



*United States Department of Commerce*  
*Import Administration*

Antidumping Duty Actions –  
Issues of Substance in AD Proceedings

**IADB Regional Conference – May 2008**



# Overview

- What is Dumping
- Legal Authorities
- Legal Framework
- Petitions and Initiations
- Antidumping (AD) Investigations
  - Timeline
  - Collection of Information
  - Margin Calculation
  - Preliminary and Final Determinations and Bond/Deposit Requirements
- Antidumping Duty Orders
- Administrative Reviews



## *What is Dumping?*

- “Dumping” occurs when a foreign producer sells its product at a lower price in the importing country at less than normal value.
- Normal value may be prices in the producer’s home country, other third country markets, constructed value, or in cases involving nonmarket economy countries, factors of production.



# *Legal Authorities*

- U.S. Statute:

Tariff Act of 1930, as amended, Sections 731-752, 771, 772-774, 776-783 (19 U.S.C. Sections 1673-1675a, 1677, 1677a - 1677c, 1677e - 1677n)

Statement of Administrative Action (SAA)

- U.S. Regulations:

- 19 CFR Part 351

- “Preamble” to final rules published in Federal Register in 1997, 62 Fed. Reg. 27296 (May 19, 1997)

- Part 354 (Administrative Protective Order Violations)

- Part 356 (Procedures for cases involving NAFTA)



# *Legal Authorities*

## ● Past Case Precedent:

- Commerce Final Decisions, published in the Federal Register and accompanying decision memoranda
- Court Decisions: U.S. Court of International Trade (CIT) and U.S. Court of Appeals for the Federal Circuit (CAFC)

## ● WTO Provisions:

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement Articles 1 through 18, Annexes 1 and II)





## *Legal Framework*

- Congress writes AD/CVD laws; effective when signed by the President
- The Executive Branch – under the President - administers the AD/CVD laws. This function is carried out in part by The Department of Commerce (Import Administration), to investigate and determine the amount of dumping or subsidization, if any
- The International Trade Commission (“ITC”) determines whether there has been injury to the domestic industry by reason of dumping or subsidies in AD/CVD cases.



## *Legal Framework*

- ⊕ Regulations – Commerce implements and explains the statutory requirements in greater detail in its regulations
- ⊕ Case-Specific Decisions – Commerce also publishes its determinations for each case, including its findings, conclusions and analysis.



## *Legal Framework*

- ☛ Court Review – Commerce findings must be sufficiently explained to allow for meaningful judicial review
- ☛ Most AD/CVD determinations are subject to three levels of judicial review
  - ☛ The Court of International Trade
  - ☛ The Court of Appeals for the Federal Circuit
  - ☛ The U.S. Supreme Court (extremely rare)



## *Legal Framework*

- The CIT and CAFC will uphold Commerce's determination if it is:
  - Supported by substantial evidence (facts) and
  - In accordance with law
  - Commerce interpretation of law, if meaning in statute is not clear, is given deference
  
- Possible review under NAFTA dispute settlement (Canada, Mexico) and WTO dispute settlement if case brought by Member Country against the United States



## *Petitions*

- AD investigations are almost always initiated in response to petitions filed by an affected U.S. industry, although Commerce may self-initiate a case.
- Although petitions must be filed with both Commerce and the International Trade Commission (ITC), Commerce has the sole authority to initiate or not initiate the investigation.
- U.S. law provides that an antidumping investigation shall be initiated whenever Commerce determines, from information available to it, that a formal investigation is warranted.



# *Petition Requirements*

## ✚ Filing a Petition

- Requirements for filing an antidumping duty petition are listed in Section 732(b) of the Act, and in
- Sec 351.202(a) through (c) of the Department of Commerce's regulations.



# *Petition Requirements*

- ⊕ Scope
- ⊕ Like Product
- ⊕ Industry Support
- ⊕ Dumping Allegation
- ⊕ Material Injury



## *Petition Requirements: Scope*

- When filing a petition, the petitioner is required to include a detailed description of the merchandise to be covered under the investigation including:
  - The technical characteristics and uses of the merchandise
  - Its current U.S. tariff classification number (HTS number)



## *Petition Requirements: Scope*

- ❖ Commerce's evaluation of scope:
  - ❑ If the petitioner seeks pre-petition filing consultations, Commerce will ensure that the proposed scope of the petition is an accurate reflection of the products for which the domestic industry is seeking relief.
  - ❑ Interested parties are able to raise issues regarding scope within the 20 day period following publication of the notice of initiation in the Federal Register.



