



MASTER CUSTOMS SPECIALIST (MCS) COURSE

Part 2: Compliance | Module 6: AD/CVD

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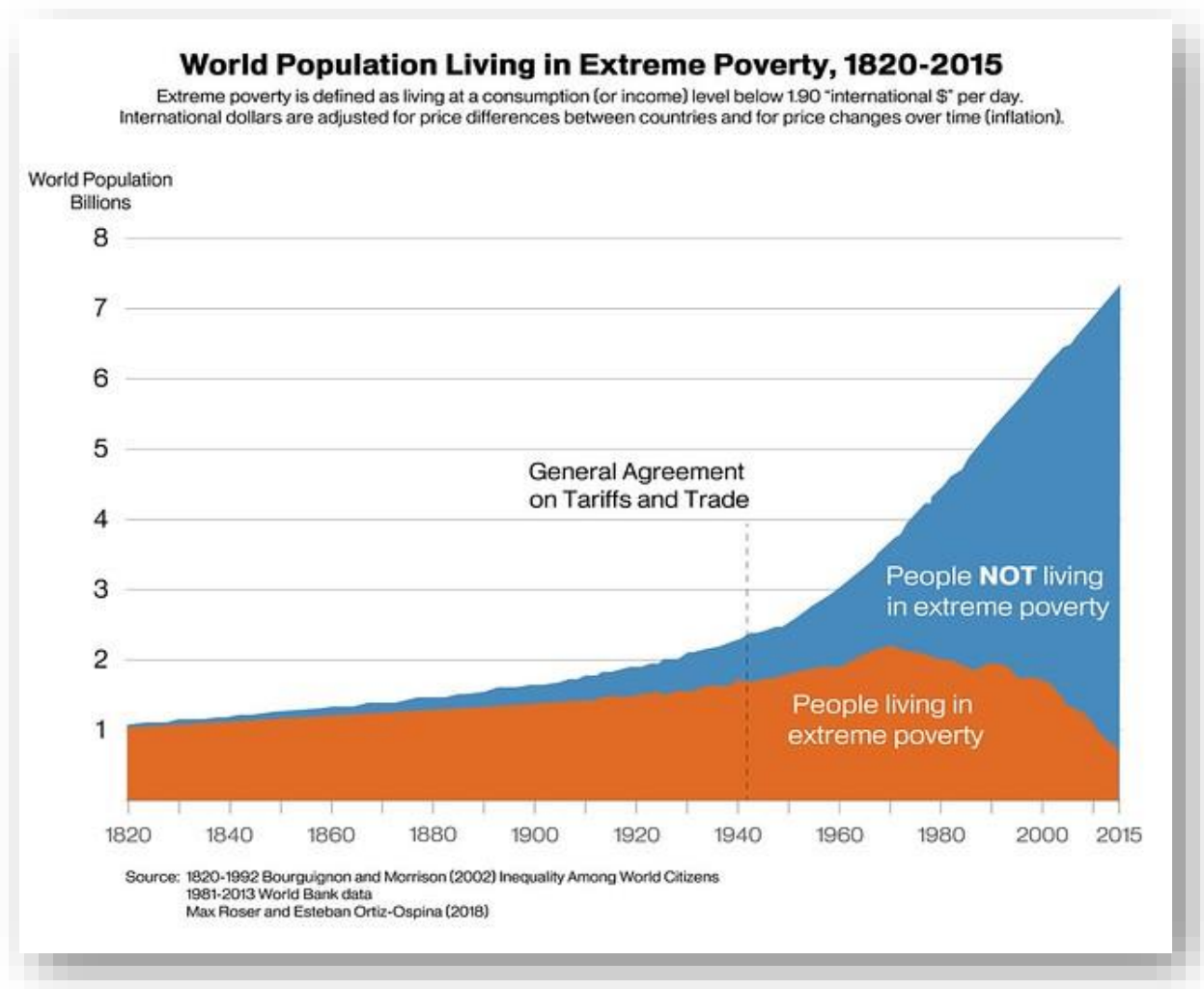
INTRODUCTION

Trade is crucial to the global economy and the lives of individuals. Looking at the chart on page 2, the number of people living in extreme poverty underwent a significant shift around the time of the GATT implementation. While not the only factor, trade played a considerable role in achieving these results as global trade agreements focused on “free trade”.

