firm that gathered the petition information in this case, this memorandum constitutes confirmation of the source of the market research report."

The petitioner must file a copy of the petition and any amendments (see 19 CFR 351.202(c) and (e)) with the ITC and the DOC on the same day and so certify in submitting the petition. When a petition is filed with the respective agencies on different dates, the latter of the two dates is the official date of filing since the Act requires simultaneous filing of petitions with the respective agencies.

Next the analyst 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, the analyst should keep in mind the fact that the DOC determines the scope of an investigation. It is important to document your contacts with the ITC on the record as we need to have a clear description of the domestic like product for determining industry support. Any areas of dispute with the ITC over the scope or product description must be immediately brought to the attention of the team and your supervisor or PM.

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

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meeting has been held with the OD. This meeting should take place no later than seven days after the petition is filed.

After meeting with the OD to discuss petition problems, the petitioner should be notified 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.

The standard cable requesting statistical data about potential respondents should be prepared and the appropriate DOC officials in Market Analysis and Compliance (MAC) and the Commercial Service (CS) must initial the cable before it is sent. The cable must also be sent to the appropriate official at the State Department for clearance.

Check with your program import compliance assistant (ICA), supervisor, or PM for current information on cable clearance.

Required information should also be inserted into the Lotus Notes case tracking system. Lotus Notes is a windows-based software package that provides analysts and managers 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.

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III. INDUSTRY SUPPORT

A. General Information

Petitions must be filed by an interested party who has the support of the industry producing or selling, at other than retail, the domestic like product in the United States. Although the ITC is the agency which determines domestic like product for injury purposes, the DOC has to determine industry support on the basis of producers of the domestic like product. Since the domestic like product is the domestic product most like the imported one, it may be exactly the same. Sections 702(c)(4)(A) and 732(c)(4)(A) of the Act recognize that industry support for a petition may be expressed by either management or workers. 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. As under current practice, the views of workers may be submitted by unions, other employee organizations, or ad hoc groups of workers.

The petitioner must provide the volume and value of its own production of the domestic like product, 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, to the extent that such information is reasonably available to the petitioner.

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, as we did in Initiation of Antidumping Duty Investigations: Brake Drums and Certain Brake Rotors from the People's Republic of China, 61 FR 14740 (April 3, 1996). However, in some cases such as: Initiation of Antidumping Investigations: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, 60 FR 38546 (July 25, 1995), we based our determination on value. We used value in that case because of the difficulty in determining what constituted a unit of merchandise. Where information is unclear, you should ask for clarification by the petitioner. Sometimes, if it is necessary to corroborate the data, we look for independent information. We often ask the ITC for the production information for the industry. Sometimes we call non-petitioning, domestic producers to determine their production. If this type of call is necessary, consult with your supervisor or PM prior to making it.

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We normally will review production figures over a twelve-month period. 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 review period on a case-by-case basis. See section 351.203(e)(1) of our regulations. If actual production data for the relevant period is not available, production levels may be established on the basis of alternative data that the DOC 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 702(c)(4)(A) of the Act requires the DOC 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 DOC 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 DOC’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 (see Initiation of Antidumping Duty Investigation: Collated Roofing Nails from the People’s Republic of China, the Republic of Korea, and Taiwan, 61 FR 67306 (December 20, 1996)). We will not consider any arguments relating to industry support once an investigation has been initiated. 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 Initiation of Antidumping Duty Investigation: Beryllium Metal and High Beryllium Alloys from Kazakhstan, 61 FR 15770 (April 9, 1996)). Also note that 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 the “Comments” section of the preamble to the AD regulations, 62 FR 27296 (May 19, 1997)).

Please note that the methodologies used to determine industry support (e.g., production publications) may vary from industry to industry.

During the pre-initiation review period for a petition, interested parties other than the petitioners may only comment on the question of industry support (see Part B below). If we receive substantive information on any subject other than industry support, we would normally consider it to be inappropriately filed and we would return it to the party that filed it (see 19 CFR 351.202(i)).

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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 team members and your supervisor. If a petition does not have industry support, the investigation would be terminated, as provided in section 782(h) of the Act.

We may ignore the opposition of related domestic producers "unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected" (see section 19 CFR 351.203(e)(4)). This puts the burden of demonstrating such an effect on those producers. We consider related domestic producers to be either 1) a domestic producer related to a foreign exporter, or 2) a domestic producer related to a foreign producer. 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. In evaluating whether to disregard such producers, the DOC 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).

