

Import Administration Policy Bulletin

Number: 05-2

Topic: Time Frame for Decisions on Whether to Initiate Automatically Sales Below Cost Investigations in Administrative Reviews

Approved:

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date

SUMMARY

This policy bulletin clarifies the Department's practice with respect to the automatic initiation of sales below cost investigations in newly-initiated administrative reviews. As of November 4, 2005, in the first administrative review of a particular exporter/producer, the Department will base its decision to initiate automatically a sales below cost investigation on whether below-cost sales were disregarded for that exporter/producer in the less-than-fair value investigation ("LTFV"). For subsequent reviews, the Department will base its decision to initiate automatically a sales below cost investigation on whether below-cost sales were disregarded in the most recent review of that exporter/producer for which final results have been published on or before the date on which the notice of initiation of the new review is published.

Background:

Section 773(b)(1) of the statute directs the Department to conduct sales below cost investigations whenever there are "reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product." If in conducting such investigations we find that sales below cost have been made within an extended period of time in substantial quantities and at prices which do not permit recovery of all costs within a reasonable period of time, the statute directs the Department to disregard such sales in determining normal value.

Section 773(b)(2) states that reasonable grounds to believe or suspect sales below cost exist if: (1) an interested party provides information regarding sales below cost using observed prices or constructed prices or costs; or (2) in a review involving a specific exporter, the Department has

disregarded some or all of the exporter's sales in the most recently completed review of that exporter (or, in the case of a first review, in the original investigation).¹

This policy bulletin addresses the following question. At what point in time in a newly initiated review should the Department determine whether reasonable grounds exist based on a finding of sales below cost disregarded in a prior review? It also addresses the question of whether the "most recently completed review" should be defined to include a preceding review completed after the initiation of the new review. More specifically, if a preceding review is underway but not yet completed at the time a new review is initiated, should the Department consider the results of that ongoing review and perhaps wait until it is completed to determine whether automatic initiation is appropriate, or should the Department base any automatic initiation on the results of the most recently completed review at the time the new review is initiated, regardless of whether a more recent review is underway?

While the regulations provide specific guidance with respect to the timing of sales below cost allegations from interested parties, neither the statute nor regulations provides specific guidance with respect to the timing of automatic cost initiations. The Statement of Administration Action concerning the interpretation and application of the Uruguay Round agreements and U.S. implementing legislation, page 163, indicates a general preference for initiating sales below cost investigations "at the outset of a case, thereby enhancing Commerce's ability to complete investigations and reviews in a timely, transparent, and effective manner," but does not speak directly to the timing of automatic cost investigations.

Statement of Policy

For newly initiated reviews, the Department will determine whether to automatically initiate sales below cost investigations based on sales below cost found and disregarded in the most recent review completed on or before the notice of initiation of the new review is published. The most recent review completed will be defined as the most recent review for which final results have been published on or before the date on which publication of the notice of initiation of the new review occurs. If the newly-initiated review is the first review of a particular exporter/producer, the decision will be based on whether below-cost sales were disregarded for that particular exporter/producer in the LTFV.

Implementation

This clarification of policy will apply to all reviews initiated on or after the effective date of this policy bulletin.

¹Initiations based on the latter are internally referred to as "automatic" sales below cost initiations.