Over the decades, the demand for “fair trade” has received increasingly more attention.

The U.S. has increasingly taken the position that, while it wants to keep its markets open, it must also act aggressively against “unfair” trade practices. The primary tool available to the U.S. against unfair trade practices is the use of Antidumping and Countervailing Duties (AD/CVD).

The Certified Customs Specialist (CCS) course offered by NEI included a module on AD/CVD. In this course, we will dive deeper into these topics.



Lesson 1: Antidumping and Countervailing Definitions

While often lumped together, Antidumping Duties and Countervailing Duties are used for significantly different reasons. Let's refresh ourselves on the use of AD/CVD.

Antidumping duties are used to counteract a practice called dumping where a foreign firm or industry sells product at less than it would sell the same product in its domestic market, at some times even below the production cost.

Countervailing duties are used to counteract subsidies a foreign government may give to a specific industry to encourage its development or continued existence within their domestic economy.



Lesson 2: World Trade Organization (WTO)

AD/CVD is often viewed within the framework of U.S. law. The global trade issues surrounding AD/CVD can be complex. Let's start from the global perspective.

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. Its primary goal is to help producers of goods and services, exporters, and importers conduct their business.

Lesson 3: WTO and Antidumping

While the U.S. and many other countries consider dumping an unfair trade practice as predatory pricing (or price discrimination), the WTO reserves judgment. In fact, **dumping is legal under WTO rules unless** the receiving country can reliably show the negative effects the exporting firm has caused its domestic producers.

The majority of trade agreements include restrictions on dumping. Violations of such agreements may be difficult to prove and can be cost prohibitive to fully enforce. If two countries do not have a trade agreement in place, then there is no specific ban on dumping between them.

The WTO Anti-Dumping Agreement (AD Agreement) clarifies and expands Article 6 of the General Agreement on Tariff and Trade (GATT) which allows countries to take action against dumping.

Working in tandem, the GATT Article and the AD Agreement, allow countries to act in a way that would normally break two of the GATT principles – tariffs are binding and there should be no discrimination between trading partners. This is generally done by charging an extra import duty on the specific product from the particular exporting country to bring its price closer to the normal (or fair market) value or to remove the injury to domestic industry in the importing country.

There could be many ways to determine a fair market price and whether or not a product is being dumped. The AD Agreement identifies only three ways to determine the fair market price.

1. Domestic market price—Net price in the domestic market to unrelated purchasers
2. Export price—Exporter's sales price to another country
3. Constructed value—Combination of the exporter's production costs, other expenses and normal profit margins



Lesson 4: WTO and Subsidies (CVD)

In the case of subsidies, the WTO Agreement on Subsidies and Countervailing Measures (CVD Agreement) disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies.

Under the agreement, a country can use the WTO's dispute-settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. The country can also launch its own investigation and ultimately charge an extra import duty called a "countervailing duty".

Lesson 5: WTO and AD/CVD

Both the AD and CVD Agreements include the caveat that the action (dumping or subsidizing) must cause material harm to the importing economy. It is not surprising that the importing and exporting countries often disagree whether the action is occurring in the first place or if the action is causing harm. In such circumstances, the assessment of AD/CVD is often brought to the WTO for dispute resolution.

Spanish Olives: On January 29, 2019, the WTO received a request from the European Union for a consultation with the U.S. on the imposition of AD and CVD for Spanish olives.

As you can see, the request also includes a list of the Agreements cited as the request for consultation which include both WTO agreements and GATT Articles.

Short title:	US — Ripe Olives from Spain
Complainant:	European Union
Respondent:	United States
Third Parties (original proceedings):	Australia; Brazil; Canada; China; India; Japan; Mexico; Russian Federation; Saudi Arabia, Kingdom of; Switzerland; Turkey
Agreements cited: (as cited in request for consultations)	Art. 1.1(a) , 1.1(b) , 1.2 , 2.1 , 2.1(a) , 2.1(b) , 2.1(c) , 2.2 , 2.4 , 10 , 14 , 15.1 , 15.2 , 15.5 , 19.1 , 19.3 , 19.4 , 32.1 Subsidies and Countervailing Measures (SCM) Art. VI:1 , VI:2 , VI:3 GATT 1994 Art. 3.1 , 3.2 , 3.5 Anti-dumping
Agreements cited: (as cited in panel request)	Art. 1.1(a) , 1.1(b) , 1.2 , 2.1(a) , 2.1(b) , 2.1(c) , 2.4 , 10 , 14 , 15.1 , 15.2 , 15.5 , 19.1 , 19.3 , 19.4 , 22.5 , 32.1 Subsidies and Countervailing Measures (SCM)
Consultations requested:	29 January 2019
Panel requested:	16 May 2019
Panel established:	24 June 2019
Panel composed:	18 October 2019



It is important to note that the U.S. is not immune to claims of AD or CVD against it.

