

DOCUMENT RESUME

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The Treasury Department's Administration of the Antidumping Act of 1921. GGD-78-60; B-114898. April 14, 1978. 2 pp. + 2 enclosures (16 pp.).

Report to Sen. Birch Bayh; Sen. H. John Heinz, III; Sen. John Glenn; Sen. Howard M. Metzenbaum; Sen. Jennings Randolph; by Victor L. Lowe, Director, General Government Div.

Issue Area: International Economic and Military Programs: Relief From Import Injury and Unfair Trade Practices (612); Tax Administration: Management Information to Measure Tax Program Effectiveness and Allocate Resources (2706).

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Congressional Relevance: Sen. Birch Bayh; Sen. H. John Heinz, III; Sen. John Glenn; Sen. Howard M. Metzenbaum; Sen. Jennings Randolph.

Authority: Antidumping Act of 1921.

Questions were raised about the Treasury Department's administration of the Antidumping Act of 1921 to determine whether the act is effective in countering unfair foreign competition involving the sale of imported merchandise in the United States at less than fair value and whether Treasury has been dilatory in its administration of the act. Questions dealt with the time involved in dumping investigations, enforcement of bonding requirements, problems in assessing dumping duties, cooperation of foreign parties, revocation of dumping findings, and the effect of dumping duties on prices. It is difficult to establish a cause-effect relationship between the price of imported merchandise and Treasury's determinations of dumping and assessment of dumping duties. However, a dumping investigation creates enough market uncertainty to prompt adjustments in the price or quantity of imports. While dumping duty assessments have rarely been timely, the potential liability for such duties is known when dumping determinations are made, and this should cause some adjustments. Treasury and the International Trade Commission have set statutory time frames for the processes involved in determining whether dumping duties should be assessed. Delays in assessment are due partly to the complexities of price comparisons but are also due to the low priority given to this function. The Customs Service has taken actions which should help to reduce delays. (HTW)

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UNITED STATES GENERAL ACCOUNTING OFFICE

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GENERAL GOVERNMENT
DIVISION

APR 14 1978

B-114898

The Honorable Birch Bayh
The Honorable H. John Heinz, III
The Honorable John Glenn
The Honorable Howard M. Metzenbaum
The Honorable Jennings Randolph
United States Senate

This report is in response to the six questions raised in your joint letter of November 4, 1977, concerning the Treasury Department's administration of the Antidumping Act of 1921. Taken together the questions seek to determine whether the Antidumping Act is effective in countering unfair foreign competition involving the sale of imported merchandise in the United States at less than fair value and whether Treasury has been dilatory in its administration of the act.

The test of the act's effectiveness is whether the price of imported merchandise is affected by Treasury's determination that dumping is occurring and the eventual assessment of special dumping duties. Because of the dynamics of the market place and the many variables involved, establishing a cause-effect relationship between dumping duties and the price of imported merchandise would be extremely difficult. The Treasury Department has not attempted to determine the effect dumping duties have had on import prices. For that matter no one we talked to, including a few trade associations, importers, a domestic manufacturer, and law firms involved with dumping cases have attempted to make or knew of such an evaluation.

The discussions did indicate, however, that the initiation of a dumping investigation by Treasury creates enough uncertainty in the market place to prompt adjustments either in the price of imports or the quantity imported. While dumping duty assessments have rarely been timely, the potential liability for such duties is known at the time of Treasury's tentative determination of sales at less than fair value. This potential liability should cause some adjustments in the import prices.

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(48295)

Under the best of circumstances, the process leading to the assessment of dumping duties takes a long time. The statutory time frames for the multistep process leading to the determination that dumping duties should be assessed add up to 13 months. Treasury, with only minor exceptions, has met these time frames as has the International Trade Commission. We see little opportunity to shorten appreciably the overall 13-month period.

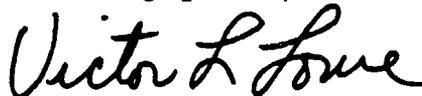
The actual assessment of duties, however, is not bound by any deadline and it is seldom done in a timely manner. The U.S. Customs Service estimated the average delay to be from 3 to 3-1/2 years.

