

Title: 4501.0, Alternative Dispute Resolution

U.S. INTERNATIONAL TRADE COMMISSION DIRECTIVE: 4501
WASHINGTON, DC 20436 DATE: 03/14/00

SUBJECT: Alternative Dispute Resolution

1. **PURPOSE.** This directive sets forth the policy of the U.S. International Trade Commission with respect to alternative dispute resolution.

2. **AUTHORITY.** Administrative Dispute Resolution Act, P.L. 101-552, § 3(a) as amended by P.L. 102-354.

3. **REFERENCES:**

a. P.L. 101-532, 5 USC § 571, et seq., The Administrative Dispute Resolution Act of 1990

b. 29 CFR, Part 1614, Equal Employment Opportunity Regulations

4. **SCOPE.** This directive applies to all Commission actions where the Commission has discretion to use alternative dispute proceedings for the resolution of an issue in controversy. This directive facilitates the internal management of the Commission's decision making process regarding the use of alternative dispute resolution. This directive does not create any right or benefit, substantive or procedural, enforceable at law or in equity against the Commission or the United States, its officers or any other person. This directive does not obligate the Commission to accept a particular settlement or any particular means of dispute resolution. No right of judicial review involving the compliance or noncompliance with its terms has been created by this directive.

5. **DEFINITION.** As used herein, the term "alternative dispute resolution," or "ADR," is any consensual dispute resolution process facilitated by third-party neutrals which can be utilized prior to or during either administrative or judicial litigation to resolve one or more issues in controversy.

6. **POLICY.** The Commission encourages the use of ADR to the extent consistent with the sound performance of the agency's statutory mission. Certain matters may be more amenable than others to resolution by informal means. Such matters may include procurement and equal employment opportunity and other personnel disputes. Whenever practicable, the

Commission desires to explore means to resolve pending or anticipated litigation by informal discussions, negotiations or settlements, rather than through resort to formal court processes. Alternative dispute resolution may facilitate such resolution when traditional negotiation is likely to be unsuccessful, or has already been unsuccessful, or when ADR can expedite negotiations and/or allow them to proceed more efficiently.

The Commission recognizes that many of the matters within its jurisdiction are not normally susceptible of resolution by settlement negotiation or ADR and are subject to factors that, consistent with 5 U.S.C. §572, suggest that it should not consider using a dispute resolution proceeding. The Commission's reports under various statutory regimes to Congress and the President, for example, are not decisions concerning disputes, but rather responses to requests for agency expertise and are used as the basis for further decision making. The antidumping and countervailing duty laws require determinations by the Commission within specific time frames with formal administrative records. Final determinations become the basis for further action by other agencies and are an element in subsequent review determinations. Others of the Commission's determinations require Commissioners to provide recommendations to the President for further action. Consequently, under the principles of the Alternative Dispute Resolution Act, these proceedings too, although disputes, will not generally be susceptible to ADR strategies.

The Commission also acts in a quasi-adjudicative capacity under 19 U.S.C. § 1337. The private litigants in these investigations are commercial companies that have available to them the full panoply of commercial arbitration and mediation services. It would, however, be difficult at best to include formal alternative dispute settlement in these processes. The statute requires that the Commission conclude these investigations at the earliest practicable time; another agency, the Customs Service, must enforce orders that the Commission issues; and the Commission must present its orders to the President for review. In these investigations, the Commission's Office of Unfair Import Investigations, which represents the public interest, facilitates settlement through its role in developing the record and presenting an unbiased view on the legal and factual issues, as well as by discussions with counsel for the private parties.