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OVERVIEW OF ECS SERVICES

International trade in goods and services is governed by a complex body of U.S. and international regulations. Properly understood and used, these rules can facilitate trade, enhance a firm's or industry's competitiveness, and protect firms from unfair business practices.

Based in Washington, D.C., Economic Consulting Services, LLC (ECS) applies international trade and tax rules and the disciplines of economics and finance to real-world business decision-making. ECS' highly skilled and knowledgeable staff is recognized throughout Washington's international business establishment. Senior staff members frequently testify as expert witnesses before the International Trade Commission, the U.S. Tax Court and other federal courts, and other governmental agencies that oversee international business issues. ECS staff members also serve on U.S. government advisory committees on customs, trade policy, and export issues.

ECS clients receive much more than conventional economic analyses. ECS' knowledge of the business implications of international trade regulations and the international allocation of corporate income for tax purposes is unsurpassed. ECS is uniquely positioned to help its clients maximize their business opportunities and maintain a competitive advantage.

ECS' Washington location and experienced staff allow it to provide clients with access to key federal and international policy-makers in the nation's capital. ECS also can connect clients directly to its network of highly qualified professionals in more than 50 major capitals and business centers worldwide.

ECS EXPERTISE

- *ANTIDUMPING, COUNTERVAILING DUTY, AND OTHER TRADE REGULATORY ACTIONS*
- *INTERNATIONAL TRANSFER PRICING FOR TANGIBLE AND INTANGIBLE PROPERTY*
- *BUSINESS VALUATION AND DAMAGES ESTIMATION*
- *TRADE REPRESENTATION AND TRADE & CUSTOMS INFORMATION SERVICES*
- *FOREIGN AND DOMESTIC MARKET RESEARCH AND MARKET ANALYSIS*



ANTIDUMPING, COUNTERVAILING DUTY, AND OTHER TRADE REGULATORY ACTIONS

Antidumping and countervailing duty actions figure prominently in international trade conflicts. For more than two decades, ECS has been a leader in providing domestic and foreign clients with the economic and financial analysis and data processing services that are vital to success in such actions. Typically working with a client's legal counsel, ECS contributes its technical expertise and its long, real-world experience in both the initiation and defense of such cases.

ECS SERVICES

- ANTIDUMPING ACTIONS
 - ▶ "LESS-THAN-NORMAL VALUE" ANALYSIS
 - ▶ INJURY ANALYSIS
 - ▶ MANAGEMENT AND CONTROL OF ANTIDUMPING DUTY LIABILITY
 - ▶ WTO COMPLIANCE
- COUNTERVAILING DUTY ASSESSMENTS
- OTHER TRADE REGULATORY ACTIONS
 - ▶ SECTION 201 "ESCAPE CLAUSE"
 - ▶ NAFTA SAFEGUARDS
 - ▶ SECTION 301: UNFAIR TRADE PRACTICES

ANTIDUMPING ACTIONS

Under U.S. law, dumping exists when imports of a product are sold in the United States at "less-than-normal value" and such sales are causing or threaten to cause "material injury" to a competing U.S. industry. The U.S. Department of Commerce (DOC) determines the less-than-normal value issue in such disputes, and the U.S. International Trade Commission (ITC) determines the injury issue. ECS has



unparalleled experience in proceedings at both agencies.

“LESS-THAN-NORMAL VALUE” ANALYSIS

Generally, the DOC determines that an import is being sold at less-than-normal value if its U.S. price is below the price of a comparable product sold in the exporter’s home market, or if its U.S. price is below its cost of production plus normal profit. ECS can assist petitioner or respondent clients in all phases of a less-than-normal value proceeding. Typical cases involve a comparison of the appropriately adjusted export price to the United States with the adjusted home market selling price (the product’s “normal value”).

Working on behalf of domestic producers, ECS can gather the data and perform the analysis needed to support a less-than-normal value allegation. ECS’ network of correspondent firms in more than 50 countries can assist with fact gathering and provide private local advisory services. As a case proceeds, ECS can review and critique respondent submissions for compliance with DOC regulations, accuracy, and appropriate financial analysis.