This long delay can be explained in part by the fact that the assessment of duties must be made on an entry-by-entry basis involving detailed and complex comparisons of the price paid by the U.S. importers and the price in the country of export on a given day. On the other hand, much of the delay is due to the fact that, until recently, the assessment of dumping duties has not been given high priority by the Customs Service and the number of people working on antidumping matters were simply unable to handle the workload.

To correct this situation, Customs has assigned additional personnel to the work, automated some previously time-consuming manual functions, and required foreign exporters to adhere to deadlines for the submission of information needed to assess dumping duties. These are all steps in the right direction.

The enclosure to this letter contains the detailed answers to the six questions you raised. The material was discussed with Customs and Treasury officials who agreed, in general, with the facts presented. Unrestricted distribution of this report will be made 30 days after the date of the report or at the time of public release of the report's contents by one of the requesters.

Sincerely yours,



Victor L. Lowe
Director

Enclosures

Results of The U.S. General Accounting Office
Review of Selected Aspects of the Administration of the
Antidumping Act of 1921

U.S. Customs Service
Department of the Treasury

HOW LONG DO DUMPING INVESTIGATIONS TAKE AND
HOW OFTEN ARE STATUTORY TIME LIMITS EXCEEDED?

The Antidumping Act of 1921, as amended, is intended to counter unfair foreign competition involving price discrimination. Under the act, the Secretary of the Treasury is responsible for determining whether foreign merchandise is being, or is likely to be sold in the United States at less than fair value and for assessing dumping duties to equalize the price paid by the U.S. importers and the price in the country of export.

The act provides for a multistep investigation process and establishes a time limit for each step. Thirteen months (16 months in complicated cases) is the maximum time allowed for completion of all steps. The purpose of each step, and the maximum time permitted for its completion are described below.

Preliminary Investigation

Dumping investigations are ordinarily initiated as the result of an affected U.S. company filing a petition containing data purporting to show that imported merchandise is being sold at less than fair value and indicating that an industry in the U.S. is being injured.

Upon acceptance of a petition, Customs has 30 days to conduct a preliminary investigation to determine if there is a sufficient basis to conduct a full-scale investigation. If the result of the preliminary investigation is negative,

the Commissioner of Customs so advises the petitioner. If, however, the result is affirmative, the Secretary of the Treasury publishes an "Antidumping Proceeding Notice" in the Federal Register and the case proceeds to the next step.

Tentative Determination of Dumping
and Withholding of Appraisement

The Secretary has 6 months (9 months in complicated cases) from the Antidumping Proceeding Notice to make a tentative determination of sales at less than fair value, with the final determination due 3 months thereafter. Unless both the importer and foreign exporter request an extension, the final determination is issued instead of a tentative one. The extension affords the exporters and importers an opportunity to present further information and argument to Treasury prior to the Secretary's final determination, and if persuasive, may prevent a determination that the merchandise is being sold below fair value.

When a tentative determination of dumping is made, the Secretary will publish a notice of withholding of appraisement for a period of 6 months to cover the extension period and the 3 months allowed the International Trade Commission to determine any injury to U.S. industry. If a final affirmative determination is made, the withholding period is for the 3 months the case is at the Commission. All imports from the date of withholding are subject to the assessment of dumping duties.

When a final determination of sales at less than fair value is made, the case is forwarded to the U.S. International Trade Commission to determine, within 3 months, whether an industry in the U.S. is being or is likely to be injured or is prevented from being established by imports sold at less than fair value. An affirmative determination subjects all imports to a dumping finding. The assessment of dumping duties--generally equal to the difference between the price paid by the U.S. importer and the price in the country of export--offset any dumping margins. The dumping duties are assessed in addition to the ordinary duties applicable to the merchandise.

Treasury's Antidumping Workload

On January 3, 1975, the effective date of the Trade Act of 1974, which established time frames for dumping investigations, 11 antidumping cases were in some stage of investigation.

Between January 1, 1975, and December 31, 1977, Treasury initiated an additional 69 antidumping proceedings; 23 in calendar year 1975, 17 in calendar year 1976, and 29 in calendar year 1977. The status of all 80 cases as of December 31, 1977, is shown below.

