CHAPTER 8

NORMAL VALUE

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LIST OF ACRONYMS & ABBREVIATIONS

BTU	BRITISH THERMAL UNIT
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
CGP	COATED GROUNDWOOD PAPER
COM	COST OF MANUFACTURE
COP	COST OF PRODUCTION
COS	CIRCUMSTANCES OF SALE
CV	CONSTRUCTED VALUE
DIFMER	DIFFERENCES IN MERCHANDISE
DOC	DEPARTMENT OF COMMERCE
E.C.	EXPORTING COUNTRY
EP	EXPORT PRICE
F.R.	FEDERAL REGISTER
GAP	GENERALLY ACCEPTED ACCOUNTING PRINCIPLES
G&A	GENERAL AND ADMINISTRATIVE EXPENSES
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
HM	HOME MARKET
IAS	INTERNATIONAL ACCOUNTING STANDARD
ITA	INTERNATIONAL TRADE ADMINISTRATION

LIST OF ACRONYMS & ABBREVIATIONS

LNPP	LARGE NEWSPAPER PRINTING PRESSES
MOI	MARKET ORIENTED INDUSTRY
NME	NON-MARKET ECONOMY
NV	NORMAL VALUE
OA	OFFICE OF ACCOUNTING
OP	OFFICE OF POLICY
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
PRC	PEOPLES REPUBLIC OF CHINA
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
SG&A	SELLING, GENERAL AND ADMINISTRATIVE
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED
USP	UNITED STATES PRICE

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INTRODUCTION

References:
The Tariff Act of 1930, as amended (the Act)
Section 773 - calculation of NV
Department of Commerce Regulations
19 CFR 351.401 - general information on NV
19 CFR 351.403 through 415 - specific information on the calculation of NV
SAA
Section B.2.c - NV
Sections B.3 through B.9 - specific information on the calculation of NV
Sections C.4.b. and d - specific information on the calculation of NV
Antidumping Agreement
Article 2 - calculation of NV

According to section 773 of the Act, NV is the price at which the **foreign like product** is first sold (or, in the absence of a sale, offered for sale) for consumption in an exporting country (E.C.) or **third country market**, in the usual commercial quantities and in the **ordinary course of trade** and, to the extent practicable, at the same level of trade as the export price (EP) or **constructed export price** (CEP). Like EP or CEP calculations, the calculation of NV for investigations or administrative reviews calls for various adjustments to be made to "starting prices," which are specified in section 773 of the Act. Starting prices are prices net of any price adjustment that is reasonably attributable to the like product. These price adjustments include such things as **discounts** and **rebates** that constitute part of the net price actually paid by the purchaser. As specified in the "Comments" section of the Preamble to the DOC's antidumping regulations, 62 F.R. 27300 (May 19, 1997), the use of net prices as the starting point for the computation of NV is consistent with the position that rebates and discounts are not expenses but rather form part of the price itself. See 19 CFR 351.102(b) and 351.401. Once starting prices for NV for specific models or types of merchandise are determined, they are adjusted for a myriad of items as covered in sections VI through XII of this chapter. As is the case with EP and CEP adjustments, any interested party that claims an adjustment must establish the claim to the satisfaction of the DOC (see 19 CFR 351.401(b)). Finally, NV for investigations, in most instances, will be a model or type-specific weighted-average price for the whole **period of investigation** (POI). For an administrative review, NV is usually based on a model or type-specific price for a one-month period (see Chapter 7, part VII for an explanation of the use of weighted-average prices).

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Throughout this chapter, the terms "exporting country" (EC) and "**home market**" (HM) are used interchangeably. The term "foreign market" is used to refer to EC(HM) and third-country sales. It should also be noted that, even though most sections refer to adjusting EC (home market) prices, the same adjustment and computational process, with the exception of EC taxes, is followed to compute an NV based on third-country prices.

I. EXPORTING-COUNTRY MARKET OR THIRD-COUNTRY MARKET

References:

The Tariff Act of 1930, as amended (the Act)
- Section 773(a)(1) - selecting exporting-or third-country market

Department of Commerce (DOC) Regulations
- 19 CFR 351.301(d) - timeliness of market **viability** allegations
- 19 CFR 351.404 - selecting exporting-or third-country market; selecting among third-country markets; exceptions
- 19 CFR 351.405(a) - **constructed value** (CV) may be substituted for foreign market sales

SAA
- Section B.2.a - market viability and third-country sales

Antidumping Agreement
- Articles 2.1 and 2.2 - use of exporting-country or third-country sales

A. The Five Percent Viability Test

Section 773(a)(1)(B)(i) of the Act identifies normal value (NV) as the price at which the foreign like product is first sold for consumption in the exporting country (E.C.) (see section II of this chapter for a discussion of foreign like product). However, there are several exceptions to this rule. One exception involves market viability. A market is considered viable if the aggregate quantity of sales of the foreign like product to affiliated and unaffiliated purchasers in the market is five percent or more of the aggregate quantity of sales of **subject merchandise** to unaffiliated buyers in the United States. See Preliminary Results of Antidumping Duty Administrative review: Fresh Kiwi Fruit from New Zealand, 61 FR 15922 (April 10, 1996). If the EC's market for the foreign like product is not viable, NV must be based on sales to a viable third-country market or on CV. "Third-country" refers to a country other than the E.C. or the United States. 19 CFR 351.404(f) specifies that whenever an E.C.'s market is not viable, the DOC normally will calculate NV based on sales to a viable third-country market rather than on CV (see Preliminary Results of Antidumping Duty Administrative review: Certain Forged Stainless Steel Flanges from India, 61 FR 14074 (March 29, 1996)). Nevertheless, the DOC may decide to use

CV over a viable third- country market in appropriate circumstances (see 19 CFR 351.404(c)(2)(iii)). Also note, that in unusual situations, the DOC may use a number that is less than or greater than five percent to determine viability (see the SAA at 821).

If the EC market is not viable, the respondent's third-country market sales must be analyzed to determine which market is best suited for NV comparison purposes. The DOC must make this decision immediately upon receipt of the response to section A of the antidumping questionnaire so the respondent can be advised on how to proceed to answer the NV section(s) of the questionnaire. Only sales to one third-country market may be used. If there is more than one viable third country market (the same five percent test is applied to each market), the DOC generally will use the following criteria specified in 19 CFR 351.404(e) to select a third country for calculating NV: (1) the foreign like product exported to the particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other countries; (2) the volume of sales to the third country is larger than the volume to other third countries; and (3) such other factors that the DOC considers appropriate. It is not necessary for all three criteria to be present in order to justify selection of a particular market.

Consult with your supervisor or program manager (PM) if there appears to be any question about whether E.C. sales should be reported as the basis for NV for your investigation or administrative review or if it is necessary to select a third-country market for NV reporting purposes.

B. Exceptions to Basing NV on Prices

Once a market is determined as viable, the sales must be examined to determine if they may be used for NV calculations. In doing this analysis, certain exceptions to basing NV on prices in an E.C. or third-country market (foreign markets) must be considered. These involve situations where like products are not sold in either usual commercial quantities or in the ordinary course of trade (see section IV of this chapter for more information on the ordinary course of trade). In addition, the Act states that there may be "particular market situations" in a foreign market that do not permit a proper comparison with EP or CEP. Although the Act does not identify these "particular market situations," several are identified in the SAA although we do not routinely consider them without an allegation by an interested party. These include: (1) where a single sale in a foreign market constitutes five percent of sales to the United States; (2) where there are such extensive government controls over pricing in a foreign market that prices in that market cannot be considered competitively set; and (3) where there are differing patterns of demand in the United States and a foreign market. Finally, 19 CFR 351.404(c)(2) permits the DOC to decline to calculate NV on the basis of prices in a viable E.C. market or third-country market if parties establish to the DOC's satisfaction that certain situations in the viable market would not permit a

proper comparison of like product prices in that market with EPs or CEPs. Note that if any of the preceding circumstances eliminate all E.C. market sales from consideration, then third-country sales could be considered for NV if there is a viable third-country market.
In addition to the above exceptions, affiliated party sales may not be useable for NV calculations in certain situations (see section XVII of this chapter for information on when affiliated party sales can be used in determining NV).

C. Sample Calculation

The following is an example of an E.C. viability calculation for an investigation or administrative review:

There are sales of 11 units of the foreign like product in the E.C. market and sales of 100 units of subject merchandise to the United States. The E.C. market is viable (11/100 = 11 percent, which is greater than the five percent required for viability).

If it is necessary to determine the viability of sales to a third-country market, the same five-percent test is applied.

II. FOREIGN LIKE PRODUCT

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 771(16) - definition of foreign like product
  - Section 773(a)(1)(B)(i) - normal value (NV) must be for a **foreign like product**
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.411 - differences in physical characteristics
- SAA
  - Section B.2.c.(3) - adjustments for physical differences
- Antidumping Agreement
  - Article 2.4 - allowances for differences in physical characteristics
  - Article 2.6 - like product definition
- Import Administration Policy Bulletin
  - Policy Bulletin 92.2 of July 29, 1992 - differences in merchandise; 20% rule

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A. Types of Comparisons

As we conduct investigations and administrative reviews, we only make comparisons between products sold in the foreign market which can reasonably be compared to the products sold in the United States. In order to make such comparisons, analysts must acquire substantial technical knowledge about the products, their uses, and process of manufacture. This knowledge is gathered from submissions by the parties, product literature such as catalogs and brochures, domestic plant tours, and information from a variety of public sources including government agencies and trade associations. On some occasions, it is necessary to consult with technical experts as we did for the Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy ("Pasta from Italy"), 61 FR 30326 (June 14, 1996), and Large Newspaper Printing Presses from Japan ("LNPP from Japan"), 61 FR 38139 (July 23, 1996). Technical experts are usually employees of the DOC or other federal agencies. Always consult with your supervisor or program manager (PM) if you feel a technical expert is required.

The Act provides general guidance in selecting the products sold in the foreign market to be compared to the U.S. sales. Section 773(a)(1) of the Act states that the preferred basis for NV is the price at which the "foreign like product" is first sold (or, in the absence of a sale, offered for sale) for consumption in an exporting-country (E.C.) or third-country market. The foreign merchandise used to determine NV must be either identical or similar to the merchandise sold to the United States. The statutory preference is to compare the subject merchandise sold in the United States to identical articles sold in the E.C. market. When this is not possible, we will compare merchandise which is physically similar to the articles sold in the United States and adjust for any physical differences in the merchandise (difmer) being compared that affect the price of the merchandise (see section XI of this chapter for information on how to compute a difmer). Foreign like product is specifically defined in section 771(16) of the Act. Difmer adjustments are discussed at length in section XI of this chapter.

B. Same Person Requirement

If resales of different manufacturers' products are reported by a respondent, it should be noted that, in determining NV, we can only compare sales of merchandise produced by the same producer or manufacturer. Because section 773(a)(1)(B)(i) of the Act incorporates by reference the definition of foreign like product in section 771(16) of the Act, it prohibits our using sales of merchandise produced by persons other than the manufacturer/producer of the particular U.S. sale or sales being analyzed in our calculation of NV (see Pasta from Italy).

C. Identical merchandise Comparisons

In Final Determination of Sales at Less then Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14065 (March 29, 1996), our product-comparison methodology is described as follows: "...for purposes of determining appropriate product comparisons to U.S. sales, we compared **identical merchandise**, or where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons based on the characteristics listed in the Department's antidumping questionnaire in accordance with section 771(16) of the Act." In Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from South Africa, 60 FR 22551 (May 8, 1995), we relied only on identical comparisons: " ...because respondent had sales in the home market of merchandise identical to that sold to the United States, similar comparisons were not necessary." If the respondent made sales in the foreign market of products that are identical in all physical characteristics to all products sold to the United States and all U.S. sales can be matched to such sales in the foreign market, we will accept reporting limited to the sales of identical merchandise for the calculation of NV. A foreign market sale of identical merchandise cannot be matched to U.S. sales if the foreign market sale cannot be considered because it is so unusual as to be outside the ordinary course of trade. It is important to note that just because products sold in the U.S. and the foreign markets possess the same matching criteria specified in Appendix V of the antidumping questionnaire it does not necessarily mean that they are identical products. There still may be a need to make a difmer adjustment because some product characteristics may not have been deemed inportant enough to be considered in formulating the Appendix V matching criteria or because some product characteristics were not known at the time the characteristics were formulated. See part D below for an explanation of the matching criteria in the questionnaire. Consult your supervisor or PM if a respondent requests permission to only report foreign market sales of identical merchandise.

D. Similar merchandise Comparisons

When products sold to the United States do not have identical matches in the foreign market, the DOC generally requires that all foreign market sales of foreign like products and their complete technical specifications be reported. This allows us to determine which products in the foreign market are most similar to those sold to the United States. Prior to the issuance of our questionnaire we consider the physical characteristics of the merchandise in order to determine which characteristics should be used as the basis for selecting the most similar products. In an investigation, we request comments from both the petitioner and respondents regarding which physical characteristics should be given the most weight in analyzing product similarity. In a review, model-matching criteria may have been resolved in the prior segment so this step may not be necessary. Before proceeding with the questionnaire in a review, however, ensure that the product-comparison methodology is clear. If not, a comment period may be appropriate. Based on these comments, we determine the hierarchy of product characteristics that will be used to match products. We attach this hierarchical list of product characteristics, known as matching criteria, to our questionnaire as Appendix V. In selecting the matching criteria outlined in Appendix V, we seek to ensure that all meaningful differences in physical characteristics are captured to the extent necessary. In addition, our questionnaire asks for information on product characteristics which are not incorporated in Appendix V. If additional characteristics are reported, we analyze the data and determine whether they should be considered for distinguishing identical and similar products during product matching (see Pasta from Italy and United Engineering and Forging v. United States, 779 F. Supp. 1375, 1381 (CIT 1991)).

As a general rule, we will not consider merchandise to be similar if the difmer adjustment (see Section XI) is greater than 20 percent of the total manufacturing cost of the product sold to the United States. This percentage is a guideline used to analyze the magnitude of the differences between products (see Import Administration Policy Bulletin 92.2 for a further discussion of this issue). The 20-percent guideline may vary to some degree given the facts of the particular case and/or the nature of the product involved. Always consult your PM anytime difmer adjustments exceed 20 percent. Where we determine that the difmer adjustment is too great, we select a different product as most similar or, if there is no similar match, use constructed value (CV) for NV.

A foreign market product is similar to a product sold to the United States only if it is sufficiently similar both in terms of the matching criteria and the size of the difmer adjustment. A product may be deemed not similar on the basis of different physical characteristics even if it meets the 20-percent guideline. In particular, merchandise that is sufficiently complex in construction and made to specification may not be considered similar even if it meets the 20-percent guideline. In LNPP from Japan, we stated that, although the EC market was viable, we based NV on CV because we determined that the particular market situation, which required that the subject merchandise be built to each customer's specifications, did not permit proper price-to-price comparisons.

III. DATE OF SALE

References:
- The Tariff Act of 1930, as amended (the Act)
  - None
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.401(i) - **date of sale**

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SAA
None
Antidumping Agreement
Article 2.4.1, footnote 8 - date of sale

One of the most important issues to be resolved at the beginning of any investigation or administrative review is that of the date of sale, since the date of sale controls which U.S. and exporting country (E.C.) or third country sales are within the period of investigation (POI) or **period of review** (POR). Establishing the date of sale in an investigation is also vital to our determination of whether there is a need to expand the POI for the investigation in order to cover a greater number of U.S. sales. Date of sale analysis is also performed for our determination of E.C. or third-country market viability for investigations and reviews. In addition, in investigations where there is substantial price volatility, date of sale gives us a basis of analysis for dividing the POI into two or more weighted-average- price periods. For your information, one of the most common mistakes made by respondents is to consider shipment dates as sale dates.

Generally speaking, the date of sale is the date on which all substantive terms of the sale are agreed upon by the parties. This normally includes the price, quantity, delivery terms and payment terms. In order to simplify the determination of date of sale for both the respondent and the DOC and in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be overcome. In Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14067 (March 29, 1996), the DOC used the date of the purchase order as the date of sale because the terms of sale were established at that point. An example of a situation where invoice date would probably not be used as the date of sale involves merchandise that requires long lead times for production (see LNPP from Japan). Where invoices do not exist, the DOC will examine the respondent's records to identify an appropriate date of sale.

The date of sale determination must be made shortly after receipt of the respondent's answer to section A of the antidumping questionnaire. Because the proper determination of date of sale is so vital to the successful completion of an investigation or administrative review, you should always consult with your team members and supervisor or PM in establishing dates of sale. Upon receipt of answers to sections B and C of the antidumping questionnaire, you must ensure that the respondent has included the appropriate transactions in the POI or POR. For additional information on date of sale, see the “Comments” section of the Preamble to the DOC’s antidumping regulations, 62 FR at 27348-49 (May 19, 1997).

IV. ORDINARY COURSE OF TRADE

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 771(15) - definition of ordinary course of trade
  - Section 773(a)(1)(B)(i) - requirement to consider ordinary course of trade
  - Section 773(b)(1)(B) - sales below cost not in the ordinary course of trade
  - Section 773(e) - constructed value and **cost of production**
- Department of Commerce Regulations
  - 19 CAR 351.102 - definition of ordinary course of trade
- SAA
  - Section B.3 - sales below cost not in the ordinary course of trade
  - Section B.4 - types of sales outside the ordinary course of trade
- Antidumping Agreement
  - Article 2.2 - reference to ordinary course of trade

Under section 773(a)(1)(B)(i) of the Act, normal value (NV) will be based on sales made in the exporting country or third-country market that are in the "ordinary course of trade." Section 771(15) defines this term as “the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.” That is, sales deemed to be outside the ordinary course of trade are to be excluded from the calculation of NV (see Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 10064 (March 29, 1996)). The Act, at section 771(15), defines sales outside the ordinary course of trade to include sales disregarded because they were sold at prices below the cost of production and, in calculating cost of production or constructed value, input transactions between affiliated parties that do not fairly reflect market values. The statute also allows for other types of sales to be considered outside the ordinary course of trade, but does not identify them. Ordinary course of trade is an NV concept; there is no equivalent provision for disregarding export price (EP) or constructed export price (CEP) sales.

19 CFR 351.102 specifies that sales or transactions may be considered outside the ordinary course of trade when "...based on an evaluation of all the circumstances particular to the sales in question, such sales or transactions have characteristics that are extraordinary for the market in question." Examples of such sales are those involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's- length price. Sample sales, off-specification sales, and sales through atypical sales channels (such as employee sales) are commonly considered as outside the ordinary course of trade and, thus, excluded from calculating NV for investigations and reviews. For example, see Appendix B to Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) from the Federal Republic of Germany, 54 FR 18992, 19087 (May 3, 1989), where the DOC excluded trial and sample sales from normal value for a respondent in the Japanese investigation.

V. DISCOUNTS AND REBATES

References:
- The Tariff Act of 1930, as amended (the Act)
  - None
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.102(b)
  - 19 CFR 351.401(c)
- SAA
  - None
- Antidumping Agreement
  - Article 2.4 - differences in terms of sale

Under CFR 351.401 (c), the DOC adjusts reported gross prices for discounts, rebates and certain post-sale adjustments to price that affect the net price to arrive at the "starting price" for normal value (NV) (see the "Introduction" section of this chapter for more information on starting prices). Where these types of price adjustments are granted on a transaction-specific basis, they should be reported on that basis. However, as with selling expenses, the DOC allows non-distortive allocations where transaction-specific reporting is not feasible.

A discount is a reduction in the price of the merchandise. Generally, we deduct discounts actually granted by a manufacturer to its home-market or third-country customers from the sales price in order to determine the net return on the sale. Common types of discounts are quantity discounts, early payment discounts, and loyalty discounts (see section X of this chapter for more information on quantity discounts).

We consider rebates to be discounts granted after the delivery of the merchandise to the customer. If the terms of the rebate are set forth at the time of sale or are understood from past dealings of the parties, we deduct the amount of the rebate. For rebates which are based on aggregate purchases over a fixed period of time, we base the deduction on the level of rebate granted in the most recently completed rebate period. For investigations this could mean that information dating from before the period of investigation may have to be requested. For administrative reviews, information dating from before and after the period of review may have to be requested. For investigations, we do not allow rebates which are instituted retroactively after the filing of a petition since such rebates could be designed to reduce the exporting country market price which could reduce or eliminate margins.

Discounts and rebates should be reported separately. The aggregating of discounts and rebates usually does not allow us to properly determine the appropriateness of the deductions for the individual discounts and rebates granted.

The following calculation reflects a situation involving an adjustment for a discount. The weighted-average discount is deducted from the weighted-average exporting-country price to arrive at a weighted-average starting price for the calculation of a weighted-average NV.

Wt-Aver E.C. Price	4,000 DM
Wt-Aver Discount	- 400 DM
Wt-Aver Starting Price for NV	3,600 DM

The following case citations involve various types of discounts and rebates:

In Final Determination of Sales at Less then Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14064 (March 29, 1996), the DOC disallowed a quantity discount claim on specific transactions because the respondent could not demonstrate that the specific amounts claimed as quantity discounts on specific transactions had any connection to the quantity sold, and because it failed to establish that it gave discounts on a uniform basis, which were made available to substantially all home market customers.