## *Petition Requirements: Like Product*

- ❁ A petitioner must clearly identify the domestic like product, the product produced in the United States which is most similar to the foreign product covered under the scope of the investigation.
- ❁ Commerce determines the like product for the purposes of the initiation. The ITC makes its own separate like product determination.



## *Petition Requirements: Dumping Allegation*

- The allegation of sales in the U.S. at less than fair value (dumping) is the thrust of any petition. The dumping allegation must contain all factual information relevant to:
  - The calculation of the U.S. price of the subject merchandise and,
  - The normal value of the foreign like product.



## *Petition Requirements: Injury*

- ✚ The ITC is responsible for determining whether a domestic industry is materially injured or threatened with material injury as a result of the individual and cumulated impact of the allegedly dumped imports.
- ✚ Commerce examines whether the petition provides evidence of material injury or threat thereof.



## *Petition Requirements: Injury*

- To assess the accuracy and adequacy of the evidence relating to the material injury and causation allegations, the Department compares the evidence presented in the petitions with information that is reasonably available.

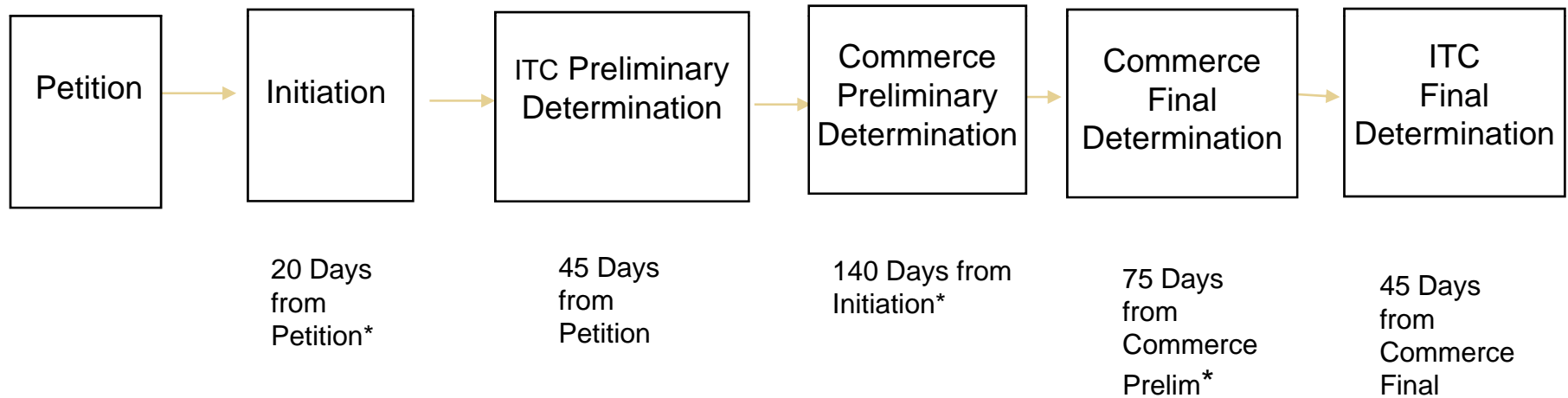


# *Initiation Procedures*

- Federal Register Notice
  - If the Commerce determines that the petition has satisfied all necessary requirements, Commerce will publish a Notice of Initiation in the Federal Register.
- Initiation Checklist
  - The checklist is submitted on the record of the proceeding and serves to provide the public with additional, more detailed, information.
  - The checklist can assist the public in locating specific information in the petition.



# *Timing of Events in AD Investigations*



\* May be extended under certain circumstances



# *Collection of Information*

## *Period of Investigation - Antidumping*

- The four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a non-market-economy country, the two most recently completed fiscal quarters) as of the month preceding the month in which the petition was filed.
- Example: Petition filed December 6, 2007  
Market Economy period of investigation = October 1, 2006, through September 30, 2007  
Nonmarket Economy period of investigation = April 1, 2007, through September 30, 2007



## *Selecting Respondents*

- ❖ In cases in which there are large numbers of exporters of the subject merchandise, the statute authorizes the Department to limit its examination to the largest exporters, by volume, or to a statistically valid sample.
- ❖ The Department will determine the dumping margins from each of the selected respondents using their data.