<u>Status</u>	<u>Pre-1975 cases</u>	<u>Subsequent cases</u>
Investigation in progress (includes cases referred to the International Trade Commission)	0	29
Terminated (no reasonable indication of injury)	0	2
Discontinuance of investigation	0	10 ^{a/}
Determination of no sales at less than fair value	3	4
No injury	5	14
Finding of dumping	<u>3</u>	<u>10</u>
TOTAL	<u>11</u> --	<u>69</u> --

^{a/}Includes eight automobile cases initiated in August 1975. Investigations were primarily discontinued due to receipt of certain specialized commitments from the automobile exporters.

Minor Delays in Meeting
Statutory Time Frames

Treasury has been late in meeting statutory time frames set forth in the Antidumping Act, but delays have been insignificant. With minor exceptions, most cases initiated since January 1975 have been processed in about 10 months, the time allowed for a final determination of whether sales at less than fair value have occurred. About 4 more months are usually required before a dumping finding is published.

TIME FRAME PERFORMANCE
CASES INITIATED BETWEEN JANUARY 1, 1975,
AND DECEMBER 31, 1977

	<u>Preliminary Investigation</u>	<u>Tentative Determination</u>	<u>Final Determination</u>
Number of cases time frame was applicable	<u>69</u> --	<u>37</u> --	<u>42</u> --
Number of cases where time frame was exceeded (percentage)	53 (76.8)	9 (24.3)	12 (28.6)
Number of cases where excess was more than 3 days	49	2	1
Most days by which time frame was exceeded	10	4	4
Average days time frame was exceeded	5.6	2.3	1.8

The time expended for the major steps of some typical cases is shown in enclosure II.

ARE THE BONDING REQUIREMENTS OF THE ACT
ENFORCED, ARE THE BONDING REQUIREMENTS
APPLIED CONSISTENTLY, AND ARE BONDS SET
HIGH ENOUGH TO AFFECT THE PRICE OF
IMPORTED MERCHANDISE?

The act provides for the posting of bonds by importers subject to a tentative or final determination by the Secretary that sales at less than fair value have occurred. Treasury views the imposition of bonding strictly as a means of protecting revenue and Customs' implementing regulations allow each district director to determine the extent of additional bonding, if any, needed to insure payment of potential dumping

duties. We believe Customs' regulations are in accord with the requirements of the act.

When a Withholding of Appraisement Notice is published, each Customs district is notified of its effective date as well as the tentative dumping margins. In processing a subsequent entry, a district can either

--consider the bond under which the entry is made to be sufficient or

--consider the bond insufficient and require the posting of a single entry bond in such amount that would assure payment of the potential dumping duties.

In only one circumstance is an additional bond mandated by Customs regulations. An antidumping bond equal to the estimated value of the merchandise covered by the finding is required when the exporters' sales price is unknown.

Bonding Requirements
Are Inconsistent

Each district determines bonding requirements independently and inconsistencies between districts exist. Customs has no system for monitoring its districts bonding practices. The following example illustrates the different bonding requirements placed on one importer who purchased merchandise from one source, but imported it through eight districts. The dumping margin on this commodity was estimated at 22 percent.

<u>Port</u>	<u>Value of merchandise</u>	<u>District's determination</u>
Boston	\$ 316,303	Single entry bonds equal to 22 percent of value for estimated dumping duties
Houston	114,042	One case single entry bond equal to 22 percent of value One case single entry bond equal to 122 percent of value Two cases-antidumping bond because sales price unknown
Los Angeles	274,600	No additional bonding required
New York	4,595,888	Single entry bonds equal to 22 percent of value
Norfolk	73,614	No additional bonding required
Philadelphia	2,433,000	No additional bonding required
Portland, Maine	120,297	Single entry bonds equal to 22 percent of value
Savannah	562,551	No additional bonding required

It should be noted that \$3,343,656 of merchandise entering through Los Angeles, Norfolk, Philadelphia, and Savannah was covered solely by the importer's regular entry bond which had a face value of only \$500,000. The estimated liability for dumping duties on this merchandise was about \$736,000.

Bonding Has Minimal
Effect on Prices

The bonding requirements of the Antidumping Act have little effect on the price of goods found to have been sold for less than fair value because the cost of antidumping bonds to importers adds little to importers' costs.

Although Customs does not always require additional bonding to cover dumping duties, even where it does the bonding requirement is not likely to have an impact on the price of the product. For example, a large surety company that underwrites Customs bonds charges only \$1 per thousand dollars of bond value for a single entry bond. Such a charge, if a bond is required by Customs, increases the importers costs by only a minute percentage. However, as discussed later on, there are other considerations which appear to generally cause either price adjustments or import curtailments.