Boeing vs. Airbus

For fifteen years, the U.S. and the European Union have exchanged barbs and disputes over possible subsidies within the commercial aircraft industry. As recently as March 2019, the WTO determined the U.S. had failed to fully remove all the prohibited subsidies to Boeing. The WTO's latest compliance ruling on the EU's efforts at removing its prohibited subsidies to Airbus is due later this year.

Lesson 6: AD/CVD Determination

While the U.S. Secretary of Commerce can self-initiate AD/CVD investigations, it is more common for the AD/CVD investigative process to be initiated by a petition from a "domestic interested party" as defined by the Tariff Act of 1930 which includes a corporation, trade union, industry association or similar entity.

To be able to file a petition, the affected industry should produce a domestic "like product" which competes with the imports in question.

Petitions should be filed simultaneously with the Department of Commerce (DOC) and International Trade Commission (ITC) and be certified using the proper language in 19 CFR 531.303. Each agency plays a specific role within the AD/CVD investigation process.

When the petition is based upon "derogation of an international undertaking on export credits," the petition must also be filed with the Secretary of the Treasury. In this scenario, the petition is based on the refusal of a signator to the CVD Agreement to comply with provisions of the agreement specifically related to export credits. The WTO CVD Agreement specifically addresses export credit activities, including loans and loan guarantees provided by government backed export credit agencies. Anytime an export credit is given, the WTO considers a subsidy to have occurred. The Department of Treasury supports the DOC investigation regarding these financial transactions. The regulations do not specifically state the filing must be simultaneous with the DOC and ITC, but filing all three simultaneously would err on the side of caution.

The specific elements required in the petition can be found in 19 CFR 351.202 and vary depending on the type of claim (AD or CVD), if "critical circumstances" are claimed, etc.

Upon receipt of the petition, the Commerce Secretary will provide a public version of the petition to the foreign government's representative in Washington D.C. It will also invite the foreign government to participate in CVD investigations.



The ITC developed an extensive Antidumping and Countervailing Duty Handbook, which can be found [here](#). It details the petition requirements, the investigative process and regulatory timetables for decision making.

The determination process is divided into five stages with each stage ending with a determination by either DOC or ITC. With the exception of stage 3, a negative determination by either agency terminates the investigation at both agencies. The Commerce Secretary has statutory authority to extend any of these stages.

Stage 1: Initiation of the investigation by DOC (**20 days**)

Stage 2: Preliminary Phase ITC investigation (**45 days**)

Stage 3: Preliminary Phase DOC Investigation

(40 days for CVD and 115 days for AD)