## *Selecting Respondents, cont'd.*

- ⊕ All other exporters and producers will receive the “all others” rate which is the weighted average of the rates of the selected respondents, excluding margins based entirely on facts available and zero/de minimis margins.



## *Market Economy vs. Nonmarket Economy Comparisons*

- ❖ U.S. anti-dumping law applies differently to countries considered to have nonmarket economies (NME) than to those with market economies (ME)
- ❖ In NMEs prices and costs are presumed to be under government control rather than subject to market-based principles



# *Questionnaire Structure - ME*

## **Market Economy**

- Section A: General Information
- Section B: Comparison-Market Sales
- Section C: U.S. Market Sales
- Section D: Cost of Production & Constructed Value
- Section E: Further Manufacturing in the United States
- Appendices: *e.g.*, Scope



# *Questionnaire Structure - NME*

## **Nonmarket Economy**

- ☛ Separate Rate Application/Certification
- ☛ Section A: General Information
- ☛ Section B: Not Applicable
- ☛ Section C: U.S. Market Sales
- ☛ Section D: Factors-of-Production Data
- ☛ Section E: Further Manufacturing in the United States
- ☛ Appendices: (*e.g.*, Scope)



## *Supplemental Questions and Facts Available*

- Commerce often issues supplemental questionnaires to correct deficiencies in a response, to clarify information previously submitted, to obtain further explanation or documentation
- If information is missing, has been withheld, or can't be verified, Commerce will use the facts available to reach a determination. If Commerce finds that a party has not cooperated, Commerce may use an adverse inference in selecting the facts available.



# *Verification*

- ❏ Commerce will conduct an extensive examination of company books and records in order to...
  - ❑ Confirm reported sales are recorded in company accounts.
  - ❑ Confirm that the respondent reported all sales of subject merchandise during the POI.
  - ❑ Confirm the accuracy of individual transactions.
  - ❑ Examine submitted cost or FOP information.
  - ❑ Examine allocations of charges and adjustments.



# *Margin Calculation*

## *Fair Comparisons - ME*

- ❖ The dumping calculation is a comparison of the price at which subject merchandise is sold in the United States -- the U.S. price – with either the “normal value” of a sale of the same or similar product in the comparison market or a “constructed value” based on the cost of production of the product plus profit



# *Margin Calculation*

## *Fair Comparisons- NME*

- ⊕ The dumping calculation is a comparison of the price at which subject merchandise is sold in the United States -- the U.S. price -- with the “normal value” based on the factors of production (FOP) and surrogate values

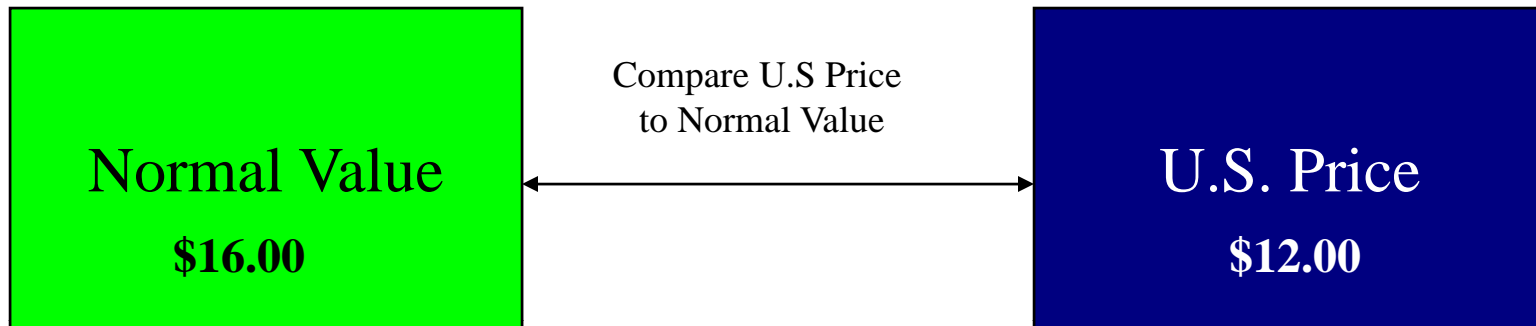


## *Margin Calculation*

- ⊕ Calculated as the difference between the normal value in U.S. dollars and the net U.S. price
- ⊕ The aggregate dumping amount is divided by:
  - ⊞ total net U.S. price to determine the *ad valorem* **rate**, or
  - ⊞ the quantity sold to determine the **per-unit amount**



