

USE OF FACTS AVAILABLE IN ANTI-DUMPING INVESTIGATIONS: ISSUES

**International Conference on Trade Remedy Measures
India 2015**

Han Yong

**Trade Remedy Investigation Bureau
Ministry of Commerce, PRC**

USE OF FACTS AVAILABLE

OUTLINE OF PRESENTATION

- * WTO RULES
- * BASIC PRINCIPLES OF PRACTICE
- * ISSUES IN PRACTICE

WTO RULES

* Anti-dumping Agreement

◆ *Article 6.8 :* In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

◆ **ANNEX II : BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6**

BASIC PRINCIPLES OF PRACTICE

* Information Replacement

- The provision permits the use of facts on record solely for the purpose of replacing information that may be missing, in order to arrive at an accurate determination.

* Non-punishment

- Facts available should not be used as a punishment.

ISSUES IN PRACTICE

- * **1. Obligations of the investigating authorities**
- What obligations should the authorities perform BEFORE using FA? *(I.e. ANNEX II paragraph 1, paragraph 6, paragraph 7)*
- What if the authorities fail to perform the obligations and the determinations are made on the basis of FA?

ISSUES IN PRACTICE

* 2. Judgment on Missing Information

Prerequisites of Using FA:

1) whether “that missing information is necessary information for the investigation” should be the Prerequisite for using FA?

2) What are the criteria to judge the necessity of missing information?

Reasons:

Why the information is missing? (*Article 6.8 and ANNEX II paragraph 3*)

ISSUES IN PRACTICE

- * **3. Judgment on “act to the best of its ability”**
 - What are the criteria for making that judgment? (*Para.5 of Annex II*)
 - What if the interested party fails to act to the best of its ability due to the circumstance of allegation of unreasonable extra burden?

ISSUES IN PRACTICE

* 4. Information from Secondary Source

- How to make sure the reliability and accuracy of secondary information?
- Whether interested parties should be provided opportunities to comment? (*Para. 7 of Annex II*)
- In disclosing essential facts pursuant to Article 6.9, what are the scope and content of disclosure regarding secondary source information?

ISSUES IN PRACTICE

* 5. Non-cooperation and Adverse Facts Available

ANNEX II paragraph 7

- What are the criteria for judging non-cooperation?
- What circumstances can be considered as non-cooperation?
- Whether Does non-cooperation inevitably result in AFA?
- Whether the ultimate consequence of using AFA methodology must be punitive?

ISSUES IN PRACTICE

* 6. Full or Partial Facts Available

ANNEX II paragraph 3

- Under what circumstances “partial facts available” can result in “full facts available” ?
- If “partial facts available” is adopted, how to judge the effect on other submitted information?

ISSUES IN PRACTICE

* 7. Determination of Weighted Average Margin when Sampling :

- * *Article 9.4: When the authorities use sampling methodology, margins established under the circumstances referred to Facts Available shall be disregarded to calculate the margins of parties not included in the examination.*
- Whether the selected exporter's margin of dumping should be excluded if it is based on "partial facts available" when determining margins of dumping for those un-selected exporters or producers?
- What if margins of dumping of all selected parties are all based on full or partial facts available?

ISSUES IN PRACTICE

- * **8.FA in Injury Determination and Causal Link Analysis**
 - How to use FA to make injury determination, when Article 6.8 applies?
 - In cases the importers or downstream users do not provide prices information of imported products in the domestic market, how to conduct price effect analysis on the basis of FA?