Acting on behalf of respondent firms, ECS can assist in all aspects of the defense against an antidumping allegation, including the preparation of extensive sales and cost data responses that the DOC may require. ECS can identify and execute the optimal strategy for gathering the large amounts and diverse types of company data that would be needed. Working on site, ECS can facilitate the collection and integration of information commonly required from a company and its subsidiaries’ sales, financial, and other databases. ECS has performed these functions in many countries with diverse accounting and record-keeping systems. Using its advanced computer systems, ECS will compile a respondent’s data in the appropriate format on computer tape for formal submission to the DOC. Preparing such data frequently requires judgments about complex cost allocation issues. ECS has the detailed knowledge of U.S. law, DOC regulations, and accounting required to address these allocation issues and to work with counsel to identify the best solutions.



INJURY ANALYSIS

ECS is the leading economic consulting firm assisting companies and industries in the prosecution or defense of “injury” cases before the ITC. Using its economic and financial expertise, ECS can help clients and their legal counsel design and execute case strategy. Recognizing the particular perspectives of the ITC, ECS also can help clients gather and prepare the data they need to respond to producer, importer, or foreign producer questionnaires. Success in an injury case before the ITC also hinges on the effectiveness of several types of specialized economic and financial analysis which determine the presence of material injury and whether the injury is caused by the imports under investigation. ECS has developed effective and creative ways to present these analyses to the ITC. ECS frequently provides expert testimony before the ITC and responds to Commissioners’ questions about the complex economic and financial issues that typically arise.

MANAGEMENT AND CONTROL OF ANTIDUMPING DUTY LIABILITY

ECS can help foreign producers to develop strategies to maximize their access to the U.S. market after an antidumping case is filed, in the event the filing of a case is anticipated, or after an antidumping order has been imposed. Working closely with the client, ECS uses its in-depth knowledge of U.S. antidumping regulations and DOC margin-calculation methodologies to construct a computer model that provides dumping margins and potential duty liabilities for both current and anticipated sales under various scenarios. ECS also can provide clients with detailed pricing guidelines for export and domestic sales that, when implemented, will minimize or eliminate antidumping duty liabilities. In addition, ECS can analyze a client’s sales and cost information to identify key factors driving the client’s overall antidumping duty liability. Once these key factors are identified, ECS can recommend specific steps to reduce or eliminate the client’s duty liability. Collectively, ECS’ margin management and control programs can significantly reduce a foreign producer’s vulnerability to antidumping duty liabilities and restore the producer’s competitive position in the U.S. market.

WTO COMPLIANCE

ECS advises and assists countries that are conforming their international trade regulations to World Trade Organization (WTO) standards. In this capacity, ECS has used its technical expertise to help foreign governments apply their antidumping

regulations in a manner consistent with the 1979 General Agreement on Trade in Goods and Services and the 1994 Antidumping Agreement. ECS has advised and assisted foreign governments in the following areas: a restatement of antidumping policies from those embodied in the 1979 Agreement to those of the 1994 Antidumping Agreement; procedures for gathering information to be used in antidumping proceedings; auditing and verification practice and procedures; and technical advice in the interpretation of the 1994 Antidumping Agreement.



COUNTERVAILING DUTY ASSESSMENTS

In general, the DOC imposes a countervailing duty (CVD) when imports benefitting from a foreign government subsidy cause or threaten to cause material injury to a competing U.S. industry. As with antidumping cases, ECS assists petitioners and respondents in CVD cases, for example, by preparing submissions to the DOC that assess the presence and magnitude of subsidy benefits to particular U.S. imports. The outcome of a CVD dispute often turns on financial analysis, particularly with regard to the creditworthiness and cost of capital to foreign firms alleged to have benefitted from government subsidies. ECS has the financial and accounting expertise to analyze such issues and prepare effective submissions to the DOC.