Sections 702(c)(4)(E) and 732(c)(4)(E) of the Act state that interested parties may challenge the adequacy of the DOC's industry-support determination if the DOC dismisses the petition or initiates an investigation and subsequently issues an antidumping duty order.

C. Polling

If the requisite support is not established in the petition, we will poll or otherwise determine whether the industry supports the petition, pursuant to 19 CFR 351.203(b)(2) of our regulations. In appropriate circumstances, we may sample, from information contained in the petition or placed on the record by domestic interested parties, to determine whether the required support exists. We have yet to have a case where it was necessary to poll the domestic industry. We will normally initiate an investigation within twenty days of the filing of the petition. However, sections 702(c)(1)(B) and 732(c)(1)(B) of the

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Act provide for an extension of up to twenty additional days after the filing of a petition in exceptional circumstances where we cannot establish whether there is the requisite industry support within twenty days. We will only extend if we need to poll the industry. In conducting such a poll, the DOC will include in the poll unions, groups of workers, and trade and business associations. Note that the SAA (section C. 3. c) and the legislative history of the Uruguay Round Agreements Act are clear in stating that the DOC will not go beyond 20 days in considering the industry support element of a petition in the vast majority of cases.

D. Regional Industry

Sections 702(c)(4)(C) and 732(c)(4)(C) of the Act establish 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 (April 4, 1996)).

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IV. SCOPE OF THE INVESTIGATION AND LIKE PRODUCT DETERMINATIONS

A. Scope of the Investigation Determinations

The DOC also determines the scope of an investigation. The scope of an investigation may also be referred to as the class or kind of merchandise under investigation or the merchandise subject to the investigation. A single investigation involves a class or kind of merchandise. Where we determine that a petition covers more than one class or kind of merchandise, we conduct separate investigations for each. In such instances, there must be evidence of sales at less than fair value and industry support for each class or kind of merchandise in order to support initiation of multiple investigations. An example of a petition covering more than one class or kind of merchandise is the March 1996 filing on certain brake drums and certain brake rotors from the People's Republic of China. Normally we will publish a combined initiation notice covering the separate classes or kinds of merchandise. In some cases we will use a generic case name, such as certain carbon steel products, and describe each product separately in the scope section of the notice. Note that splitting a class or kind of merchandise into two or more classes or kinds usually results in having to query different sets of respondents.

We normally limit the class or kind of merchandise in an investigation to the products that the petitioner specifically names in the petition. In many instances, the class or kind includes finished products as well as components or subassemblies (see Initiation of Investigations: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, 60 FR 38546 (July 27, 1995)).

In cases in which the Department has been asked to find more than one class or kind of merchandise subject to investigation, we have relied upon the four characteristics mentioned above from the Diversified Products case and a fifth characteristics, introduced by the CIT in the Kyowa Gas case:

1. The general characteristics of the merchandise;
2. The expectations of the ultimate purchaser;
3. The channel of trade in which the products are sold;
4. The ultimate use of the merchandise; and,
5. The manner in which the products are advertised and displayed.

When examining the physical characteristics of groups of products, the Department does not rely on mere physical differences among products. There must be clear dividing lines between product groups

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for the Department to find difference classes or kinds.

In interested parties ask the DOC to determine that there are two separate classes or kinds of merchandise under investigation. Where the DOC was called upon to determine the number of classes or kinds of merchandise under investigation, analysis has been based on the criteria set forth by the CIT in Diversified Products. Regarding four of the five Diversified Products criteria (ultimate use, expectations of the ultimate purchasers, channels of trade, and manner of advertising), the DOC found a significant overlap. When examining the physical characteristics of products in the context of class or kind analysis, the DOC looks for clear dividing lines between product groups, not merely the presence or absence of physical differences between certain products. Physical differences alone between the two product groups are not conclusive proof of different classes or kinds. Sulphur Dies is an example of this type of analysis and decision. (see Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes from the United Kingdom, 58 FR 7537 (February 8, 1993)). In that case, the DOC decided that the subject merchandise constituted only one class or kind.

In Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea, 54 FR 15467 (March 23, 1993), the DOC received submissions from interested parties asking that the DOC exclude the following from the scope: 1) future generations of semiconductors; 2) further-manufactured memory boards containing semiconductors; and 3) further-manufactured memory boards contained in downstream products. Regarding future generations of semiconductors and further-manufactured memory boards containing semiconductors, we determined that these products were within the scope of the investigation. Regarding further-manufactured memory boards contained in downstream products, we determined that the downstream products themselves were not in the same class or kind of merchandise and, therefore, could not be included in the scope. However, we determined that the further-manufactured memory boards were not so physically integrated into the downstream products as to constitute one inseparable amalgam. In order to avoid coverage under the order, we allowed the importer of the downstream products to certify with U.S. Customs that memory boards contained on those downstream products would not be removed from the downstream products after importation and sold separately.