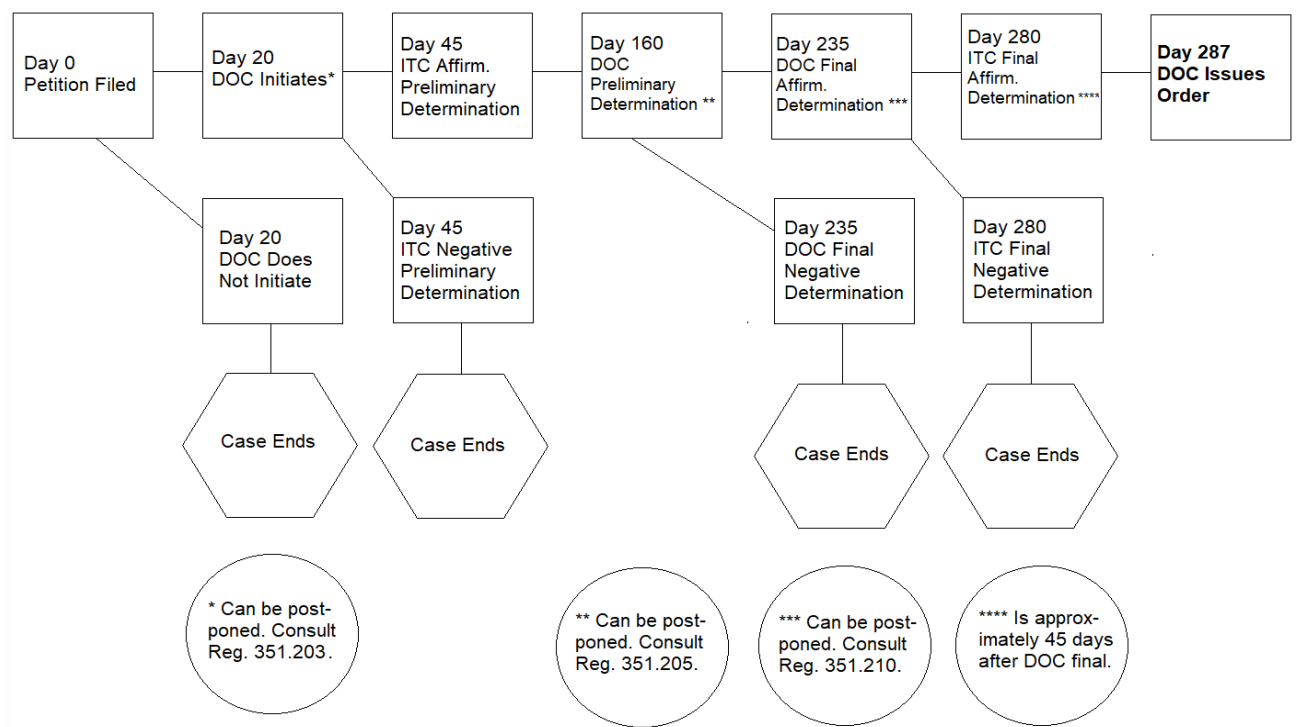
Stage 4: Final Stage of DOC Investigation

(75 days from DOC preliminary determination)

Stage 5: Final Stage of ITC investigation

(120 days from DOC preliminary determination or

45 days from DOC final determination whichever is later)





Lesson 7: Case Administration

The International Trade Administration (ITA) is an agency within the DOC. ITA's Enforcement and Compliance calculates the AD/CVD rates and establishes the scope of AD/CVD orders.

CBP enforces these decisions and collects the AD/CVD assessed on the imported goods.

As part of the investigative process, manufacturers can voluntarily provide information on their pricing. Based on this information, the manufacturer may be granted a lower AD/CVD duty rate or be excluded from the scope of the case entirely.

Some products will have both AD and CVD cases and both duty rates will be applied.

Lesson 8: Reading an AD/CVD Case

Each case is assigned a 7-digit AD/CVD case number which provides information on the commodity and country of origin of the product involved. An additional three digits are added for special rate considerations making the case number reported on an entry to be 10-digits long.

For example: A-570-890-023

- Digit 1: The type of case (A = Antidumping, C = Countervailing)
- Digits 2-4: Country of Origin (570 = China)
- Digits 5-7: Commodity (890 = Wooden Bedroom Furniture)
- Digits 8-10: Producers (000 = All others. Specific codes are assigned to producers receiving different rates).

Let's review the [scope of A-570-890](#). It begins with a scope description, including things such as:

- Ways to identify the product
 - Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish.
- Items included in the scope
 - The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; etc.
- Items excluded from the scope
 - The scope of the Petition excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; Digits 8-10: Manufacturer (000 = All others. Specific codes are assigned to manufacturers receiving different rates).



- HTSUS numbers where product subject to this scope may be found
 - Imports of subject merchandise are classified under statistical category 9403.50.9040 of the HTSUS as “wooden * * * beds”
 - This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.
- Scope rulings already issued
 - Requestor: Bassett Mirror Company, Inc.; Reflections and Murano chairside chests are outside the scope of the antidumping duty order because of their limited storage space and characteristics consistent with end tables or occasional tables; April 30, 2015.

Lesson 9: Finding Applicable Cases

Each AD/CVD case has a separate scope. As noted above, while the order includes Harmonized Tariff (HTSUS) numbers, these are for reference only. They are not legally binding. It is imperative that importers review AD/CVD cases that **may** apply to its product. Each case must be read individually to determine the scope of the ruling and if there is applicability to the imported product.

