

NEI Trade Law Enforcement Package FACT SHEET

- On Thursday, August 26, 2010, in support of President Obama's National Export Initiative (NEI), which calls for a doubling of U.S. exports over the next five years, the Commerce Department is announcing a Trade Law Enforcement Package to strengthen the administration of the nation's trade remedy laws.
- U.S. commercial competitiveness and the maximum potential of U.S. exporters can be undermined by the unfair trade practices of governments and firms abroad. Secretary Locke recognizes the importance of providing U.S. businesses and workers with relief from such unfair trade practices, and, consistent with the compliance and enforcement objectives of the NEI, Commerce is announcing a number of proposals that place a high priority on refining the Department's current practice and strengthening the agency's administration of the nation's antidumping and countervailing duty laws.
- Beginning this fall, the Commerce Department will seek input on and introduce these proposed changes in practice, in many cases through a public notice and comment procedure in the *Federal Register*, and will give stakeholders a full opportunity to comment on the proposed changes in practice.
- The proposals address a range of issues (antidumping duty, countervailing duty, market economy and non-market economy) that have arisen in the course of the Department's administration of the unfair trade laws.
- For example, Commerce plans to end its practice of allowing individual companies to be removed from an antidumping/countervailing duty order based on their ability to show zero dumping margins for three consecutive years in AD cases or zero subsidy rates for five consecutive years in CVD cases.
- Also, Commerce is considering requiring importers to post cash deposits rather than bonds for imports that fall within the scope of the AD/CVD investigation starting with the issuance of Commerce's preliminary determination (rather than following the imposition of an AD/CVD order), to better ensure that importers will bear full responsibility for any future AD/CVD duties they may owe.
- Additionally, to address the unique set of methodological issues present in its non-market economy country proceedings, Commerce is proposing a number of updates to its practice that will more closely capture the realities of how entities function in a non-market economy.
- This proposed trade law enforcement package will help to ensure that U.S. companies are given every opportunity to compete on a level playing field and to develop the competitive strength to expand into new markets. These changes will be adopted in a manner consistent with the nation's international obligations.

NEI Trade Law Enforcement Package
Listing of Proposals

Proposals that may be achieved through administrative action:

- Expanded use of random sampling to select companies as individual respondents in AD investigations and reviews rather than choosing the largest exporters;
- Strengthening Commerce’s current practice regarding the issuance of company-specific AD rates in NME cases;
- Clarification of Commerce’s current NME practice that when the Department uses import prices for valuing a production factor, such prices should include all applicable freight and handling costs;
- Clarification of Commerce’s current NME practice to require companies to report production inputs for all products produced at each of their facilities – not just those facilities that produced merchandise destined for the United States – for use in the Department’s NME dumping calculations;
- Clarification of Commerce’s current CVD practice to reiterate that Commerce considers state-owned enterprises (SOEs) as constituting a “specific” group when they are alleged to be receiving countervailable subsidies from the government;
- Reconsidering the treatment of export taxes and value-added taxes (VAT) in Commerce’s NME AD methodology; and
- Strengthening the treatment of resellers and other non-reviewed parties in NME cases to ensure that such parties pay the full amount of AD duties.

Proposals that may involve regulatory change:

- Adoption of a new methodology for valuing wage (labor) rates in NME cases by using surrogate wage rates that fully capture all labor costs (including benefits and taxes paid to workers by their employers) in the NME country;
- Eliminating the practice of allowing individual companies to seek removal from an antidumping (AD) or countervailing duty (CVD) order based on their ability to show zero dumping margins or subsidy rates for three (AD) or five (CVD) consecutive years;
- Tightening the rules in non-market economy (NME) cases for determining when the price of production inputs purchased from market economy countries will be substituted for the Department’s standard valuation for such inputs;
- Considering whether importers will be required to post cash deposits rather than bonds for imports that fall within the scope of an AD/CVD investigation starting with the issuance of

Commerce's preliminary determination (rather than following the imposition of an AD/CVD order);

- Strengthening the certification process for the submission of factual information to the Department;
- Strengthening the accountability of attorneys and non-attorneys practicing before Commerce; and
- Tightening the deadlines for submitting new factual information in AD/CVD cases.