# Sample Ad Valorem Margin Calculation



<b>Normal Value</b>	\$16.00	<b>A</b>
---------------------	---------	----------

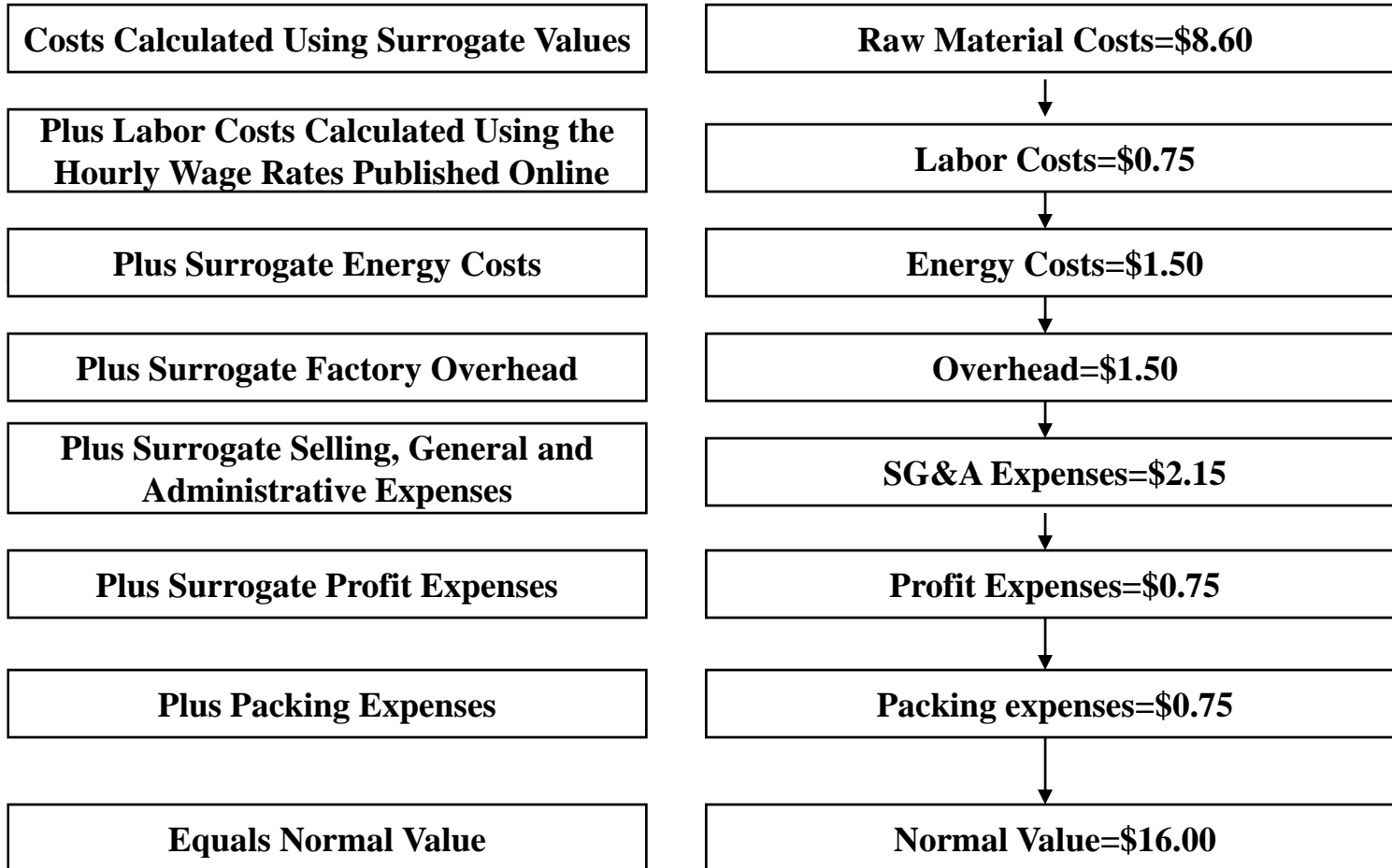
<b>U.S. Price</b>	\$12.00	<b>B</b>
-------------------	---------	----------