In Final Determination of Sales at Less then Fair Value: Certain Pasta from Italy, 61 FR (June 14 , 1996), the DOC denied a rebate adjustment claim that was based on a percentage of pre-determined sales targets because the respondent failed to provide support documentation for the reported amounts at **verification**.

In Final Results of Administrative Review: Color Picture Tubes from Japan, 52 FR 44171 (November 18, 1987), the DOC verified that a company's customers received the rebates in question. Furthermore, the historical patterns of loyalty rebates provided to the company's customers, measured as a ratio of total rebate payments to total color picture tube sales, shows that the rebates granted were a standard business practice. In Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Canada, 51 FR 44319 (December 9, 1986), the DOC verified that the year-end rebate expenses were provided for in the terms at the time of sale and, therefore, were directly related to sales.

VI. PACKING COSTS

References:

- The Tariff Act of 1930, as amended (the Act)
  - Section 773(a)(6)(A) - increase in normal value (NV) for cost of U.S. packing
  - Section 773(a)(6)(B) - decrease in NV for cost of foreign packing
  - Section 773(b)(3)(C) - packing costs added to cost of production (COP)
  - Section 773(c)(1)(B) - packing costs added to NV for non-market-economy countries
  - Section 773(d)(3) - packing cost adjustments for multinational corporation comparisons
  - Section 773(e)(3) - packing costs added to constructed value (CV)
- Department of Commerce Regulations
  - 19 CFR 351.404(c) - adjust NV prices per requirements in the Act
- SAA
  - Section B.2.c.(2) - packing adjustments for NV
- Antidumping Agreement
  - Article 2.2.2 - inclusion of "any other costs" in the COP/CV
  - Article 2.4 - allowance for "any other differences" that affect price comparability

Adjustments made for the difference in packing costs between the foreign market sale and the U.S. sale are made to the foreign market price (see sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act). We deduct the packing cost for foreign market sales and add the packing cost for sales to the United States to the foreign market price. Packing costs include materials, labor and overhead. We prefer to use actual packing costs; however, if an allocation of costs is necessary, the cost of materials should be allocated on the basis of the weight or size of the subject merchandise, not on the basis of value. When possible, labor and overhead should be allocated based on the amount of time used to pack the subject merchandise.

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When there is additional packing done while the merchandise is in the inventory of an affiliated firm in the United States prior to sale to the first unaffiliated purchaser (constructed export price (CEP) comparison situations), this additional cost is treated as a direct U.S. selling expense and deducted from the CEP in accordance with section 772(d)(2) of the Act. The cost of additional packing added after importation into the U.S. market is never added to NV.

The following is an example of a foreign market packing calculation. The calculation is the same for export price (EP) and CEP comparisons unless there are U.S. repacking charges included in the CEP packing charges. If repacking expenses are included in the total CEP packing charges, they would be removed before adding the U.S. packing expense to the adjusted exporting country (E.C.) price to arrive at the NV. Currency conversions are made at the rates of exchange in effect on the dates of sale for the U.S. transactions in the comparison pool of sales:

Sample Calculation of NV for Comparisons to EP and CEP in an Investigation:

The weighted-average E.C. packing cost is deducted from the weighted-average E.C. price to arrive at the net weighted-average E.C. price.

Wt-Aver E.C. Price	2,000 lira
Wt-Aver E.C. Pack Cost	- 50 lira
Net Wt-Aver E.C. Price	1,950 lira

Next the net weighted-average exporting country price is converted to a U.S. dollar amount using the weighted-average exchange rate in effect on the dates of U.S. sales within the comparison pool of subject merchandise sales to which the NV will be compared.

1,950 lira x 0.000624 = $1.22

At this point, the weighted-average U.S. packing cost (converted from lira) for those U.S. sales in the subject merchandise comparison pool is added to the net weighted-average E.C. price to arrive at a weighted-average NV.

Wt-Aver U.S. Pack Cost = 100 lira x 0.000624 = $0.06

Net Wt-Aver E.C. Price	$1.22
Wt-Aver U.S. Pack Cost	+ $0.06
Wt-Aver NV	$1.28

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The following case citations involve packing charges:

In Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30287 (June 14, 1996), the DOC stated: “....in accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs."

"We deducted from CEP the following expenses that related to economic activity in the United States: ... direct selling expenses, including advertising, warranty, credit, and repacking in the United States...." Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026 (April 30, 1996).

VII. MOVEMENT EXPENSES

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 773(a)(6)(B)(ii) - adjustment for movement expenses
- Department of Commerce (DOC) Regulations
  - 19 CAR 351.102(b) - definitions
  - 19 CFR 351.401(e) - adjustments for moving expenses
- SAA
  - Section B.2.c.(2) - adjustments for moving expenses
- Antidumping Agreement
  - Article 2.4 - comparisons normally to be made at an ex-factory level

Movement expenses that are included in the normal value are adjusted for under section 773(a)(6)(B)(ii) of the Act. Movement expenses are transportation and other expenses, including warehousing expenses, incurred by the seller after the merchandise leaves the point of shipment in the foreign market. When sales involve unaffiliated resellers (i.e., a person who purchased rather than produced the foreign like product), the price adjustment may only involve movement and related expenses incurred after the goods leave the place of shipment of the reseller. This different treatment is to avoid deduction of expenses which are really part of the reseller’s acquisition cost. Other examples of movement expenses include such costs as inland insurance, loading, forwarding, unloading, brokerage, customs duty (third country comparisons only), and handling. For information on how to handle warehousing expenses that occur prior to shipment, see section VIII of this chapter.

Movement expenses incurred for freight are usually based on the weight or physical volume of the merchandise. Where possible, we prefer that actual movement expenses for each shipment be reported. When these expenses are reported on an allocated basis because the reporting of actual expenses is not possible, our methodological preference is for the allocation to be made on the basis of the unit weight of the individual products shipped or packed. An allocation will only be accepted if the DOC is satisfied that it does not cause inaccuracies or distortions. When a verification is conducted for allocated expenses, the analyst should verify that these expenses (like any expenses that are reported based on an allocation methodology) are reported on as specific a basis as permitted by the company's records, and examine the effect of the allocation on the accuracy of the reported data.

Under the 1994 amendments to the Act, the DOC's new approach for deducting movement expenses is explained in the SAA as follows: "The [old] statute required the deduction of transportation and other movement-related expenses from export price, but is silent regarding similar costs in foreign markets. New section 773(a)(6)(B) explicitly provides for the deduction of movement charges from normal value. Failure to deduct all movement charges from the foreign price would result in a distorted comparison." (SAA at 827) Prior to the effective date of the 1994 amendments to the Act, foreign market movement expenses were deducted from foreign market value as a circumstance of sale adjustment. Because of this change, prior treatment of post-shipment factory warehousing and movement expenses as direct or **indirect expenses** is no longer relevant. All of these post-shipment expenses are now deducted as movement expenses.

Adjustments for movement expenses for high-inflation economy producers and exporters require special treatment (see section XV of this chapter for information on why a special adjustment is required and how to compute it).

A sample calculation for the adjustment of an exporting-country (E.C.) weighted-average price for movement expenses is shown below. The normal value (NV) calculation is the same for U.S. **export price and constructed export price** comparisons.

The weighted-average E.C. inland freight and insurance are deducted from the weighted-average exporting country price to arrive at a weighted-average price to which other adjustments will be made to arrive at a weighted-average NV (see section VIII of this chapter).

Wt-Aver E.C. Price	5,775 lira
Wt-Aver E.C. Inland Freight Cost	-75 lira
Wt-Aver E.C. Insurance Cost	- 50 lira
Wt-Aver Price Ready for Additional Adjustments	5,650 lira

The following are case cites involving adjustments for moving expenses:
In the Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 1350 (January 19, 1996), references are made to various adjustments for movement expenses including inland freight, warehousing, and insurance.

Where costs for movement expenses are based on affiliated party transactions, we test whether they represent **arm's length transactions** by comparison to unrelated expenses, or to the actual costs incurred by the affiliated party. In Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled, Cold Rolled, and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from France, 58 FR 37132 (July 9, 1993), the DOC found that ocean freight, brokerage, and handling services provided by a company affiliated with the producer were at arm's length prices. Consequently, these charges were accepted for the dumping calculation (see section XVII of this chapter for information on affiliated parties).

VIII. DIFFERENCES IN CIRCUMSTANCES OF SALE

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 773(a)(6)(C)(iii) - other differences in **circumstances of sale** (COS)
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.401(b) adjustments in general
  - 19 CFR 351.401(g) - allocation of expenses
  - 19 CFR 351.402(b)-calculation of export price and constructed export price
  - 19 CFR 351.410 - differences in COS
- SAA
  - Section B.2.c - adjustments to normal value (NV)
- Antidumping Agreement
  - Article 2.4 - differences in conditions and terms of sale

A. Overview

When making export price (EP) and constructed export price (CEP) comparisons to NV, we attempt to calculate comparison amounts on as near an equivalent basis as possible. In doing this, we take into account certain differences in directly related selling expenses, assumed expenses, and other selling expenses incurred in the markets (U.S. and foreign) under consideration. Thus, we recognize the fact that sellers incur different costs based on differences in selling conditions in their respective markets. We refer to these direct expense adjustments as adjustments for differences in COS. Parts B through H of this section contain information on the most common COS adjustments that you will encounter in doing a dumping analysis. These adjustments are made after adjustments are made for discounts and rebates and movement expenses referred to in sections V and VII of this chapter. Check with your supervisor or program manager (PM) if claims are made for other categories of COS adjustments.

19 CFR 351.410 explains the DOC's practice with respect to adjustments for differences in COS under section 773(a)(6)(C)(iii) of the Act. COS adjustments consist of the following items: 1) direct selling expenses such as commissions, **credit expenses**, and warranties that result from and bear a direct relationship to the particular sale[1] in question; 2) assumed expenses, which are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses; and 3) a reasonable allowance for other selling expenses when commissions are paid in one market under consideration but not the other market under consideration. In accordance with 19 CFR 351.410 (e), the amount of such allowance for other selling expenses is limited to the amount of indirect selling expenses incurred in the one market or the amount of commission allowed in the other market, whichever is less. In deciding what allowances will be made for COS expenses, we consider the cost of the differences to the exporter or producer but, if appropriate, we may also consider the effect of such differences on the market value of the merchandise. See the SAA at 821 for additional explanations of COS for EP, CEP and NV calculations. See also Torrington Co. v. United States, 82 F.3d 1039 (Fed.Cir. 1996), and Koyo Seiko Co., Ltd. v. United States, 92 F.3d 1162, 1167 (Fed. Cir. 1996).

All other selling expenses are what we consider indirect or non-variable expenses. These expenses are incurred regardless of whether sales are made. It is extremely important that direct and indirect selling expenses are properly identified since the classification of individual expenses will substantially affect the outcome of our comparisons of EP and CEP to NV (see part H of this section and section IX of this chapter for more information on indirect selling expenses and how they are accounted for in the calculation of discountsmargins). It is important to note that, in the calculation of NV, the DOC treats a selling expense as an indirect expense unless a respondent interested party establishes that

[1]warranties are included even though the expense can not be tied to a particular sale because of the lapse of time between sale and expense. Yet it is inescapable that had there been no sales, there would have been no warranty expense

the expense is direct in nature (see RHP Bearings v. United States, 875 F. Supp. 854, 859 (Ct. Int'l Trade 1995)).

Remember that any interested party claiming an adjustment must establish the claim to our satisfaction. Also, no claimed adjustment can be double counted in our calculations (see 19 CFR 351.401(b)).

1. COS Adjustment Scenarios

   The following dumping comparison scenarios show the manner in which adjustments for COS are made. These examples illustrate calculations in investigations, which typically involve weighted-average U.S. prices and expenses. For purposes of illustration, all of the COS adjustments (except for commissions - see part H of this section) that are explained in this section are included for each scenario. No additions are made for weighted-average, U.S. packing costs (see section VI of this chapter for information on how to make a packing cost adjustment). Note that most COS adjustment situations that you will encounter will only involve some of these categories of adjustments. You may also find that an individual adjustment category only pertains to the NV, EP, or CEP. Finally, you will find that present computer programming accomplishes the following results, but does so by working with individual sales transactions first.

   o EP Scenario

     When comparing EP to NV, we make the adjustments for differences in COS by deducting weighted-average expenses incurred on sales in the like product comparison pool in the exporting country (EC) from weighted-average EC prices for sales of products in the like product sales comparison pool, and adding the weighted-average COS expenses incurred on the sales in the U.S. in the subject merchandise comparison pool to the weighted-average EC price after it is converted to U.S. dollars. Conversion to U.S. dollars is made at the weighted-average exchange rates in effect for the dates of sale of the merchandise in the U.S. subject merchandise comparison pool. This calculation gives us the weighted- average NV.

     The following calculation illustrates this procedure starting with the weighted-average EC price:

NORMAL VALUE

Wt- Aver EC Price
- Aver EC Credit Cost
- Wt-Aver EC Advertising Cost
- Wt-Aver EC Technical Services Cost
- Wt-Aver EC Pre-Shipment Warehousing Cost
- Wt-Aver EC Warranties Cost
- Wt-Aver EC Royalties Cost
= Adjusted Wt-Aver EC Price

The adjusted weighted-average EC price is converted to U.S. dollars. Next, the weighted-average U.S. COS amounts are added to the adjusted weighted-average EC price to arrive at the weighted-average NV:

Adjusted Wt-Aver EC Price
+ Wt-Aver U.S. Credit Cost
+ Wt-Aver U.S. Advertising Cost
+ Wt-Aver U.S. Technical Services Cost
+ Wt-Aver U.S. Pre-Shipment Warehousing Cost
+ Wt-Aver U.S. Warranties Cost
+ Wt-Aver U.S. Royalties Cost
= Wt-Aver NV

o CEP Scenario

In comparisons involving CEP, we deduct weighted-average direct and assumed expenses for selling activities in the United States incurred in selling the product in the U.S. subject merchandise comparison pool from the weighted-average U.S. sales price for merchandise in the subject merchandise sales comparison pool. (In administrative reviews we use individual U.S. sales, not weighted-average U.S. sales). These deductions include an allocated amount for profit as required by section 772(d)(3) of the Act (see Chapter 7, part III for information on when these deductions are appropriate).

Next, we deduct the weighted-average EC COS expenses from the weighted-average EC price for sales in the like product comparison pool. Note that, in addition, under some circumstances we add certain U.S. selling expenses to NV as we do for EP comparisons. Because we do not deduct all selling expenses. In calculating CEP, the SAA (at 158) and 19 CFR 351.402(b) make clear that direct and assumed expenses related solely to a sale to an affiliated U.S. importer are not deducted from the U.S. price, but will be added to NV as a COS adjustment. This gives us the weighted-average NV. Profit is never allocated to EC COS expenses.

The following sample calculation illustrates this procedure starting with the weighted-average U.S. sales price:

Wt - Aver U.S. Sales Price
- Wt-Aver U.S. Credit Cost
- Wt-Aver U.S. Advertising Cost
- Wt-Aver U.S. Technical Services Cost
- Wt-Aver U.S. Pre-Shipment Warehousing Cost
- Wt-Aver U.S. Warranty Cost
- Wt-Aver U.S. Royalty Cost
= Wt-Aver CEP

Wt - Aver EC Price
- Wt-Aver EC Credit Cost
- Wt-Aver EC Advertising Cost
- Wt-Aver EC Technical Services Cost
- Wt-Aver EC Pre-Shipment Warehousing Cost
- Wt-Aver EC Warranty Cost
- Wt-Aver EC Royalty Cost
= Wt-Aver NV

o Constructed value (CV) Scenario

We also make adjustments for differences in COS when the NV is based on CV. When we use CV because there are no sales in the EC at prices above COP in a like product sales comparison pool you will not have information for COS adjustments for this pool. Accordingly, if available, you will have to calculate the weighted-average COS expenses to deduct from the CV based on all above cost sales of the foreign like product in other EC sales comparison pools (all remaining above-cost like-product sales) . In situations where CV is used because there are no EC or third country sales of like products, you must check with your supervisor or PM to determine how to calculate COS adjustment amounts that will be deducted from the CV. The way you make your CV adjustments for COS will depend on whether the U.S. sale is EP or CEP.

The following sample calculation illustrates the adjustment procedure for a CV when U.S. EP sales are involved:

Unadjusted CV (materials, labor, selling and general and administrative expenses (SG&A), profit, and U.S. packing expense)

- \- Wt-Aver EC Advertising Cost
- \- Wt-Aver EC Technical Services Cost
- \- Wt-Aver EC Pre-Shipment Warehousing Cost
- \- Wt-Aver EC Warranty Cost
- \- Wt-Aver EC Royalty Cost
- = CV adjusted for EC COS expenses

- \+ Wt-Aver U.S. Credit Cost
- \+ Wt-Aver U.S. Advertising Cost
- \+ Wt-Aver U.S. Technical Services Cost
- \+ Wt-Aver U.S. Pre-Shipment Warehousing Cost
- \+ Wt-Aver U.S. Warranty Cost
- \+ Wt-Aver U.S. Royalty Cost
- = CV(NV)

Note that the adjustment of the CV for EP weighted-average COS amounts follows the same procedure used in calculation of a NV in an EP price-to-price situation, i.e., the U.S. COS amounts are added to the CV after the CV is adjusted for EC COS amounts (see the EP price-to-price example above).

The following sample calculation illustrates the adjustment procedure for CV when U.S. CEP sales are involved:

Unadjusted CV
- \- Wt-Aver EC Advertising Cost
- \- Wt-Aver EC Technical Services Cost
- \- Wt-Aver EC Pre-Shipment Warehousing Cost
- \- Wt-Aver EC Warranty Cost
- \- Wt-Aver EC Royalty Cost

= CV(NV)

Note that, in general, no further adjustments are made to the CV to arrive at NV. As is the case in U.S. CEP price-to-price comparisons, adjustments for most U.S. direct and assumed expenses are deducted from the starting price. See the CEP price-to-price example above.

2. Adjustments for Actual or Allocated COS Expenses

Examples of various types of COS expense categories and our treatment of these categories are discussed in parts B through H below. These examples cover the expenses which are generally adjusted for in calculating EP, CEP, and NV. Other categories of COS expenses may need to be adjusted for based on the specific practices of the industry subject to the proceeding. We prefer that claims for adjustments be based on actual costs incurred on individual sales made during the period of investigation (POI) or period of review (POR). We will, however, allow companies to allocate these POI or POR expenses when transaction-specific reporting is not feasible, providing that the allocation methodology used does not cause inaccuracies or distortions (see Chapter 7, section III. A for more information on the allocation of expenses. Also see 19 CFR 351.401(g)).

The following sample calculations illustrate calculations for actual and allocated COS expenses:

Actual Expenses

Unit price	$100.00
Quantity sold in one sales transaction	5,000 pieces
Bank charges related to processing a letter of credit for this sale	$12,575.00
Total sales value for this sale	$500,000.00

Ratio of bank charges to total sales value = $12,575/$500,000 = 0.02515
Actual bank charges on a per-unit basis = $100 x 0.02515 = $2.52

Allocated Expenses

Unit price for sale on May 12, 1996 to customer A	$92.55
Unit price for sale on August 16, 1996 to customer B	$96.45

NORMAL VALUE

Quantity of units sold to customer A on May 12, 1996	6,000 pieces
Quantity of units sold to customer B on August 16, 1996	10,000 pieces
Total bank charges related to the above two sales	$19,750.00
Total sales value for the above two sales	$1,519,800.00

Ratio of total bank charges to total sales = $19,750/$1,519,800 = 0.0130
Allocated bank charges on a per-unit basis for customer A = 0.0130 x $92.55 = $1.20
Allocated bank charges on a per-unit basis for customer B = 0.0130 x $96.45 = $1.25

The following case citation describes a situation involving the allocation of selling expenses:

In Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 37154, "Nippon" Comment 16, (July 9, 1993). Even though the company did not keep separate warranty records for just the subject merchandise, the DOC allowed an allocation of these expenses because the company used a reasonable allocation methodology.

B. Credit

The most common adjustment for differences in COS is for differences in credit costs. This adjustment is necessary because there is usually a period of time between the shipment of merchandise to a customer and payment for the merchandise. This period of time usually varies in the respective markets. It is important to note that an adjustment for imputed credit expense is made even if the exporter does not actually have to borrow funds to carry its accounts receivable. This adjustment is required to account for the opportunity cost associated with the loss of the use of the monies involved. Our preference is to use actual credit cost information if it is available. If actual expenses are not available, we impute the cost of credit by determining the number of days payment is outstanding and the interest rate the company paid, or would have paid, if it borrowed the same money (i.e., the same amount in the same currency) to finance its accounts receivable. In determining the number of days payment is outstanding, we look at the actual payment date, not at the nominal period between shipment and payment, because payment is often made later than provided for in the terms of sale. Our preference is to obtain this information on a sale-by-sale basis. However, where this imposes too great a burden on a respondent, we can accept reporting of the average number of days for which each customer's payments were outstanding on the basis of an analysis for accounts receivable turnover.