In order to ensure that the scope of an investigation is defined as accurately as possible, the Department undertakes two procedures. The Department announced its implementation of these procedures in the preamble to the 1997 final regulations (62 FR 27296, 27323, May 19, 1997). First, we include in our pre-filing checklist of petition information a check that the proposed scope of the petition is an accurate

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reflection of the product for which the domestic industry is seeking relief. Pre-filing consultations with the prospective petitioner should seek to ensure that the scope of the petition is not unintentionally overinclusive. Second, we designate a period early in the investigation for parties to raise issues regarding product coverage. Petitioners then have an opportunity to reconsider product coverage and the Department can amend the scope of the investigation if warranted. You should include in the notice of initiation of the investigation an announcement of this comment period (see, e.g. Initiation of Antidumping Duty Investigation: Fresh Atlantic Salmon from Chile, 62 FR 37027 (July 10, 1997))

Subsequent to the filing of a petition, the analyst should send a letter to Customs containing the scope language from the petition. The letter requests that the National Import Specialist for the product review the scope definition and the HTSUS number(s) for accuracy. The standard format for the letter can be obtained from the your supervisor or PM.

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. In some instances, the definition of a domestic like product will be narrower than that of class or kind. If 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 narrower like-products categories than our class or kind of merchandise is found in Antidumping Duty Order: Certain Compact Ductile Iron Waterworks Fittings and Glands from the People's Republic of China, 58 FR 47117 (September 9, 1993).

B. Like Product Determinations

The DOC is also required to make a like product determination as part of its analysis of a petition. Section 771(10) of the Act defines a domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation." Thus, the reference point from which a like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined by the petition. In Initiation of Antidumping Duty Investigation: Collated Roofing Nails from the People's Republic of China, 61 FR 67306 (December 20, 1996) (Nails from the PRC), the DOC found no reason to find the petitioner's definition of the product "clearly inaccurate." Accordingly, the petitioner's representations that there are clear dividing lines between collated roofing nails and other

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collated and bulk roofing nails was accepted, and the like product definition (which was the same as the definition of the class or kind in the petition) as set forth in the petition was adopted.

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. For petition purposes, there must be a showing that sales of a popular model or type (one that involves a substantial number of sales) of merchandise are made at prices that do not allow for the recovery of the producer's or exporter's costs. (see Chapter 8). 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 less than fair value investigation (see sections I and II of this chapter). Usually, petitioners construct a cost allegation using their own factors of production with adjustments for 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 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 supervisor or PM (see 19 CFR 351.301(2)(i)).

You are responsible for ensuring that all facets of the analysis of a less than cost allegation are performed in a timely and correct fashion. Accordingly, you should review the allegation in conjunction with the OA accountant or financial analyst 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

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OA accountant or financial analyst have analyzed the cost data and made any necessary adjustments to it, it will be used in performing the less than 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 provided by the OA accountant or financial analyst 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 Deputy Assistant Secretary (DAS) with a recommendation as to whether or not a COP investigation should be prepared. If we decide to initiate a cost investigation, you will issue a cost questionnaire which will be prepared in collaboration with the OA accountant or financial analyst. Always consult with your supervisor or PM if you are involved in a less than COP allegation. You should also check the most recently completed less than COP 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. An exporter or producer could be doing this to blunt the effects of a preliminary affirmative determination of sales at less than fair value and the potential for **dumping** duty liabilities on entries filed after that date (see Chapter 10). If the petition contains a critical circumstances allegation, we must make a determination relative to this allegation either before or in the preliminary determination. If the petition is amended to include an allegation that critical circumstances exist, our required action will depend on the timing of the amendment. If the allegation is filed more than 20 days prior to the due date for 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 21 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 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

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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.

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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. 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, overhead.

