



INTERNATIONAL  
**TRADE**  
ADMINISTRATION

# Delhi Regional Antidumping Workshop

Use of “Facts Available”

October 4, 2016

# Facts Available

- Enforcement & Compliance (E&C) prefers to base all findings on information submitted by respondents.
- However, if E&C does not have the necessary information, it may use the “facts otherwise available” (FA).
- FA is any acceptable information that E&C can find to substitute for missing, deficient or unverifiable information.

# When To Apply Facts Available

Section 776(a)(2) provides that, if:

- (1) necessary information is not available on the record,  
or
- (2) an interested party –
  - (A) withholds information requested, or
  - (B) fails to provide information requested in a timely manner or in the form and manner required, or
  - (C) significantly impedes the proceeding, or
  - (D) provides such information but the information cannot be verified;

the Department shall use the facts otherwise available to make its determination.

# **Use of Facts Available: Notification of Deficient Submissions**

Sections 776(a) and 782(d) provide that if E&C determines that a response to a request for information is deficient E&C will inform the submitter, and to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency in light of the time limits established.

# Use of Facts Available: Corroboration of Secondary Information

Section 776(c) requires E&C to corroborate, to the extent practicable, information used as facts available that is secondary information rather than information obtained in the course of an investigation or review.

- Corroboration often arises when we use information from an AD/CVD petition or information from a prior administrative review of the order;
- Corroboration means E&C should satisfy itself through independent sources that the information has probative value;
- We are not required to corroborate any dumping margin or countervailing duty applied in a separate segment of the same proceeding.

# Use of Submitted Information or Use of Facts Available

Section 782(e) provides that E&C shall not decline to consider submitted information even if it doesn't meet all the applicable requirements if:

- 1) the information is timely;
- 2) the information can be verified;
- 3) the information is sufficiently complete such that it can serve as a reliable basis for making a determination;
- 4) the submitter acted to the best of their ability;
- 5) the information can be used without undue difficulties.

# When to apply Adverse Facts Available

Section 776(b) provides that, if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.