NORMAL VALUE

We use short-term interest rates for the currency of the transaction in computing imputed credit expenses. See LMI-LA Metali Industriale, S.p.A. v. United States, 912 F. 2d 455 (Fed.Cir. 1990) where it is specified that credit costs are to be computed, "...on the basis of usual and reasonable commercial behavior." Also see LNPP from Japan 61 FR 38139, (July 23, 1996), where the DOC explains that its practice is to match the denomination of the interest factor to the denomination of the receivables and Certain Pasta from Turkey, 61 FR 30324 (June 14, 1996) where the DOC states that its first choice in determining interest rates is to use the short-term rates actually experienced by the respondent in borrowing funds in the currencies involved during the period under investigation. If the respondent has no short-term borrowings, our preference is to use U.S. prime rates for U.S. currency transactions and LIBOR+ rates for foreign currency transactions. When these rates are not available, see your supervisor or program manager for possible alternatives.

Imputed credit costs are calculated by dividing the number of days between shipment and payment by 365, then multiplying by the interest rate and unit price. If a firm uses 360 as the credit base rather than 365 days, we divide the number of days by 360. Where possible we calculate the exact credit costs on an individual shipment basis. In all instances where the respondent provides shipment and payment dates, we use this information to calculate the actual number of days credit is outstanding. In cases where the sales reported to the DOC have not yet been shipped or paid for, we have calculated an average number of days based on the reported data and apply the calculated average for the customer to these sales (see Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy ("Pasta from Italy"), 61 FR 30324 (June 14, 1996)). In cases where the sales have been shipped, but are unpaid, we have used the date of the preliminary determination for the preliminary determination and the date of the final determination for the final determination as the payment date (see Preliminary Determination of Sales at Less Than Fair Value: Grain Oriented Electrical Steel from Italy, 59 FR 5991 (February 9, 1994), and Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France, 58 FR 68865 (December 29, 1993)).

Note that in cases where the sales are paid for prior to shipment we use the exact same formula, and we add the amount for "negative credit expense".

Sample calculations for EC and U.S. imputed credit COS adjustments follow:

EC Sale

Date of shipment	October 1, 1995
Date of payment	January 22, 1996

Number of days	112
Interest rate	10.5% per year
Price per unit	250,000 yen

Calculation: 112/365 x .105 x 250,000 = 8054.79 yen per year per unit

U.S. Sale

Date of shipment	October 10, 1995
Date of payment	October 31, 1995
Number of days	21
Interest rate	3% per year
Price per unit	$1500.00

Calculation: 21/365 x 1500.00 = $2.59 per year per unit

See the appropriate illustrative, dumping comparison scenario shown in part A of this section to determine how to make a COS adjustment for credit terms.

The following case citations describe additional COS credit adjustment situations:

In Final Results of Antidumping Duty Administrative review: Brass Sheet and Strip from Germany, 60 FR 38545 (July 27, 1995), the DOC used the U.S. dollar borrowing rate of a U.S. subsidiary company even though the sales in question were made by the foreign producer. In Final Determination of Sales at Less than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from France, 59 FR 50564 (October 4, 1994), the DOC made a COS adjustment for differences in credit expenses between the U.S. and home market (exporting country). We calculated U.S. credit expense, using the rate the respondent reported at which it could borrow in U.S. dollars during the POI.

For exporter’s sales price transactions (the predecessor to CEP transactions), we normally used the U.S. subsidiary's short-term borrowing rate for dollar denominated loans in computing credit costs unless it is established that the company is financing its U.S. receivables using home market loans in the currency of the U.S. sale.

We made an adjustment to the foreign market value (the predecessor to NV) for credit costs on sales made in each market using interest rates specific to the market in which each sale was made. Final Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid from Israel, 52 FR 25440 (July 7, 1987).

When a company is required to maintain deposits in order to borrow funds, the net cost of maintaining the deposits is used in the calculation of credit costs. The adjustment to interest expense is made only when the respondent can demonstrate that the deposit is a requirement for obtaining the loan (see Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Japan, 52 FR 30700 (August 17, 1987)).

C. Advertising and Sales Promotion

Most advertising expenses are aimed at the customer of the producer or exporter and as such they are not adjusted for as COS adjustments because they are considered indirect in nature (see section IX of this chapter for how to address indirect selling expenses). Advertising and sales promotion expenses can, however, be "assumed" by the producer or exporter on behalf of its customer. If this is the case, a COS adjustment is warranted. The most common types of assumed advertising expenses are consumer advertising costs paid for totally by the producer and cooperative (co-op) consumer advertising which is paid for jointly by the producer and first unrelated purchaser and aimed at customers of the first purchaser.

When considering claims for COS adjustments for assumed media advertising costs, we examine specific examples of the advertisements and the media in which the ads are placed. The advertising must be directed toward the specific product under investigation. The following examples are illustrative of different advertising scenarios that you may encounter and what the DOC's position would be on allowing an adjustment: 1) we disallow COS claims for advertising in trade journals when the sales under consideration are directly to an end-user because there is no further sale of the merchandise by the end user; 2) trade journal advertising expenses would be adjusted for as a COS if the sales under consideration were to distributors and the advertisements in the trade journal were aimed at retailers; 3) we make a COS adjustment for consumer advertising expenses when they involve sales made to distributors and/or retailers and the final sales of the merchandise are to consumers. These types of advertisements are usually placed in general circulation magazines, in newspapers, on television, or other broadcast media.

Another type of assumable expense involves sales promotional materials. These materials often take the form of free give-away merchandise supplied by the exporter to be given away to its customers' customers. In order to qualify for a COS adjustment, promotional materials must directly reference the merchandise under consideration. Examples of give-away merchandise would be athletic bags, t-shirts, and key chains. If these types of costs do not qualify as assumable, they would be considered indirect selling expenses.

Many advertisements cover a variety of products sold by a manufacturer. When these are aimed at a secondary purchaser, we allocate the associated expenses on the basis of the portion of the advertisement specifically directed at the merchandise under consideration. For example, if a consumer electronics manufacturer places an advertisement in a general circulation magazine which shows televisions, video recorders and compact disc players, we would determine the portion of the advertisement covering each product and allocate the cost of placing the ad in the magazine across product lines. Only the portion allocated to the product under consideration would be included in an adjustment for differences in advertising.

Sample calculations for EC and U.S. assumed advertising expenses follow. In both calculations only the portion of advertising aimed at secondary purchasers of the product is allowable as a COS adjustment. The remainder of the advertising expenses would be considered indirect selling expenses.

EC Sales

Total EC advertising costs claimed	100,000 DM
Portion determined aimed at secondary purchasers	40,000 DM
Units sold = 1,000	

Allowable COS adjustment amount = 40,000 DM

Calculation: 40,000 DM/1,000 units = 40 DM per unit

U.S. Sales

Total U.S. advertising costs claimed	$150,000
Portion determined aimed at secondary purchasers	$ 75,000
Units sold = 15,000	

Allowable COS adjustment amount $ 75,000

Calculation: $75,000/15,000 units = $5.00 per unit

See the appropriate illustrative dumping comparison scenario in part A of this section to determine how to make a COS adjustment for advertising.

The following case citations describe various advertising and promotional material COS adjustment situations:

In Pasta from Italy, one respondent reimbursed its customer for advertising expenses directed at tertiary-level unaffiliated purchasers. The respondent requested that this expense not be treated as a COS adjustment as it was not directed at a secondary level unaffiliated customer. The DOC rejected the respondent's request, and ruled that this type of advertising qualified for a COS adjustment. In Pasta from Italy, the DOC accepted one respondent's classification of advertising expenses related to banners shown publicly at sporting events and on television as direct selling expenses because such advertising is typically directed at the customer's customers. However, the DOC rejected the respondent's classification of promotional expenses for sports trophies, calendars, and pens because these expenses were not deemed to be directed at the customer's customers.

Sample newspaper and magazine advertisements were directed solely at the customer's customer--in this case, the retailer or wholesaler of the color televisions containing the color picture tubes. Therefore, the DOC allowed advertising as a COS adjustment (see Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from the Republic of Korea, 52 FR 44186 (November 18, 1987)).

D. Technical Services

Another area of claims for adjustments for differences in COS is **technical service expenses**. These claims are particularly common in cases where the merchandise under investigation or review is sold to an industrial user. Such claims are usually made for services involving the use of an industrial material in a manufacturing process or the operation of machinery. Where technical services are rendered as part of a sales agreement, all, or some portion of them, may constitute COS expenses. Many claims, however, relate to services provided for purposes of determining new uses for a product in future production. Such services are considered to constitute goodwill or sales promotion and as such the expenses are not considered directly related to the sales under consideration.

Claims for technical services rendered in assisting the customer in solving problems with products purchased are adjusted for as COS to the extent that the variable costs can be segregated from the fixed costs. The allowable variable costs are usually travel expenses and contracted services by unrelated technicians as these expenses would not have been incurred if the sales in question had not been made. Salaries of technicians employed by the exporter usually would not be allowed as a COS adjustment because they are usually fixed costs which are incurred whether or not the sales are made. Therefore, they are usually indirect selling expenses (see section IX of this chapter to determine how to treat indirect selling expenses in the calculation of NV).

Sample calculations for determining the differences between EC and U.S. technical services expenses are shown below. In each instance, the portion of the claimed expenses that is allowed as a COS adjustment covers variable expenses only, i.e., travel and material expenses. Salary expenses are not allowed as a COS adjustment because they are usually indirect expenses, i.e., they are paid even if sales are not made.

EC Sales

Total technical service expenses claimed 500,822.00 pesos

Breakdown of expenses claimed:

Salaries	250,000.00 pesos
Travel	200,000.00 pesos
Materials used	50,822.00 pesos

Units sold = 40,000

Allowable COS adjustment amount is for travel and materials used, i.e., 250,822 pesos

Calculation: 250,822 pesos/40,000 units = 6.27 pesos per unit

U.S. Sales

Total technical service expenses claimed $20,000.00

Breakdown of expenses claimed:

Salaries	$13,000.00
Travel	$ 7,000.00

Units sold = 20,000

Allowable COS adjustment amount is for travel expenses only $ 7,000.00

Calculation: $7,000/20,000 units = $0.35 per unit

See the appropriate illustrative discounts comparison scenario shown in part A of this section to determine how to make a COS adjustment for technical services expenses.

The following case citations describe various COS technical services situations:

The DOC allowed a technical service claim for expenses associated with helping a customer solve product-related problems (see Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker, and Flux from France, 59 FR 14136 (March 25, 1994)).

The DOC verified that the technical service expenses claimed were non-variable and would have been incurred regardless of whether any particular sale would have been made. Therefore, the DOC treated these expenses in both markets as indirect selling expenses (see Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Netherlands, 53 FR 23431 (June 22, 1988)).

The DOC disallowed the portion of the respondent's technical service claim attributable to salaries because it does not consider salaries which would have been paid regardless of whether a sale was made to be direct expenses. The DOC also disallowed the portion of the respondent's technical service claim related to the amortization of laboratory machinery and related equipment because these are fixed expenses. Only that portion of the home market technical service claim reflecting travel expenses for customer service was allowed (see Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Italy, 52 FR 816 (January 1, 1987)).

E. Warehousing

Respondents will sometimes claim COS adjustments for differences in pre-shipment warehousing costs incurred at the place of production (or, in the case of a reseller, the place of shipment) . The DOC treats these expenses as directly related to the sales under consideration when the respondent can establish that it holds specific merchandise in inventory exclusively for a particular customer (see section VI of this chapter for information on price adjustments for warehousing expenses that occur after the merchandise leaves the place of production/shipment).

NORMAL VALUE

Pre-shipment warehousing expenses that cannot be classified as direct selling expenses can be classified as indirect selling expenses. See section IX of this chapter for information on how to treat indirect selling expenses in the calculation of NV.

A sample calculation for an EC COS adjustment for differences in pre-shipment warehousing expenses is shown below. The total amount of the claim is allowable because all merchandise is designated for individual purchasers as it is placed in pre-shipment warehouse inventory. If the merchandise is placed in pre-shipment general inventory, these expenses would be considered indirect selling expenses.

EC Sales

Total pre-shipment warehousing expenses claimed	1,000,000 francs
Breakdown of warehoused merchandise set aside for specific customers	
Like product	40,000,000 francs
Other products	20,000,000 francs
Units sold = 5,000	

Allowable COS adjustment amount = 1,000,000 francs
Calculation: 40,000,000/ 40,000,000 + 20,000,000 x 1,000,000 = 667,000 francs --- 667,000francs/5,000 units = 133.4 francs per unit

U.S. Sales

There are normally no pre-shipment warehousing claims for the U.S. market.

See the appropriate illustrative dumping comparison scenarios shown in part A of this section to determine how to make a COS adjustment for warehousing expenses.

The following case citations describe COS adjustment situations involving pre-sale warehousing expenses:

Because the respondent was required to keep inventories of specific products for specific customers that would be available immediately upon sale, the DOC considered the pre-sale warehousing expenses as direct expenses and made an appropriate COS adjustment. See Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 59 FR 66928, Comment 10 (December 28, 1994). Also see Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan, 56 FR 16303, Comment 4 (April 22, 1991). Note that these examples involve "pre-sale" inventory expenses, and are cited only for information on the standard that must be met to qualify for a pre-shipment COS adjustment, i.e., the identity of a particular inventory with a particular customer. Because of the 1994 changes to the Act, it is possible to have a situation where post-shipment warehousing is of a pre-sale nature. In this situation, these expenses would be deducted as part of movement charges (see section VII of this chapter).

F. Warranties and Guarantees

COS adjustments for differences in warranty and guarantee expenses are allowed provided that they are directly related to the sales under consideration. These expenses usually are based on the cost of repairing or replacing a defective item. If a claim for warranty costs includes after sale services, the non-variable expenses connected with the servicing would be treated as indirect selling expenses. These types of expenses would probably include the salaries of service personnel if they are employed by the exporter (see section IX of this chapter to determine how to treat indirect selling expenses in the calculation of NV).

Since many warranties and guarantees extend over a period of time that is longer than the POI or POR or because complete information is not available at the time the questionnaire response is received, we often base our calculation of per-unit warranty costs on a weighted-average of the annual amounts for warranty expenses for the three years prior to the POI or POR. If an individual year's expenses included in the three-year historical period appear to be aberrational, they can be discarded from the calculation. When POI or POR warranty information reflects historical experience, then actual warranty information should be used. Where possible, we consider historical or actual data on a model-by-model basis. The historical granting of warranties can be used to establish a link to the sales under consideration in the absence of warranty terms in a sales agreement.

Sample calculations for EC and U.S. COS adjustments for differences in warranties expenses are shown below. In these examples, expenses covering the past three calendar years are used because total warranty expenses are not available for the POI or POR. The technicians' salaries are not allowable as COS adjustments because the producer pays these salaries even if sales are not made. The salaries would be considered indirect selling expenses.

NORMAL VALUE

EC Sales

Total claimed warranty expenses	1.2% of sales value for the past three calendar years
Breakdown of expenses:	
Replacement costs	0.9% of sales value for the past three calendar years
Salaries of technicians	0.3% of sales value for the past three calendar years
Allowable COS expenses	0.9%
Calculation for COS adjustment:	
Unit price =	275 francs
Per-unit allowance = 275 x 0.009 =	2.475 francs

U.S. Sales

Total claimed warranty expenses	1.1% of sales value for the past three calendar years
Breakdown of expenses:	
Replacement costs	1.1% of sales value for the past three calendar years
Salaries of technicians	None
Allowable COS expenses	1.1%
Calculation for COS adjustment:	
Unit price =	$10.50
Per-unit allowance = $10.50 x 0.011 =	$ 0.1155

NORMAL VALUE

See the appropriate illustrative **dumping** comparison scenarios shown in part A of this section to determine how to make a COS adjustment for warranty and guarantee expenses.

The following case citations describe various COS warranty and guarantee situations:

The DOC relied on historical warranty data when claimed warranty expenses for the POI could not be tied to POI sales (see Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR 18795 (April 20, 1994)). Note that the five-year period referenced in this determination has since been changed to a three-year period.

A formal agreement at the time of sale is not necessary in order to make a warranty claim. Mitsubishi demonstrated a five-year history of warranty expense claims. Therefore, we concluded that customers should have been aware of the existence of these warranties. We have recalculated these expenses on a model-by-model basis (see Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from Japan, 52 FR 44171 (November 18, 1987).

G. Royalties

Manufacturers and sellers incur royalty expenses when selling merchandise which is produced under license from another company. Such licenses involve merchandise which is subject to patent or trademark restrictions. The royalties are paid pursuant to agreements, and are usually product specific. We consider the terms of the agreement in allocating the royalty expenses. If the payments are directly related to the sales under consideration, we treat them as direct selling expenses and adjust for them as a difference in circumstances of sale.

Sample calculations for EC and U.S. COS adjustments for royalty expenses are shown below. In both instances, the claims are allowed in full because payments under both agreements are made only if the merchandise is sold. If the agreements called for a flat fee payment at the beginning of the year regardless of whether sales are made, the expenses would be considered indirect selling expenses (see section IX of this chapter for information on how to handle indirect selling expenses).

EC Sales

The royalty agreement calls for a five-percent payment based on the DM 10.00 sales price of the product. The claim for a COS adjustment is for the full five- percent amount. The allowable COS adjustment amount for the royalty is DM 10.00 x .05 = DM 0.5 per unit.

U.S. Sales

The royalty agreement calls for a flat fee of $0.50 for every item sold. The claim for COS adjustment is the full $0.50 per unit. The allowable COS adjustment amount for the royalty is $0.50 per unit.

See the appropriate illustrative dumping comparison scenarios shown in part A of this section to determine how to make a COS adjustment for royalty expenses.

The following case citations refer to cases involving royalty claims:

See Preliminary Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware from Taiwan, 61 FR 43344 (August 22, 1996). Also see Final Determination of Sales at Less Than Fair Value: Generic Cephalexin Capsules from Canada, 54 FR 26820 (June 26, 1989). COS royalty adjustments were made in both of these investigations.

H. Commissions

Commissions are payments to parties providing services that relate to the sale of merchandise. The commission amount is usually set forth in an agreement between the manufacturer and the selling agent. The services provided by a selling agent may vary from the level of minimal services in facilitating communication to substantive services including maintaining inventory and providing support in all areas of the sales transaction. Selling agent may be employees of a company, affiliated companies, or independent persons or firms providing the services required. Because the treatment of commissions is one of the most complex areas of our analysis, you must always check with your supervisor or PM to determine whether commission deductions will be allowed, and the current methodology employed in calculating them.

We sometimes treat commissions paid to affiliated companies or employees and unaffiliated persons differently. In addition, we adjust for commissions differently depending on whether we are using EP or CEP as the basis for calculating a price to the United States. We normally treat commissions paid to employees as direct selling expenses. In Final Determination of Sales at Less Than Fair Value: Industrial Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988), the DOC verified that the company paid bonuses to individuals and to its dealer's employees who introduced new customers. Because the payments were actual expenditures made by the firm resulting from specific sales and were not intra company transfers, the DOC treated the payments as home market sales commissions. Note that section 351.402(e) calls for deductions from a

NORMAL VALUE

CEP starting price to normally be the expense incurred by an affiliated party, not the payment to such a party.

Pursuant to LMI-LA Metali Industriale S.p.A. v. United States, 912 F.2d 455 (Fed. Cir. 1990), the DOC determined that related (referred to as "affiliated" under the 1994 amendments to the Act) party commissions are allowable as COS adjustments if they are at arm's-length and tie directly to sales. Subsequent to this decision, we developed guidelines to determine whether adjustments should be made for affiliated party commissions paid in either the United States or the foreign market. Accordingly, to determine whether commissions paid to affiliated parties are at arm's-length, we undertake the following analysis, as appropriate:

1) Compare the commissions paid to the affiliated selling agents to those paid by the respondent to any unaffiliated selling agents in the same market (exporting or U.S.) or in any third-country market.

2) In cases where there is not an unaffiliated sales agent, compare the commission earned by the affiliated selling agent on sales of merchandise produced by the respondent to commissions earned by the affiliated selling agent on sales of merchandise produced by other unaffiliated sellers or manufacturers.

In appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for service rendered in return for payment in order to ensure that both affiliated and unaffiliated agents perform approximately the same services for the commission. If we find the commissions to be at arm's length and directly related to the sale, we will make an adjustment for these commissions (see Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium, Finland, France, Germany and the United Kingdom ("CGP"), 56 FR 56359 (November 4, 1991).

Examples of decisions made regarding commissions from the coated groundwood paper investigations are illustrated in the extracts from the final determinations indicated below:

In CGP Finland, the DOC found that none of the respondents used unrelated commissionaires to sell the subject merchandise in the United States. The fact that these commission arrangements were in writing was not, in itself, an appropriate standard against which to measure the arm's-length nature of the transaction. Therefore, because we had no appropriate benchmark against which to test the arm's-length nature of the commission arrangements, we were not satisfied that these payments were at arm's-length. Accordingly, we did not adjust for them.

