



Antidumping and Countervailing Duty Liquidation Instructions (FY 2019)

October 22, 2019

Fiscal Year 2019 Report to Congress



**Homeland
Security**

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

October 22, 2019

I am pleased to submit the following report, “Antidumping and Countervailing Duty Liquidation Instructions (FY 2019),” which has been prepared by U.S. Customs and Border Protection (CBP).

This report has been compiled pursuant to language set forth in Senate Report 115-283, which accompanies the Fiscal Year (FY) 2019 Department of Homeland Security Appropriations Act (P.L. 116-6). This report reaffirms the requirements in Senate Report 114-264, which accompanies the FY 2017 DHS Appropriations Act (P.L. 115-31), and Senate Report 112-169, which accompanies the FY 2013 DHS Appropriations Act (P.L. 113-6). This report describes how the U.S. Department of Commerce (Commerce) and CBP can improve the timeliness, accuracy, and clarity of liquidation instructions sent to CBP.



Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions that you may have. Please do not hesitate to contact my office at (202) 344-2001.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Perez", written over a circular stamp or seal.

Robert E. Perez
Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

This report summarizes joint initiatives between CBP and Commerce in FY 2018 to improve the administration of antidumping and countervailing duty (AD/CVD) enforcement. CBP has a statutory responsibility to collect revenue due to the U.S. Government resulting from the importation of subject goods into the United States, including AD/CVD. CBP and Commerce work cooperatively on the administration of AD/CVD enforcement. All AD/CVD case information resides in the Automated Commercial Environment (ACE). This is the system of record for all AD/CVD cases and instructions. Both agencies use ACE daily to build and maintain case records and to review and publish AD/CVD instructions. ACE is used by CBP personnel at the ports of entry and at Centers of Excellence and Expertise, as well as by the trade community, to research and verify AD/CVD messages including, but not limited to: initiation of new cases; orders; administrative review results; new shipper review results; scope rulings; and injunctions and liquidation instructions. In FY 2018, CBP processed 1,762 AD/CVD instruction messages issued by Commerce and liquidated more than 232,180 AD/CVD entries.

Staff from CBP and Commerce meet biweekly, and senior executives from CBP and Commerce meet regularly. U.S. Immigration and Customs Enforcement, Homeland Security Investigations also participates in the joint working-level meetings with Commerce. These meetings are used to discuss a broad range of topics including the scope of new Commerce AD/CVD investigations and existing orders; the timeliness, clarity, and content of Commerce's messages; CBP Enforce and Protect Act investigations; and various enforcement issues. CBP and Commerce will continue to collaborate closely to improve AD/CVD instructions and the enforcement of AD/CVD measures.



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I. Legislative Language

This document was compiled pursuant to legislative language set forth in Senate Report 115-283, which accompanies the Fiscal Year (FY) 2019 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-6). Senate Report 115-283 reaffirms the requirements in Senate Report 114-264, which accompanies the FY 2017 DHS Appropriations Act (P.L. 115-31), and Senate Report 112-169, which accompanies the FY 2013 DHS Appropriations Act (P.L. 113-6).

Senate Report 115-283 states:

Antidumping and Countervailing Duties—The Committee directs CBP to continue reporting on antidumping and countervailing duties, as required in Senate Report 114–264.

Senate Report 114-264 states:

The Committee directs CBP to continue submitting the reports on AD/CVD required in Senate Report 112–169 and the explanatory statement accompanying Public Law 113–6, including the same level of detail prescribed in such report and during the timelines prescribed for each report: AD/CVD Actions and Compliance Initiatives, AD/CVD Liquidation Instructions, AD/CVD Collection of Outstanding Claims (consistent with Public Law 103–182), and AD/CVD Collection New Shipper Single Entry Bonds. A version of each report shall be posted on CBP’s Web site.

Senate Report 112-169 states:

The Committee further directs the Secretary to work with the Secretary of Commerce to identify opportunities for the Commerce Department to improve the timeliness, accuracy, and clarity of liquidation instructions sent to CBP. Increased attention and interagency coordination in these areas could help ensure that steps in the collection of duties are completed in a more expeditious manner.

