

TRADE MEASURES POLICY ADVICE

Number: **2/2004**

Date of issue: February 2004

Topic: Duty refund procedure

Approved: National Manager

Issue

This advice provides guidance regarding the practice to apply to the assessment of duty refund applications with effect from 16 January 2004.

Previous practice

ACDN 93/76 concerned applications for assessment of duty payable. It advised that when determining the duty liability any positive dumping amounts associated with a particular export sale may not be offset by any negative dumping amounts associated with another export sale. In effect, Customs zeroed the negative dumping duty amounts applying to a particular export sale.

New practice from 16 January 2004

A weighted average dumping margin over the assessment period will be determined for the good. Where there are different models or types a weighted average dumping margin will be determined for each model or type.

Background

The interim duty scheme, introduced in the Customs Legislation (Anti Dumping Amendments) Act 1992, became effective from 1 January 1993.

Article 9 (*Imposition and Collection of Anti-dumping Duties*) of the WTO Agreement provides:

‘9.3.2: When the amount of the anti dumping duty is assessed on a prospective basis provision shall be made for a prompt refund upon request of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months...’.

When ensuring that the amount of duty collected does not exceed the actual margin of dumping the methodology set out in Article 2 must also be considered. For example, the determination of normal value and the associated concepts of ordinary course of trade, adjustments, fair comparison etc, have a bearing in duty assessments as in the initial investigation.

Another relevant consideration is Article 18.3.1 of the AD Agreement. This Article requires that the margins of dumping in refund procedures under paragraph 3 of Article 9 follow the same calculation rules as applied in the most recent determination or review of dumping.

In assessing the margin of dumping in an initial investigation Customs takes account of all export transactions and does not practice zeroing. Accordingly, having regard to the above requirements and to advice that the *Customs Act 1901* does not compel a particular methodology in considering refund applications, Customs will adopt procedures which avoid the effect of zeroing.

Example

Following an investigation the Minister ascertains an export price and normal value and applies an anti-dumping measure on two models of the good. Amounts would be ascertained for each exporter. Assume for one of these exporters the outcome is:

Model	AEP	ANV	IDD
Model A	100	120	20
Model B	90	108	18

AEP: the ascertained export price per unit determined at the completion of the initial investigation.

ANV: the ascertained normal value per unit determined at the completion of the initial investigation.

IDD: the interim dumping duty per unit.

Subsequently the following importations took place by the exporter:

Model A

	Quantity	Export Value	Unit export price
Shipment 1	5,000	600,000	120
Shipment 2	100	11,500	115
Shipment 3	75	9,750	130

Model B

	Quantity	Export Value	Unit export price
Shipment 1	150	13500	90
Shipment 2	50	5500	110

In considering the duty refund application Customs determines that the actual normal values are:

Model A: 135/unit

Model B: 125/unit

The current actual dumping margin (weight average basis) is:

	Quantity	NV	EP	Sum NV	Sum EP	Total dumping
Model A						
Shipment 1	5,000	135	120	675,000	600,000	75,000
Shipment 2	100	135	115	13,500	11,500	2,000
Shipment 3	75	135	130	10,125	9,750	375
Total	5,175			698,625	621,250	
Total WA						77,375

dumping amount						
WA dumping/unit						14.9
Model B						
Shipment 1	150	125	90	18,750	13,500	5,250
Shipment 2	50	125	110	6,250	5,500	750
Total	200			25,000	19,000	
Total WA dumping amount						6,000
WA dumping/unit						30

The refund would be determined this way:

Model A	Quantity	Duty paid (20/unit)	Dumping margin (14.95/unit)
Shipment 1	5000	100,000	74,758
Shipment 2	100	2,000	1,495
Shipment 3	75	1,500	1,121
Total		103,500	77,375

Model B	Quantity	Duty paid (18/unit)	Dumping margin (30/unit)
Shipment 1	150	2,700	4,500
Shipment 2	50	900	1,500
Total		3,600	6,000

Total all shipments for that exporter:
duty paid =103,500+3,600 =107,100
total dumping =77,375+6,000 =83,375
refund =107,100-83,375=23,725

The answer is the same as if:

- the weighted average normal value and the weighted average export price had been ascertained by model, and
- those ascertained amounts were used to assess the total dumping by model
- from which the total amount of dumping may be determined for all of the models imported from that exporter in the period.

In the event that the applicant for the duty refund imported from more than one exporter/producer the process would be repeated by exporter. The refund entitlements by exporter would then be summed to determine the total refund entitlement.

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