In CGP Germany, the DOC found that the related party commissions between one company and its related U.S. agent were arm's-length transactions and directly related to the sales under investigation. During verification, we examined the contracts establishing the commission relationship between the related companies, and verified that these commissions were earned at the time a sale occurred. Furthermore, the related U.S. agent received a comparable commission rate for sales in the US market of CGP from unrelated manufacturers of CGP. Therefore, we deducted from the U.S. price the commission the related manufacturer paid to its related U.S. agent.

In another case to determine whether a claim for a commission paid to an unrelated party was a bona fide commission, the DOC looked at commission agreements which existed during the POI. The commission agreements set forth the basis for paying the commission and established the amount to be paid. We verified that no commission agreement existed between the parties involved. Further, we were unable to verify that any service was provided for the alleged commission. Absent evidence to the contrary, we have treated the amounts in question as a discount and deducted the amounts from the selling price (see Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from the Republic of Korea, 52 FR 44186 (November 18, 1987)).

For EP comparisons involving commissions on sales in both the U.S. and EC markets, an adjustment is made to the weighted-average EC price for sales in the like merchandise comparison pool by deducting the weighted-average EC commission for sales in the like merchandise pool and adding the weighted-average U.S. commission from the subject merchandise sales comparison pool (for administrative reviews you are dealing with individual U.S. sales so the U.S. commission will be the commission amount associated with the individual U.S. sale) to arrive at a weighted-average NV. For CEP comparisons involving commissions in both the U.S. and EC markets, the weighted-average commission amounts (for selling actions in the United States) are deducted from the weighted-average U.S. sales price (for reviews you are dealing with an individual U.S. sale and the commission associated with that sale) and the weighted-average EC sales price, respectively. See below if there is a significant imbalance in the amounts of commission for the sales in the U.S. and EC merchandise comparison pools.

Section 351.410 (e) of the regulations requires that, where there is a commission paid in one market and none in the other market, we offset the commission with indirect selling expenses incurred in the other market to the extent of the lesser of the commission or the indirect selling expenses. In offsetting a weighted-average U.S. commission for sales in the subject merchandise comparison pool (or for the commission associated with an individual U.S. sale for an administrative review) when comparisons involve EP, we apply the offset by increasing the weighted-average EC price for sales in the like product comparison pool by the amount by which the weighted-average U.S. commission (the commission associated with the individual U.S. sale in a review) exceeds the EC indirect selling expenses in the like product sales comparison pool, if any. Nothing is added if the EC indirect selling expenses exceed the U.S. commissions. If there are EC commissions in the sales comparison pool and none on sales in the EP sales comparison pool (or individual U.S. sale in a review), we offset the weighted-average EC commission by deducting it from the weighted-average EC price and then adding weighted-average U.S. indirect selling expenses (in reviews, the sale-specific allocated indirect selling expense). Revised questionnaire asks for it in all instances. Up to the amount of the weighted-average EC commission. If no U.S. indirect selling expenses or, if appropriate, EC indirect selling expenses, are reported, check with your supervisor or PM to determine how to make the required offset.

In investigations with comparisons involving commissions on CEP sales but none on EC sales, we deduct the weighted-average commission paid for selling activities in the United States for sales in the subject merchandise comparison pool (for the individual U.S. sale for reviews) from the weighted-average U.S. selling price for pool merchandise (individual U.S. sale price for reviews) to arrive at the weighted-average CEP for the subject merchandise comparison pool. We then offset the U.S. commission for the EC like product comparison pool of sales by deducting weighted-average indirect selling expenses (same for reviews) up to the amount of the U.S. commission (this is referred to as "capping" the deduction) from the weighted-average EC sales price to arrive at weighted-average NV. For comparisons involving commissions on EC sales but none for U.S. CEP sales, we deduct the weighted-average EC commission from the weighted-average EC price for sales in the like product comparison pool. In calculating weighted-average CEP (or an individual sale CEP in reviews), all U.S. indirect selling expenses are deducted from the weighted-average U.S. sales price (the individual U.S. sale price for reviews). There is no cap to this deduction as section 772 of the Act calls for the deduction of all U.S. indirect selling expenses in calculating CEP.

Sample calculations for adjustments for differences in commissions and offsets for commissions in comparisons involving EP and CEP sales are given below. For ease of understanding, all amounts shown are in U.S. dollars. Also, remember that while we calculate weighted-average EPs and CEPs in investigations, we rarely do so in reviews. Accordingly, all references to weighted-average U.S. amounts in the following examples should be read as individual U.S. sale amounts if you are doing an administrative review.
The following are examples of commission offsets involving EP sales:

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1) If the total amount of commissions for sales in the merchandise comparison pools for both the weighted-average U.S. price and weighted-average EC price is not significantly different, you should subtract the weighted-average EC commission from the weighted-average EC price, and add the weighted-average U.S. commission to the weighted-average EC price to arrive at a weighted-average NV. See below if there is a significant imbalance between the total amounts of commission in the two markets.

U.S. Sales		EC Sales	
Wt-Aver U.S. Price	= 10	Wt-Aver EC Price	= 13
Wt-Aver U.S. Commission	= 4	Wt-Aver EC Commission	= 3

NV Calculation = 13(Wt-Aver EC Price) - 3 (Wt-Aver EC Commission) + 4 (Wt-Aver U.S. Commission) = Wt-Aver NV of 14

2) If all or a portion of the sales in the U.S. subject merchandise comparison pool have commission included and sales in the EC like product comparison pool do not, subtract weighted-average EC indirect selling expenses capped by the weighted-average U.S. commission from the weighted-average EC price, and add the weighted-average U.S. commission to the weighted-average EC price to arrive at the weighted-average NV.

U.S. Sales		EC Sales	
Wt-Aver U.S. price	= 10	Wt-Aver EC Price	= 13
Wt-Aver U.S. Commission	= 4	Wt-aver EC Indirect Selling Expenses	= 4

NV Calculation = 13 (Wt-Aver EC Price) - 4 (Wt-Aver EC Indirect Sell Exp) + 4 (Wt-Aver U.S. Commission) = Wt-Aver NV of 13

3) If sales in the U.S. subject merchandise comparison pool do not have commission and all or some portion of the sales in the EC like product comparison pool do, you subtract the weighted-average EC commission from the weighted-average EC price, and add the weighted-average U.S. indirect selling expenses capped by the

NORMAL VALUE

EC commission to the weighted-average EC price to arrive at a weighted-average NV.

U.S. Sales		EC Sales	
Wt-Aver U.S. Price	= 10	Wt-Aver EC Price	= 13
Wt-aver U.S. Indirect Selling Expenses	= 3	Wt-Aver EC Commission	= 3

NV Calculation = 13 (Wt-Aver EC Price) - 3 (Wt-Aver EC Commission) + 3 (Wt-Aver U.S. Indirect Sell Exp) = Wt-Aver NV of 13

The following are examples of commission offsets for CEP transactions:

1) If the total amount of commissions for U.S. CEP sales and EC market sales is not significantly different, you subtract the weighted-average commissions from the weighted-average U.S. sales price and EC sales prices, respectively. See below if there is a significant imbalance in the amounts of commission between the markets.

U.S. Sales		EC Sales	
Wt-aver U.S. Price	= 30	Wt-aver EC Price	= 42
Wt-aver U.S. Commission	= 4	Wt-aver EC Commission	= 3.9

CEP and NV Calculation = 30 (Wt-aver U.S. Price) - 4 (Wt-aver U.S. Commission) = Wt-aver CEP of 26 and 42 (Wt-aver EC Price) - 3.9 (Wt-aver EC Commission) = Wt-aver NV of 38.1

2) If the weighted-average U.S. price has a commission and the weighted- average EC price does not, deduct the weighted-average U.S. commission from the weighted-average U.S. price to arrive at the weighted-average CEP. You then deduct weighted-average EC indirect selling expenses capped by the amount of the weighted-average U.S. commission. You must consult with your supervisor or PM if an indirect selling expense offset for level of trade is also involved in your calculation.

U.S. Sales EC Sales

Wt-aver U.S. Price	= 30	Wt-aver EC Price	= 42
Wt-aver U.S. Commission	= 4	Wt-aver EC Indirect Selling Expenses	= 11

CEP and NV Calculation = 30 (Wt-aver U.S. Price) - 4 (Wt-aver U.S. Commission) = Wt-aver CEP of 26 and 42 (Wt-aver EC Price) - 4 (Capped Wt-aver EC Indirect Selling Expenses) = Wt-aver NV of 38

3) If the weighted-average U.S. price has no commission and the weighted-average EC price does, you deduct the weighted-average EC commission from the weighted-average EC price to arrive at NV. You then deduct all weighted-average U.S. indirect selling expenses from the weighted-average U.S. price. The deduction of U.S. indirect selling expenses is not capped because section 772 of the Act requires that all U.S. indirect selling expenses be deducted in computing CEP.

U.S. Sales		EC Sales	
Wt-aver U.S. Price	= 30	Wt-aver EC Price	= 42
Wt-aver U.S. Indirect Selling Expenses	= 6	Wt-aver EC Commission	= 3

CEP and NV Calculation = 30 (Wt-aver U.S. Price) - 6 (Wt-aver U.S. Indirect Selling Expenses) = Wt-aver CEP of 24 and 42 (Wt-aver EC Price) - 3 (Wt-aver EC Commission) = Wt-aver NV of 39. There is no cap on the deduction of U.S. selling expenses.

If you have an EP or CEP situation where only a portion of the sales involve a commission and significantly more total commission is paid on sales in the U.S. subject merchandise comparison pool than on sales in the EC like merchandise comparison pool, you need to make an adjustment for this imbalance. This requires identifying the total amount of commission included in the weighted-average EC price and subtracting it from the total commission included in the weighted-average U.S. price or vice-versa. This difference is then adjusted for by deducting EC indirect selling expenses from the weighted-average EC price up to the amount of the difference in the commissions to arrive at a weighted-average NV. The same adjustment is necessary for situations when the EC like product sales comparison pool has a significantly greater amount of commission than EP sales in the U.S. subject merchandise comparison pool. For comparisons involving EP transactions, U.S. indirect selling expenses would be added to the weighted-average EC price up to the amount of the difference in the commission amounts to arrive at a weighted-average NV. For comparisons involving insignificant commission amounts for CEP transactions, no further adjustment is necessary to the weighted-average U.S. sales price as all indirect selling expenses are removed under section 772 of the Act in calculating CEP. Where EC sales involve insignificant commission amounts relative to CEP transactions, an adjustment for this imbalance is made by deducting EC indirect selling expenses capped by the difference in the U.S. and EC commissions to arrive at NV. Always ensure that your computer program correctly accomplishes this type of adjustment. Also, you must check with your supervisor or PM if indirect selling expense information is not available for the offset or a **level of trade adjustment** is called for in your calculation.

These examples illustrate the adjustments required for EP imbalance situations:

1) U.S. Sales

Wt-Aver U.S. Price = 14
Wt-Aver U.S. Commission = 4

EC Sales

Wt-Aver EC Price = 15.0
Wt-Aver EC Commission = 0.5
Wt-Aver EC Indirect Sell Exp = 6.0*

EC Price Adjustment = 15 (Wt-Aver EC Price) - 0.5 (Wt-Aver EC Commission) - 3.5 (Wt-Aver EC Indirect Sell) + 4 (Wt -Aver U.S. Commission) = Wt-Aver NV of 15

*Note that in this example the EC indirect selling expense deduction is capped by the difference in the commission amounts.

2) U.S. Sales

Wt-Aver U.S. Price = 14
Wt-Aver U.S. Commission = 1
Wt-Aver U.S. Indirect Sell Exp = 1*

EC Sales

Wt-Aver EC Price = 15
Wt-Aver EC Commission = 3

EC Price Adjustment = 15 (Wt-Aver EC Price) - 3 (Wt-Aver EC Commission) + 1 (Wt-Aver U.S. Commission) + 1 (Wt-Aver U.S. Indirect Sell Exp) = Wt-Aver NV of 14

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*Note that in this example the U.S. indirect selling expense addition could be 2 but because the U.S. indirect selling expenses only amount to 1 that is all that can be added.

These examples illustrate the adjustments required for CEP imbalance situations:

1) U.S. Sales

Wt-aver U.S. Price = 16
Wt-aver U.S. Comm = 3

EC Sales

Wt-aver EC Price = 17
Wt-aver EC Commission = 0.5
Wt-aver EC Indirect Selling Expenses = 5

CEP and NV Calculation = 16 (Wt-aver U.S. Price) - 3 (Wt-aver U.S. Comm) = Wt-aver CEP of 13 and 17 (Wt-aver EC Price) - 3 (Combination of 0.5 Wt-aver EC Commission and 2.5 Wt-aver EC Indirect Selling Expenses (Capped by the difference in the U.S. and EC Commissions)) = Wt-aver NV of 14

2) U.S. Sales

Wt-aver U.S. Price = 13
Wt-aver U.S. Commission = 0.5
Wt-aver U.S. Indirect Selling Expenses = 4

EC Sales

Wt-aver EC Price = 14
Wt-aver EC Commission = 3

CEP and NV Calculation = 13 (Wt-aver U.S. Price) - 0.5 (Wt-aver U.S. Commission) - 4 (Wt-aver U.S. Indirect Selling Expenses) = Wt-aver CEP of 8.5 and 14 (Wt-aver EC Price) - 3 (Wt-aver EC Commission) = Wt-aver NV of 11. There is not an adjustment for an imbalance on the CEP sales because section 772 of the Act requires that all U.S. indirect selling expenses be deducted in computing CEP.

IX. ADJUSTING NORMAL VALUE BY THE CEP OFFSET (INDIRECT SELLING EXPENSE) ADJUSTMENT

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 773(a)(7)(B) - constructed export price (CEP) offset
- Department of Commerce Regulations
  - 19 CFR 351.412(d) - CEP offset
- SAA
  - Section B.2.c.(4) - CEP offset
- Antidumping Agreement
  - Article 2.4 - adjustments for comparisons at equivalent level of trade

The CEP offset is described in Section 773(a)(7)(B) of the Act and in 19 CFR 351.412 (f). This offset is an adjustment that, in limited circumstances, is made to normal value (NV) when NV is being compared to CEP sales in the United States. The CEP offset adjustment is only made to NV when NV is established at a more advanced level of trade than the level of trade of the CEP sales and despite the fact that the party cooperated to the best of its ability, the available data do not allow for a level of trade adjustment (see the discussion on level of trade in section XII of this chapter). The adjustment is made by reducing NV by the amount of indirect selling expenses on sales of the foreign like product in that country. The amount of the CEP offset adjustment cannot be more than the amount of indirect selling expenses deducted from CEP under Section 772 (d)(1)(D) of the Act (see the discussion of CEP deductions in Chapter 7, section III). Indirect selling expenses are selling expenses that the seller would incur regardless of whether particular sales were made but that reasonably may be attributed, in whole or in part, to such sales (e.g., salesperson’s salaries).

In practice the CEP offset adjustment is derived by (1) computing the weighted-average of each type of per-unit indirect selling expense reported for the foreign like product sales being compared to CEP sales, (2) summing these weighted-averages, (3) converting this sum to a U.S. dollar amount using the average exchange rate in effect for sales in the U.S. sales comparison pool during the period of investigation (POI) or, in a review, the exchange rate in effect on the date of sale of the CEP sale being compared, and (4) comparing this U.S. dollar amount to the total weighted-average indirect selling expense for the CEP sales. The CEP offset adjustment is equal to the lesser of the total weighted-average indirect selling expense for the foreign like product sales or the total weighted-average indirect selling expense for the CEP sales. For example, assume you calculated the following weighted-average amounts from the indirect selling expenses reported by a respondent in an investigation in which NV in the exporting country (EC) is at a more advanced level of trade than the level of trade of the CEP sales but the data do not allow for a level of trade adjustment:

Wt-aver, per-unit indirect selling expenses incurred in the EC on like product sales:

Indirect advertising	1,000 lira
Technicians' salaries	2,500 lira
Product liability insurance premium	1,700 lira
Warehousing	3,000 lira
Salespersons' salaries	4,500 lira
Total wt-aver, indirect EC selling expenses	12,700 lira

Wt-aver, per-unit indirect selling expenses for U.S. CEP sales:

Indirect advertising	\$1.00
Technician's salaries	\$2.00
Product liability premiums	\$1.50
Pre-sale warehousing	\$3.25
Salesperson's salaries	\$1.25
Total wt-aver, indirect U.S. CEP sales selling expenses	\$9.00

If the weighted-average exchange rate for the POI is 0.000715 U.S. dollars per Italian lira, then the total weighted-average foreign market indirect selling expense expressed in U.S. dollars is \$9.08 (12,700 x .000715 = \$9.08). However, the CEP offset adjustment to NV is limited or "capped" by the total weighted-average indirect selling expense deducted from the CEP. In this example the "cap" is \$9.00 which is less than the total weighted-average EC indirect selling expense of \$9.08. Therefore, the CEP offset deduction is \$9.00.

In Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30326 (June 14, 1996), the DOC denied one respondent's request for a CEP offset adjustment because the respondent's sales in the United States (that is, the CEP) and Italy were made at the same level of trade (see Comment 7 of the notice). In Final Results of Antidumping Duty Administrative review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from France, et al., 62 FR 2105 (January 15, 1997), the DOC determined that the CEP offset adjustment to NV was appropriate.

X. DIFFERENCES IN QUANTITIES

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 773(a)(6)(C)(i) - adjustments for differences in quantities
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.409 - adjustments for differences in quantities
- SAA
  - Section B.c.(3) - adjustments for differences in quantities
- Antidumping Agreement
  - Article 2.4 - allowances for differences in quantities

A. Adjustment Criteria

Section 773(a)(6)(C)(i) of the Act provides that normal value (NV) may be adjusted to reflect the differences in quantities sold between the exporting-country (EC) or third-country market and the U.S. market. The granting of a quantity discount adjustment depends more on the pricing behavior of the individual exporter or producer, and not on whether other firms in the industry engage in similar behavior. 19 CFR351.409 lists the requirements normally needed to be satisfied to qualify for a quantity adjustment. In brief, where an exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country during the period examined or a more representative period or if the exporter or producer demonstrates that the discounts reflect savings specifically attributable to the production of the different quantities, NV will be based on sales with quantity discounts. The existence of a price list that includes a quantity discount, or the lack of such a discount, will not in and of itself determine the eligibility of a respondent for this adjustment. If a level of trade adjustment is claimed in addition to the quantity **discount** adjustment, the latter adjustment will not be granted unless the respondent demonstrates that the effect on price comparability due to differences in quantities is separate from that due to differences in levels of trade.

The respondent must demonstrate either that it consistently granted discounts based on quantity for at least twenty percent of its sales of the subject merchandise or that the discounts are directly related to cost savings in producing these quantities. However, quantity discounts in calculating NV are seldom allowed for all sales because foreign sellers usually do not adhere strictly to a quantity discount program and because few are able to demonstrate actual cost savings. If a producer or seller does not satisfy these conditions, we calculate NV based on a weighted-average price that includes all sales in the averaging group, along with the specific discounts associated with those sales.

The DOC's criteria in granting the quantity discount adjustment were elaborated in such cases as Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Netherlands, 53 FR 23431, 23433 (June 22, 1988), where we rejected a quantity discount claim because the alleged quantity discounts were not granted on a uniform basis, but rather were part of the Dutch company's customer-specific sales negotiations. We made a similar finding in the Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14064 (March 29, 1996), where the Taiwan respondent was unable to demonstrate that the claimed "quantity discounts" for sales in the EC had any connection to the quantity sold and instead had the appearance of volume rebates. Moreover, the respondent made no attempt to demonstrate that the alleged quantity discounts were granted on a uniform basis.

In the case of the quantity discount adjustment claim in Final Results of Antidumping Duty Administrative review: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, 61 FR 14049 (March 29, 1996), although the respondent showed that it granted a quantity discount on more than 20 percent of its home market sales of such or similar merchandise, we did not allow the claim. We made this decision because the respondent reported the quantity discount on an average basis which precluded us from determining that the discounts were offered on a uniform basis to all purchasers. In contrast, in Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip from the Federal Republic of Germany, 52 FR 822 (January 9, 1987), an adjustment for differences in quantities sold was allowed on all home market sales because the DOC found that at least 20 percent of these sales received a quantity discount on a uniform basis during the six- month period of investigation (POI).

B. Sample Calculation

When a quantity **discount** is granted during the POI or period of review (POR), every sale used to calculate NV has a deduction made for the quantity **discount**. The following example illustrates how the adjustment works:

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EC sales over the POI/POR	No. of units	Gross price per unit	Quantity discounts	Net price per unit
1	10	$1.00	10%	$0.90
2	2	$1.00	0%	1.00
3	3	$1.00	0%	1.00
4	10	$1.00	10%	0.90
5	5	$1.00	0%	1.00

Facts: The manufacturer maintains a quantity discount price schedule to which it strictly adheres. The schedule calls for a $1.00 gross price with a quantity discount of 10 percent for purchases in quantities of 10 units or greater. The transactions to the United States average 10 units or more; EC sales 1 and 4 provide as comparable a sale quantity level as possible to the U.S. sale. All sales are made at the same level of trade.