<b>Difference Attributable to Dumping</b>	\$4.00	<b>C</b>
---	--------	----------

<b>Ad Valorem Dumping Margin</b>	=	<b>Difference Attributable to Dumping / U.S Price</b>	\$4.00 / \$12.00 = 33.3%
			<b>C / B</b>



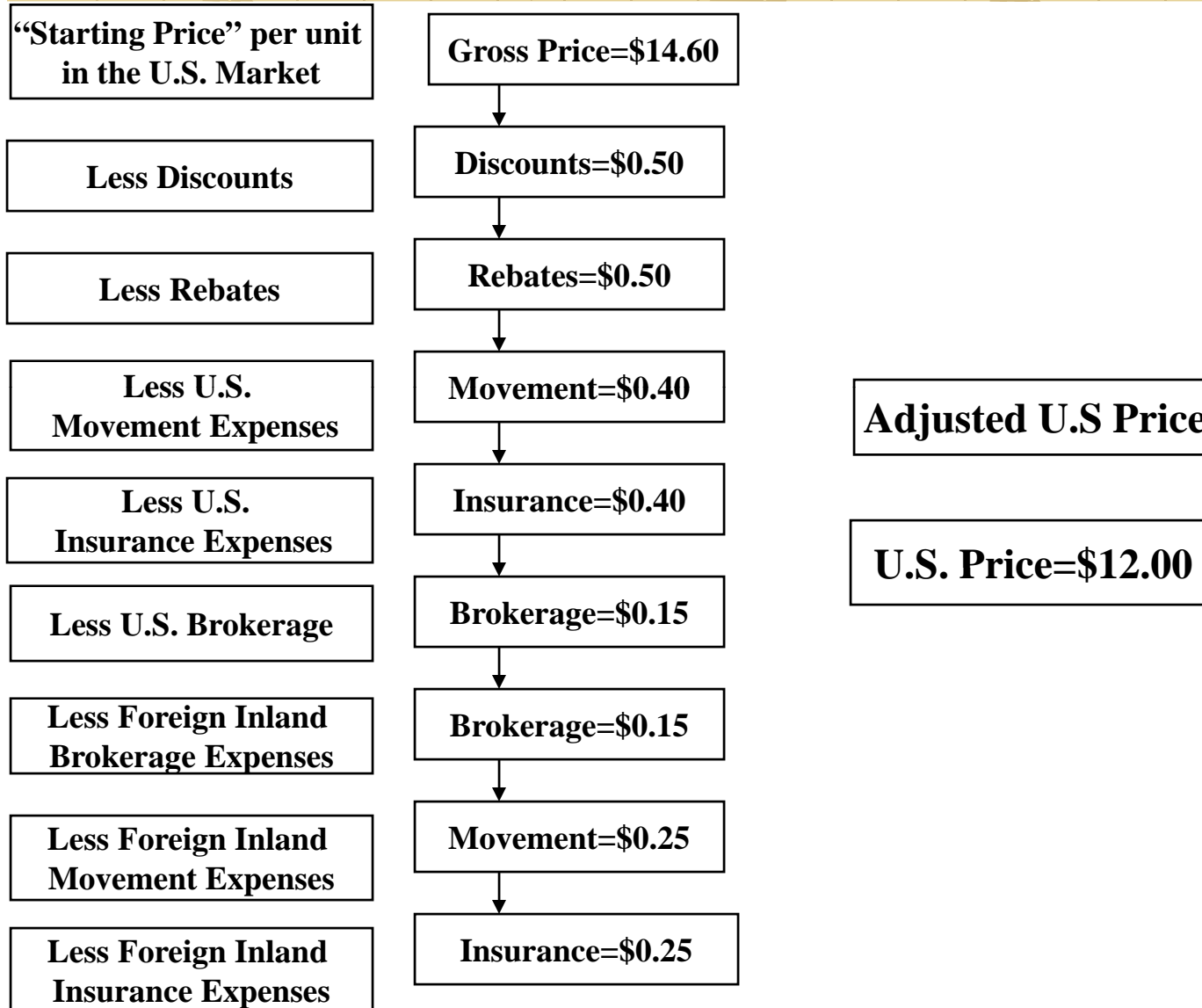
## *Normal Value Calculation for a Non Market-Economy (NME) Investigation*



Note: For general information purposes only. When interpreting and applying the law, please refer to the Tariff Act of 1930, as amended, (19 U.S.C. 1671-1671h, 1673-1673h) and the related regulations in Title 19 of the Code of Federal Regulations.