PROBLEMS ASSOCIATED WITH ASSESSING DUMPING DUTIES

Customs has fallen far behind in the assessment of dumping duties. The average delay has been about 3 to 3-1/2 years. Faced with mandated time requirements for other segments of the antidumping process, Customs has simply not concentrated on the assessment phase. Recognizing the problem, Customs has taken steps which should speed up the assessment process. There is, however, a minimum time frame of 12-18 months that will be difficult to shorten because of the complexity of the assessment process.

Appraisement Process Steps

Once a finding of dumping is published, special dumping duties are assessed on an entry-by-entry basis on shipments from the date of withholding of appraisement. The assessment process involves the gathering and analyzing of information from the exporters, the issuance of master lists--special appraisement instructions--to Customs field offices, and the assessment of dumping duties by the field offices. Customs is under no time constraints during the assessment process.

Information gathering

To obtain the information required to appraise shipments under the Antidumping Act, a Customs representative presents questionnaires to all exporters of the subject merchandise in the country covered by the finding. The questionnaire relates to home market (or third country) sales, U.S. export sales, and circumstances relative to all sales, such as discounts, advertising, warranties, and distribution costs. This information is initially requested for the period from the withholding of appraisement to the date of the questionnaire, which usually covers a period of 6 to 12 months.

Customs usually allows exporters 30 days to respond to requests for price information with possible extensions of 30 days. Provided the information from the questionnaire is in good order, approximately 2 months are then required to determine the special dumping duties. This time frame is dependent upon the number of manufacturers and complexity of each individual transaction.

Preparation of master lists

To properly process entries subject to dumping duties, it is necessary for Customs headquarters to provide specific appraisement instructions to the field offices. These instructions, called master lists, outline for the field offices the various calculations and price adjustments that must be made to determine the appropriate amount of dumping duty. A master list covers each shipment of merchandise by a particular manufacturer which was purchased or exported during a specified time period.

In preparing the master lists, Customs makes numerous calculations to arrive at the foreign market values or constructed values for each manufacturer covered by the dumping finding. Price adjustments may be made for such items as differences in merchandise, differences in quantities, and circumstances of sale.

The calculations during the appraisement process are more detailed than those made during the dumping investigation. The purchase price or the exporters' sales price for each transaction is compared to the home market price or constructed value on the date of purchase or export to calculate the dumping duty. For appraisement purposes, Customs cannot use any weighted average to arrive at home market price as it does in making the tentative or final determination of sales at less than fair value.

To comply with the requirement that dumping duties be assessed on price comparisons at the time of export or purchase, the master lists must be revised periodically. Updated information is requested from the exporters at periodic intervals, usually every 6 months or every year. Upon receipt of the information, revised master lists are prepared and issued to field offices.

Assessment of dumping duties

When a master list is issued, the field offices appraise the entries covered by it and determine the amount of the special dumping duty. In each case the importer of record is notified of the dumping duties. However, as shown below, the extent of the appraisal delay is disclosed by the backlogs in the issuance of the master lists.

MASTER LIST BACKLOG

<u>Year</u>	<u>Number of manufacturers</u>	<u>Number of master lists published</u>	<u>Backlog</u>
1970	52	0	52
1971	96	13	83
1972	146	24	122
1973	264	85	179
1974	298	47	251
1975	370	161	209
1976	392	158	234

Customs officials advised us that the backlog figures for 1977 have not been determined.

Customs officials gave the following explanations for the backlog of master lists.

--Passage of the Trade Act of 1974. The act placed statutory deadlines on all new antidumping and countervailing duty cases. Customs operations officers who handled those cases were also responsible for preparing master lists. Case work with statutory deadlines was given priority over master list work.

--The act placed special emphasis on previously neglected countervailing duty cases. During 1975, Customs personnel were required to work on 40 active countervailing duty cases and were diverted from master list work.

--From July 1975 through May 1976, Customs had to handle eight complex automobile cases in addition to all other antidumping and countervailing duty work. Customs officials stated that work on master lists during this time virtually ceased.

Efforts to Reduce
Appraisement Delays

Customs has taken the following actions to reduce the delays in issuing master lists.

--In May 1977, Customs assigned 16 additional operations officers to work on a temporary basis to update master lists.