OTHER TRADE REGULATORY ACTIONS

SECTION 201 “ESCAPE CLAUSE”

Section 201 of the Trade Act of 1974 (known as the “Escape Clause”) provides U.S. industries with temporary, comprehensive relief from imports that are entering the country at a rate that causes or threatens to cause serious injury. ECS has aided domestic industries and importers in a large portion of all U.S. Escape Clause cases, testifying before and providing economic analysis to the ITC as well as presenting cases to the Executive Branch.

NAFTA SAFEGUARDS

The U.S. law that implemented the North American Free Trade Agreement (NAFTA) in 1994 contains safeguards that permit U.S. industries to obtain relief against imports from Canada and Mexico under certain circumstances. As in a Section 201 case, such relief requires a showing of actual or threatened serious injury linked to the reduction of U.S. import duties negotiated between the United States and the NAFTA partner whose products are involved. ECS successfully brought the first such case under this provision.

SECTION 301: UNFAIR TRADE PRACTICES

Section 301 of the Trade Act of 1994, as amended, permits the U.S. government to retaliate against certain foreign unfair trade practices that “burden or restrict U.S. trade,” particularly in export markets. ECS has provided economic analysis and expert testimony in several Section 301 cases.



INTERNATIONAL TRANSFER PRICING PRACTICE

U.S. and foreign tax authorities generally require products, intangibles, and services sold within a multinational corporation to be priced as if the transactions were made between unrelated parties. These authorities are increasing their scrutiny of multinationals' intercompany transfer prices. Economic forces, new U.S. and foreign regulations, and new international guidelines are forcing multinationals to reexamine long-established methods for calculating these prices. ECS is a leader in the development of international transfer prices for tax and customs purposes.

ECS has helped firms of all types and sizes -- from Fortune 500 companies to those just starting their international operations -- determine methodologies for setting intercompany prices. In addition to helping corporate taxpayers, ECS frequently undertakes projects on behalf of the U.S. Internal Revenue Service and foreign tax authorities.

ECS' highly trained and experienced economists and financial analysts can perform the full range of transfer pricing services. ECS offers significant strategic advantages to a taxpayer, such as:

- *A focus on economics.* ECS is an economics firm that fully utilizes the economic, financial, and statistical expertise of its senior staff. It does not rely on a rote adherence to accounting rules and regulatory text.
- *A transaction-based approach.* ECS examines the unique attributes of its clients' intercompany transactions and selects the best transfer pricing method under the given circumstances. In keeping with the preferences of U.S. and foreign tax authorities, ECS attempts to find third-party transactions that can be used to support intercompany prices directly. ECS generally uses profit-based approaches when third-party transactional data are unavailable or to test the reasonableness of a transactional approach.



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- *A customized product.* ECS carefully tailors its work to its clients' unique circumstances both in terms of the methodologies applied and in the preparation and format of the final report.
 - *Experience in litigation.* ECS experts have successfully testified in cases before the U.S. Tax Court, and ECS has worked on many projects in various stages of litigation. ECS understands the level of detail required in cases that may be reviewed by the courts.
 - *A centralized structure.* The ECS staff is located in one central office, which avoids the inefficiencies common in larger, multi-office firms.

ECS SERVICES

- *DOCUMENTATION REPORTS AND ADVANCE PRICING AGREEMENTS*
- *STRATEGIC TRANSFER PRICING PLANNING*
- *AUDITS, LITIGATION SUPPORT, AND COURT TESTIMONY*
- *CUSTOMS AND ANTIDUMPING LINKAGES*

DOCUMENTATION REPORTS AND ADVANCE PRICING AGREEMENTS

Under IRC Section 6662 regulations, the federal government can impose 20 percent or 40 percent penalties on companies that lack adequate documentation for, and have substantial adjustments to, their transfer prices. ECS has prepared numerous reports for corporate clients designed to meet the documentation requirements of Section 6662. In preparing its reports, ECS conducts a thorough analysis of the intercompany transactions and uses the appropriate transfer pricing methodologies specified in the IRS' regulations to support the arm's length nature of the transactions.