## Sample U.S. Price Calculation



Note: For general information purposes only. When interpreting and applying the law, please refer to the Tariff Act of 1930, as amended, (19 U.S.C. 1671-1671h, 1673-1673h) and the related regulations in Title 19 of the Code of Federal Regulations.



## *Calculated Rates in NME Investigations*

- ⊕ Rates for Selected Respondents
- ⊕ Separate Rate Average (like the market economy All Others rate)
- ⊕ Country-wide Rate



## *Margin Calculation*

- In investigations and reviews we calculate a single weighted-average dumping margin for an exporter/producer that will be used for bonding (investigation preliminary determinations only) or cash deposit purposes until there is a subsequent administrative review.
- In administrative reviews Commerce also establishes dumping margins for each U.S. importer for duty assessment purposes.



# *Margin Calculation Assessment vs. Cash Deposit*

- ❖ Cash deposits are a temporary payment of estimated antidumping duties
- ❖ Assessment is the actual amount of antidumping duties due on a given entry of subject merchandise



## *Bond/Deposit Requirements Imposed After Issuance of a Preliminary Determination*

- On the date of the publication of an affirmative preliminary determination in the *Federal Register* and at the request of Commerce, U.S. Customs and Border Protection will suspend liquidation of entries of the product under investigation and begin collecting a deposit of estimated AD duties based on the preliminary margin Commerce published.



## *Bond/Deposit Requirements Imposed After Issuance of a Preliminary Determination*

- ⊕ Until the publication in the *Federal Register* of an AD order following an affirmative determination by the ITC, the importer has the option of posting a bond or cash deposit for estimated AD duties.



## *Final Determinations*

- Summary and statement of the Commerce position on each issue -
  - Raised by parties in briefs, rebuttal briefs, and hearing.
  - Commerce's findings during the investigation.
- The analysis memorandum and attachments provide information on Commerce's analysis.
- The memorandum contains an explanation of the calculation methodology Commerce used to calculate dumping margins.
- The attachments contain the computer program and resulting output.



## *Bond/Deposit Requirements Imposed After Issuance of a Final Determination by Commerce*

- Following an affirmative final determination, Commerce will instruct Customs to continue to suspend liquidation and collect bonds or deposits at the final rate.
- Commerce does not instruct Customs to apply the rate in the final determination retroactively to entries made between the preliminary and final determinations.



# *Antidumping Duty Order*

- What is an order?
  - Public announcement that Commerce will instruct Customs to assess duties pursuant to the affirmative final determinations of Commerce and the ITC.
  
- When are orders issued?
  - Within seven days after the ITC notifies Commerce of its affirmative injury determination.



## *Cash-Deposit Requirements Following Issuance of AD Order*

- Deposit requirement set at AD margin established in Commerce's final determination.
- Bonds for estimated duties no longer allowed.



## *Recourse Following Final Determination*

- Seek Correction of Ministerial Errors
- Appeal Decision to the Court of International Trade
- Governments may seek redress before World Trade Organization Dispute Settlement Body
- Request Administrative Review during the Anniversary Month of the Order



# *Administrative Reviews*



## Purpose

1. Determine amount of AD duties to assess on entries during a specific period of review.
2. Establish new deposit rates for prospective application.



## *What if no review is requested?*

- ❖ If no review is requested for a company:
  - ❑ An importer's entries are assessed duties at the rate of deposit at the time of entry.
  - ❑ Commerce sends "automatic-assessment" instructions to Customs.



## *Who can request a review?*

- ✚ Petitioners can request a review of specific exporters or producers.
- ✚ Importers can request a review of their suppliers.
- ✚ Producers or exporters can request a review of their own exports or sales of subject merchandise.



## *What if deposits are less than the review results?*

- ❖ If the AD margins Commerce finds in the review exceed the amounts deposited on entries during the POR, then the importer must:
  - ❑ Pay duties to make up for the difference between the deposit rate and the actual calculated assessment rate and
  - ❑ Pay interest accumulated since the date of deposit (date of entry).

