

# Delhi Regional AD/CVD Workshop

October 4, 2016

Session 5

Individual Treatment/All Others Rates

# Individual Margins

- We strive to calculate dumping margins and subsidy rates for each known exporter/producer of subject merchandise.

# Respondent Selection

- There are too many exporters/producers and too few resources to individually examine each known exporter/producer.
- We may limit the number respondents by means of a:
  - Statistically valid sample
  - Selecting respondents accounting for the largest volume during the period.

# Respondent Selection Continued

- These are the only means under our law by which we may limit the number of respondents.
- These methods ensure an unbiased selection methodology in which the firms subject to individual examination are representative of that country's overall industry.

# Respondent Selection – Administrative Reviews

- For reviews, we follow the same respondent selection procedures as for investigations.
- However, our starting point, in terms of the pool of potential mandatory respondents, consists of those firms for which a review was requested.

# Individual Margins/Rates

- Firms selected for individual examination (aka, the mandatory respondents) will receive their own dumping margin/subsidy rate.
- The individual margin/rate calculated for a mandatory respondent will continue to apply until the completion of a subsequent review proceeding covering that particular firm.

# Voluntary Respondents

- We have the discretion to individually examine “voluntary respondents” in a given proceeding.
- Pursuant to the 2015 Trade Preferences Extension Act (TPEA), we consider several factors when determining whether to individually examine voluntary respondents, *e.g.*, the complexity of the proceeding, experience with the proceeding, and total number proceedings agency-wide that we are conducting.
- We hold voluntary respondents to the same reporting standards as mandatory respondents.

# Exclusion Based on *De Minimis* Margins/Rates

- Companies subject to individual examination in an investigation whose dumping margins or subsidy rates are zero or *de minimis* are excluded from any resulting antidumping or countervailing duty order.
- Voluntary respondents whose dumping margins or subsidy rates are zero or *de minimis* are also excluded from any resulting order.
- Exclusions are provided for a specific exporter/producer combination (e.g., the exclusion only applies to the exporter and all of the producers which supplied subject merchandise to the exporter during the POI).



# *De Minimis* Threshold for Investigations

- For antidumping investigations, the *de minimis* threshold is two percent *ad valorem*.
- For countervailing duty investigations, an overall subsidy rate is *de minimis* if it is less than one percent *ad valorem*.
- As an exception, in countervailing duty investigations the Department will apply a *de minimis* threshold of two percent to a country if the United States Office of the Trade Representative has designated it as a developing country.

# De Minimis Threshold – Administrative Reviews

- The *de minimis* threshold for antidumping and countervailing duty administrative reviews is 0.5 percent *ad valorem*.
- The receipt of a *de minimis* margin or rate by a firm in an administrative review enables it to pay zero cash deposits on future entries of subject merchandise
- Additionally, in the case of a receipt of a *de minimis* margin or rate by a firm in an administrative review, Customs and Border Protection will refund, with interest, any duties collected during review period.

# De Minimis Threshold – Administrative Reviews - Continued

- Receipt of a *de minimis* margin or rate in an administrative review does not result in a firm being excluded from an order.
- *De minimis* cash deposit margins and rates calculated for an individual producer/exporter in an administrative review remain in effect until the subsequent completion of a review covering that particular firm.

# All Others Rate

- The all others rate is calculated during the investigation phase of market economy dumping and countervailing duty proceedings.
- The all others rate is fixed; it does not change during the life of the proceeding (unless due to a Court decision).
- The all others rate is applied to all exporters/producers not individually investigated.
- A company covered by the all others rate continues to receive that rate until a review is requested and completed for that company.

# Basis of All Others Rate

- Margins/rates calculated for mandatory respondents subject to individual examination are the basis of the all others rate.
- In general, the all others rate is a weighted-average of the dumping/subsidy rates calculated for all investigated mandatory respondents, excluding any rates that are *de minimis*, zero, or based entirely on adverse facts available.

# What the All Others Rate Includes

- The all others rate calculation is limited to cooperative, mandatory respondents that are subject to individual examination.
- We do not include margins/rates calculated for voluntary respondents in the all others rate calculation.
- The all others rate may include margins/rates for mandatory respondents that involve “partial” facts available “plugs.”

