



U.S. Department of Commerce



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Vietnamese Business Community Presentation

Hanoi, Vietnam
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AD/CVD Rules and Regulations

Legal Framework for AD/CVD Proceedings

- The U.S. Statute (Tariff Act of 1930, as amended)
- Commerce's Regulations
- U.S. Court of International Trade decisions
- Court of Appeals for the Federal Circuit decisions
- Past practice in proceedings
- WTO rules
 - The statute and regulations emanate from the WTO Agreements and are WTO-consistent

U.S. AD/CVD Practice

- Decisions based on record evidence
- Deadlines determined by Statute and Regulation
 - Questionnaire deadlines
 - Extension requests
- If Commerce does not have the necessary information, it may use the “facts otherwise available” (FA)

Transparency

Hallmarks of the U.S. system: transparency, due process and rules-based decision-making

- Decisions based on in-depth analysis and case records
 - Electronic Filing System (ACCESS)
 - Administrative Protective Order System
- Subject to judicial review and WTO challenge

Judicial Review

Commerce decisions (and U.S. ITC decisions regarding injury) are reviewable by domestic courts and international tribunals:

- Domestic courts
 - U.S. Court of International Trade
 - U.S. Court of Appeals for the Federal Circuit
 - U.S. Supreme Court
- WTO dispute resolution
 - Panels
 - Appellate Body
- NAFTA binational panel review
 - Alternative to judicial review in U.S. Courts; available in proceedings involving merchandise from NAFTA countries

Role of Other U.S. Government Agencies

- **U.S. International Trade Commission**
 - Investigates whether there is injury to the domestic industry.
 - Headed by six Commissioners who are nominated by the President and confirmed by the U.S. Senate.
 - Commissioners serve 9-year terms.

Role of Other U.S. Government Agencies

- U.S. Department of Justice
- Office of the U.S. Trade Representative
- U.S. Department of Homeland Security
 - U.S. Customs and Border Protection
 - U.S. Immigration and Customs Enforcement (ICE)

AD/CVD Enforcement

- The number of antidumping and countervailing duty investigations initiated by Commerce has been steadily increasing:
 - 56 in FY 2016
 - 73 in FY 2017
 - 53 investigations in 2018 to date.
- As of May 2018, Commerce has over 400 antidumping (AD) and countervailing duty (CVD) orders in place, ten involving Vietnam.

However...

- **Only 1.5 percent** of U.S. imports for consumption are subject to antidumping or countervailing duty orders.



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U.S. Antidumping Practice

Non-Market Economy Countries

Legal Framework for Making a NME Country Designation

“any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.”

Commerce designates a country as an NME for antidumping purposes:

- Prices are not reflective of market principles
- Prices are not meaningful measures of value.

Legal Framework for Making a NME Country Designation

Six Factors:

- (i) the extent to which the currency of the foreign country is convertible into the currency of other countries;{.}
- (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,
- (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,
- (iv) the extent of government ownership or control of the means of production,
- (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and
- (vi) such other factors as the administering authority considers appropriate.

Legal Framework for Making a NME Country Designation

- **Commerce currently treats 11 countries as NMEs:**
 - Armenia
 - Azerbaijan
 - Belarus
 - China
 - Georgia
 - Kyrgyzstan
 - Moldova
 - Tajikistan
 - Turkmenistan
 - Uzbekistan
 - Vietnam

Legal Framework for Making a NME Country Designation

- **Commerce formerly treated 11 other countries as NMEs, all of which have since been graduated to market economy status:**
 - Czech Republic (1998)
 - Estonia (2003)
 - Hungary (2000)
 - Kazakhstan (2001)
 - Latvia (2001)
 - Lithuania (2003)
 - Poland (1992)
 - Romania (2003)
 - Russia (2002)
 - Slovakia (1998)
 - Ukraine (2006)

Legal Framework Governing the NME AD Margin Calculation Methodology

Normal value of the subject merchandise based of the value of the factors of production

- based on the best available information
- values of such factors in a market economy country or countries considered to be “appropriate”
 - at a level of economic development comparable to that of the nonmarket economy country, and
 - significant producers of comparable merchandise

Legal Framework Governing the NME AD Margin Calculation Methodology

- **Factors of Production include:**
 - hours of labor required,
 - quantities of raw materials employed,
 - amounts for energy and other utilities consumed, and
 - representative capital cost, including depreciation.