II. Background on CBP's Antidumping/Countervailing Duty Enforcement

U.S. Customs and Border Protection (CBP) has a statutory responsibility to collect revenue due to the U.S. Government, resulting from the importation of subject goods into the United States, including antidumping and countervailing duties (AD/CVD). AD/CVD enforcement long has been identified as a priority trade issue by CBP because of the inherent risks associated with motivation for corrupt entities to exploit the system intended to level the playing field for domestic producers. Further, the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) designated AD/CVD as a priority trade issue.

CBP is committed to ensuring that AD/CVD laws are enforced vigorously and takes an agencywide approach to AD/CVD enforcement. CBP partners with the U.S. Department of Commerce (Commerce) on a wide range of AD/CVD issues related to enforcement responsibilities. CBP's agencywide coordination and partnerships with other U.S. Government agencies are essential to AD/CVD enforcement.

Commerce is responsible for administering the AD/CVD laws and for establishing the duty amounts that CBP collects from importers. CBP and Commerce share extensive information on AD/CVD cases. Commerce refers to CBP the allegations of fraud or evasion that it receives from the public, in addition to direct evidence of fraud or evasion discovered in the context of an ongoing AD/CVD proceeding. Commerce further supports CBP's efforts at countering evasion by reviewing, upon request, information obtained during CBP audits and by identifying discrepancies or claims that contradict information on Commerce's record of the underlying proceeding.

AD/CVD Administration

CBP continues to pursue modernization efforts to process AD/CVD entries and to facilitate legitimate trade. The administration of AD/CVD entries is currently a dual paper and electronic-based, labor-intensive, and time-consuming process involving multiple steps over a period of several years for each entry. When importers file AD/CVD entries upon the importation of merchandise into the United States, CBP's tasks include:

- searching and reviewing AD/CVD messages from Commerce;
- ensuring proper collection of the required cash deposit;
- reviewing entries for proper suspension from liquidation; and
- holding entries for several years until Commerce issues liquidation instructions related to the entries, pursuant to the statutory timelines governing Commerce's AD/CVD proceedings and judicial review of those proceedings.

Once Commerce issues liquidation instructions, CBP's tasks include:

- reviewing these complex instructions and determining which entries from previous years are subject to these instructions;
- updating entry summary records with the final duty rates to calculate the amount of final duties due;
- entering required data to liquidate each entry summary properly;
- implementing separate court-ordered injunctions to prevent inadvertent liquidations; and
- processing protests involving liquidation instructions and deemed liquidations.

Some of these steps are repeated multiple times for individual entries involving more than one AD/CVD case.

CBP is continuing efforts to manage and oversee the liquidation and processing of AD/CVD entries nationally through the Centers of Excellence and Expertise (Centers). The Centers have national authority to process entry summaries, and by centralizing the AD/CVD processes in the Centers, CBP has reduced duplicative functions that were taking place at numerous ports of entry across the United States. It also increases national oversight and accuracy of CBP's AD/CVD entry processing.

In FY 2016, CBP piloted an AD/CVD centralization project that included analyzing the data for all AD/CVD entry summaries nationally. CBP analyzes the entry summary data to determine which entry summaries are subject to a given case and apply to a given Commerce message. Further, analysis of the data ensures that CBP is taking appropriate action in a timely manner depending on the stage of a case. The centralization project provided enhanced oversight of AD/CVD processing, increased revenue assessment, and increased efficiencies by centralizing certain AD/CVD processing functions. During FY 2017 and FY 2018, CBP implemented the centralization efforts within the Centers to provide an industry-focused, account-based approach to the review, processing, and oversight of AD/CVD. These efforts will enhance additional Automated Commercial Environment (ACE) functionality. This functionality includes the standardization of ACE reports, which allows for greater visibility into the AD/CVD entry summary data allowing for improved oversight and efficiencies. Training on processes and guidelines was conducted for Center managers in FY 2018.

CBP holds biweekly meetings with Commerce at the working level and regular meetings at the executive level to coordinate AD/CVD-related administration and enforcement activities. U.S. Immigration and Customs Enforcement, Homeland Security Investigations also participates in the joint working-level meetings with Commerce. In addition to the regular interaction through ACE, CBP's AD/CVD Policy Branch and Commerce's Customs Liaison Unit are in daily contact. This coordination helps to facilitate CBP's AD/CVD entry, liquidation, and collection processes on case-specific issues throughout the year. CBP also meets with Commerce, the U.S. Department of Treasury, and the U.S. Trade Representative to confer on AD/CVD issues.