Conclusion: As sales 1 and 4 in the EC represent 67 percent of sales by number of units sold, the company has demonstrated that over 20 percent of sales received the discount during the POI or the POR. Further, the **discounts** were applied according to a consistent price policy, and were of the same magnitude. Consequently, the company has satisfied the quantity discount adjustment criteria. We would calculate EC price as follows:

Sale	Calculation
1	price-10% = net price
2	price-10% = net price
3	price-10% = net price
4	price-10% = net price
5	price-10% = net price

Weighted-average price = Total price divided by number of units = $27/30 = $0.90 per unit.

19 CFR 351.409(b)(2)) requires that the seller demonstrate to the DOCs satisfaction that the discount is warranted on the basis of savings which are specifically attributable to the production of the different quantities involved. We consider differences in the direct **cost of manufacture** in quantifying a cost based adjustment. For example, we would consider the cost savings attributable to the purchase of raw materials at a discount due to the quantity purchased. Respondent may make claims for differences in the cost to produce different quantities based on theoretical cost studies. Such claims are not allowed. Cost adjustment claims must be based on direct manufacturing costs. Claims that additional setup time is required for shorter runs do not

form the proper basis for an adjustment. Most manufacturers will arrange their production schedules to obtain the greatest possible efficiency in setting up production runs. Thus, when a manufacturer has two orders of the same product, it will produce the quantity needed to fill both orders at the same time.

19 CFR 351.409(e) ensures that there is no double-counting between the quantity discount adjustment and a level of trade (LOT) adjustment. Thus, where we make a LOT adjustment, we will not also make a quantity adjustment unless the respondent satisfactorily isolates the price comparability effect of difference of quantities from the effect of differences in LOT.

XI. DIFFERENCES IN MERCHANDISE

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 773(a)(6)(C)(ii) - differences in merchandise (difmer)
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.411 - differences in physical characteristics
- SAA
  - Section B.2.c.(3) - difmer
- Antidumping Agreement
  - Article 2.4 - differences in physical characteristics
  - Article 2.6 - like product definition
- Import Administration Policy Bulletin
  - Policy Bulletin 92.2 of July 29, 1992 - difmer; 20% rule

A. Difference in Merchandise Adjustments

Section 773(a)(6)(C)(ii) of the Act provides for an adjustment to normal value (NV) for differences in the physical characteristics of the products being compared. Where identical products are not sold in the U.S. and exporting country (EC), we will compare the good sold in the United States to the good sold in the EC that is most similar in physical characteristics. Where similar products are compared, a “difference in merchandise adjustment” (difmer) must be made to normal value to account for the differences in the physical characteristics of the merchandise sold in the United States and the EC.

The DOC adjusts the EC price by the net difference in the variable manufacturing costs incurred in producing the differences in physical characteristics. The adjustment is based on actual physical differences in the products, and is calculated on the basis of direct manufacturing costs.

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We include the cost of materials, labor and variable factory overhead as direct manufacturing costs. See Final Results of Antidumping Duty Administrative review: Brass Sheet and Strip from Canada, 62 FR 16771 (April 8, 1997), Final Determinations of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30287 (June 14, 1996), and Polyvinyl Alcohol from Taiwan, 61 FR 14065 (March 29, 1996).

An example of the calculation for an export price (EP) difmer adjustment is shown below -- the calculation is the same for constructed export price (CEP) transactions:

EC Sales		U.S. Sales	
Wt-Aver EC price converted to US$	= $5.00	Wt-Aver EP	= $5.50
Total variable manufacturing costs	= $3.00	Total variable manufacturing costs	= $2.96
Difmer = $3.00 - $2.96	= $0 .04		
Wt-Aver NV =	$ 4.96	Wt-Aver EP	= $5.50

In this example, the variable manufacturing costs are $3.00 for the EC product and $2.96 for the U.S. product. Because the variable manufacturing costs are less in the United States, a $0.04 deduction is made from NV. If the costs were greater for the U.S. product, an addition would be made to NV. We do not consider differences in the cost of production when the products being compared have identical physical characteristics. Remember that although products may have identical comparison criteria as stated in Appendix V of the antidumping questionnaire, they are not necessarily identical in all physical characteristics. Also, adjustments cannot be made for difmers based on 1) the fact that the exporter is charged different prices for its inputs depending on the destination of the finished product or 2) the fact that the domestic and exported products are produced in different facilities with differing production efficiencies. Finally, if the EC's economy has high inflation (over 25% per annum). During the period of investigation or review, consult with your supervisor on how to handle difmer adjustments (see section XV of this chapter for information on how to compute difmer adjustments in high inflation situations).

B. The 20 Percent Difmer Guideline

As a further step, we must assess whether there is a reasonable basis for comparing merchandise.

The following example illustrates our assessment of comparability.

EC Sales U.S. Sales

NORMAL VALUE

Ex works, EC price	30DM	Ex works, U.S. price	$13.00
Variable manufacturing costs of EC product:		Variable manufacturing costs of U.S. product:	
materials	14DM	materials	13DM
labor	2DM	labor	1DM
direct factory overhead	3DM	direct factory overhead	2DM
Total variable manufacturing cost of EC product =	19DM	Total variable manufacturing cost of U.S. product =	16DM
		Non-variable manufacturing costs of U.S. product =	4DM
		Total manufacturing cost of U.S. product =	20DM

Calculation of difmer:

Variable manufacturing cost of EC product	=	19 DM
Variable manufacturing cost of U.S. product 0	=	-16 DM
Difmer =		3 DM

In the above example, the variable manufacturing costs of the U.S. product are less than the costs of the comparison EC product. However, we only make comparisons between products which can reasonably be compared (see section II of this chapter for a further discussion of this topic). Sales of products in the EC market with a difmer exceeding 20 percent of the total average cost of manufacture, on a model specific basis, of the product exported to the United States will normally not be used in determining NV. Any use of products with a difmer exceeding 20 percent must be noted and fully explained (see policy bulletin 92.2 for information on the 20-percent guideline).

Total manufacturing costs are the variable costs of manufacturing plus the non-variable or fixed manufacturing costs of the product. The formula for determining whether two products can be compared using the 20-percent guideline is as follows:

$$\frac{\text{Difmer}}{\text{Total manufacturing cost of U.S. product}} \leq 20\ \%$$

Applying this formula to our example above, we divide the difmer of 3 DM by the U.S. product's total cost of manufacturing of 20 DM for a result of 15 percent. Insofar as there is less than a 20-percent difference in variable manufacturing costs, we conclude that the EC product is sufficiently similar to the U.S. product that it can be used for comparison purposes with a difmer adjustment. Accordingly, we deduct 3 DM from the EC price of 30 DM to account for the smaller variable manufacturing costs of the U.S. product to arrive at an NV of 27 DM as reflected in the following calculation:

EC price before difmer	30 DM
Difmer	- 3 DM
NV	27 DM

XII. DIFFERENCES IN LEVEL OF TRADE

References:
- The Tariff Act of 1930, as amended (The Act)
  - Section 773(a)(1)(B)(i) - requirement for same level of trade (LOT)
  - Section 773(a)(7)(A) - explanation of LOT
  - Section 773(a)(7)(B) - constructed export price (CEP) offset for LOT
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.412 - LOTs; adjustments for differences in LOTs; CEP offset
  - 19 CFR 351.414(d)(2) - LOT and price averaging groups
- SAA
  - Section B.2.c.(4) - LOT adjustments
  - Section B.8 - LOT and price averaging
- Antidumping Agreement
  - Article 2.4 - requirement to compare sales at the same LOT
  - Article 2.4.2 - requirement to consider LOT when comparing prices

Section 773(a)(1)(B) of the statute requires that normal value (NV) shall be based on exporting-country (EC) (or third-country) sales at the same level of trade as the export price (EP) or CEP. Section 773(a)(7)(A) adds that, if comparisons are made between sales at different LOTs, an adjustment may be made based on price differences between the two LOTs in the exporting-country or third-country market. Section (A) states that differences in LOTs for which adjustments may be made involve the performance of different selling activities and a demonstrated effect on price comparability. This definition contrasts with the one used prior to the 1994 statutory changes; previously, the LOT was often defined as the position of the customer in the market, e.g., end users or original equipment manufacturers, wholesalers or distributors, and retailers, without regard to specific selling functions performed. Such customer categories may still be considered as the basis for different LOTs if the DOC determines that differences in selling functions exist between groups. Alternatively, these groupings can be used to establish different price averaging groups (see Chapter 6, section V for more information on price averaging).

19 CFR 351.412(c)(2) provides the following additional guidance in identifying LOTs:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

Also see section B.2.c.(4) of the SAA for a detailed discussion of LOT adjustments: In the case of export price (EP) transactions, LOT will be determined based on the starting price, while for CEP, LOT will be determined based on the starting price as adjusted under section 772(d) of the Act. NV LOT is based on the starting price or constructed value. Starting price is, in most instances, the gross price less all discounts and rebates.

If EC or third-country sales at the same LOT as the U.S. sales are inadequate for comparison, the DOC will calculate NV based on sales at the most comparable commercial LOT, making appropriate adjustments for differences affecting price comparability. When comparisons are made between EP or CEP and NV at different LOTs, and there is a pattern of consistent price differences between sales made at different LOTs in the EC market, a LOT adjustment will be made in accordance with 19 CFR 351.412(e), which prescribes that:

> The Secretary normally will calculate the amount of a LOT adjustment by:
>
> (i) Calculating the weighted-averages of the prices of sales at the two levels of trade identified in paragraph (d), after making any other adjustments to those prices appropriate under section 773(a)(6) of the Act [i.e., movement expenses, packing expenses, duty drawback, circumstances of sale, etc.] and this subpart;
> (ii) Calculating the average of the percentage differences between those weighted-average prices; and

NORMAL VALUE

(iii) Applying the percentage difference to normal value, where it is at a different level of trade from the export price or constructed export price (whichever is applicable), after making any other adjustments to normal value required by section 773(a)(6) of the Act and this subpart.

Under special circumstances as described in 19 CFR 351.412(f), the DOC may make a CEP offset using indirect selling expenses in the EC or third-country market. The offset can only be applied where the respondent has succeeded in establishing that there is a difference in LOT, the EC LOT is more remote from the factory, but, although the respondent has cooperated to the best of its ability, the available data do not permit a determination on whether the difference affects price comparability. See your supervisor or program manager (PM) if it appears that this type of an adjustment is warranted.

Additionally, because DOC policy on LOT under the Act is still evolving, analysts should always 1) read the last several LOT determinations or final results for investigations or administrative reviews respectively, and 2) consult with their supervisor or PM as to the current policy. One application of the LOT provisions is discussed in Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30287 (June 14, 1996). In this determination, we analyzed the customer groups defined by the respondents, which included supermarket chains, wholesalers, buying consortiums, etc., with respect to the selling functions performed by the respective respondent for each group. In analyzing the selling functions, we considered all types of selling functions, both claimed and unclaimed, that had been performed, with no single selling function in this industry being sufficient to warrant determining a separate LOT. Examples of selling functions included sales process, inventory maintenance, forward warehousing, freight services, advertising, and warranties. Where we found differences in several functions between the respondent's groups, we considered these groups to be at different LOTs but, where there was only one difference, we did not find different LOTs. Also see Final Results of Antidumping Duty Administrative review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France et, al., 62 FR 2106 (January 15, 1997). In this review, the DOC examined whether comparison sales were at different stages in the marketing process than the EP or CEP sales. This determination was made on the basis of a review of the distribution system in the **comparison market**, including selling functions, class of customer, and the level of selling expenses for each type of sale. As a result of this analysis, the DOC found different levels of trade. In addition, see Final Results of Antidumping Administrative review: Gray Portland Cement and Clinker from Mexico, 62 FR 17155 (April 9, 1997) where the DOC denied respondent's request for different levels of trade because the selling fuctions were largely the same across the levels of trade reported.

LOT analysis is performed in all investigations and reviews whether or not it is requested by the petitioner or respondent. In the antidumping questionnaire, respondents are asked to report and justify the different LOTs according to the selling functions performed and services offered to each customer or class of customers. We ask the respondent to separate customers into phases of marketing to which a unique set of selling functions/services apply and provide a consolidated, detailed narrative analysis of the selling functions and services provided to each of these unique customer classes.

XIII. CONSTRUCTED VALUE

References:

The Tariff Act of 1930, as amended (the Act)
- Section 773(a)(4) - use of constructed value (CV)
- Section 773(b)(1) - normal value (NV) based on CV if all sales are below the cost of production (COP)
- Section 773(e) - calculation of CV

Department of Commerce Regulations
- 19 CFR 351.405 - when to base NV on CV; where to look for selling, general, and administrative expenses (SG&A) and profit
- 19 CFR 351.407 - how to calculate CV and COP

SAA
- Section B.2.c.(5) - adjustments to CV
- Section B.3 - NV based on CV if all sales are below cost below cost
- Section B.5 - calculation of costs
- Section B.6 - SG&A and profit for CV

Antidumping Agreement
- Article 2.2 - when CV may be used
- Article 2.2.1.1 - how to calculate CV
- Article 2.2.2 - how to calculate amounts for administrative selling and any other costs and profit

Import Administration (IA) Policy Bulletin
- Policy Bulletin 91.2 of July 18, 1991 - source of cost of manufacture (COM)
- Policy Bulletin 92.4 of December 15, 1992 - the use of CV in COP cases

NORMAL VALUE

A. Use of CV

CV is an alternative basis for the calculation of NV. In many cases, CV is calculated by accountants in the Office of Accounting (OA) or senior financial analysts from your office. Regardless, the analyst must be aware of how to make these calculations. Once CV calculations are completed, the analyst must make any adjustments to the numbers that are required for a fair comparison to U.S. price. These adjustments will almost always involve circumstances of sale (COS) and, in some instances, levels of trade (LOT). You should consult with your program manager (PM) or accountant involved on the appropriate way to handle CV adjustments and comparisons to export prices (EP) or **constructed export price**s (CEP).

Sections 773(a)(1), 773(a)(4) and 773(b)(1) of the Act and 19 CFR 351.405 provide that we use CV for NV when:

1. Neither the exporting country (EC) nor a third-country market is viable,

2. There is a viable EC or third-country market but a particular market situation does not permit a proper comparison with the EP or CEP,

3. All sales failed the cost test in section 773(b)(1) and (2) (see Import Administration Policy Bulletin 92.4. Note that certain provisions of this bulletin reference pre-1995 practice). Consult your supervisor or PM if there is any question on current policy.

4. The remaining sales that did not fail the cost test were made to establish a fictitious market or were not made in the ordinary course of trade (e.g., aberrationally high prices, year-end models, seconds, etc.) or were not at a time contemporaneous with the U.S. sales.

When EC market sales are not viable, we generally use sales to a viable third-country market rather than CV. However, we still retain the discretion to select CV, if more appropriate, over a third-country market (see Section 773(a)(4) and 19 CFR 351.405(f)).

After the **comparison market** is chosen, the issue of viability will not normally be reexamined. In those situations where all the EC market sales prices of the product which is most similar to the U.S. product are disregarded, because they failed the cost test, or are outside the ordinary course of trade for reasons other than cost, we use the CV for comparison purposes rather than sales prices of less similar merchandise in the EC market or sales prices in a third- country market (see sections I, IV, and XIV of this chapter for explanations of market viability, ordinary course of trade, and COP, respectively).

B. General Guidelines for the Calculation of CV

1. CV Components

The first step in the process of constructing a value is to sum the three major components of CV in accordance with section 773(e) of the Act. These are the following:

a. Cost of manufacturing (COM), which includes material, fabrication and other processing costs incurred in producing the merchandise. The COM of the CV is for the product exported to the U.S. (the subject merchandise) (see IA Policy Bulletin 91.2).

b. The actual amount of the selling, general, and administrative (SG&A) expenses and profit from sales in the EC or third-country market of the product under investigation or review for the specific company under investigation. This calculation of SG&A is known as the "preferred methodology" (see 19 CFR 351.405(b)(1)). When such data is unavailable, section 773(e)(2)(B) provides for alternative methodologies to be used.

   Since selling costs are based on actual amounts, imputed selling expenses (e.g., credit and **inventory carrying costs**) are not included in the CV (see Certain Pasta from Italy, 61 FR 30361 (June 14, 1996)).

   In cases where the producer is not the exporter and CV is the basis for NV, the costs of the exporter is combined with the costs of the producer to arrive at the CV of the merchandise. This procedure is followed whether or not the exporters and producers are affiliated parties. See Final Determination of Sales at Less than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (February 25, 1991).

   The amounts computed for SG&A and profit are added to the COM.

c. The actual packing costs incurred for packing the subject merchandise for shipment to the U.S. market is then added to the amounts for COM, SG&A

and profit.

2. Adjustments to CV

Next, all required adjustments to CV are made in accordance with section 773(a)(8) of the Act. These adjustments usually involve differences in the expenses for circumstances of sale in the two markets (see section VIII of this chapter for information on circumstance of sale adjustments). Note that no adjustment is necessary for differences in the merchandise because the COM of the U.S. **subject merchandise** is used in computing CV. Once these adjustments are made, you have computed CV. See part F of this section for sample calculations of CVs for U.S. EP and CEP sales.

C. SG&A Methodologies and Guidance for Quantifying and Valuing CV Components

1. Calculation of SG&A and profit by the preferred methodology

Under section 773(e) of the Act, actual amounts incurred and realized by the specific exporter or producer being investigated or reviewed are used in the preferred methodology. Specific guidelines for calculating SG&A and profit using the preferred methodology are as follows:

a. Sales data from the selected market, i.e., the home or third-country market, is used as the basis for SG&A.

b. SG&A and profit are calculated on an average of foreign like products sold in the selected market, not on a model specific basis.

c. Profit is derived by subtracting the COPs from the prices in the selected market.

d. General and administrative (G&A) is calculated by dividing the fiscal year G&A expenses by the fiscal cost of goods sold (adjusted for categories of expense not included in COM, such as packing) and then applying the percentage to the COM of the product.

e. Selling expenses are derived from the home market sales list.

2. Alternatives to the preferred methodology for SG&A and profit

Section 773(e) of the Act also lists three alternatives, without priority, preference or hierarchy, which may be used for calculating SG&A and profit if the preferred methodology is not attainable.

These alternatives are:

a. Actual amounts incurred or realized on products of the same general category as the products under investigation sold in the EC by the company under investigation or review.

b. The weighted-average of the actual costs incurred or realized by other companies under investigation or review for the production and sale of the foreign like product in the EC, and

c. Any other reasonable method.

When we use an alternative methodology, the data must be from the country under investigation or review. It cannot be data from a third country market (see 19 CFR 351.405(b)(2)). Consult with your supervisors or PM if an alternative methodology is proposed.

3. Quantifying and Valuing the Elements of Cost

Guidance for quantifying and valuing the elements of costs are provided in Section 773(f) of the Act.

a. We use data from the books of the respondent to calculate the COP/CV if such books are kept in accordance with the generally accepted accounting principles (GAAP) of the country and reasonably reflect the costs of producing the merchandise. Costing methodologies and allocations may also be relied on if they have been historically used and reasonably reflect the cost of producing the merchandise.

Each country has its own GAAP (broad conceptual accounting guidelines) established by the accounting profession, economists, business leaders, and/or the government. Although maintaining books in accordance with GAAP should reflect the economic reality of the cost, there may be cases when this is not so (e.g., GAAP based on tax rulings may result in expensing the purchase price of equipment instead of depreciating the cost of the equipment over its useful life).

1) The following cases illustrate situations where the DOC did not consider the costs to be stated in accordance with GAAP or the GAAP did not appropriately account for the costs related to the product:

In Certain Pasta from Italy, 61 FR 30355 (June 14, 1996), the DOC noted that one company's method of capitalizing the cost of exchange losses related to elimination of debt which was not the recommended method under Italian GAAP, nor was it acceptable under U.S. GAAP. In Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, et. al., from Brazil, 58 FR 37097 (July 9, 1993), the DOC did not accept the change in the useful lives of the assets because the revised remaining lives were longer than the lives commonly utilized in the steel industry worldwide.

2) We have also made adjustments to the data maintained by the respondent in accordance with the country's GAAP in those cases where the respondent is located in a country experiencing a high rate of inflation. Since the company's transactions are usually recorded as of the date that they were incurred or realized and because the high inflation caused a rapid erosion in the value of the currency, the amount recorded does not reflect the actual value of the expense as of the date of the U.S. sale. Consequently, we have either used the current value (e.g., price of material at the time of the U.S. sale) instead of the amount recorded on the books, or applied an inflation index to the cost data (see section XV of this chapter for more information on calculations for costs in high-inflation economies).

b. We allocate the portion of non-recurring costs that benefit current and/or future production to the periods that will benefit from the expenditures. The method and period of time over which the costs are allocated are determined on a case-by-case basis.

c. We adjust the COP/CV for the costs incurred for a startup operation. These costs must be tied directly to manufacturing of the merchandise. In brief, start-up operations are only those operations where a) a producer is using new production facilities or producing a new product that requires substantial additional investment and b) production levels are limited by technical factors associated with the initial phase of commercial production.