Surrogate Country Methodology

- Economic comparability
 - GNI per capita
 - Surrogate country list – non-exhaustive
 - Current potential surrogate countries for Vietnam: Philippines, Indonesia, Nigeria, India, Pakistan, Bangladesh
 - This list is updated annually
- Producer of comparable merchandise
 - Production processes
 - End uses
 - Physical characteristics
- Data considerations
 - Availability
 - Contemporaneity
 - Reliability

ME vs. NME AD Margin Calculations

Market Economy

U.S. Price

Compare U.S Price
to Normal Value

Normal Value = **Prices
or Constructed Value**

Non-Market Economy

U.S. Price

Compare U.S Price
to Normal Value

Normal Value = **FOP
and SV Methodology**

NME U.S. Price Calculation

	“Starting Price” per unit in the U.S. Market	Use actual Value
	Less Discounts	Use actual Value
	Less Rebates	Use actual Value
	Less U.S. Movement Expenses	Use actual Value
	Less U.S. Insurance Expenses	Use actual Value
	Less U.S. Brokerage	Use actual Value
Expenses Incurred in NME Country	Less Foreign Inland Brokerage Expenses	Use Surrogate Value
	Less Foreign Inland Movement Expenses	Use Surrogate Value
	Less Foreign Inland Insurance Expenses	Use Surrogate Value

Note: For general information purposes only. When interpreting and applying the law, please refer to the Tariff Act of 1930, as amended, (19 U.S.C. 1671-1671h, 1673-1673h) and the related regulations in Title 19 of the Code of Federal Regulations.

NME Normal Value Calculation Example

<u>Input</u>	<u>FOP</u>	<u>SV</u>	<u>Total Cost</u>
steel	1.4 tons	\$300/ton	\$420
labor	10 hours	\$4/hr.	\$40
electricity	40 kwh	\$2/kwh	\$80
Cost of Material			\$540
FOH	8%	\$43.20	\$583.20
SGA	10%	\$58.32	\$641.52
Profit	7%	\$44.91	
NV			\$686.43



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Update on U.S. AD/CVD Rules, Regulations and Practices

Recent Developments in U.S. AD/CVD Practice

- **Particular Market Situation**
 - Section 504 of the Trade Preferences Extension Act of 2015
 - Allows an alternative calculation methodology in situations costs do not accurately reflect the cost of production in the ordinary course of trade.
 - Found PMS in:
 - OCTG from Korea
 - Biodiesel from Argentina and Indonesia
 - Found no PMS in:
 - Steel Nails from Korea
 - Softwood Lumber from Canada
 - Rebar from Taiwan

Recent Developments in U.S. AD/CVD Practice

- **Circumvention and Evasion:**
 - Anticircumvention Investigation involving corrosion-resistant steel and certain cold-rolled steel flat products imported from the Vietnam produced from substrate originating in China.
 - Working with CBP pursuant to its new investigation authority granted under the Enforce and Protect Act (EAPA) and Trade Facilitation and Trade Enforcement Act of 2015.

U.S. AD/CVD cases involving Vietnam

- 10 antidumping orders
 - Frozen Fish Fillets
 - Tool Chests and Cabinets
 - Wind Towers
- 3 countervailing duty orders
 - Steel Nails
 - Steel Wire Garment Hangers
- 2 ongoing investigations
 - AD and CVD investigations of laminated woven sacks



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Trade Agreement Issues

Trade Agreement Negotiations and Compliance

- For key non-tariff barrier disciplines, **E&C represents the Department of Commerce in trade agreement negotiations** to secure strong, binding commitments that open markets and guarantee fair treatment for U.S. industry.

Example: the new WTO TFA Agreement

- In force as of 2017, the WTO Agreement on Trade Facilitation (TFA) is the first new multilateral agreement since 1995.
- Purpose: cuts existing “red tape” still hampering movement of goods across borders.
 - e.g. requires more transparency for customs rules, promotes faster clearance times.
- U.S. goal: *increase the velocity of our exports.*

Trade Agreement Negotiations and Compliance

- Once agreements are in force, **E&C works to seek foreign government compliance** with those commitments.

Example: WTO TBT Compliance in Brazil

- In 2009, U.S. industry reported Brazil required domestic regulator inspection of all medical device manufacturing plants before devices could be registered for sale in Brazil.
- WTO Technical Barriers to Trade (TBT) Agreement requires that mandatory technical regulations not be more trade-restrictive than necessary.
 - In this case, Brazil should accept U.S. certifications that meet Brazilian requirements in lieu of inspections.
- Sustained U.S. engagement in the WTO and the International Medical Device Regulator Forum resulted in a 2017 Brazilian decision to accept U.S. certifications.
- Result: *\$1 billion in annual exports protected.*



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Questions?

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