Commerce regularly provides training and webinars to CBP on complex AD/CVD orders. In FY 2017 and FY 2018, Commerce staff participated in and provided extensive input to the CBP

Commercial Customs Operations Advisory Committee’s AD/CVD working group and steel industry seminars.

1. ACE AD/CVD Functionality

AD/CVD case management information, Commerce message processing, and CBP field inquiries now are processed, managed, and stored in ACE to give national visibility of the data to the CBP user. CBP has an integrated and automated process with Commerce in which Commerce creates the AD/CVD case in ACE and updates the case information throughout the lifetime of the case.

Commerce creates and uploads the messages into ACE with instructions to CBP. The AD/CVD case information interacts with the ACE entry processing system, allowing importers and customs brokers to file AD/CVD entry information with CBP. All AD/CVD entries can be filed in ACE, and in FY 2018, CBP also began to liquidate entries in ACE.

In FY 2019, CBP partnered with Commerce to begin to update and redesign the AD/CVD section of ACE. This redesign allows for more efficient functionality of AD/CVD case management in ACE, including new screens in CBP’s AD/CVD case management, messages, and inquiries modules. These new functionalities, which are expected to be implemented by the end of FY 2019, foster greater communication and cooperation between CBP and Commerce, while allowing CBP to enforce AD/CVD orders and protect lawful revenue better.

2. Entry Administration Workload

As of May 6, 2019, CBP was enforcing a total of 489 AD/CVD orders. During FY 2018, Commerce issued 53 new AD/CVD orders, and Commerce initiated 59 new AD/CVD investigations, which may result in new AD/CVD orders. Additionally, during the first quarter of FY 2018, Commerce issued 6 new AD/CVD orders and initiated 13 new AD/CVD investigations.

CBP liquidates AD/CVD entries after receiving liquidation instructions from Commerce. In FY 2018, CBP processed 1,762 AD/CVD instruction messages issued by Commerce and liquidated more than 232,180 AD/CVD entries. On average, it takes 2.6 years after the date of entry for Commerce to issue liquidation instructions and for CBP to liquidate an AD/CVD entry.¹

¹ Based on a U.S. Government Accountability Office (GAO) calculation in GAO-16-542, “Antidumping and Countervailing Duties: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk,” July 14, 2016 (<https://www.gao.gov/assets/680/678419.pdf>).

III. Liquidation Instructions

CBP and Commerce work jointly to improve the timeliness, accuracy, and clarity of AD/CVD instructions. Once Commerce issues liquidation instructions, CBP determines which entry summaries from previous years are subject to these instructions. CBP manually applies the final duty rates and calculates the amount of final duties due. CBP enters the proper codes electronically to liquidate each entry. When needed, CBP implements separate court-ordered injunctions to stop liquidations and to process protests involving liquidation instructions and deemed liquidations.

CBP reviews every AD/CVD instruction drafted by Commerce and advises Commerce about any concerns with the content of the message. Commerce regularly reviews and edits its standard AD/CVD instructions to enhance clarity and collaborates with CBP on the language of fact-specific instructions that deviate from the standard. CBP personnel communicate daily with Commerce on AD/CVD matters regarding questions related to specific entries in the AD/CVD portal within ACE.

IV. Conclusion

CBP works to ensure that it implements its statutory and regulatory AD/CVD responsibilities and that it adheres to current CBP and other U.S. Government agency policies to minimize loss of revenue through the timely and accurate liquidation of AD/CVD entries. CBP continues to prioritize enforcement actions and compliance initiatives in support of the AD/CVD laws. The cooperation between CBP and Commerce is strong, and together the agencies will pursue all available avenues to assess AD/CVD, ensure importer compliance, and collect the revenue in a timely manner.

Appendix. List of Acronyms

Acronym	Definition
ACE	Automated Commercial Environment
AD/CVD	Antidumping/Countervailing Duty
CBP	U.S. Customs and Border Protection
Centers	Centers of Excellence and Expertise
Commerce	U.S. Department of Commerce
DHS	Department of Homeland Security
FY	Fiscal Year
GAO	U.S. Government Accountability Office