

entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: June 2, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

1. Currency Conversions
2. Post-Sale Billing Adjustments
3. Depreciation Expenses
4. Proposed Rules Regarding the Margin Calculation Methodology in Administrative Reviews
5. Corrections to the Dumping Margin Calculations

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DEPARTMENT OF COMMERCE

International Trade Administration

Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for comments.

SUMMARY: In antidumping duty (“AD”) administrative reviews involving non-market economy countries (“NME”), the Department of Commerce (“the Department”) currently instructs U.S. Customs and Border Protection (“CBP”) to liquidate entries from non-reviewed exporters at the cash-deposit rate required at the time the subject merchandise entered into the United States, consistent with 19 CFR 351.212(c)(i). The Department is aware

of instances where merchandise from a non-reviewed exporter enters the United States at the cash-deposit rate of an exporter subject to review but where the basis for that cash deposit is not consistent with information subsequently reported to the Department during an administrative review. Accordingly, to ensure that entries are liquidated at appropriate rates and in accordance with the information reported to the Department during an administrative review, the Department is proposing to refine its practice with respect to the rate at which it instructs CBP to liquidate certain entries from non-reviewed exporters. Specifically, the Department proposes to instruct CBP to liquidate such entries at the NME-wide rate. Through this notice, the Department invites the public to comment on the proposed refinement to its practice.

Effective Date: The Department proposes that this refinement in practice apply to all entries for which the anniversary for requesting an administrative review of an AD order is on or after the date of publication of a final notice on this issue.

DATES: Comments must be submitted to the Department by 30 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, Special Assistant, China/NME Unit, Office of Antidumping and Countervailing Operations, Import Administration, U.S. Department of Commerce, at 202-482-1394.

Background

In AD proceedings, the Department establishes a cash-deposit rate for each company subject to the investigation or review. In market economy (“ME”) proceedings, the Department establishes an “all-others” rate that applies to exporters that have not been assigned a company-specific rate. See section 735(c)(1)(B)(i)(II) of the Tariff Act of 1930, as amended (“the Act”). In NME proceedings, the Department establishes an “NME-wide” rate that applies to exporters that do not qualify for and do not receive a separate rate.¹

In an ME proceeding, importers enter subject merchandise into the United States at either a company-specific cash-deposit rate or at the all-others rate in ME proceedings. In an NME proceeding, importers enter subject merchandise at

a company-specific cash-deposit rate, a separate rate, or the NME-wide rate. Entries of subject merchandise are subject to cash-deposit requirements and are suspended from liquidation until the Department instructs CBP to liquidate the entries. See section 733(d)(2) of the Act. When no review is requested for a particular AD order for a given review period, the Department instructs CBP to liquidate all entries of subject merchandise for that period at the cash-deposit rate that was required at the time of entry. See 19 CFR 351.212(c). When a review is requested for a firm for a given review period, entries that have been identified by an importer as that firm's merchandise remain suspended from liquidation during the pendency of the administrative review.

Sometimes an importer identifies its entry as merchandise from a particular firm, but the sales underlying the entry from the firm are not reported to and/or reviewed by the Department during the administrative review of that firm. Nevertheless, such entries remain suspended during the administrative review because they were identified as merchandise from a firm under review. During its proceeding, the Department determines the merchandise to which its final results of administrative review apply. There may be suspended entries to which the Department's final review results do not apply.

In the past, in both ME and NME cases, the Department instructed CBP to assess AD duties on entries not examined and/or not otherwise covered by the final results of review for a firm that was subject to the review at the rate at which the merchandise entered the United States, *i.e.*, at the cash-deposit rate in effect at the time of entry. However, in May 2003, the Department announced a change to its practice. In ME cases with an anniversary month of May 2003 or later, the Department began instructing CBP to assess duties at the rate applicable to a party that did not have its own antidumping duty rate, *i.e.*, the all-others rate, on entries that were suspended at the deposit rate of the producer subject to review but that were not covered by the final results of review for that firm subject to review. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (“*2003 Antidumping Duties Notice*”). In other words, to the extent that a firm did not report sales to a particular importer or customer during a given review period, the customer or importer is not entitled to a rate that the Department previously established for that firm. The Department stated that its

¹ In proceedings involving NME countries, it is the Department's policy to assign all exporters of subject merchandise in an NME country a single antidumping duty rate, the NME-wide rate, unless an exporter can demonstrate that it is sufficiently independent of government control so as to be entitled to a “separate rate.”

prior practice “often result[ed] in the use of an inaccurate rate for duty assessment * * * where the Department conduct[ed] a review * * * [T]he duty rate for non-reviewed resellers (which do not have their own rate and where the deposit rate at the time of entry becomes the final rate of duty) is based on a previous review of the producer’s selling experience, not the reseller’s selling experience.” *Id.*, 68 FR at 23955.