--Customs at the same time reorganized and established a new group that works exclusively on master lists and augmented its permanent staff by seven positions to keep master lists current.

--Customs is utilizing a computer to automate a portion of the functions currently being manually performed by case analysts, such as data transcription and simple arithmetic functions. Automation will also eliminate time consuming manual typing of the master lists.

--Customs now requires exporters to adhere to the established cut-off dates for the submission of information. In the past, this has been a significant cause of delay in the assessment process.

DO FOREIGN PARTIES COOPERATE
IN DUMPING INVESTIGATIONS?

According to Customs officials, cooperation from foreign governments and firms in the conduct of dumping investigations is usually good.

With only three exceptions, Customs is able to contact businesses in foreign countries during dumping investigations without formally coordinating its efforts with the foreign government. The three exceptions are

--Japan--contacts with industry have to be coordinated through the Ministry of International Trade and Industry;

--Austria--permission from the government must be obtained before contacting industry; and

--Switzerland--permission from the government must be obtained before contacting industry. Verification has to be performed at a neutral site.

These requirements have not posed any problems to Customs.

Customs officials advised us that there have been only three cases since 1975 where cooperation has been a major problem. These were as follows:

<u>Commodity/Country</u>	<u>Problem</u>
Animal glue/West Germany	Most manufacturers refused to complete questionnaire.
Carbon plate steel/Japan	Manufacturers refused to supply cost of production data.
Polyvinyl chloride sheet and film/Taiwan	Manufacturers' responses to questionnaires were deemed inadequate for verification.

While Customs officials stated that cooperation is generally good, incomplete or late submission of data often delays the dumping investigation. Foreign firms will frequently request extensions to Customs' deadline or Customs frequently has to follow-up the responses to obtain clarification or additional data. In some cases, firms are reluctant to release certain details of costs or allowances such as cash discounts to preferred customers, quantity discounts, and sales commissions.

As discussed previously, Customs is taking a harder line with exporters to insure that response to its questionnaires are received timely. Only time will tell whether this will improve the process.

HOW FREQUENTLY ARE DUMPING FINDINGS REVOKED?

Dumping findings are revoked by Treasury when it is satisfied that further sales at less than fair value will not occur or when the International Trade Commission changes its injury determination. Treasury revoked seven findings of

dumping from January 1970 to March 1978 (see enclosure III), and had issued a notice of intent to revoke five additional dumping findings. Revocation of a finding of dumping is not mentioned in the Antidumping Act of 1921, as amended; however, Customs regulations allow revocation under either of the following sets of conditions:

- Interested parties request revocation. No sales at less than fair value have been made for at least 2 years and assurances are given that there will be no future sales at less than fair value.
- Treasury initiates action. Dumping finding has been in effect for at least 4 years and Treasury is satisfied that there is no likelihood of resumption of sales at less than fair value.

The International Trade Commission determination of no further injury was the reason for Treasury's revocation of three dumping findings. The Commission found that changed circumstances indicated that if the findings of dumping were revoked, industry in the United States would not be injured or prevented from being established. Unless good cause is shown, 2 years must have elapsed since the publication of the finding of dumping in order for the Commission to reconsider its injury determinations.

Enclosure III presents additional details of the seven revocations.

WHAT EFFECT DO DUMPING DUTIES
HAVE ON RETAIL OR WHOLESALE PRICES?

We were unable to identify any studies which addressed the effect of dumping duties on import prices. However, based upon our discussions with Government officials, trade associations, importers, a domestic manufacturer, and a law firm involved with dumping cases, it appears that the Antidumping Act generally has some restraint on unfair competition.

The consensus was that antidumping proceedings create uncertainty in the market place and this prompts some types of adjustments to prices of imports and/or the quantity imported until it is known whether or not there will be a dumping finding and what the potential dumping duties will be. Our discussions with various parties involved in antidumping proceedings disclosed the following.

