

Department of Commerce Seeks Comments for Amending Rules in Antidumping Proceedings

December 20, 2010

The U.S. Department of Commerce has published two notices requesting comments on proposals to amend its rules in antidumping proceedings with regard to whether to grant separate rates to exporters in proceedings involving non-market economy countries, such as China, and how to “sample” respondents in proceedings involving large numbers of producers and exporters.

The U.S. Department of Commerce (DOC) published for public comment on December 16, 2010, two proposed rules concerning its practice in antidumping proceedings with regard to whether to grant separate rates to exporters in proceedings involving non-market economy (NME) countries, such as China, and how to “sample” respondents in proceedings involving large numbers of producers and exporters. The proposals are part of DOC’s Trade Law Enforcement Initiative pursuant to which DOC is studying possible administrative and regulatory changes to antidumping and countervailing duty procedures to strengthen the administration of the nation’s trade remedy laws in support of President Obama’s National Export Initiative’s goal of doubling U.S. exports in five years.

Separate Rates Status

The first notice seeks comments on revision of DOC’s practice regarding whether to grant separate rates to exporters in antidumping proceedings involving NME countries. In NME cases, DOC makes a rebuttable presumption that the export activities of all companies within the country are subject to government control, and thus, that every company should be assessed a single “NME entity” antidumping duty rate, which is always extremely high. DOC assigns this rate to every exporter in the country by default unless an individual exporter can demonstrate it is sufficiently independent so as to be entitled to a “separate rate.”

DOC is concerned its current practice “focuses on direct government involvement in a firm’s export activities and, to that extent, it may not take sufficient account of the government’s role in the NME and how that role may impact an exporter’s behavior with

regard to its export activities and setting prices.” DOC is inviting comments and suggestions regarding additional criteria it might examine in assessing a company’s eligibility for separate rate status.

Comments on this proposal are due Jan. 31, 2011.

Respondent Selection

The second notice seeks comments on a proposed new methodology for selection of respondents in antidumping proceedings. When the number of producers and exporters involved in an investigation or review is so large that it is impracticable to examine each company individually, DOC can limit its examination to a sample of exporters, producers or types of products that is statistically valid based on the information available to DOC at the time of selection, or exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

DOC has never established procedures for sampling, and uses the second option in virtually every case. As a result, companies under investigation or review with relatively smaller import volumes are typically not selected. To solve this problem, DOC is proposing a new sampling methodology, which it states “(1) is random, (2) is stratified, and (3) uses probability proportional- to-size (“PPS”) samples.”

Comments on this proposal are due Jan. 18, 2011.

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