

Small Business Compliance Guide

The Department of Commerce's (the Department) Import Administration is charged with enforcing the antidumping (AD) and countervailing duty (CVD) laws. These laws provide for various types of administrative determinations, including investigations and reviews of AD and CVD orders. The Tariff Act of 1930, as amended, provides that in AD proceedings involving non-market economy (NME) countries, the Department calculates normal value (NV) by valuing the NME producer's factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. The goal of this surrogate factor valuation is to use the "best available information" to determine NV.

Recently, the Department changed 19 §CFR 351.408(c)(1) to establish that where substantially all (*i.e.*, 85 percent or more) of an input is purchased by an NME producer from market economy suppliers (from one or more market economy countries) as a share of total purchases of that input from all sources during a particular period of investigation or review, the Department will normally use the weighted-average purchase price paid to the market economy supplier(s) to value all of the input. When the 85 percent threshold is not met, the Department will weight-average the market economy purchase price(s) and an appropriate surrogate value, using the respective quantities of the input sourced, from market economy and NME suppliers.

Additionally, the Department added a requirement to 19 CFR §351.408(c)(1) that the market economy input at issue must actually be produced in one or more market economy countries, and not just sold through market economy countries, to address concerns that the pricing of an NME-produced input by a market economy supplier (or reseller) can be distorted by NME cost or supply factors. The Department made these changes because it finds that a market economy input price is not the best available information for valuing all purchases of that input when market economy purchases of an input do not account for substantially all purchases of the input.

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act, this serves as a guide to assist small entities in complying with 19 CFR §351.408(c)(1). In order to comply with section 351.408(c)(1) of the Department's regulations, exporters or producers are required to establish on the administrative record that 85 percent or more of an input has been purchased from market economy suppliers from one or more market economy countries as a share of total purchases of that input from all sources (domestic and foreign) during a particular period of investigation or administrative review, if the exporter or producer wishes the Department to use the weighted-average purchase price paid to the market economy supplier(s) to value all of the input (from all sources). Furthermore, exporters or producers must also establish on the administrative record that the market economy input at issue was produced in a market economy, rather than merely being sold through a market economy supplier.

If you are participating in an AD or CVD proceeding and have questions concerning compliance with 19 CFR §351.408(c)(1), contact the official in charge of that proceeding.