A full list of AD/CVD cases can be found at:

- CBP’s Automated Commercial Environment (ACE) contains comprehensive case information on every case.
- The ITC publishes a list of every AD/CVD case [here](#).
- Commerce’s ITA website, www.trade.gov/enforcement, contains information on AD/CVD cases listed by country under “Products currently subject to AD/CVD Orders”.

When an importer is unsure if its product is within the scope of an AD/CVD case, it can request a scope ruling from DOC through ACCESS at <https://access.trade.gov/login.aspx>.

DOC has also created a guidance document to assist the trade community in requesting scope rulings. This information can be found at: <https://enforcement.trade.gov/scope/Request-Scope-Ruling.pdf>.

Note: Determining if a product is within an AD case’s scope is beneficial to an importer.

When an importer disagrees with DOC’s scope ruling, the matter can be referred to the Court of International Trade (CIT).



Once an applicable 7-digit AD/CVD case number has been identified, you must determine the last three digits of the case number to report to CBP. First you must identify the exporter and manufacturer of the goods. The duty rates may be assigned to an exporter, an exporter/manufacturer combination, or a manufacturer. The exporter rate is used if the exporter has been assigned its own rate. Next, you would look for a manufacturer rate. In the case of duty rates assigned to an exporter/manufacturer, the transaction must have the exporter and manufacturer combination present in order to qualify for the rate.

If there is no specific cash deposit rate assigned to the exporter, manufacturer or exporter/manufacturer combination, then the all-others or country-wide rate applies which is represented by the last three digits being 0s.

Note: If a producer/exporter combination is excluded from an AD/CVD order, the exclusion is applicable only to that combination and are not available if the product is purchased from a reseller. It must be purchased directly from the combined entities. If product is purchased from a reseller in this scenario or if the reseller doesn't have its own specific rate, the "all others" or "country-wide" 000 case number would apply.

Lesson 10: Import Requirements

For imports subject to AD/CVD, the case number must be reported at time of import with AD/CVD duties tendered.

In addition, imports subject to AD must include a non-reimbursement statement.

Non-reimbursement statements should be filed at the time of entry but can be provided at any time prior to liquidation. Non-reimbursement statements are signed by the importer attesting whether or not they received reimbursement for the AD paid.

An importer can file a single non-reimbursement statement with Customs and Border Protection (CBP) for a particular entry, or they may choose to use a blanket non-reimbursement statement which is good for a certain time period. The importer can then use the same statement multiple times.

It is recommended that a copy of the statement is included with all entries filed at all ports to avoid any issues. It is important to note that ACE allows non-reimbursement statements at the line level for entries filed in ACE or blanket non-reimbursement statements at the importer



account level for entry summaries filed in ACE. Importers with their own ACE portal can also store their Non-Reimbursement certificates there and not have to include with the entry.

A signed copy of the statement is not required to be attached; however, since CBP can ask for a copy later on, it is a good procedure to attach the document to the entry.

Individual non-reimbursement statements need to include the following language:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter, of all or any part of the antidumping duties or countervailing duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of antidumping notice suspending liquidation in the Federal Register) or purchased before (same date) but exported on or after (date of Final determination of sales at less than fair value).

Blanket non-reimbursement statements need to include the following information:

- The time period that the certificate applies to, which is either 12 months or the administrative review period, whichever is longer
- The specific AD case number
- The manufacturer

If the importer attests that they are being reimbursed for the AD paid, CBP will issue a bill for double the AD duties due at the time of liquidation.

This will also happen if the importer fails to provide a non-reimbursement statement prior to liquidation (a protest can be filed once the bill is issued and the non-reimbursement statement can be presented at that time).

It is a good practice for the broker to verify that the importer properly completes the statement.

If the entry was initially filed as a consumption entry and not as an AD entry, there will not be a non-reimbursement statement initially filed.

However, it is important to note that when CBP reviews an entry and they determine that a commodity falls within the scope of an AD order, they can ask for the appropriate AD to be paid and a non-reimbursement statement should be filed at that time.



If a non-reimbursement statement is not presented, the AD will be doubled at liquidation resulting in a claim against the importer.

Lesson 11: Post Entry: Refunds, Liquidation and Bills

Refunds

As detailed in 19 U.S.C. § 1558, and 19 § CFR 191.3(b)(3), once the merchandise has been released from CBP custody, the importer is not entitled to a refund of AD/CVD duties, except for refunds due to overpayment of a duty, or as a result of a subsequent decrease in the duty rate resulting from an administrative review of that AD/CVD order at Commerce covering, as appropriate, the exporter or producer of the merchandise.

