INTERNATIONAL TRADE ADMINISTRATION

Webinar on Updated Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws

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April 24, 2025

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Commerce's Updates to Its Regulations

- On July 12, 2024, Commerce proposed updates to its regulations to improve and strengthen the administration and enforcement of several areas of the AD and CVD laws. It explained the reasoning for the various regulations in a detailed preamble.
  - *Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws*, 89 Fed. Reg. 57286 (July 12, 2024).
- In response to the proposed updated regulations, Commerce received 27 submissions from various governments and private entities.
- On December 16, 2024, Commerce issued its final regulations. It modified many of the proposed regulations in response to the numerous comments it received and responded to others in a detailed preamble. The regulations became effective on January 15, 2025.
  - *Regulations Enhancing the Administration of the Antidumping and Countervailing Duty Trade Remedy Laws*, 89 Fed. Reg. 101694 (December 16, 2024)
- Today's presentation covers some of the updates to Commerce's regulations. All the revisions described are in full compliance with U.S. law, which in turn, is consistent with the United States' relevant obligations under World Trade Organization agreements.

What is Dumping?

- Dumping occurs when a foreign producer sells its product at a lower price in the importing country than it does in its home country, in other primary markets, or below its production costs.

What is a Countervailable Subsidy?

- When a company benefits from a form of financial contribution from a government or public body, it is considered a subsidy. A subsidy is “countervailable” if it is provided to a specific enterprise or industry.

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Today's Agenda

1. **Providing Business Proprietary Information to Customs and Border Protection**
2. **Cash Deposit Rates**
3. **Separate Rates in Nonmarket Economy Proceedings**
4. **Respondent Selection, All-Others and Voluntary Respondents**
5. **Benchmark & Surrogate Value Information Deadlines**
6. **Selecting Surrogate Countries in Nonmarket Economy Proceedings**
7. **Removal of Agriculture and SME Provisions**
8. **More Than Adequate Remuneration**
9. **Subsidy Attribution Rules**
10. **Updated Charts for the Regulations**

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1. Providing BPI to Customs and Border Protection

Location in Regulation:

19 CFR 351.306(a)(3)

Providing Business Proprietary Information to CBP Employees

- Currently Commerce can already disclose business proprietary information (BPI) to a CBP employee involved in conducting fraud investigations.

- This recent update reflects changes to the law put in by Congress in 2015. It now also includes negligence and gross negligence investigations.

2. Cash Deposit Rates

Location in Regulation:

19 CFR 351.107

Rules that update and expand how Commerce establishes and applies cash deposit rates:

1. Clarifies that cash deposits should be calculated in proportion to estimated value of merchandise on an *ad valorem basis*, but there are exceptions where cash deposit rates may be calculated on a per-unit basis when appropriate.

2. Clarifies that Commerce may establish producer/exporter combination rates and provides examples where combinations rates are appropriate.

3. Clarifies that Commerce may impose a certification requirement and instruct CBP to apply a cash deposit requirement that effectuates the administration and purpose of the certification.

Rules that update and expand how Commerce establishes and applies cash deposit rates:

1. Details the cash deposit hierarchy applicable to AD proceedings.
   - The cash deposit hierarchy for AD market economy and non-market economy proceedings did not change from what was previously in effect.

2. Establishes a new CVD cash deposit hierarchy, as one did not previously exist. The hierarchy is as follows:
   i. Producer/Exporter combination rates
   ii. The higher of the two rates if both the producer and exporter have different rates.
   iii. The producer's rate if there is no exporter rate.
   iv. The exporter's rate if there is no producer rate.
   v. The All-Others Rate

3. Clarifies the effective dates of corrected/amended cash deposit rates.
   - For Investigations, if the rates decrease, the effective date is retrospective to the date of the original determination. If the rates increase, the rate is prospective from the date amended/corrected determination.
   - For Administrative Reviews, the amended cash deposit rates are retrospective to the date of the original final.
   - If Commerce amends the final results pursuant to litigation, the effective date may differ and will normally be identified in a Federal Register notice.

3. Separate Rates in Nonmarket Economy Proceedings

Location in Regulation:

19 CFR 351.108

Separate Rates Practice

Commerce codified and improved its methodology for determining if entities exporting merchandise from a nonmarket economy (NME) should receive a separate rate or be treated as part of that entity.

If Commerce determines an NME government generally has control over an entity's production and commercial decisions through ownership, the entity exporting merchandise exporter should be treated as part of a larger NME entity. Specifically, if the NME government owns over 50% of the entity, it will not receive a separate rate. Furthermore, if the NME government owns 50% or less of the entity, AND has a "golden voting share," veto power, or mandates a government person on the Board of Directors – no separate rate.

On the other hand, exporters to which those criteria do not apply may prove that their export activities are *de facto* and *de jure* separate from government control. If the information submitted supports their claim, Commerce will calculate and apply a separate AD rate from that of the larger NME entity.

Separate Rates Practice

A provision was also added in the final rule which addresses the situation in which an exporter located in a third country is owned or controlled, in whole or in part, by the NME government. Under that provision, rather than mandate the separate rate test, it provides that Commerce will determine based on record information if the entity will be assigned the NME entity rate or be granted a separate rate. Such a scenario will be addressed on a case-by-case basis.