- Representatives of a U.S. manufacturer in discussing the degree of protection provided by the Antidumping Act said the process provided some protection initially because of the uncertainty which the investigation creates. However, they do not believe this protection lasts long because of the lengthy delays in assessing dumping duties.
- A representative from a law firm which handles dumping cases told us that the act had a definite but unmeasurable effect on prices. The uncertainty created by the investigation caused a strong effect over the short run, but over the long run this effect would be weakened.
- Representatives of a major trade association advised us that it is the market place where the true measurement of the effect of the Antidumping Act takes place. However, they were not aware of any attempts to measure the act's effect on prices.
- Representatives of a large importers association believe that the antidumping investigations provided good protection to the U.S. industries. They stated the act created so much uncertainty in the market place that price adjustments would be made and/or the volume of imports would decline. For example, they believe the typical reaction to a dumping investigation would be either the exporter raised the export price or lowered the home market price thus eliminating dumping margins; or the importer would change to another supplier or switch to a similar product not subject to dumping.
- Several importers whose products were the subject of dumping investigations advised us that the act did cause a rise in import prices. However, the extent of price increases was uncertain because of factors such as inflation and fluctuations in currency exchange rates.

Two importers said their general practice, during the antidumping investigation, was to continue ordering if delivery could be made

before the withholding of appraisement. Then they would discontinue ordering until they knew the potential dumping liability. Another importer continued ordering because he believed there would not be a finding of dumping.

The degree to which the Antidumping Act is a restraining influence on competition would probably vary from product to product. There are numerous factors which could have a bearing on how effective antidumping proceedings will be. Some of the factors are the supply and demand situation for the product; the state of the world economy; quality differences in the domestic and foreign product; importers' profit margins; the availability of substitute products; importers' and exporters' perceptions of the probable outcome of the dumping investigation; the stability of exchange rates; as well as the specific reasons why the exporter is dumping.

Because of these complexities, all those we talked to believed that a study to determine the effect of the act on import prices would be extremely difficult. A scientific approach would require a detailed time-consuming market analysis of a single product for a specific period of time. The result of such an analysis, however, would have limited value because it could not be used to infer that the same effect would be found in another industry or that the effect would be the same at another period of time.

SUMMARY OF TREASURY'S PROCEDURESUNDER THE ANTIDUMPING ACT

	Hypothetical Case Based on Average <u>Days Required</u>	<u>Days Required To Complete Segment 1/ Average</u>	<u>Range</u>
<u>INVESTIGATION PROCEDURES</u>			
A. Preliminary Investigation (maximum duration 30 days)			
1. A preliminary investigation is initiated when the Department accepts a petition in its proper form.	JAN 1		
2. Upon acceptance of the petition, Customs performs a preliminary investigation to determine whether a full investigation is warranted. During this period they attempt to verify from readily available information, the adequacy and accuracy of the petition; gather background information on the product and the effected industry; and prepare its recommendation to Treasury on whether further investigation is warranted.	JAN 24	24 <u>2/</u>	20-30
3. Treasury reviews the petition and Customs recommendations, prepares the necessary notices, and has the Antidumping Proceeding Notice signed by the Secretary.	JAN 31	7 <u>2/</u>	4-12

1/Based on 5 cases.

2/Based on 4 cases.

	Hypothetical Case Based on Average <u>Days Required</u>	Days Required To Complete Segment 1/ <u>Average</u> <u>Range</u>	
B. Full Investigation (6 months) <u>2/</u>			
1. Publication of the Antidumping Proceeding Notice in the Federal Register. The publication date starts the full investigatory period. <u>3/</u>	FEB 5	5	4-7
2. Customs' foreign attaches arrange meetings with foreign manufacturers to provide them with information concerning the Act and questionnaires which they are requested to complete.	MAR 2	25	15-33
3. During this period, the foreign manufacturers are assembling the information requested in the questionnaires. They are given 30 days in which to assemble the information, but are granted extensions when requested. This date represents the day the manufacturers response is received by the attache.	APR 23	52	28-70
4. The attache arranges meetings with the manufacturers for the purpose of verifying their responses. The actual verification generally requires 1 day per manufacturer.	APR 30	7	4-10
5. The attache prepares his verification reports and forwards them along with supporting documentation to Customs headquarters. This date represents the day the reports are received by the Duty Assessment Division.	MAY 17	17	10-24

1/Based on five cases.

2/Treasury may extend the full investigatory period by 3 months if additional time is needed to analyze complex cases. Since January 1975, 16 cases have been extended.

3/If Treasury believes that there may be questionable injury to U.S. industry, it may request a preliminary determination by ITC. Since January 1975, 14 cases have been referred for preliminary review with 2 of the cases being terminated because of insufficient injury.