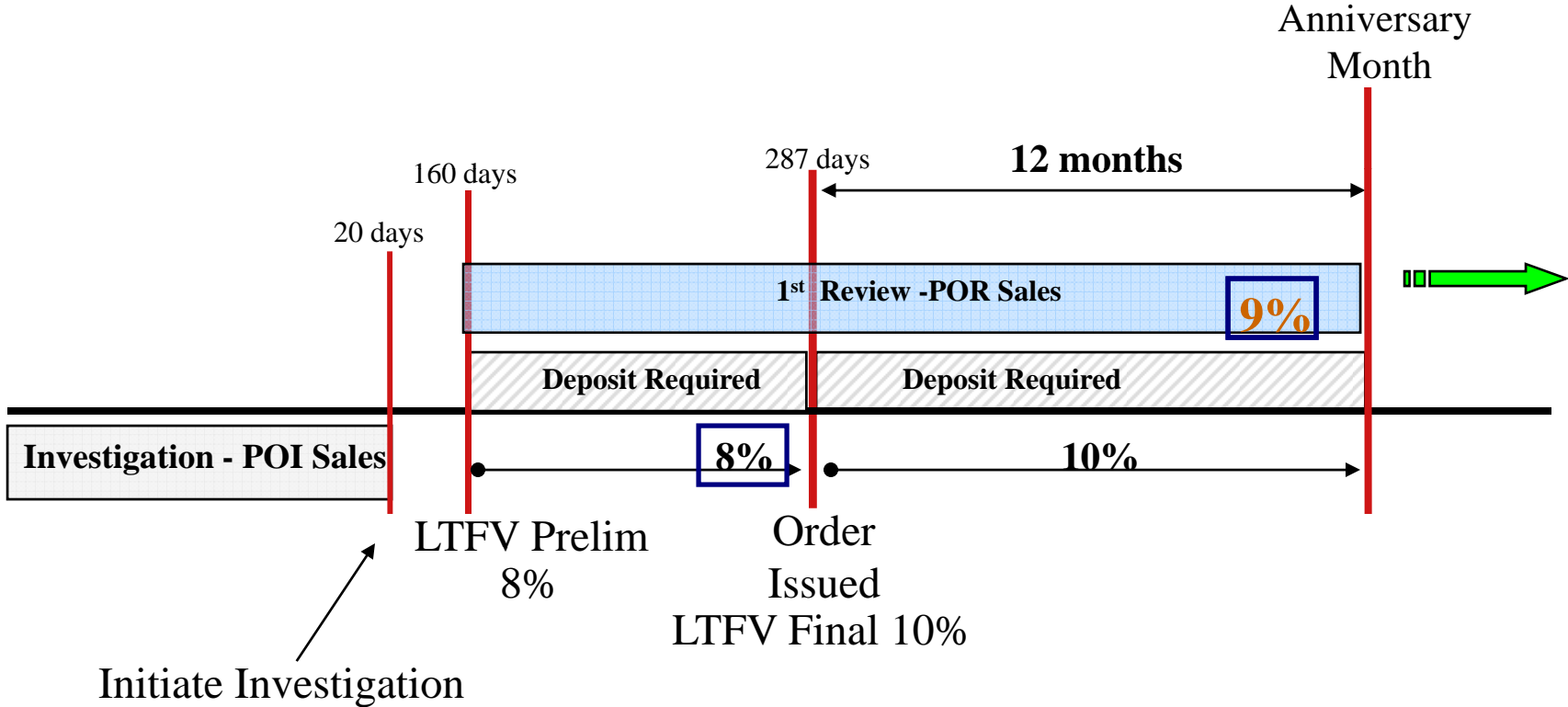


## *What if deposits are greater than the review results?*

- ⊕ If the deposit rate is higher than the AD margin Commerce calculates for the review, then the importer typically
  - ▣ Receives a refund and
  - ▣ Receives interest on the refunded portion dating from the date of deposit



