

Commerce's Unprecedented Action

Typically in antidumping proceedings involving market economy countries, the Department of Commerce calculates normal value using the producer's actual sales or costs of production. However, in the final results of the administrative review of two Korean oil country tubular goods (OCTG) producers in *OCTG from Korea*, Commerce applied Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) and rejected the producer's actual costs of production for hot-rolled steel in coil (HRC) in calculating constructed value. This action is unprecedented and reflects the aggressive stance of the Trump Administration in trade remedy cases.

Section 504

Section 504 of the TPEA allows Commerce to disregard a respondent's actual cost of an input when the "particular market situation" in the country of production "does not accurately reflect the cost of production in the ordinary course of trade." In other words, to use a surrogate value for a material even though it is *not* a nonmarket economy antidumping case.

The Particular Market Situation

The main input for OCTG is HRC. Maverick Tube Corporation raised four arguments why a particular market situation existed in Korea:

1. Chinese hot-rolled steel depressed the price of HRC in Korea.
2. The Korean government purportedly subsidized domestic production of HRC.
3. Strategic alliances existed between Korean HRC companies and Korean OCTG companies, creating distortions in HRC prices.
4. Because the largest electricity supplier in Korea is government-controlled, Maverick argued that electricity in Korea "functions as a tool of the government's industrial policy."

Commerce preliminarily determined that none of the allegations was sufficient for finding a particular market situation. In the final results, however, Commerce stated that the "totality" of the conditions indicated distortions in the production costs of OCTG. To correct this distortion, Commerce increased the cost of the HRC by the subsidy margin it found in a Korean HRC CVD case, increasing the normal value.

A New-Found Trade Remedies Weapon?

Before this decision, prices paid in arm's-length transactions for materials were used in calculating constructed value in market economy antidumping cases. This case, however, changes this general rule, giving Commerce more flexibility in calculating normal value in all antidumping proceedings.

It is unclear if this practice will be applied in other antidumping proceedings. This particular administrative review drew the interest of White House National Trade Council Director Peter Navarro, who argued in a letter to Commerce Secretary Wilbur Ross that the particular market situation methodology could be a useful tool "to stop both diversionary dumping by non-market economies like China and an undervaluation of Korean subsidies under the guise that it is a market economy." This case may signal the Administration's approach to what it perceives to be diversionary dumping.



What to Watch For

- Is this an isolated incident or an issue that will be raised in all future antidumping proceedings?
- Will this decision be appealed by the Korean producers?
- Will Commerce develop methodology and criteria to implement this provision? Or will it be applied strictly on a case-by-case basis, giving Commerce broad flexibility to address what it perceives to be diversionary dumping?
- How should companies consider this possibility in attempting to avoid allegations of dumping product in the U.S.?
- Is this particularly focused at companies that use Chinese steel inputs? If so, what does this mean to the anticircumvention cases presently pending against cold-rolled and corrosion-resistant steel from Vietnam?
- Is this an attempt to pressure the Chinese steel industry to address the global overcapacity issue?
- Is this WTO consistent?

Contact our [International Trade & Regulatory Group](#) or the following:

Jason Waite
202.239.3455 | jason.waite@alston.com

Eric Shimp
202.239.3409 | eric.shimp@alston.com

Jon Fee
202.239.3387 | jon.fee@alston.com

Ken Weigel
202.239.3431 | ken.weigel@alston.com

Tom Feddo
202.239.3521 | thomas.feddo@alston.com

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