Because discussions had not fully explored the Department’s revised practice in the NME context, to date, the Department has not applied the 2003 *Antidumping Duties Notice* in NME cases. Nevertheless, in both ME and NME proceedings, the Department maintains an interest in having entries liquidated in a manner that is consistent with the final results of its administrative reviews. *Id.*, 68 FR 23958. Along these lines, the Department has received arguments that some imports from NME countries have benefitted from an exporter’s previously-established cash-deposit rate but have not been reported to the Department during the relevant administrative review of the exporter and, therefore, should be liquidated at the NME-wide rate. See, e.g., *Glycine From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009) and accompanying Issues and Decision Memorandum at Comment 7 (which did not change in *Notice of Amended Final Results of Antidumping Duty Administrative Review: Glycine from the People’s Republic of China*, 74 FR 48223 (September 22, 2009)); *First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010) and accompanying Issues and Decision Memorandum at Comment 3. In such situations, because an importer entered merchandise at a particular exporter’s cash-deposit rate, the assumption at the time of entry was that the exporter made the U.S. sale. In certain cases, however, that assumption was disproven during the administrative review, as the entries did not correspond to the exporter’s reported U.S. sales, therefore the claimed cash-deposit based on the exporter’s rate was not appropriate. When the declaration of the exporter’s cash-deposit rate at the time of entry is inconsistent with the information reported to the Department, the liquidation rate applicable to such entries from firms without their own

separate rate should be the NME-wide rate.

Additionally, as described in the 2003 *Antidumping Duties Notice*, the practice of liquidating entries at an exporter’s cash-deposit rate claimed at the time of entry where the entries have been suspended pursuant to a request for review of the exporter but are not covered by the final results of review for the exporter subject to review allows intermediaries to benefit from another firm’s rate. 68 FR 23961. Yet, as the Court of International Trade stated in connection with the 2003 *Antidumping Duties Notice*, “there is no reason that a reseller or importer should be entitled to choose among the rates it prefers when none is specific to it, and when it may request its own rate.” *Parkdale Int’l, Ltd. v. United States*, 491 F. Supp. 2d 1262, 1272 (Ct. Int’l Trade 2007). This same logic is applicable to exporters in NME proceedings. The Department’s proposed refinement of its practice is intended to prevent non-reviewed exporters in NME cases from benefitting from the rates of other exporters.

For the above reasons, the Department proposes revising its liquidation instructions in NME cases to instruct CBP to liquidate entries of merchandise from a non-reviewed exporter at the NME-wide rate. The Department proposes to apply this refinement to merchandise produced in the NME country and exported to the United States either directly from the NME country or from a third-country reseller. Regardless of the location of the non-reviewed exporter or reseller, when a party does not file a separate-rate application, the Department lacks necessary information on the record to determine whether it is entitled to a separate rate. By revising the NME liquidation instructions in a manner similar to that described in the 2003 *Antidumping Duties Notice*, the Department intends to ensure that entries are liquidated at the appropriate rate, i.e., the NME-wide rate for entries from firms without a separate rate assigned to them.

This refinement will increase the need for interested parties (including exporters and importers of merchandise produced in NME countries) to participate in the Department’s proceedings. For example, exporters and importers of subject merchandise will need to determine whether to request an administrative review and file a separate-rate application. Through an administrative review, a party can seek a separate cash-deposit rate for its merchandise.

The Department welcomes written comments on this proposed refinement of its practice.

Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than 30 days after the publication of this notice in the **Federal Register**. All comments must be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>, into Docket Number ITA-2011-0007, unless the commenter does not have access to the Internet. Commenters that do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. Please address the written comments to the Secretary of Commerce, Attention: Julia Hancock, Special Assistant, China/NME Unit, Antidumping and Countervailing Duty Operations, Room AA118, Import Administration, U.S. Department of Commerce, Constitution Avenue and 14th Street, NW., Washington, DC 20230.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration’s Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department’s Web site at <http://www.trade.gov/ia/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

Dated: May 25, 2011.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

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