   The 1994 amendments to the Act have significantly clarified when an operation is considered to be in a start-up mode and how to account for the costs associated with start-up. Consequently, a case conducted prior to these amendments in which a start-up adjustment was granted should not be relied upon as a precedent for decisions under the present Act. Consult with your supervisor or PM when there is a claim for a startup adjustment. See section 773(f)(1)(c) and 19 CFR 351.407(d)

d. We also review various qualitative and quantitative factors to determine whether a representative measure of the materials, labor, overhead and other costs have been allocated to the product. We should specifically review the allocation methods (e.g., production quantities and relative sales values) to determine whether an appropriate portion of common costs have been allocated to the product. For example:

   Where different grades of merchandise result from the same manufacturing process, adjustments in CV can be made based on the value of the various products (see <u>Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea</u>, 56 FR 16311 (April 22, 1991)).

D. Affiliated Party Inputs

Section 773(f)(2) of the Act authorizes the DOC to review the values of transactions made, directly or indirectly, between affiliated parties to determine whether the values "fairly" reflect the value (market value) in the country under investigation or review. Unaffiliated third- party comparable transactions are a good measure to test the validity of the market price of the affiliated transaction. When we do not have unaffiliated third-party information, we may use other information which is available on the record.

Also, when we have a reasonable basis to "believe or suspect" that the value reflected on the company's books for a major input, obtained from an affiliated party, is below the COP for that input (see 19CFR 351.407(b) and the relevant section of the preamble 62 FR at 27361-2) we may use the COP of the input if it is higher than the value determined under section 773(f)(2), i.e., if the COP is greater than both the transfer price and the market value.

The 1994 amendments to the Act significantly changed the definition of affiliated parties and, therefore, a case conducted prior to the enactment of these amendments might not be an appropriate precedent for determining whether a party is considered to be an affiliated party or whether the value used was an appropriate value for a transaction with an affiliated party (see Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof from Japan (“LNPP” from Japan), 61 FR 38162, 38163 (July 23, 1996), wherein the DOC determined affiliation based on a close supplier relationship, and declared that an input accounting for two percent of COP was a major input because of the thousands of parts included in a large printing press.) Whether an input qualifies as “major,” however, must be determined on a case-by-case basis. You should consult with your supervisor or PM when there are questionable transactions which might involve "affiliated parties” (see section XVII of this chapter for more information on affiliated parties and 19 CFR 351.407).

E. Important Procedures for COP/CV Investigations

1. The decision to request CV information

The CV and the COP sections of the questionnaire are sent at the initial stage of the investigation or review along with the other sections of the questionnaire. A respondent is not required to submit CV information as part of its response to the initial questionnaire unless a) an acceptable COP allegation is part of the petition in an investigation (CV information is always required to be submitted when COP data is required), b) it is known that a COP inquiry is needed at the time of initiation of a review because the DOC disregarded below cost sales for the same company in the most recent previously completed segment of the proceeding, c) it is known that a CV comparison will be made based on the case history of a review or d) there is no contemporaneous foreign market sale of identical or similar merchandise for comparison to one or more U.S. sales. In other instances for investigations and reviews, the respondent will be required to furnish CV information after the issuance of the questionnaire. These instances involve situations where a) section A responses to the questionnaire reveal that the exporting-country and third-country markets fail the market viability test (see section I of this chapter) and b) when acceptable country-wide or company-specific allegations are received. See Chapter 4 for more information on questionnaires for COP and CV data.

2. Determining the period for CV and/or COP information

After the decision to use CV is made, the assigned accountant or senior financial analyst, as available, should be notified. The case analyst and the accountant or financial analyst should coordinate to ensure that the period of investigation (POI) or period of review (POR) will provide for the cost data needed to calculate the CV and/or COP.

Examples of when the POI or POR may not provide for the cost data required to calculate the CV and/or COP are:

- o When the sales of a customized product are consummated prior to production of the product and, as a consequence, the actual manufacturing of the product occurs subsequent to the sale dates.

- o When the product requires longer than one year for manufacturing (e.g., certain agricultural products).

3. The analyst's responsibility for CV/COP

In cases where the analyst is not responsible for calculating the CV and/or COP, he or she is still responsible for knowledge of the basic methodology and the particular issues of the investigation or review that relate to cost. The analyst is also responsible for verifying and providing the necessary data on selling expenses and packing which are used in the COP/CV computation. The analyst and, where applicable, the accountant or financial analyst should coordinate on information for indirect selling expenses submitted in response to sections B and D of the questionnaire to ensure that the numbers are the same. The analyst should also coordinate with the accountant or financial analyst regarding the verification of indirect selling and packing expenses.

NORMAL VALUE

For cases where the analyst is responsible for calculating CV and COP, he or she must work closely with their supervisor or PM on all aspects of the analysis and verification.

4. Conducting the panel review and disclosure meeting

The analyst and the accountant or financial analyst must both be present for the panel review and subsequent disclosure of the COP/CV calculations to the parties. During panel review, certain areas need to be specifically checked and coordinated to ensure that the calculations and comparisons are correct. The most important of these are as follows:

a. Checking to ensure that appropriate matching of the sales price and the CV for each specific model has occurred; and,

b. Checking to ensure the use of the appropriate selling expenses for the sales.

F. Sample Calculations For CV

1. CV calculation for comparisons to U.S. CEP sales (amounts shown are in foreign currency unless otherwise specified):

COM	
(This is the COM of the U.S. subject merchandise.)	
Materials (quantity x unit price)	2.50
Labor (hours x rates)	1.00
Factory Overhead (direct and indirect)	1.00
Total COM	4.50

SG&A
Preferred Methodology
(These are the actual expenses of the producer as found on the company's books. The selling expenses are for the product sold in the foreign market and do not include **imputed expenses**. See, LNPP from Japan 61FR at 38147 wherein the DOC states that imputed expenses are not part of CV).

NORMAL VALUE

General and Administrative (e.g., salaries of non-sales personnel, rent, and heat) at a rate of 22 percent (22% x 4.50 = 1.00)	1.00
Direct Selling Expenses (i.e., expenses that can be directly tied to the sale of a specific unit, e.g., credit, warranty and advertising expense)	.50
Indirect Selling Expenses (i.e., expenses which cannot be directly tied to the sale of a specific unit but which are proportionally allocated to all units sold during a certain period, e.g., telephone, rapifax, postal charges)	.50
Total SG&A	2.00
Financial Expense (66% x 4.50) =	. 30
Total cost without profit added	6.80
Profit	.50
Packing cost for U.S. market	.50
Total CV unadjusted for COS	7.80
Deduction of EC COS Amounts	
Less	
EC Warranty	.03
EC Advertisement	.02
EC Technical Services Expenses	.15
Total COS amount	.20
CV adjusted for EC COS	7.60
Conversion to U.S. Dollar Amount	

Hypothetical Exchange Rate: 1@ = $.1321
Adjusted CV = (7.60) X exchange rate ($.1321)= $1.00

Usually there are no amounts for U.S. direct and assumed selling expenses to be added to the CV because these amounts are deducted from the U.S. sales price before a comparison is made to a U.S. CEP transaction.

2. CV calculation for comparisons to U.S. EP sales (amounts shown are in foreign currency):

Unadjusted CV (see above)	7.80
Less: EC COS adjustments (see CEP/CV example above)	.20
CV adjusted for EC COS	7.60
Conversion to U.S. dollar amount (7.60 x $.1321) =	$1.00
Addition of U.S. market COS amounts	
Plus	
U.S. Credit	$ .06
U.S. Warranty	.01
U.S. Advertising	.04
U.S. Technical Services	.15
Total COS amount	$0.26
CV adjusted for EC and U.S. market COS	$1.26

XIV. SALES AT LESS THAN COST OF PRODUCTION

References:
The Tariff Act of 1930, as amended (the Act)
773(b) - sales at less than cost of production (COP)
773(f) - special rules for the calculation of COP
Department of Commerce (DOC) Regulations

NORMAL VALUE

19 CFR 351.406 - calculation of NV if sales are made at less than COP
19 CFR 351.407 - calculation of COP
SAA
Section B.3 - exclusion of sales below COP
Section B.4 - ordinary course of trade and sales at less than COP
Section B.5 - calculation of costs
Antidumping Agreement
Article 2.2.1 - sales below COP
Article 2.2.1.1 - calculation of COP
Article 2.2.2 - calculation of COP
Import Administration Policy Bulletins
Policy Bulletin 94.1 - standards for initiation of COP investigation

In many cases, COP is calculated by accountants in the Office of Accounting (OA) or financial analysts. It is important, however, that the analyst is aware of how these calculations are made. Once COP amounts are calculated, the analyst is responsible for comparing them to the prices for like products in the exporting country (EC) or, if appropriate, third-country sales prices. The results of these comparisons will dictate whether prices or constructed value (CV) will be used for normal value (NV). In some cases, the analyst is responsible for calculating COP. In these situations, you must work closely with your supervisor or program manager (PM) in performing the analysis and verification of the data.

Section 773(b) of the Act states that sales of the foreign like product made at prices below the COP may be disregarded for determining NV whenever such sales have been made 1) within an extended period of time in substantial quantities and 2) at prices which do not permit the recovery of all costs within a reasonable period of time.

A. Initiation of a COP Investigation

A "sales-below-cost" investigation is conducted, pursuant to Section 773(b) of the Act, when there are reasonable grounds to "believe or suspect" that sales have been made below the COP. We do not automatically initiate a COP inquiry in every investigation or review. We initiate only when we have the following:

- In an investigation, administrative review or a new shipper review, an allegation has been presented by a domestic interested party indicating that sales have been made at less than COP. This allegation must be presented in a timely manner and supported with sufficient evidence.

- o In an administrative review, some or all of the company's sales were disregarded in the calculation of NV in the most recent segment for that company that is completed or, if no review has been completed, the investigation.

An allegation is considered to be filed in a timely manner, as required by 19 CFR 351.301(d)(2), when we have the following:

- o In an investigation, it is made on a country-wide basis within 20 days after the date on which the initial questionnaire was transmitted to any person, and

- o In an investigation, administrative review, new shipper review, or changed circumstances review, it is made on a country-wide basis within 20 days after a respondent files a response to the relevant section of the initial questionnaire (unless the DOC determines that the relevant questionnaire response is incomplete).

We can grant additional time beyond the 20 days to the party making a country-wide allegation when we determine from the facts of the particular case that such additional time is needed. However, once company -specific information (i.e. Section B response) has been submitted for a firm, the party must make a company-specific allegation. We can also grant additional time for a company-specific allegation when we determine that the questionnaire response for that company is incomplete.

Sufficiency of an allegation will be considered on a case-by-case basis. A COP allegation is considered sufficient when it is supported by information reasonably available to the petitioner, including information already on the record. When company-specific costs and sales information are on the record such information must be used for the allegation.

Import Administration Policy Paper 94.1 clarifies that an allegation need not

- o reflect that sales were made below COP in substantial quantities (i.e., 20 percent of the sales of the foreign like product), or

- o include sales of every model involved in the investigation or review. However, the sales for the models of the product which are used for an allegation should be representative of the models which are to be used to determine NV in the final determination for the investigation or review.

See Certain Pasta from Italy, 61 FR 30361, “La Molisana” Comment 13, (June 14, 1996).

If company specific information is not on the record we consider a COP allegation to be sufficient when petitioners rely on their own COP data for the relevant period and adjust the costs for known differences between costs in the U.S. and those in the country under investigation or review. Such adjustments include, but are not limited to, adjustments for 1) wage and salary rates, 2) volume of output of the company under investigation or review which affect the fixed overhead costs, 3) material prices, and 4) differences in the methods used in the manufacturing processes.

Because we need to determine whether the sales prices are below the COP as defined by the Act, an allegation also needs to comply with our usual methodology for determining the COP, and should identify each major component of the COP. The major components of COP are materials, labor, variable overhead, fixed overhead, selling general, and administrative expenses (SG&A) and packing.

OA normally prepares a memo analyzing the COP calculation methodology used in the allegation (the analyst will have to do this if OA is not involved). This memo is attached to a decision memo that includes an analysis of the comparison of COP to individual sales prices and that states whether or not the DOC should initiate an investigation (although if a country-wide allegation is received in the petition then the analyses would be part of the case initiation memo). See below for information on how to calculate COP and how to compare COP to EC or third-country prices.

B. Calculation of COP

In accordance with section 773(b) of the Act, sales at less than COP should be for a period of time which would "ordinarily permit the production of the foreign like product in the ordinary course of business" and should include the following:

- Cost of Manufacturing, which includes materials, labor, variable overhead, fixed overhead and other processing costs incurred for the foreign like product,

- o an actual amount for SG&A incurred for the foreign like product, and

- o all actual costs for packing the product for shipment in the foreign market.

C. Quantifying and Valuing the Elements of Cost

Specific guidelines for quantifying and valuing the elements of costs are provided in Section 773(f) of the Act.

1. We use data from the books of the respondent to calculate the COP/CV if such books are kept in accordance with the GAAP of that country and reasonably reflect the costs of producing the merchandise. Costing methodologies and allocations may also be relied upon if they have been historically used and reasonably reflect the cost of producing the merchandise.

   Each country has its own set of GAAP (broad conceptual accounting guidelines), established by the accounting profession, a group of economists, business leaders, etc. and/or the government. Although maintaining books in accordance with GAAP should reflect the economic reality of the cost, there may be cases when this is not so, e.g., GAAP based on tax rulings may result in expensing the purchase price of equipment instead of depreciating the cost of the equipment over its useful life.

   We make adjustments to the COP/CV when we do not consider the costs to be stated in accordance with GAAP or when we believe that the GAAP does not appropriately account for the costs related to the product. For example:

   The DOC did not accept the change in the useful lives of the assets because the revised remaining lives were longer than the life commonly utilized in the steel industry worldwide (see <u>Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, et.al., from Brazil</u>, 58 FR 37097 (July 9, 1993).

   In <u>Final Determination of Sales at Less Than Fair Value: DRAMs from Korea</u>, 58 FR 15479 (March 23,1993), the DOC did not accept the changes of the depreciation method and the useful lives of the assets because the new lives of the assets were established as if they were new assets and, contrary to GAAP, the financial results were not retroactively restated to reflect the change.

2. We allocate a portion of non-recurring costs that benefit current and/or future production to the period that will benefit from the expenditures. The method and period of time over which the costs are allocated are determined on a case-by-case basis.

3. We adjust the COP/CV for the costs incurred for a start-up operation. These costs must be tied directly to manufacturing of the merchandise. A start-up operation is defined by Section 773(f)(1)(C) of the Act. In brief, start-up operations are only those operations where a) a producer is using new production facilities or producing a new product that requires substantial additional investment, and b) production levels are limited by technical factors associated with the initial phase of commercial production.

   The 1994 amendments to the Act have significantly clarified when an operation is considered to be in a start-up mode and how to account for the costs associated with start-up. Consequently, a case conducted prior to the enactment of the 1994 amendments, in which a start-up adjustment was granted, cannot be relied on as precedent. You should consult with your supervisor or PM when there is a claim for a start-up adjustment. (See Section 773(f)(1)(c) and 19CFR 351.407(d)).

4. We review various qualitative and quantitative factors to determine whether a representative measure of the materials, labor, overhead and other costs have been allocated to the foreign like product. We should specifically review the allocation methods (e.g., production quantities and relative sales values) to determine whether an appropriate portion of common costs have been allocated to the product. For example where different grades of merchandise result from the same manufacturing process, adjustments in CV can be made based on the value of the various products (see Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea, 56 FR 16311 (April 22, 1991)).

D. Affiliated Party Inputs

Section 773(f)(2) of the Act authorizes DOC to review the values of transactions made, directly or indirectly, between affiliated parties to determine whether the values "fairly" reflect the value (market value) in the country under investigation or review. Other third- party comparable transactions are a good measure for the market price of the affiliated transaction. When we do not have third-party information, we may use other information which is available on the record.

Also, in calculating COP and CV, when we have a reasonable basis to "believe or suspect" that the value determined under section 773(f)(2) (i.e., the transfer price or market value) for a major input obtained from an affiliated party is below the inputs actual production costs, we may base the value of that input on the higher of transfer price, market value or COP consistent with section 773(f)(2) and (3) of the Act.

The 1994 amendments to the Act significantly changed the definition of affiliated parties and, therefore, a case conducted prior to the enactment of the 1994 amendments might not be an appropriate precedent for determining whether or not a party is considered to be an affiliated party or whether the value used was an appropriate value for a transaction with an affiliated party (see LNPP from Japan, 61 FR 38162, 38163 (July 23, 1996)), wherein the DOC determined affiliation based on a close supplier relationship, and declared that an input accounting for two percent of COP is a “major” input because of the thousands of parts included in a large printing press. Whether an input qualifies as major, however, must be determined on a case-by-case basis. Consult with your supervisor or PM when there are questionable relationships which might involve "affiliated parties” or questions about major inputs (see section XVII of this chapter for more information on affiliated parties, and 19 CFR 351.407).

E. Determining Whether Sales Should Be Disregarded

The sales-below-cost test is always done on a product specific basis.

Section 773(b) of the Act requires that when sales prices are below the COP and are made 1) within an extended period of time in substantial quantities, and 2) at prices which do not permit the recovery of all costs within a reasonable period of time, that they be disregarded for calculation of the NV.

The terms associated with these two requirements are specifically defined by the Act as follows:

- An extended period of time for an investigation or review is normally one year, but not less than six months. See Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey (61 FR 30323 (June 14, 1996), wherein the DOC stated that for hyper-inflationary economies the period of investigation (POI) should be considered the extended period of time and not individual months within the POI.

- o Substantial quantities exist if the volume of sales represent 20 percent or more of the volume of total sales of that product under consideration for the determination of NV.

- o Substantial quantities may also be considered to exist when the weighted-average per-unit price of the sales under consideration for the determination of NV is less than the weighted-average per-unit COP for these sales. DOC intends to use this criterion for determining whether substantial quantities exist for specific types of products, e.g., agricultural products.

- o Costs are considered to be recovered when the sales price below the COP at the time of sale is above the weighted-average per- unit COP for the whole POI or POR. Thus, when costs are declining, prices which are below cost at the beginning of the POI or POR may be above average costs for the period and useable for NV.

F. The Comparison of COP to Sales Prices

It is particularly important to ensure that the COP used for comparison purposes represents the COP for the prices of the model, grade, etc., of the product under investigation or review. To conduct the cost test, we compare EC market or third-country market prices, net of discounts and rebates, movement charges, and direct and indirect selling expenses, to a COP which is composed of COM, general and administrative (G&A), actual interest cost and home market packing. No additions are made to the COP and no deductions are made for imputed expenses , i.e., imputed credit and inventory carrying costs.

Movement charges and rebates are normally deducted from the EC prices before comparison to COP, if appropriate. However, some companies record the cost of freight and rebates to customers as direct selling expenses. In this case, in order to avoid double counting, we must either reduce the direct selling expenses by the amount of the freight charge and rebates or not subtract the transaction-specific freight and rebate charges. In addition, when U.S. sales are export price (EP) sales, and indirect selling expenses may not be reported for NV, make sure that the COP contains SG&A inclusive of actual indirect selling expenses.

When the COP is compared to individual EC or third-country sales prices, where 20 percent or more by volume of the sales of a given product during the POI or POR fail the cost test we may disregard only the below-cost sales. All of the remaining sales are used in the calculation of NV.

Where less than 20 percent of the sales during the POI or POR of a given product fail the cost test, we do not disregard any below-cost sales of that product because the below-cost sales are not made in substantial quantities within an extended period of time. The "within an extended period of time" language contained in the 1994 amendments to the Act allows for the exclusion of below cost sales that occur in a single month of the POI or POR if they are in substantial quantities relative to quantities for the entire POI or POR and are not at prices that would permit the recovery of costs. Sales below cost permit the recovery of costs if their price is more than the average cost for the entire period. This becomes relevant when we are calculating costs for periods shorter than the POI/POR. When costs are declining, prices below cost early in the period may be above period-long average cost, and would, therefore, not be disregarded.

In an investigation, when all sales of a specific product fail the cost test we disregard all sales of that product, and calculate NV based on CV (see Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30334 (June 14, 1996)). Also, in a review, when all contemporaneous sales of the comparison product are disregarded, we calculate NV based on CV (see Professional Electric Cutting Tools from Japan; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 42750 (August 8, 1997)).

G. Important Procedures for COP/CV Investigations

1. The decision to request COP information

The COP/CV section of the questionnaire should be sent at the time of the initiation of an investigation or the commencement of a review, even when a COP allegation has not been received. The respondent should then be notified of the need for a response, if an affirmative decision that an acceptable COP allegation is made at some time in the future. If we disregarded below cost sales in the most recent completed segment of the proceeding for a company, the company is automatically subject to a COP investigation for the subsequent review, and should be instructed to respond to the COP section of the initial questionnaire. In addition to responding to the COP questions, the respondent must furnish complete CV data in case there is a need to use CV for NV after the completion of the below cost sales analysis (see section XIII of this chapter for information on CV).