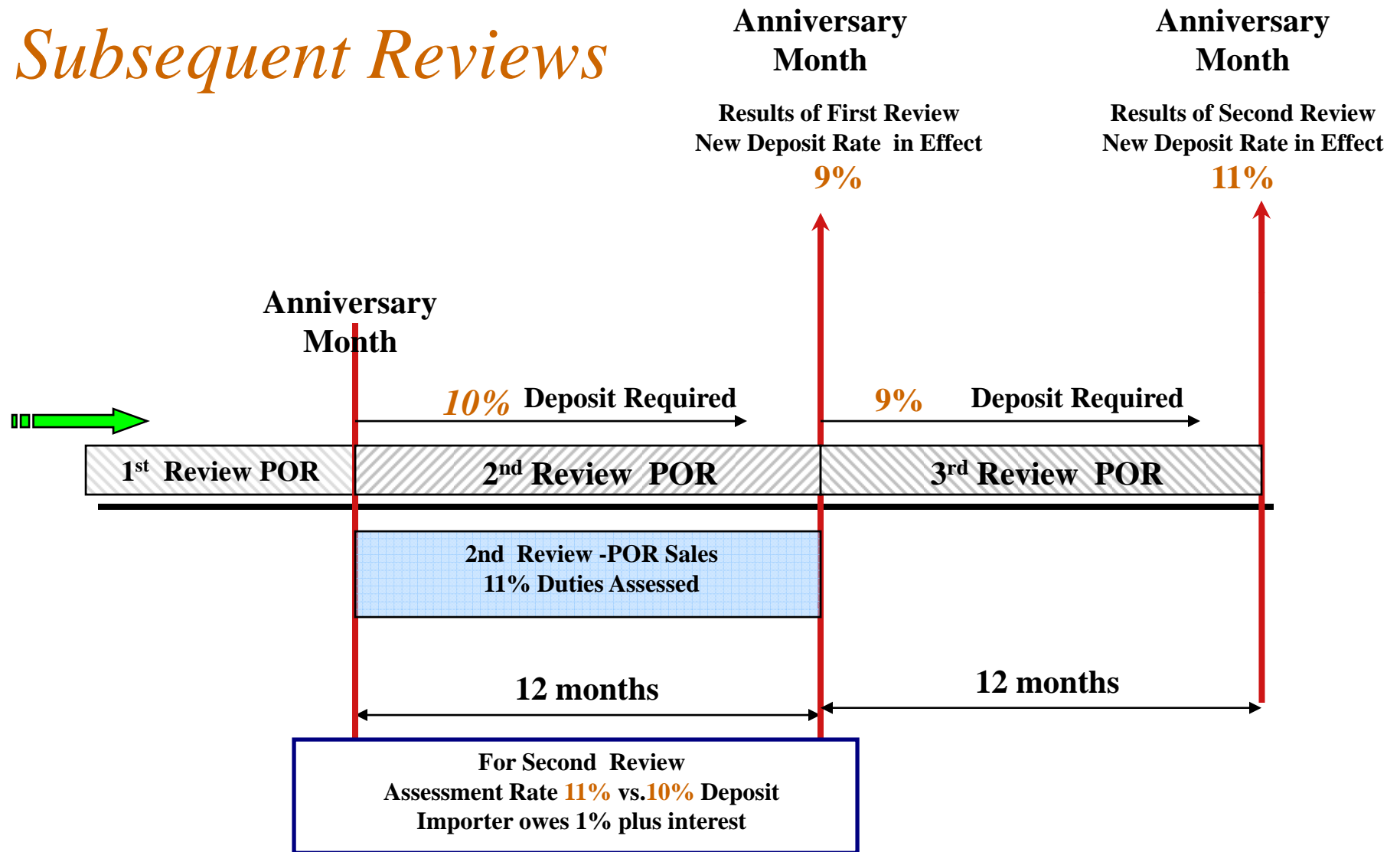
# First Review



**For First Review**  
Assessment Rate 9% vs. 8% deposit Capped at 8%  
Assessment Rate 9% vs. 10% deposit Refund 1% + interest



# Subsequent Reviews





## *Conclusion*

- Commerce conducts AD investigations and reviews using an open and transparent process.
- The multi-step process allows for the collection of information and participation by the parties in the determination of the AD duties through preliminary and final determinations.



## *Conclusion*

- In investigations, Commerce determines whether dumping has occurred.
- In reviews, Commerce determines the actual amount of dumping duties due on entries of merchandise subject to an AD order.



# *Helpful Reference Information*

☛ Import Administration website:

<http://www.trade.gov/ia/>