



Live Swine from Canada

Preliminary Antidumping Determination: Questions and Answers: Revised for October 15, 2004 Release

Q. What is dumping and how is it determined?

A. Dumping can be defined as when a product is sold in the U.S. at less than normal value. A dumping margin is calculated by determining the amount by which the sales in the U.S. are less than the normal value.

Q. What is normal value?

A. Normal value is determined by looking at the price of the product sold in the home market (in this case, Canada) for the same product category. However, determining normal value can be quite complex; more details on this are provided in a later question.

Q. How are the rates determined?

A. In this investigation, four respondents were chosen for investigation, and results were published for three of the four (one was de-selected). Each of the three respondents will have their own dumping margin, which will be assigned to exports from their company. For all others that were not investigated, an “all others” rate will be assigned. This is generally calculated by taking a weighted average of the rates from the companies that were investigated, but excluding any rates that are zero or less than 2%, which is the de minimis level for dumping.

Q. What are the rates?

Hytek - - de minimis
Ontario Pork - - 13.25%
Premium Pork - - 15.01%
Excel – de-selected

All others - - 14.06%

Q. What will this mean for exporters?

A. This decision means that all exports of hogs, except breeding stock, will be assessed additional costs, in the form of a dumping duty deposit requirement. This deposit is paid by the “importer of record”.

Q. What is a “dumping duty deposit”

A. The term “dumping duty deposit” refers to the cash that must be deposited with Customs when hogs affected by the duty are shipped to the U.S. The term deposit is used as it is an estimated value of a final duty. A bond can be filed with Customs instead of a cash deposit. The dumping margins released were calculated based on the market situation in 2003, and therefore the deposit reflects this time period as well, not the time period the animals are actually shipped. Therefore, a deposit is required as an estimate of what the rates could be for the period, but that will not be known until later.

Q. When is the deposit requirement effective?

A. The deposit requirement will go into effect for entries into the U.S. on the date of publication of the preliminary determination in the Federal Register, which most likely will be on or about October 20.

Q. How is the duty deposit expressed?

A. The deposit requirement will be likely be a percentage figure which is roughly equivalent to a percent of the import value.

Q. Will there be a different percentage for market hogs, isoweans, feeder pigs, etc?

A. No.

Q. Is there any alternative to having to make a cash deposit of the estimated dumping duties?

A. After a preliminary determination, U.S. law permits importers to post a bond to cover estimated duties instead of cash deposits. Exporters/importers should contact their Customhouse brokers to arrange for a bond.

Q. How long is the preliminary dumping duty deposit requirement in effect?

A. The preliminary dumping duty deposit will be in effect until the U.S. Commerce Department makes a final determination, most likely in early March of next year. At that time, the amount of the deposit requirement could change or, if there is a negative final determination, be eliminated.

Q. If the final determination is affirmative, how long is the new rate in effect?

A. The new rate will be in effect at least until the U.S. International Trade Commission (ITC) makes a final determination on the question of injury, most likely in early April. If the Commission finds no injury, the deposit requirement will cease, and deposits posted to that time will be refunded. If the Commission finds injury or threat of injury, the deposit requirement will continue at the same level, but when an antidumping duty order is issued (mid April), filing a bond in lieu of the cash deposit will no longer be an option. (In the event that the ITC only finds threat of injury, the antidumping order will be issued and the deposit requirement will continue, but deposits posted on entries prior to the determination will be refunded.)

Q. What happens if the final injury determination is negative, will any cash deposits be returned?

A. Yes, if the final injury determination by the U.S. International Trade Commission is negative, all cash deposits of estimated dumping duties will be returned, and any bonds released.

Q. Besides the current "all others" antidumping rate, could exporters be held responsible for any additional duties between October 20 and the International Trade Commission's final determination in April 2005, if it is determined then that the deposit rate is actually too low?

A. No. From the period from October 20 to the publication date of the U.S. International Trade Commission (ITC) final determination on injury next April, the U.S. Department of Commerce and U.S. Customs cannot charge exporters more than the deposit rate. On the other hand, if the assessed duty is *less* than the deposit rate for that period of time, the difference is still refunded.

Q. If the Commission finds injury, and the Commerce Department then issues an antidumping duty order, what happens to the requirement to make cash deposits of estimated dumping duties?

- A. The requirement remains in effect without any change to the rate of deposit until the final results of the first annual review of the order are determined, most likely in April, 2007 (a review typically takes a year to complete and would likely be requested in April, 2006), after which a new rate of deposit will be required in the amount of the final results of review. The new rate will continue until the final results of a second review are determined, and so on.

Q. When are actual dumping duties assessed?

- A. During the anniversary month (April) of the antidumping duty order, either petitioners or exporters can ask for a review of the order. If a review of the order is not requested by either the petitioners or foreign exporters, the amount of the cash deposit becomes the assessed duty. In that event, if bonds were filed in lieu of cash deposits during the investigation, the importer of record will have to pay the dumping duty for those entries. If a review is requested, the Commerce Department will conduct a year-long investigation of exports that occurred during the period from the date of the preliminary determination to the date of the anniversary month (mid-October, 2004 – mid-April, 2006), to determine whether, and to what extent, there were sales at less than fair value, and if there were, Commerce will order that dumping duties be assessed in the amount of the dumping margins found. The dumping margins so found will determine the amount of the cash deposits for the ensuing twelve months (April, 2007 - March, 2008).

Q. Can you provide more details on determining normal value?

- A. Commerce has many steps to follow to determine home market sales.

If any of the home market sales are alleged to be below cost of production, then an examination will be made to see if these sales are in fact below cost of production.

If only 20% or less of the home market sales of the specific product category are below the cost of production, then all sales of that product category will be included in the dumping analysis.

However, if more than 20% of the home market sales are below the cost of production, then all sales below cost are removed from the database, and are not used in the analysis. This leaves only the above cost of production sales.

If there are no sales in the home market of the same product category, other “tests” will be conducted to find matches in the home market for similar products. If similar products are found to be sold in the home market, these can be used, with some adjustments.

Finally, if no home market sales can be found, a constructed value (which is essentially cost of production plus profit) will be used.

After determining appropriate measures for normal value, the Department of Commerce then calculates a dollar dumping margin as the amount by which the normal value for a product category exceeds the U.S price to which it is compared. Current practice is to assign a “zero” to non-dumped sales. A total dumping margin is then calculated. This is divided by the total adjusted U.S. sales value to determine the percentage margin. This analysis is conducted for each exporter under review.