Through an Advance Pricing Agreement (APA) with the IRS, companies can establish the arm's length nature of their intercompany prices and avoid future disputes while the agreement is in place. An economic analysis of the intercompany transactions and a demonstration that intercompany prices are consistent with arm's length expectations are critical in obtaining an APA.

ECS analyzed the royalty rates paid to a European parent company by U.S. manufacturing entities for the use of brand names, trademarks, and technology supplied by the parent. To demonstrate the reasonableness of the rates, ECS examined the prevailing rates in the industry and compared the profitability of the U.S. operations, both before and after payment of the royalties, with the profitability of a sample of independent U.S. companies in the industry.

STRATEGIC TRANSFER PRICING PLANNING

Companies sometimes must change where they manufacture their products or conduct other business activities. ECS can help clients plan for such restructuring by providing an economic analysis of the intercompany transactions and determining the appropriate method for setting transfer prices.

ECS helped a producer of semiconductor devices establish the transfer pricing and cost-sharing regimes for tangible and intangible property flows between a U.S. parent and an overseas affiliate. ECS determined the relevant transfers and then established the following arm's length arrangements: (1) the payment for existing technology in a dynamic industry, (2) the terms of cost-sharing payments for



ongoing improvements to technology, (3) the prices for various semiconductor devices, and (4) the appropriate cost plus markup for managerial and accounting related services.

AUDITS, LITIGATION SUPPORT, AND COURT TESTIMONY

ECS prepares economic studies for clients during the course of IRS audits. Such studies describe the basis for the taxpayer's transfer prices and can form the basis for an agreement with the IRS. When agreements cannot be reached, ECS can also offer clients expert economic advice, reports, and court testimony in conjunction with cases that will be litigated in U.S. Tax Court. ECS also has helped clients on matters involving state tax authorities and courts.

ECS critiqued an IRS report and the methodology therein that provided the basis for a significant unfavorable adjustment to the taxable income of a Japanese company's U.S. manufacturing and distribution subsidiaries. ECS uncovered several flaws with respect to the IRS's selection of "comparables" and its application of transfer pricing methodologies (e.g., the resale price method).

ECS provided the economic analysis in a project for a foreign tax authority that was evaluating the transfer prices paid by a local distributor to its foreign parent. As patent and trademark rights were owned offshore, the royalty rates to be paid by the local distributor were also at issue. ECS used a resale price or "work back" approach to estimate the value of the tangible and intangible property involved. ECS performed additional analyses as tests of the reasonableness of its results, including profit splits and comparisons to the profits earned by comparable companies.

CUSTOMS AND ANTIDUMPING LINKAGES

Exporting companies often find that the steps they take to be in compliance with IRS transfer pricing regulations overlap and conflict with their efforts in complying with the antidumping law and customs regulations. ECS' extensive experience in all three areas offers its clients the unique opportunity to approach intercompany pricing in a way that takes antidumping and Customs implications into account, thereby also minimizing the cost of an integrated system for compliance.



BUSINESS VALUATION AND DAMAGES ESTIMATION

The valuation of a business or asset may be required in connection with estate and income tax matters, mergers and acquisitions, commercial damages litigation, or other matters.

ECS staff members are experts in performing business valuations and in estimating commercial or personal damages. In addition to employing standard accounting and business valuation skills, ECS uses its expertise in technical finance, statistics, and economics to conduct valuations that meet its clients' unique needs and satisfy the highest standards of professional appraisal practice. ECS personnel have published articles on valuation procedures and made presentations on valuation practices to the IRS and professional groups.

Working on behalf of companies, estates, and the IRS, ECS has performed valuation services ranging from major projects for Fortune 50 firms to smaller engagements for family-owned businesses.

In an estate tax matter, ECS valued a large, privately held firm owning numerous foreign entities in the food processing, wholesale, and retail industries. The valuation addressed significant issues regarding marketability and "key-man" adjustments.

In an estate tax matter, ECS valued the limited convertible preferred stock held in a major foreign pharmaceutical corporation. The convertibility option was valued using the Black-Scholes pricing model.