2. Determining the period for COP information

After the decision is made to commence a COP investigation, the OA accountant or financial analyst, as available, should be notified. The case analyst and the accountant or financial analyst should coordinate to assure that the POI or POR will provide the cost data needed to calculate the COP/CV (see part E of section XIII of this chapter for examples of when POI data may be insufficient).

3. Case analyst's responsibility for COP/CV

In cases where the analyst is not responsible for calculating COP and/or CV, he or she is still responsible for knowledge of the basic methodology and particular issues of the investigation or review that relate to cost. The analyst is also responsible for verifying and providing the necessary data on selling expenses and packing costs which are used in the COP/CV computation. The analyst and accountant or financial analyst should coordinate on information for indirect selling expenses submitted in response to sections B and D of the questionnaire to ensure that the numbers are the same. The analyst should also coordinate with the accountant or financial analyst regarding the verification of indirect selling and packing expenses.

For cases where the analyst is responsible for calculating COP and CV, if appropriate, he or she must work closely with their supervisor or PM on all aspects of the analysis and verification. Junior analysts are not normally the primary case analyst in these situations.

4. Conducting the panel review and disclosure meeting

The analyst and the accountant or financial analyst must both be present for the panel review and subsequent disclosure of the COP/CV calculations to the parties. Particular attention should be given to the appropriate matching of the EC or third-country sales data with the COP data.

H. Sample Calculation for COP

All amounts shown in this calculation are in units of foreign currency. There is no need to convert them to U.S. dollars as they will be compared to the EC or third-country prices of the product. Remember that COM is product-specific for the product sold in the selected market whereas selling expenses are transaction specific. Thus, the movement and selling expenses should be subtracted from the COP, not added to the COP.

1. COM
(This is the COM of the EC/third-country product.)

Materials (quantity x unit price)	3.50
Labor (hours x rates)	3.00
Factory Overhead (direct and indirect)	1.00
Total COM	7.50

2. G&A
(These are the actual expenses of the manufacturer as found in the company's books. Selling expenses are not part of this number because these expenses are deducted from sales prices before the COP is compared to these prices -- see part F of this section.)

General& Administrative at a rate of 13 percent (e.g., salaries of non-sales personnel, rent, and heat) (13% x 7.50= 1.00)	1.00
Total G&A	1.00
3. Financial expense (4% x 7.50=.30)	.30
4. Home market Packing	.50
Total COP	9.30

As detailed in part F of this section, the COP figure of 9.30 per unit is then compared to EC or third-country market sales prices net of discounts and rebates, movement charges, and direct and indirect selling expenses to determine if these prices are below cost.

XV. HIGH INFLATION ECONOMIES

References:
The Tariff Act of 1930, as amended (the Act)
None
Department of Commerce (DOC) Regulations
None
SAA
None
Antidumping Agreement
None
Import Administration Policy Bulletin
Policy Bulletin 94.5 of March 25, 1994 - Difference in merchandise adjustments (difmers) in hyperinflationary economies

A. Inflation and Its Effects

"High inflation" is a term used to refer to a high rate of increase in price levels. Investigations and reviews involving exports from countries with highly inflationary economies require special methodologies for comparing prices and calculating constructed value (CV) and cost of production (COP).

You should check with the Office of Policy at the beginning of the investigation or review when it appears that the rate of inflation in the country under investigation is abnormally high. Often, an accountant from the Office of Accounting (OA) or a financial analyst will be assigned to assist on these types of cases. Please contact your Program Manager if you believe that your case involves issues of high inflation.

In prior years, the Department of Commerce (DOC) has found antidumping (AD) margin calculations in cases involving "hyperinflationary" economies to be distorted when the average monthly and/or annual inflation rate in such countries exceeded 5 or 50 percent, respectively. In the mid-nineties, many of the economies which were hyperinflationary during the eighties and early nineties began to stabilize, but some economies still showed signs of high inflation. At this point, the DOC began to examine the impact of the application of its antidumping methodology in situations involving high, but not "hyper" rates of inflation. The standard questionnaire developed as a result of this inquiry asks whether the annual inflation rate in the country under investigation exceeds 25%. This 25% rate has been used as a general guide for assessing the impact of inflation on AD investigations and reviews. Sometimes, (e.g., due to the mid-year institution of currency reforms or a sudden plunge in the value of a currency) inflation may be sufficiently high during certain months of the POI/POR to significantly affect dumping calculations, even though the annual rate of inflation is below 25%. Please contact your Program Manager regarding possible adjustments if this appears to be the case.

When an economy is experiencing high inflation, the value of the country's currency is rapidly deteriorating, resulting in each unit of local currency having substantially less real value over time. Consequentially, a greater nominal amount of the currency is required to purchase a product at a later point in time than was needed at an earlier point in time. Even if real costs remain constant, because of the decline in the currency's value, the price of the inputs used to produce the product under investigation or review would be expressed at a lower nominal value at the beginning of the POI/POR than at the end. Similarly, the price to home market customers purchasing the same domestic like product will be expressed at a lower nominal value at the beginning of the POI/POR than at the end of the POI/POR. If the DOC determines that the inflation rate in the country under investigation will likely distort the margin calculation, a modified questionnaire should be used. Always consult with your Program Manager to determine the specific needs of your case.

To assure that we are appropriately matching the prices and the costs, we generally make our price-to-price, price-to-CV and price-to-COP comparisons over shorter periods of time during which inflation will have a less distortive effect in our analysis. For example, when inflation exceeds 25% per year, we often limit our averaging of EC sales to sales within the same month as the U.S. sale to which they will be compared. For COP and CV, we generally compute a monthly cost that is based on the weighted average of all monthly costs as indexed for inflation over the POI/POR. This methodology is illustrated below under "calculation of cost of production and constructed value." Thus, EC sales, U.S. sales, COP and CV are stated in nominal currency of approximately the same value when they are compared to each other.

For various methodologies which the DOC has used in dealing with highly inflationary economies, see e.g., Rebar from Turkey, 62 FR 9737 (March 4, 1997); Certain Welded Carbon Steel Pipe and Tube from Turkey, 61 FR 69067 (December 31, 1996); Certain Pasta from Turkey, 61 FR 30309 (June 14, 1996); Small Diameter Circular Seamless Standard, Line and Pressure Pipe from Brazil, 60 FR 31960 (June 19, 1995); Ferrosilicon from Brazil, 59 FR 732 (January 6, 1994).

B. Sales

In high inflation cases, identification of the date of sale is particularly critical, because it affects whether, and to what extent, inflation-related adjustments must be made when comparing the U.S. price to other prices and/or to the CV. 19 CFR 351.401 states that the date of sale will normally be the date of invoice as recorded in the producer's/exporter's records in the ordinary course of business.

While sales comparison periods based on the month of the U.S. sale have been the norm in past cases, the determination of the proper comparison period should be reviewed for each case. Sales comparison periods may be influenced by the pattern of inflation observed during the POI/POR. Comparisons of periods of greater than one month may be non-distortive if the inflationary trend is low for certain months within the POI/POR. You should discuss the circumstances of your specific case with your Program Manager in order to establish a reasonable basis on which to determine the appropriate averaging period.

For administrative reviews, we normally compute a weighted average NV for each model during each month of the POR. Then, each sale to the U.S. is matched to an EC monthly weighted average from the 90/60 day window associated with the month of the U.S. sale (see Chapter 6, section IV on the mechanics of the 90/60 guideline). High inflation generally does not create a problem under this approach, when the U.S. sale is compared to an EC sale in the same month. However, if we need to use a EC price in a month other than that of the U.S. sale to which it is being compared, we must consider the effects of inflation on the calculation of the margin. Always consult with your program manager if this situation arises.

C. Calculation of Cost of Production and Constructed Value

In countries experiencing high inflation, the nominal value of production costs increases over time, even where such costs -- expressed in real terms -- remain constant. This may cause distortions in our antidumping analysis because of our practice of comparing period-average COP and CV amounts to transaction-specific prices during the POI or POR. As an example of this distortion, consider a sales-below-cost analysis where real production costs remain constant but, because of high inflation, nominal costs rise throughout the POI. Under this scenario, a period-average COP figure based on monthly nominal cost amounts would tend to be higher than individual sales prices at the beginning of the period, but lower than prices at the end of the period. Depending on the timing of the home market sales, this could result in an excessive quantity of below-cost sales at the beginning of the period or, conversely, an overstatement of the number of above-cost sales at the end of the period. These same distortions exist where we compare U.S. prices to CV based on period average costs in high inflation economies.

To help mitigate the distortions in our antidumping analysis caused by high inflation and rapidly escalating costs, we may compute the period-average COP and CV on a constant currency basis using inflation indices during the period and then restate this average in terms of the currency value in each month. The table below illustrates how inflation indices can be used to compute the weighted-average cost of manufacturing (COM) for COP and CV.

Month	Per-Unit Nominal COM	Total Production Quantity	Total Nominal COM	Inflation Indices	Total Inflation-Adjusted COM	Per-Unit Inflation-Adjusted COM
January	$ 8.00	25	$ 200	1.00	$ 430	$ 8.05
February	8.00	26	208	1.10	407	8.86
March	9.00	30	270	1.25	464	10.06
April	10.00	28	280	1.30	463	10.47
May	11.00	25	275	1.42	416	11.43
June	13.00	19	247	1.55	343	12.48
July	15.00	13	195	1.60	262	12.88
August	15.00	12	180	1.73	224	13.93
September	16.00	17	272	1.85	316	14.89
October	16.00	19	304	1.91	342	15.38
November	17.00	21	357	2.00	384	16.10
December	18.00	24	432	2.15	432	17.31
Total		259	$ 3,220		$ 4,483	

In this example, the monthly amounts shown in the “Total Inflation-Adjusted COM” column were calculated by multiplying the total nominal cost for each month by the ratio of December’s inflation index to the inflation index for the month of production. For example, the March inflation-adjusted cost of $464 was calculated as $270 ^{x} (2.15/1.25). In this way, monthly nominal costs are adjusted for the cumulative effects of inflation to the end of the POI or POR.

Once all monthly production costs have been expressed in common, inflation-adjusted currency values, the figures can be added together in order to compute a weighted-average cost for the product. In the example above, the weighted-average cost for the period is $17.31, which is calculated as the sum of the monthly inflation-adjusted costs, $4,483, divided by the total production quantity of 259 units.

Note that the weighted-average cost of $17.31 per unit represents production costs expressed in December's currency value; that is, at the end of the period for which costs were reported. To obtain the weighted-average cost of the product expressed in the currency value for any other month, as shown in the "Per-Unit Inflation-Adjusted COM" column, we need only "deflate" December's per-unit cost using the same inflation indices. For example, March's inflation-adjusted cost of $10.06 per unit is calculated as $17.31 x (1.25/2.15). In a sales-below-cost analysis, the $10.06 figure would be used to compute total COP for comparison to EC sales prices during the month of March. Likewise, the same inflation-adjusted cost figure of $10.06 would be used to compute CV for comparison to U.S. sales made in March.

In selecting an appropriate index for use in calculating COP and CV in your case, you should consider indices commonly used in business applications in the high inflation economy country, preferably on a sector-specific basis. If reliable sector-specific indices are not available, indices can be based on the wholesale or consumer price index, as appropriate, or on the rate of inflation of the country's exchange rate against the U.S. dollar. Because countries experiencing high inflation usually maintain several indices which may change over time, or maintain multiple exchange rate systems, it may be difficult to develop a general list of indices/exchange rates to be used for each country. Therefore, the decision to use indexation and the selection of an appropriate index/exchange rate system should be made on a case-by-case basis. See Policy Bulletin No. 94.5.

D. Calculation of Differences in Merchandise Adjustments

As discussed above, in cases involving high inflation, we normally compare U.S. sales prices to EC sales made in the same month. However, where we match non-identical products, inflation may distort our comparisons when production of the either the U.S. or EC product does not occur in the month of sale. These distortions result from the fact that the difference in merchandise ("difmer") adjustment that we use to adjust for physically dissimilar merchandise is calculated as the difference between variable production costs incurred in producing the U.S. and EC products. In high inflation environments, nominal costs in one month cannot be meaningfully compared to nominal costs in another month without first restating them in similar currency values. In addition, as was shown above for COP and CV, monthly costs may vary in real terms and, thus, a weighted-average variable cost for the period must be calculated for the U.S. and EC products prior to computing any difmer adjustment.

To illustrate how we calculate the difmer adjustment in cases involving high-inflation economies, assume that the U.S. sale occurred in May at a per-unit price of $10.00. Production of the U.S. merchandise occurred only during the three-month period from May through July. The table below provides information regarding the variable costs incurred in manufacturing the U.S. product. The information is reported in the local currency (LC) of the exporting country.

Month	Per-Unit Nominal VCOM	Total Production Quantity	Total Nominal VCOM	Inflation Indices	Total Inflation-Adjusted VCOM	Per-Unit Inflation-Adjusted VCOM
January	-	-	-	100	-	-
February				134	-	-
March	-	-	-	201	-	-
April	-	-	-	293	-	-
May	LC 51.00	40	LC 2,040	404	LC 4,408	LC 45.67
June	68.00	40	2,720	647	3,670	73.13
July	95.00	50	4,750	873	4,750	98.68
Totals		130	LC 9,510		LC 12,828	

Note that the inflation-adjusted variable cost figures in the table are calculated using the same method shown above under “Calculation of Cost of Production and Constructed Value.” That is, using the inflation indices, the total nominal cost figures in each month are indexed to the last month in which production occurred (i.e., the month of July) in order to compute a weighted-average cost of LC 98.68, or LC 12,828 divided by production quantity of 130 units. The inflation-adjusted variable cost figure for May of LC 45.67 is then computed as LC 98.68 x (404/873).

To continue the illustration, during the month of May, the EC model most similar to the U.S. product was sold at a per-unit price of LC 70.00. The average exchange rate for May was LC 6.00 to $1.00. Production of the similar EC model, however, occurred only during two three-month periods, January through March and September through November. The variable costs incurred for the product are shown in the table below.

Month	Per-Unit Nominal VCOM	Total Production Quantity	Total Nominal VCOM	Inflation Indices	Total Inflation-Adjusted VCOM	Per-Unit Inflation-Adjusted VCOM
January	LC 10.00	50	LC 500	100	LC 26,705	LC 10.17
February	14.00	45	630	134	25,111	13.63
March	22.00	55	1,210	201	32,152	20.44
April	-	-	-	293	-	29.80
May	-	-	-	404	-	41.09
June	-	-	-	647	-	65.80
July	-	-	-	873	-	88.79
August	-	-	-	1240	-	126.11
September	173.00	60	10,380	1870	29,647	190.19
October	242.00	60	14,520	2518	30,799	256.09
November	387.00	50	19,350	3514	29,410	357.39
December	-	-	-	5341	-	543.20
Total		320	LC 46,590		LC 173,824	

Although the EC product was not manufactured during May, the month of the U.S. sale, we can derive a variable cost of LC 41.09 for the product using the weighted-average cost at the end of the period and the inflation indices, or LC 543.20 ^{x} (404/5341). We can then calculate the difmer adjustment and normal value (NV) as follows:

Difmer = U.S. VCOM - EC VCOM = LC 45.67 - LC 41.09 = LC 4.58

Normal Value (NV) = EC Price - Difmer = LC 70.00 - LC 4.58 = LC 65.42

To calculate the dumping margin in this example, we convert NV to U.S. dollars using the average exchange rate of LC 6.00 to $1.00 to derive the foreign unit price in U.S. dollars of $10.90. Comparing the dollar-denominated NV to the U.S. price of $10.00 results in an dumping margin of $0.90, or 9.0 percent, calculated as ($10.90 - $10.00)/$10.00.

Pursuant to Section 773(f)(1), we normally calculate the COP and CV based on the records of the producer if such records are kept in accordance with generally accepted accounting principles of the country and reasonably reflect the costs associated with the production and sale of the merchandise. However, in some countries experiencing high inflation, GAAP of the country cannot be used because, for example, the accounting records and financial statements have not been adjusted for the effects of inflation. Companies in countries with a long history of high inflation may maintain their accounting records and prepare their financial statements on an inflation-adjusted basis following the GAAP of the country. Such data may be useful for DOC purposes, and may be used as an alternative to indexation by the DOC provided that the data are derived in a way that does not distort antidumping margins. You should check with the Office of Accounting if costs in your case are submitted in "constant currency" terms.

Where inputs are purchased in U.S. dollars, or for an unspecified amount in foreign currency corresponding to a stated amount of U.S. dollars, we may use the dollar acquisition cost because the dollar is not subject to major inflation. Similarly, where prices of materials and wages remain constant due to government controls, the reported costs in the company's records reflect the current value of these costs, and need not be indexed. For certain types of cost (e.g., depreciation), we may rely on the historical cost adjusted for inflation by indexing or other methods.

Other areas of special consideration in the calculation of COP and CV include general and administrative (G&A) expenses and finance (interest) costs. For G&A expenses, the monthly amounts that comprise fiscal year historical costs may be indexed to obtain a year-end average. Interest expense will be calculated differently depending on the lending terms and the country's GAAP. However, we have calculated G&A expenses and finance costs based on indexed financial statements, rather than historical statements, if maintained by the respondent in the ordinary course of business. See Oil Country Tubular Goods from Mexico, 60 FR 33567 (June 28, 1995).

XVI. NON-MARKET-ECONOMY COUNTRIES

References:
The Tariff Act of 1930, as amended (the Act)
Section 771(18) - definition of a nonmarket economy (NME); factors considered in determining NME status; and other items

NORMAL VALUE

Section 773(c) - NME countries
Department of Commerce (DOC) Regulations and preamble to DOC proposed AD and CVD rules (61FR 7308, February 27, 1997)
19 CFR 351.408 - calculation of normal value (NV) for NME countries
SAA
None

One of the most complicated areas under the Act is the calculation of NV for cases involving NME countries. The presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. In addition, the fact that the currencies of these countries may not be convertible means that, even if a NV could be calculated in the country, it might not be expressed meaningfully in U.S. dollar terms. Always consult with your supervisor or program manager (PM) if you are assigned a NME investigation.

1. The country in your case, call it "X", has" NME country status if: (1) DOC has treated X as a NME country in past cases and no interested party contests NME treatment in your case or (2) there is no prior history of NME country treatment for X, but DOC nevertheless determines (in your case) that NME methodology is warranted. In making such a determination, DOC would consider the six factors in Section 771(18) of the Act and would give full consideration to all interested party comments and arguments. Situation 2 arises only where there is no case history, such as with North Korea.

2. For NME countries, section 773(c) of the Act requires that DOC normally calculate NV using market economy ("**surrogate country**)" prices to value the NME country "**factors of production**" used to produce the subject merchandise. These factors include, but are not limited to 1) hours of labor required; 2) quantities of raw materials employed; 3) amount of energy and other utilities consumed; 4) representative capital costs, including depreciation. To these factor costs, DOC adds amounts for factory overhead, general, selling and administrative expenses, profits and packing.

3. The valuation of labor is different from the valuation of all other physical or material inputs because we set the rate for each year. (See 19 CFR 351.408(c)(3) and the preamble to the 2/27/97 proposed AD regulations.) This wage rate essentially is an average of wages prevailing in market-economy countries at the per capita GDP of

the NME country.

4. The statute requires that the country you use as a surrogate must be, to the extent possible, at a stage of economy development comparable to the NME country and a significant producer of comparable merchandise.

5. The Office of Policy (OP) determines, primarily on the basis of per capita income, which market economy countries (any country not treated as a NME country under the law) are economically comparable to the NME and hence, qualify as potential surrogates. You must check with OP for a current list of potential surrogates in each investigation/review that you do. Once OP provides you with this list of 5 or 6 countries, your team must then determine, on the basis of interested party comments and input from USG industry experts, which, if any, of the countries on OP's list is a significant producer of comparable merchandise.

6. If the necessary price data is not available for factor valuation purposes, the statute allows you to base NV on the price at which merchandise comparable to the subject merchandise is exported from the surrogate country to other countries, including the United States. Since amendment of the current NME provision in 1988, we have not resorted to this alternative.

A. Hierarchy for Valuing Factors of production

Presently, the DOC considers it appropriate in NME cases to rely, to the extent possible, on publicly available information from the first choice surrogate country to value all factors of production (except labor). However, if the inputs used to produce the product under investigation or review are purchased by the NME respondent from market-economy suppliers and paid for in a market-economy currency, then our practice is to use the actual price paid for these inputs, where possible, before relying on surrogate country information. See Lasko Metal Products, Inc. v. United States, 43 F.3d 1442 (Fed. Cir. 1994). Where a portion of an input is purchased from a market- economy supplier and the remainder from a NME producer, the DOC normally will value the factor using the price paid to the market-economy supplier.