Liquidation

Unlike other entry types, liquidation of AD/CVD entries can be extended or suspended indefinitely. This means that there is longevity in bond exposure for these entry types and most are longer than one year. Sureties have seen liquidations occur several years after an entry is cleared and even as long as 15 years after the entry date.

Late Liquidation

Once liquidation occurs it is important to check the date of the Federal Register Notice that lifted the suspension of the liquidation. This notice informed CBP to start the liquidation process of all entries in the Period of Review. CBP only has **six months to liquidate** entries once the DOC issues liquidation instructions in the Federal Register. If liquidation happens after the six-month timeframe and a bill is issued to the importer, a protest could be filed asserting untimely liquidation and full cancellation of the bill requested.

Duty Rate Changes

At the time of liquidation, it is possible that the specific duty rate for an exporter or manufacturer no longer exists. It is possible that during the administrative review, the Department of Commerce determines that the manufacturer/exporter no longer qualifies for a separate rate. At liquidation, the AD/CVD rate would then jump to the all others rate. The all others rate is usually significantly higher than a separate rate.

In one instance, the loss of a separate AD/CVD rate increased the AD by more than 200%; this created a large bill to the importer and there was nothing to protest with CBP.

Importers may want to bring this potential risk to the attention of their risk management team.



Defunct Importer

Because of the possible long delay between entry and liquidation, it is possible the importer has gone out of business. The bond surety company will generally review the transaction for any protestable issues and file a protest, if possible.

For example, let's say CBP issued a bill for doubling AD because a non-reimbursement statement is not on file. The Department of Commerce has instructed CBP to waive presumption of reimbursement in this instance. If it can be proved that the importer went out of business prior to liquidation and the doubling of AD, protests have been successful in reducing the bill by half.

Bills

If CBP issues a bill to the importer, the importer has **180 days from liquidation** to file a protest (if there is an issue to protest). If the bill involves an older entry (prior to December 2004), the protest timeframe is **reduced to 90 days**.

Protests can now be filed electronically through the ACE portal *as well as sent directly to the port of entry*. The protesting party (attorney, importer, broker) should provide the surety a copy of the protest with supporting documentation for their records. As with any other bill, the importer has the option of paying the bill while the protest is decided. If the protest is approved, the importer will receive a refund with interest. If payment is not remitted, interest will continue to accrue on the bill until a decision has been made.

Notice of a decision depends on the method of filing. If a protest was filed through ACE, the protesting party will receive an email advising that there is a decision made and the individual should log into ACE to verify status. If the protest was filed through the port via hard copy, a CF 19 will be mailed to the protesting party with the decision.

At the **60-day** mark, the bill becomes a demand on the surety. The surety has **180 days** to file a protest from the date the bill first appears on the surety's CF 612 report. It is imperative to note that the surety certifies that they are filing the protest on its own behalf, and is not collusively filing to extend any other authorized person's time to protest.

Sureties are barred from protesting a bill on behalf of an importer, so it is extremely important that if an importer wishes to dispute liquidation, they do so prior to the expiration of the 180-day timeframe.



Lesson 12: Broker Considerations

AD/CVD can be a complex and confusing topic for importers and brokers alike. AD/CVD duties represent a considerable risk to importers and by extension brokers. Consider fireworks, specifically sparklers. The import duty is 5.3% while the AD duty is 93.54%. If an importer did not account for the additional AD duty, it would be impossible to recoup those duties at time of liquidation. Importers have sued brokers over bills for AD duty.

While an importer must exercise reasonable care in its import transactions, Customs brokers must exercise responsible supervision. A Customs broker, acting as an agent of the importer under a Power of Attorney, also has obligations under domestic law.

Key processes for a broker to develop in this area include:

1. Handling of ACE AD/CVD Warning Flags – When a warning flag is received from ACE, a broker should have a procedure for communicating the potential for AD/CVD to an importer and capturing the importer's response.
2. If a broker has reason to believe any information provided is incorrect, a broker should have a procedure for communicating concerns and an importer's response.
3. Handling of non-reimbursement statements – both blanket and single shipment.
4. Periodic communications to importers regarding the need to review AD/CVD scopes and not rely on the HTS codes listed in the order to be all-inclusive.