At this time, we are following the deadline for filing a company-specific, sales at less than COP allegation for the filing of a multinational corporation allegation, which is 20 days after a respondent files its response to the relevant sections of the antidumping questionnaire. For the most recent DOC positions on the acceptance of MNC allegations, see Preliminary Determination of Sales at Less Than

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Fair Value: Color Negative Photographic Paper and Chemical Components Thereof from the Netherlands, 59 FR 16181 (April 6, 1994), and Initiation of Antidumping Investigations: Melamine Institutional Dinnerware Products from Indonesia, the People's Republic of China, and Taiwan, 61 FR 8039 (March 1, 1996). Note that the first two cases cited used the old home market viability test (where home market sales had to meet the 5- percent of third-country sales standard). Always consult with your supervisor or 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 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 OP, 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. Analyze the petition using the “Antidumping Investigations Initiation Checklist” found in Section VII of this chapter. Also do a like product

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analysis as described in part B of section IV of this chapter. See the like product memo written for Nails from the PRC.

5. If a draft petition was previously filed and reviewed by another analyst, determine whether problems identified at the draft stage have been corrected.
6. Meet with your team members to discuss problem areas in the petition.
7. Arrange a meeting for the team with your supervisor or PM to review problem areas in the petition. Determine what issues need to be brought to the attention of the OD.
8. Set up a meeting with the OD to discuss significant problem areas.
9. Prepare a memo outlining the significant problem areas for the OD's meeting. Have the memo approved by your supervisor or PM, and submit it to the OD the day before the scheduled meeting.
10. After the OD meeting, advise the petitioner 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.
11. Begin to prepare the initiation package as described below.
12. Give the initiation package to your team members for comments and then to your supervisor or PM once the team comments are incorporated.
13. Incorporate your supervisor's or 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.

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14. Place the initiation package in the formal review chain (see Chapter 12, I.E. for review chain information).
15. 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. In general, the FR should contain the following information:

- a. Identification of the petitioner.
- b. A description of the basis for the calculation of the USPs and NVs contained in the petition.
- c. Any adjustments the DOC makes to the submitted USPs 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 (see, e.g., Initiation of Antidumping Duty Investigation: Fresh Atlantic Salmon from Chile, 62 FR 37027 (July 10, 1997)).

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h. The due dates for ITC and DOC preliminary determinations.

2. Other Documents

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

- a. The “Antidumping Investigations Initiation Checklist.”
- b. A like product analysis memo.
- c. A Customs e-mail message to announce the initiation.
- d. The ITC letter announcing the initiation of the investigation.
- e. Interested party letters announcing the initiation of the investigation.
- f. A letter to Customs requesting comments on the scope language contained in the FR.
- g. A memo to the OD in MAC for the country involved announcing the initiation and case schedule.

C. Post-Initiation Requirements

Post-initiation activities are as follows:

1. Take the original, signed FR notice and four copies to the Central Records Unit (CRU) in Room B-099 with a cover letter addressed to the FR and a diskette containing the FR. CRU will take care of publication of the document.
2. On the day of initiation, make phone calls to the petitioner or its counsel, counsel for potential respondents, if known, the MAC country desk officer, the State Department, the ITC, and the United States Trade Representative’s office.
3. Have a secretary or ICA distribute copies of the FR to all DASs and to the ODs who work for your DAS.

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4. 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 draft and 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 a like product analysis memo. You may also have to prepare a memo documenting your contact with consultants if any 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 “Antidumping Investigations Initiation Checklist” is located on the “g” drive under g:\global\inithec.1st. You should copy this to your own drive. The checklist is a standard format. No changes should be made to the content of this document without the approval of 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):

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(insert name(s))

SCOPE:

(insert the scope of the investigation)

IMPORT STATISTICS:

(insert the volume and value of imports for the most recently completed calendar year, year-to-date, and the corresponding prior period)

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 (insert %) (petition page reference)

___ No (insert %)

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

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(identify each party expressing opposition)

No

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

Yes

No

(explain how the views of these parties were treated in your determination of industry support)

INJURY ALLEGATION:

We have received a copy of the action request from the Director of the Office of Investigations, International Trade Commission. It indicates that the ITC finds that the petition contains adequate and accurate information with respect to material injury. (The relevant injury data can be found on page (insert #) of the petition.)

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:

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- 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 (% of producers identified)

Does the petition also contain the following:

- a clear and detailed description of the merchandise to be investigated, including the appropriate Harmonized Tariff Schedule 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 of Commerce 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:

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Export Price/Constructed Export Price

Provide an explanation on how the export price and/or constructed export price 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 **export price** 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.

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- ___ 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., COP allegation, 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. That 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 DOC is necessary.

IX. POST-INITIATION WITHDRAWAL

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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.

After terminating an investigation, you should notify the interested parties and the embassy. You should also prepare e-mail instructions to Customs regarding the termination of suspension of liquidation.

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