

June 15, 2011

U.S. Department of Commerce Proposes Drastic Policy Change in Handling Antidumping Administrative Reviews of Non-Market Economy Countries, Including China

The Department of Commerce is proposing to change one of its practices in conducting antidumping administrative reviews of nonmarket economy (NME) countries (e.g., China). This proposal would impact how U.S. companies purchase and import merchandise subject to antidumping duties, and could lead to increased obligations on these importers to participate in annual administrative reviews.

As background, currently when an importer enters merchandise subject to an antidumping duty order, it must deposit antidumping duties. In cases involving China, specific cash deposit rates are assigned to exporters who participate in an investigation or prior administrative review. If the importer purchases directly from an exporter, the importer may claim the exporter's cash deposit rate. The importer may also use a Chinese exporter's specific rate if that importer purchases from an intermediary in a market economy country (e.g., Taiwan) who is in turn supplied by the Chinese exporter.

A June 10, 2011, [Federal Register Notice](#) proposes to change how Commerce instructs U.S. Customs and Border Protection (CBP) to liquidate antidumping entries after concluding an administrative review. Under Commerce's existing practice, it instructs CBP to liquidate entries that were not reviewed or examined in the administrative review at the cash deposit rate at the time of entry. With this policy change, Commerce will begin instructing CBP to liquidate these non-reviewed entries at "country-wide" rates rather than at the cash deposit rate.

For example, suppose an importer uses a sourcing company based in Taiwan to procure goods from China. The sourcing company—acting under the direction of the importer—purchases goods subject to an antidumping duty order from a Chinese exporter, and the exporter is aware that its goods are destined for the United States. The importer is responsible for handling the importation into the United States, and deposits antidumping duties under the exporter's specific case number.

Later, during Commerce's administrative review of the antidumping duty order, the Chinese exporter fails to report its sales to the Taiwanese sourcing company, or that those sales do not identify the importer. Under Commerce's current policy, the importer's entries would most likely be liquidated at the cash deposit rate, meaning no additional duties would be due. Under its proposed change, however, the entries would likely be liquidated at the China-wide rate.

Comments on this proposal are due on July 11, 2011. If your company is interested in submitting comments to Commerce in response to its proposed policy change, please contact one of the Katten Muchin Rosenman LLP **Customs and International Trade** attorneys or professionals listed below.

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This proposed policy had been adopted by Commerce with respect to reviews in market economy (ME) country cases since 2003. The key practical difference, however, is in how the rates are calculated under the two scenarios. In ME country cases, the “all-others” rate is determined by taking the weighted average of certain rates calculated during the initial investigation. In NME country cases, the “country-wide” rate is almost always calculated using “facts available” with adverse inferences, resulting in antidumping margins that typically fall well into the triple digits. The importer in the above scenario may well end up with a bill from CBP that could double or triple the actual cost of the goods it purchased through the Taiwanese middleman.

If Commerce’s proposal is adopted, importers and wholesalers would have a much stronger interest in participating in administrative reviews to ensure that the sales being reviewed include their entries. Even if importers are rightly using a specific exporter’s cash deposit rate at the time of entry, they could lose that rate if Commerce cannot correlate their entries with the exporter’s reported sales during a review. Importers would also be far more limited in challenging CBP’s liquidation of their entries at the country-wide rate when they believe a specific rate is appropriate.

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