If a company is wholly foreign owned (100% owned by a foreign company or companies) and is both incorporated and headquartered in a market economy, Commerce will consider it independent from the NME government and it will get a separate rate. Important to note: For interested parties to get such treatment, they must submit their information in a separate rate application or certification. The separate rate application has a section just for this purpose.

The requirements for a separate rate application or certification has been clarified and the deadline has been revised to be 21 days for an investigation and 14 days for an administrative review or new shipper review, following publication of the notice of initiation in the Federal Register.

4. Respondent Selection, All-Others and Voluntary Respondents

Location in Regulation:

19 CFR 351.109(a), (b), (c)

Respondent Selection, All-Others, and Voluntary Respondents

The recent updates cover Commerce's methodology for determining the all-others rate and a rate for unexamined exporters and producers. These updates promote transparency and efficiency.

Furthermore, it also:

- allows for a single country-wide subsidy rate;
- provides a waiver from examination option if both the petitioners + potential respondent agree to non-selection of that potential respondent;
- clarifies that a non-market economy rate is not the same as an all-others rate; and
- includes some additional clarification on allowing parties to be voluntary respondents.

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5. Benchmark (CVD) and Surrogate Value (AD) Information Deadlines

Location in Regulation:

19 CFR 351.301(c)(3)(ii)

Modification in the timeline for submissions

- For administrative reviews, new shipper reviews, and changed circumstances reviews, this revision will require parties to submit factual information no later than 60 days before the schedule date of preliminary results of review.
- For CVD investigations, the deadline for benchmarks is no later than 45 days before the scheduled date of the preliminary determination, while for NME AD investigations the deadline is 60 days before the scheduled date of the preliminary determination for surrogate values.
- The decision to shorten the deadlines for such information allows Commerce's analysts sufficient time to review the submissions in light of increasing workload.

6. Selecting a Surrogate Country in NME Proceedings

Location in Regulation:

19 CFR 351.408(b)

Steps Used to Select a Surrogate Country Now Codified

- Commerce determined to use Gross Domestic Product (GDP) to select a surrogate country (rather than its historical use of GNI).
- Commerce modified its regulation to spell out its practice of selecting a surrogate country:
  - First, Commerce determines economically comparable countries;
  - Next, Commerce determines economically comparable countries that produce comparable merchandise;
  - Third, Commerce considers additional factors such as the availability, accessibility and quality of data on the record and the similarity of merchandise produced in those countries to the subject merchandise.

7. Removal of Non-Specificity Regulation for Subsidies to Agricultural and Small– and Medium Sized Business

Location in Regulation:

19 CFR 351.502

Specificity for Agricultural and Small- and Medium-sized (SME) Enterprises

- In 1989, these provisions were included as the law did not include a “specificity test.”
- The current law and Statement of Administrative Action (SAA) contains a “specificity test” that states the analysis of specificity must be conducted on a “case-by-case” basis.
- Thus, to be consistent with the law and SAA, we removed these blanket exceptions and will conduct a specificity analysis on a “case-by-case” basis.
    - Agricultural – We have found these subsidies specific in the past and would expect allegations of specificity to be based on “reasonably available” information.
    - SME – We would expect allegations of specificity to based on “reasonably available” information and not on the fact that it is limited to SMEs.

8. More Than Adequate Remuneration (MTAR)

Location in Regulation:

19 CFR 351.512

More Than Adequate Remuneration

- Countervailable subsidies exist when a foreign government or public entity provides a financial contribution to a company which confers a benefit to the company's production, manufacture, or exportation of merchandise.

- A financial contribution could include more than adequate remuneration, or when a government purchases goods for a price that is higher than what is considered reasonable for the market.

- The issue of a subsidy in the form of a government purchase doesn't arise often, however, Commerce has developed methodologies, especially in a situation where the government is both a provider and a purchaser of the good at issue.

More Than Adequate Remuneration

- To determine whether a government paid more than adequate remuneration, we will compare the government price to a benchmark price. The focus will generally be on internal market-determined prices within the country, or world market prices.

- However, we may exclude certain prices from our analysis if interested parties have demonstrated that certain actions, such as government price or production mandates or controls, likely impact such prices.

9. Subsidy Attribution

Location in Regulation:

19 CFR 351.525(b), (c), (d)

Attribution of Subsidies

- Commerce provided greater detail and clarity regarding our analysis of cross-owned companies and the attribution to respondents of subsidies received by certain cross-owned companies.

- This includes a detailed explanation of the circumstances in which Commerce will include subsidies received by cross-owned input suppliers (including suppliers of utility products).

- In addition, Commerce provided greater detail on its existing methodology for cumulating subsidies received by trading companies.

10. On December 19, 2024, we also updated the helpful timetables and charts at the end of the AD/ CVD regulations

- Updates the annexes accompanying Commerce's regulations.
- Provides helpful timetable for various milestones under AD and CVD proceedings.
- Also adds new annexes with timetables for Scope, Circumvention, and Covered Merchandise Referrals.

Resources

All Case Information: https://access.trade.gov/login.aspx

Active AD/CVD Proceedings: https://www.trade.gov/data-visualization/adcvd-proceedings

Case Numbers/Scope: https://access.trade.gov/ADCVD_Search.aspx

Customs Liaison Unit: 202-482-0984

Frequently Asked Questions: https://www.trade.gov/antidumping-and-countervailing-duty-frequently-asked-questions

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Previously Submitted Questions

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Thank you!