# Calculation of Non-Selected Rate – Administrative Reviews

- Firms for which a review was requested but which were not selected for individual examination as mandatory respondents are still considered to be part of the review.
- Such firms are assigned what is referred to as the non-selected rate.
- Normally, the non-selected rate tracks the calculation procedure for the all others rate in investigations.
- The non-selected rate assigned to particular firm will continue to apply until the completion of a subsequent review proceeding covering that particular firm.

# Non-Market Economy-Wide Rate

- In non-market economy dumping proceedings, Commerce assumes that all companies within the country are essentially operating units of a single, government-wide entity and, thus, should receive a single dumping margin (*i.e.*, a non-market economy-wide rate).
- The non-market economy-wide rate may be based on adverse facts available if exporters considered part of the non-market economy-wide entity do not cooperate.
- The non-market economy-wide rate assigned in an investigation remains in effect going forward unless a subsequent review of the entity is requested and completed.



# Individual Margins – Non-Market Dumping Economy Proceedings

- Individual dumping margins calculated in non-market economy dumping investigations are provided for a specific exporter/producer combination (*e.g.*, the margin only applies to the exporter and all of the producers which supplied subject merchandise to the exporter during the POI).
- Individual margins/separate rates calculated in non-market economy dumping reviews are provided for a particular exporter.

# Qualifying for a Separate Rate - Non-Market Economy Dumping Proceedings

- Mandatory respondents in non-market economy dumping proceedings that demonstrate they merit a separate rate will receive their own dumping margin.
- Exporters not selected for individual examination may also apply for a separate rate that is distinct from the non-market economy-wide rate.

# Qualifying for a Separate Rate - Continued

- All companies other than those that have been determined to be eligible for a separate rate are considered part of the non-market economy entity and receive the non-market economy-wide rate.
- Non-market economy exporters that are wholly-owned by market-economy based entities do not require a separate rate analysis.

# Separate Rate Applications

- Exporters seeking separate rate status must submit a separate rate application.
- Copies of the separate rate application are available via the Enforcement & Compliance website. See <http://enforcement.trade.gov/nme/nme-sep-rate.html>.
- Mandatory respondents subject to individual examination submit separate rate information as part of their initial questionnaire response.
- Separate rates are also granted as part of the administrative review process.

# Calculation of Separate Rate

- The separate rate calculation mirrors the calculation used for the all others and non-selected rate (e.g., a weighted-average of the mandatory respondents' dumping margin, excluding any margins that are *de minimis*, zero, or based entirely on adverse facts available).
- The separate rate and non-market economy wide rate methodology only applies to antidumping proceedings involving non-market economies.
- Countervailing duty proceedings involving non-market economies calculate individual subsidy rates and all others rates using the same methodologies employed in market-economy countervailing duty proceedings.

# Treatment of Multiple Firms as a Single Entity

- During our examination of mandatory respondents in investigations and reviews, we may treat related companies as a single entity for purposes of calculating a dumping margin or subsidy rate.

# Treatment of Multiple Firms as a Single Entity – Dumping Proceedings

- We refer to the practice of treating multiple firms as a single entity as “collapsing.”
- Commerce will treat multiple firms as a single entity where:
  - Affiliation exists between the producers.
  - Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing facilities;
  - And, there is a significant potential for manipulation.

# Potential for Manipulation Analysis

- Potential for manipulation – Factors Considered
  - The level of common ownership;
  - The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
  - Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.



## Treatment of Multiple Firms as a Single Entity – Countervailing Duty Proceedings

- Commerce will treat multiple firms as a single entity where cross-ownership exists between:
  - Two or more producers of subject merchandise;
  - A producer of subject merchandise and a holding or parent company;
  - A producer of subject merchandise and a producer of an input that is primarily dedicated to the production of subject merchandise; or
  - The recipient of a subsidy transferred the subsidy to a company with whom it is cross-owned.

# Cross-Ownership Defined

- Cross-ownership is the ability of a firm to use or direct the individual assets of another firm in essentially the same way it can use its own assets.
- Normally, the standard is met when there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.