In a dispute between the U.S. and foreign parties to a joint venture in the petrochemical industry, ECS prepared an analysis addressing the economic aspects of liability and damages. The assignment required a detailed analysis of complex international pricing data and a complex capital budgeting cash flow model to determine the venture's expected level of profitability.



In a tax matter concerning a large apparel company, ECS valued the intangible assets employed in producing and marketing the firm's products.

In a tax matter related to a corporate acquisition, ECS prepared a valuation of the merchandise inventory of a large retail firm.

In connection with a cable television company, ECS used a discounted cash flow approach to determine the value of subordinated partners' shares.



TRADE REPRESENTATION AND TRADE AND CUSTOMS INFORMATION SERVICES

ECS helps industries and individual corporations create and implement comprehensive trade strategies. ECS' ability to build those strategies on a strong economic foundation sets it apart. These tailored trade strategies, combined with ECS' knowledge of how best to implement them, gives its clients a commercial advantage over competitors in the United States and abroad.

ECS SERVICES

- REPRESENTING CORPORATE CLIENTS' INTERESTS IN WASHINGTON
- MONITORING TRADE DEVELOPMENTS AND PROVIDING TRADE INFORMATION
 - ▶ SPECIAL TRADE PROGRAMS
 - ▶ TRADE DATA
- CUSTOMS ISSUES

REPRESENTING CORPORATE CLIENTS' INTERESTS IN WASHINGTON

ECS shapes trade policy initiatives on behalf of its business clients and helps them solve large or small trade problems as they arise. For example, ECS won important concessions in the NAFTA negotiations for its U.S. clients on the timing of tariff elimination and rules of origin. In the Uruguay Trade Round, ECS secured better market access abroad for a number of the firm's exporting clients while holding the line on U.S. tariffs for the firm's domestically based clients. ECS also has helped bring about numerous legislative victories for industries before Congress.



MONITORING TRADE DEVELOPMENTS AND PROVIDING TRADE INFORMATION

Corporate executives need to stay current with the numerous, complex, and overlapping U.S. and international trade regulations and policy developments that influence manufacturing, import, and export operations. ECS can provide corporate decision-makers with the information they need to make judgments in the fast-changing global marketplace. ECS can keep clients up to date on developments relating to: emerging Asia-Pacific and Western Hemisphere trade issues; important rules and regulations flowing from the implementation of the Uruguay Trade Round; changes to U.S. trade remedy laws; the expansion of trade with China; the opening up of Vietnam to U.S. business; and new export initiatives.

ECS' trade monitoring service features a monthly newsletter tailored to specific industry interests.

SPECIAL TRADE PROGRAMS

ECS advises clients about changes to preferential or special trade agreement programs, particularly those affecting imports into the United States. These programs include: NAFTA; ongoing implementation of the Uruguay Trade Round agreements; U.S. duty-free treatment for developing countries under the Generalized System of Preferences (GSP) program; production sharing arrangements commonly referred to as "807"; the Caribbean Basin Initiative (CBI); and the U.S. Foreign Trade Zone program. ECS staff members have particular expertise in the area of textile and apparel trade, having consistently practiced in this area for the past 25 years.

ECS helped a U.S. company that is both a manufacturer and importer conduct a cost-benefit analysis of using one or more preferential trade programs in tandem with domestic manufacturing. This required analyzing the economics of co-producing the goods in Mexico or the Caribbean with U.S. fabricated components versus importing the goods from China, or, alternatively, a country that receives duty-free treatment in the U.S. under the GSP.

TRADE DATA

ECS can provide clients with detailed reports and analyses of import and export statistics in specific product areas. These reports can be augmented with other data sources that provide detailed information on shipments by port of entry, importer/exporter of record, and value of specific entries.

CUSTOMS ISSUES

ECS provides businesses with the information they need about foreign and domestic origin issues, including marking. ECS also answers clients' inquiries and provides up-to-date information about duty drawback, valuation issues, user fees, and the changes taking place as a result of the Customs Modernization Act. ECS also monitors Customs' classification rulings for its clients to determine how their competitors' imports are being classified for duty and quota purposes, their country of origin, and even importer of record.

