

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries

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

ACTION: Announcement of Change in Practice

SUMMARY: The Department of Commerce (“the Department”) is instituting two modifications in its non-market economy (“NME”) practice in antidumping investigations: one on separate rates and one on combination rates. The separate rates practice refers to the Department’s long-standing policy in antidumping investigations of presuming that all firms within an NME country are subject to government control and thus should all be assigned a single rate unless a respondent can demonstrate an absence of both *de jure* and *de facto* control over its export activities. For firms that qualify for separate rate status, the Department assigns the respondent its own individually calculated rate or, in the case of a non-investigated firm, a rate based upon the weighted-average of the rates of the investigated companies, excluding any rates that are zero, *de minimis*, or based entirely on facts available.

On May 3, 2004, the Department first published a notice in the *Federal Register* requesting comment on its separate rates practice and on various proposed changes to this

practice (69 FR 24119). In response to this notice and request for comment, the Department received 23 submissions from interested parties. Taking into account the submissions in response to the May 2004 notice requesting comments on various changes to its separate rates practice the Department published a second notice on September 20, 2004, which outlined revised options. This provided the public with a further opportunity to comment on whether these changes would be consistent with the statute and would appropriately redress problems that have been identified concerning separate rates. In response to this second notice in the *Federal Register* published on September 20, 2004, requesting comments on the Department's separate rates practice and implementation of combination rates (69 FR 56188), the Department received 14 submissions.

Having carefully considered the arguments presented by parties in the previous two notices, as well as the Department's experience in recently concluded antidumping investigations, the Department further narrowed the options for changing its separate rates practice in its third notice in the *Federal Register*, published on December 28, 2004 (69 FR 77722). In this notice, the Department provisionally decided to adopt an application process for evaluating separate rate requests by non-investigated firms, and to outline in specific detail its proposal to institute combination rates (also known as "chain" or "channel" rates) for all firms receiving separate rate status in NME investigations.

In order to provide interested parties another opportunity to comment on these detailed proposals before instituting them, the Department posted the draft application on the Import Administration website and once again invited public comment on both the draft application

and on the proposal to institute combination rates for all exporters deemed eligible for a separate rate in NME investigations. In response to this third opportunity for public comment on proposed changes in the Department's separate rates practice and implementation of combination rates, the Department received 12 submissions.

As a result of almost a year of deliberation and extensive public comment, the Department is finalizing its decision to adopt an application process for non-investigated firms in future NME antidumping investigations and to begin assigning only exporter-producer specific "combination" rates in these investigations to the mandatory respondents receiving an individually calculated separate rate, as well as to the pool of non-investigated firms receiving a separate rate. After consideration of the public comments, the Department has modified the separate rates application and its requirements, as well as the proposal to institute combination rates. Both changes in practice are being made after consideration of several rounds of public comment, and neither change alters the threshold of eligibility for a separate rate, which remains an absence of *de jure* and *de facto* government control over a firm's export activities. A detailed explanation of both final decisions on these changes in practice can be found in Policy Bulletin 05.1, which will be posted on the Import Administration website at the following address: <http://ia.ita.doc.gov/>. The final template of the separate rates application will likewise be found on the Import Administration website; however, for each new investigation, a specific application will be posted. Both changes in practice will take effect in the next NME antidumping investigation that is initiated after publication of this notice. These changes in practice only apply to investigations, and the

Department is continuing to evaluate whether to extend these changes in practice to administrative reviews.

EFFECTIVE DATE: April 5, 2005.

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Date