ECS has frequent contact with Customs personnel at both the Washington and district levels and works closely with them to solve problems. ECS clients also benefit from the foreign customs expertise of the firm's network of overseas correspondent firms and professional contacts abroad. In addition, ECS requests classification and other rulings from Customs, responds to Form 29 requests, files protests, and assists law firms or legal departments with research and advice in customs and trade issues.

ECS helped an industry correct a problem created by ambiguity in the tariff classification of a consumer product. Consultations with Customs and other Executive Branch agencies built support for a miscellaneous tariff bill that is now law. On behalf of another client, ECS alerted the Executive Branch to an anomaly in the proposed Harmonized System that would have significantly changed the rate of duty on a product. ECS' intervention resulted in a modification to the Harmonized System and restored tariff neutrality for this product.

During negotiation of the U.S.-Canada Free Trade Agreement, ECS played a key role in designing country-of-origin requirements for non-ferrous metal products to prevent third-country products from obtaining preferential duty benefits.

FOREIGN AND DOMESTIC MARKET RESEARCH AND MARKET ANALYSIS

ECS has conducted market research in the U.S. and abroad on a broad array of industrial and agricultural products. ECS' extensive network of overseas consultants provides its clients with direct access to highly qualified professionals in major capitals and business centers throughout the world. ECS also has established close ties with individual foreign economic research and law firms, particularly in the Far East and Latin America.

ECS SERVICES

- MARKET RESEARCH AND THE MECHANICS OF EXPORTING
- TRADE DATA MONITORING

MARKET RESEARCH AND THE MECHANICS OF EXPORTING

ECS conducts market research in support of its clients' sales and investment efforts in the United States and overseas. Through analysis of domestic and international market conditions, ECS helps clients identify potential markets and spot trade and investment problems as well as opportunities.

On behalf of an apparel trade association, ECS assessed export expansion opportunities for apparel products in several European markets. For a prospective producer of intermediate iron and steel products, ECS evaluated and compiled publicly available data and directly surveyed potential consumers of designated iron and steel products in that market area. For a Far Eastern producer of labeling machinery, ECS assessed the demand, channels of distribution, and pricing of competing goods available in the U.S. market.



ECS helps domestic and foreign clients identify the best distribution channels for their products in the United States and abroad, while evaluating the effects of specific foreign non-tariff barriers (NTBs). NTBs can take the form of restrictive product standards or testing requirements, labeling, distribution practices, and cultural or religious practices. Additionally, ECS can provide clients with information about the structure of the market, major competitors, prices, and the mechanics of exporting.

For several U.S. firms in a specialty consumer goods industry, ECS compiled an exporters' manual giving step-by-step instructions on how individual firms can establish a sales presence overseas. This manual is now a basic tool in the export marketing strategies of several of this industry's manufacturers.

ECS conducted a detailed study of the feasibility of using export trading companies to promote increased exports by the U.S. textile and apparel industries. ECS prepared financial and market models and presented the results of this study at nationwide seminars sponsored by the U.S. Department of Commerce.

ECS prepared export "fact books" on the textile and apparel markets in Japan and Korea, and countries in South America and Western Europe. The fact books covered the essentials of doing business in these countries, such as the size of the market, local production, major competitors, major distributors and retailers, price points at retail, trade shows, and trade and tariff barriers. The fact books were prepared under contract to the U.S. Department of Commerce, the American Textile Manufacturers Institute, and the American Apparel Manufacturers Association, and were used in a series of seminars conducted across the country.

Under contract to Cotton Council International, ECS prepared export studies on seven markets. The studies examined the export market for U.S. textiles and apparel in Mexico, Guatemala, El Salvador, Belgium, Italy, Saudi Arabia, and Poland.

TRADE DATA MONITORING

For numerous industries and products, ECS provides clients with periodic reports on trends in imports, exports, and market shares both in the United States and abroad, and the competitive positions of U.S. and foreign producers. ECS' electronic access

to official U.S. and foreign-country import and export statistics offers clients the opportunity to analyze U.S. trade flows in detail.