In developing factor value information, we try to remain within one surrogate country to the extent possible. If there is no reliable information from the first choice surrogate country for a particular factor, we will attempt to use public, data from another surrogate (see Final Determinations of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058 (May 18, 1992), and Sulfanilic Acid from the

People's Republic of China, 57 FR 29705 (July 6, 1992)).

B. NME Factor Valuation and Construction of NV

Factors of production are inputs such as materials, labor, and energy used in producing a product. Material inputs are measured in the number of physical units used in the production of the product, i.e., tons, pounds, gallons. Labor is measured in terms of hours and we distinguish between direct and indirect labor. Energy is measured in terms of quantities used, e.g., BTUs (gas), kilowatt hours (electricity), gallons (fuel oil).

The NME questionnaire requires information on the quantity of inputs actually used to produce the subject merchandise in the NME. If the NME exporter is a trading company, we will normally require factors information from each of the factories supplying that trading company with exports of the subject merchandise to the US. Where there are a large number of factories involved in the production of the merchandise, we may limit our questionnaire to only the largest suppliers.

. 1. Valuation of Materials and Energy

We rely almost exclusively on publicly available data sources to value input factors and have developed an index of such sources employed in previous NME investigations and reviews. (See Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC, and Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from NME Countries Other Than the PRC, located in the Central Records Unit, B-099). Parties should be encouraged to submit factor values. Where we have several surrogate values from which to choose, we make our selection based on the quality and contemporaneity of the data.

A primary quality concern is the extent to which the surrogate factor price corresponds to the NME factor of production. In many cases, an exact match is not possible, e.g. we must match no. 2 fuel oil to the price of no. 4 fuel oil, or we must use the price of a basket of goods that includes, but is not limited to, the NME factor. If subject merchandise is energy intensive, we should use the price of energy to large users in the surrogate country. Note that we value factors of production using price contemporaneous with the POI/POR, regardless of when the subject merchandise was actually produced (see Beryllium Metal from Kazakstan: Final Determination of Sales at Less Than Fair Value, 62 FR 2648

(January 17, 1997). If the values are not contemporaneous with the POI or POR, we adjust them using wholesale price indices from publicly available sources. Moreover, to the extent possible, we use tax-and duty exclusive factor prices. Further, factor values should be prices that are broadly available in the surrogate economy. For example, if we have information on what a particular producer pays for an input and also have information on what producers economy-wide pay for the same input, we would choose the latter (all other things being equal).

Where we cannot develop publicly available data in the surrogate country, we use data from other sources, including that supplied through our Foreign Commercial Service office in our embassy in the surrogate country. We may also use information from the petition as **facts available**.

a. Materials

To obtain a cost figure, we multiply the surrogate factory price by the factor input quantity, including a wastage factor, if applicable.
If a by-product or a co-product is generated in the manufacturing process, we allow a credit for it in accordance with generally accepted accounting principles (see Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China, 59 FR 28053 (May 31, 1994).

b. Labor

We value labor hours using regression-based wage rates that are up- dated once a year. These wage rates are posted on IA’s web page.

We calculate direct labor cost by multiplying the labor hour input and the regression based wage rate.

Indirect labor may not need to be valued separately if it is included in the surrogate value for factory overhead (see below).

c. Energy and Utilities

Most production processes use a variety of energy sources. These may include the use of electricity, steam, natural gas, oil or water. We value these inputs by determining the amount of each energy source or utility used in the production process and applying the appropriate per-unit surrogate values.

If energy is not an important production factor it may not be necessary to quantify this input separately. In this situation, energy may be included in the surrogate value for factory overhead, (see below). If it is included in overhead, do not double count energy and utilities.

2. Factory Overhead, General Expenses and Profit

Factory overhead, general expenses, and profit are included in the constructed value. Until recently, we have been unable to obtain published surrogate information to value these cost elements. However, in two 1996 investigations involving products from the PRC, we used publicly available financial statements of producers of comparable merchandise from the surrogate country (see Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 62 FR 14057 (March 29, 1996), and Bicycles). For factory overhead general expenses and profit, it is important to fine tune the information as much as possible to surrogate producers of the identical (or similar) merchandise rather than more broadly aggregated data.

a. Factory Overhead

The most important component of factory overhead is depreciation. It can also include supervisory and indirect labor, maintenance, and energy. Normally, factory overhead is expressed as a percentage of the cost of goods sold.

b. General Expenses

Included in general expenses are selling and administrative expenses (SG&A). We use actual SG&A expense amounts obtained from published data sources. When the published information we have been able to obtain from the surrogate country does not distinguish between direct and indirect selling expenses, we do not make an adjustment for differences in circumstances of sale in EP cases. We will only deduct these items when calculating CEP if we can break out direct and indirect expenses on the NV side. (see, Bicycles at 19031, and Preliminary Results of Antidumping Duty Administrative review:

Tapered Roller Bearings and Parts Thereof from the People's Republic of China, 61FR 40613 (August 5, 1996)).

c. Profit

We rely on actual profit amounts from published data in the surrogate country. Profit is usually found in published company financial statements (see Bicycles at 19031).

3. Packing

Packing for shipment to the United States is valued in the surrogate country based on factor amounts for materials and labor supplied by the NME respondent.

C. Separate rates

Individual dumping margins are automatically assigned to exporters in market-economy country cases. In NME cases, however, exporters must pass a "separate rate" test to receive their own, individual dumping margins. Those exporters that do not pass this test receive the NME country-wide dumping margin.

In Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China ("Sparklers"), 56 FR 20588 (May 6, 1991), and amplified in the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China ("Silicon Carbide"), 59 FR 22585 (May 2, 1994), DOC set out the elements of this separate rate test. It essentially requires that the exporter demonstrate that its export activities, on both a de jure and de facto basis, are not subject to government control. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities would include 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, and 2) any legislative enactments devolving central control of export trading companies.

Relevant evidence for the de facto determination includes: 1) whether the export prices are set by or are subject to the approval of a government authority, 2) whether the respondent has the authority to negotiate and sign contracts and other agreements, 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. The DOC has found that "ownership by all the people," where private property/ownership does not yet exist on a large scale, does not itself imply anything about government control over export activities.

In situations where the NME respondent's ownership is located outside the NME, the DOC does not perform a **separate rates** analysis for the NME respondent because it is beyond the jurisdiction of the NME government. Accordingly, these types of NME respondents are given separate rates. See Final Determinations of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China, 60 FR 22359, 22361 (May 5, 1995), and Bicycles from the People's Republic of China ("Bicycles"), 61 FR 19026, 19027 (April 30, 1996).

D. Market-Oriented Industry (MOI)

Section 773(c)(1) of the Act allows the DOC, in certain circumstances, to use the market-economy methodology described in section 773(a) to determine NV in an NME case. To identify those situations where we would use our market economy methodology and calculate NV based on domestic prices or costs in the NME, we developed the **market oriented industry** ("MOI") test.

Under the current MOI test, an affirmative finding of a market-oriented industry requires:

- For the merchandise under investigation or review, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production or allocation of production of the merchandise, whether for export or domestic consumption in the non-market-economy country, would be an almost impossible barrier to finding a MOI.

- The industry producing the merchandise under investigation or review should be characterized by private or collective ownership. There may be state-owned enterprises in the industry, but substantial state ownership would weigh heavily against finding a MOI.

- Market determined prices must be paid for all significant inputs whether material or non-material (e.g., labor and overhead) and for all but insignificant proportions of all the inputs accounting for the total value of the merchandise under investigation or review. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation or review pay a state-set price for the input or if the input is supplied to the producers at government direction.

> Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, the producers of the merchandise under investigation or review will be treated as NME producers and the NV will be calculated in accordance with section 773(c) of the Act.

E. Sample Calculation for NV

The sample calculation shown below is a very simple example of the type of factors valuation calculation that is done in investigations or reviews involving merchandise from a NME country.

The product is widgets from NME country A, and the surrogate is country B

Factor in Country A	Factor Amount (including waste) Used in Country A	Value in Country B
Steel rod	100 lbs	$0.35 per lb.
Plastic molding	2 lbs	$2.50 per lb.
Labor:	45 min	$10 per hr.
Factory overhead goods sold		20% of cost of
SG&A		20% of foregoing
Profit		5% of foregoing
Export Packing + packing labor	carton	2.00 per piece and straps

Factor	Calculation of Value	Per Unit Amount
Steel	100 lbs X $.35 per lb.	$35.00
Plastic	2 lbs X $2.50 per lb.	$ 5.00
Labor	45 min. X $10 per hr.	$ 7.50
Subtotal		$49.50
Factory Overhead	49.50 X .20	$ 9.90
Subtotal		$59.40
SG&A	59.40 X .20	$11.88
Subtotal		$71.28

NORMAL VALUE

Profit	71.28 X .05	$ 3.56
Packing		$ 2.00
NV	(Materials + labor + factory overhead) SGA + profit	$76.84

XVII. AFFILIATED PARTIES

References:

The Tariff Act of 1930, as amended (the Act)

Section 771(33) - **affiliated persons**

Section 773(a)(5) - sales through an affiliated party

Section 773(d) - multinational corporations and control

Section 773(f)(2) - affiliated transactions and COP/CV calculations

Section 773(f)(3) - affiliated transactions for major inputs for COP/CV calculations

Department of Commerce Regulations

19 CFR 351.102(b) - affiliated persons; affiliated parties - control factors

19 CFR 351.403(c) - sales to an affiliated party

19 CFR 351.403(d) - sales through an affiliated party

SAA

Section B.2.e - affiliated party transactions

Antidumping Agreement

Article 2.4 - any other differences that affect price comparability

Article 4.1 foot note 11

In these days of mergers, conglomerates, and multinationals, we are often faced with situations that involve affiliated parties and affiliated party transactions in our consideration of sales comparisons and in the calculation of cost of production (COP) and constructed value (CV). In defining relationships, we normally do not consider the companies to be affiliated where stock ownership is less than five percent in accordance with section 771(33) of the Act. However, under this same section of the Act, we may find two parties to be affiliated with less than five percent or no stock ownership if we find other evidence of control in such areas as close supplier relationships, franchise or joint venture agreements, debt financing, or other corporate or family affiliations.

NORMAL VALUE

NORMAL VALUE

A. Affiliated Party Sales

The location of the affiliated party in the sales process in the exporting-country or third- country market determines the level of transaction we require a respondent to report. When sales of the foreign like product are made through an affiliated company, we require that the affiliated company report the resales of the product to its first unaffiliated customer unless the sales account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product. Depending on the circumstances, the DOC may decide that a percentage higher than five percent is an appropriate benchmark. For example, this situation would apply to merchandise resold in the home market by an affiliated distributor (see 19 CFR 351.403(d) and the "Comments" section of the preamble to the DOC's antidumping regulations, 62 FR 27355 (May 19, 1997)). If the merchandise is consumed by an affiliated purchaser in the home market, the respondent should report these sales in accordance with 19 CFR 351.403(c). Sales of this type can only be used if the DOC is satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to an unaffiliated person (see Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products, 61 FR 20225 (May 6, 1996)).

We include home market or third-country affiliated party sales in our analysis only if the respondent's sales are made at "arm's length", i.e., at prices and terms which are comparable to sales to unaffiliated parties. In determining whether affiliated party transactions are made at arm's-length prices, we generally compare the respondent's reported prices to affiliated parties with the respondent's prices to unaffiliated parties at the same level of trade. If affiliated party prices are, on average, less than 99.5 percent of unaffiliated party prices, we reject them. (see Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 1350 (January 19, 1996). Also see Final Results of Antidumping Duty Administrative review: Steel Wire Rope from the Republic of Korea, 62 FR 17171 (April 9, 1997)). If the affiliated party prices are comparable, then the DOC includes them in the margin analysis. If there are no comparable sales to unaffiliated parties to use as an arm's-length benchmark or the sales in question are not deemed to be at arm's length, we generally will disregard the reported sales to affiliated parties for margin calculation purposes (see Final Results of Antidumping Duty Administrative review; Welded Carbon Steel Pipe and Tube Products from Turkey, 55 FR 42230 (October 18, 1990)). Finally, when the sales made through the affiliated party constitute all or a significant percentage of home market sales, the DOC calculates normal value based on the sales price by the affiliate to the first unaffiliated party (see Final Results of Antidumping Duty Administrative review: Roller Chain, Other Than Bicycle From Japan, 55 FR 42602, 42608 (October 22, 1990)).

NORMAL VALUE

As discussed in the "Comments" section for the preamble to the DOC's antidumping regulations, 62 FR27355 (May 19, 1997), the DOC is currently reviewing its 99.5 percent test, and evaluating other possible tests. Consult your program manager (PM) or supervisor to ensure there has not been a change in policy.

An example of a decision made regarding affiliated party transactions is illustrated in the extracts from the final determination indicated below:

In order to identify the manufacturer, producer or exporter of the merchandise, we require the recipients of our questionnaires to see that affiliated companies also report their sales. Here, Company A owns virtually 100% of Company B, which sells brass sheet and strip products in the home market. Despite our repeated requests, Company A refused to report Company B's home market sales, arguing that the regulations do not permit us to "collapse" the companies. While it is true that the regulations do not directly address this issue, the regulations are not intended to cover all factual situations that arise in antidumping cases. In our view, it is necessary for respondents to report sales by affiliated companies to ensure that our investigation or review covers the applicable U.S. and home market sales of the class or kind of merchandise. If respondents were not required to report these sales, they could manipulate their affiliates' selling prices or set up separate home market selling subsidiaries, so as to mask sales at less than fair value. We cannot ensure that we have adequately investigated applicable sales of the merchandise subject to investigation unless affiliated companies' sales are reported. We, therefore, view our reporting requirement as a reasonable exercise of our authority to administer the **antidumping laws** (see Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France, 52 FR 812 (January 9, 1987)).

For information on collapsing affiliated companies for purposes of reporting U.S. sales, see Chapter 7.

B. COP/CV and Affiliated Parties

When calculating cost of manufacture for CV or COP, it is common to find affiliated suppliers of goods and services used in making the subject merchandise or foreign like product. Pursuant to Section 773(f)(2) of the Act, we may scrutinize these affiliated transactions to determine if the price of the input is less than purchases from, or sales to, independent parties (i.e., whether they are at arm's-length). Pursuant to Section 773(f)(3) of the Act we may also investigate whether transactions involving affiliated suppliers of major inputs are made at prices above the COP of the input. In LNPP from Japan at 38163, the DOC stated that a decision on affiliation may be based on a close supplier relationship. Accountants from the Office of Accounting (OA) or financial analysts are usually involved in these types of analyses. See your supervisor or PM if you encounter these types of situations and there is no OA accountant working with you. See sections XIII and XIV of this chapter for more information on CV and COP affiliated party transactions.

C. Other Affiliated Transactions

Occasionally we find affiliated suppliers of services which are not considered under the COP/CV area. These situations most frequently involve freight companies, insurance companies, or commissionaires. We follow the same procedures we follow for COP/CV, i.e., we try to establish whether the prices paid for these services are arm's length (see LNPP from Japan at 38150 for a situation involving the rejection of an arm's-length claim for insurance premium prices from an affiliated insurance company, and LNPP from Japan at 38156 wherein the DOC rejected a claim that a U.S. commissionaire was affiliated with the producer. Also see section VIII of this chapter for more information on affiliated party commissions).

XVIII. TAXES

References:

- The Tariff Act of 1930, as amended (the Act)
  - Section 773(a)(6)(B)(iii) - deduction of taxes
- Department of Commerce (DOC) Regulations
  - None
- SAA
  - Section B.2.c.(2) - deductions for indirect taxes
- Antidumping Agreement
  - Article 2.4 - differences in taxes

Section 773 (a)(6) of the Act requires the deduction from NV of any taxes imposed directly upon the foreign like product or components thereof (sales in the exporting-country (EC) market) which have been rebated or which have not been collected on the subject merchandise (U.S. sales), but only to the extent that such taxes are added to or included in the price of the foreign like product. This change from previous legislation is intended to ensure dumping margins will be tax neutral.

The following sample calculation illustrates the adjustment required for indirect taxes for sales in the EC. When NV is based on third-country sales this adjustment is usually not necessary as the taxes usually only apply to sales in the EC.

NORMAL VALUE

EC Sales

Wt-aver EC price	DM 6.50
Less included consumption tax	DM 1.00
Wt-aver EC price, net of taxes	DM 5.50

U.S. Sales

There is no need for an adjustment as EC, internal consumption taxes have been rebated or not collected on U.S. sales.

The following case citation describes a situation involving EC market indirect taxes:

In Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Preliminary Results of Antidumping Administrative review; 61 FR 20225 (May 6, 1996), the DOC made no adjustment for VAT taxes as none were included in the EC market prices that were reported by the respondent. Note, however, that VAT taxes in Brazil are structured differently than those in other countries and examine recent notices and consult with your PM on how to adjust for them.

XIX. CURRENCY CONVERSIONS

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 773A - currency conversions
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.415 - currency conversions
- SAA
  - Section B.3.7 - currency conversions
- Article VI of the GATT 1994
  - Article 2.4.1 - currency conversions
- Office of Policy Bulletin
  - Policy Bulletin 96-1 - Import Administration exchange rate methodology

To determine if dumping margins exist, price comparisons must be done in the same currency. Accordingly, one of the final steps in calculating normal value (NV) is the conversion of the net price or constructed value (CV) from foreign currency into a U.S. dollar amount. This is necessary because the export price (EP) or constructed export price (CEP) is usually expressed in dollars.

A. General Rule

The 1994 amendments to the Tariff Act of 1930 provide explicit guidance regarding the exchange rate to be used when converting currencies in antidumping proceedings.

As stated in the DOC's Notice: Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996), the DOC intends to use an exchange rate model announced in Import Administration’s Policy Bulletin 96-1 for one year and then evaluate its performance based on public comment. Accordingly, after March 7, 1997, check with your supervisor or program manager on the status of the exchange rate model.

Based on the amended Section 773A of the Act, the DOC is required to ignore "fluctuations" in the exchange rate and to provide respondents in an investigation at least 60 days to adjust prices after a "sustained movement" in the exchange rate.

B. Summary of Model

The model determines the official rate for each day on the basis of a lagged rate. A list of official rates starting with January 1, 1992, for the 30 exchange rates collected by the New York Federal Reserve Bank is available on Internet (www.ita.doc.gov./import_admin/records) and through the Central Records Unit.

The model classifies each daily rate as "normal" or "fluctuating" based on a "benchmark" rate. The benchmark is a moving average of the actual daily exchange rates for the 40 reporting days immediately prior to the date of the actual daily exchange rate to be classified. Whenever the actual daily rate varies from the benchmark rate by more than two-and-a-quarter percent, the actual daily rate is classified as fluctuating. If the rate is within two-and-a-quarter percent, the actual daily rate is classified as normal. Actual daily rates classified as normal are the official exchange rate for that day. However, when an actual daily rate is classified as fluctuating, the benchmark rate is the official rate for that day (see Preliminary Results of Antidumping Duty Administrative review: Ferrosilicon from Brazil, 61 FR 20795 (May 8, 1996)).

Whenever the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks ("the recognition period"), the model classifies the exchange rate change as a sustained movement. During the eight-week recognition period, the model continues to classify each daily rate as normal or fluctuating and to substitute the benchmark rate for the actual daily rate when the daily rate is fluctuating.

When there has been a sustained movement increasing the value of a foreign currency in relation to the dollar, respondents under investigation, but not review, are given 60 calendar days to correct their prices. The 60-calendar-day grace period begins on the first day after the recognition period. During that period, the official rate in effect on the last day of the recognition period will be the official rate in the investigation. For reviews, the model continues to apply the eight-week average to determine whether daily rates are normal or fluctuating.

When a foreign currency has decreased in value in relation to the dollar, there is no adjustment required for a sustained movement, and the official rate generated by the model will normally apply to currencies depreciating against the dollar. However, in both investigations and reviews, whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, the lower actual daily rates will be employed from the time of the large decline (see Certain Pasta from Turkey at 30309 and 30325).

C. Decision Rules in Greater Detail

Below is a summary of the decision rules used in applying the model:

1. We will use the actual daily exchange rate unless the actual daily rate varies by more than two-and-a-quarter percent from the benchmark rate ("fluctuates"). The benchmark rate is defined as the moving average exchange rate of the 40 reported days immediately preceding the date of the exchange rate being tested and classified.

2. When the actual daily rate fluctuates from the benchmark rate, we will use the benchmark rate until the daily rate fluctuates by more than five percent in the same direction from the benchmark rate for a period of 40 days (approximately eight weeks). In other words, the weekly average of the actual daily rates will be compared to the average benchmark rate for the same week. If the actual exchange rate average exceeds the benchmark average by five percent or more for eight consecutive weeks, a sustained movement in the value of the currency is deemed to have occurred.

3. In investigations, if a sustained movement has occurred and the foreign currency has increased in value in relation to the U.S. dollar, we will continue to use the official rate from the last day of the recognition period for 60 days following the end of the recognition period. On the 61st day, we would return to comparing the actual daily rate to the benchmark rate.

   Whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, we will use actual daily rates from the start of the recognition period.

D. Other Discussion and Sample Calculations

See section XV of this chapter for a discussion of the effect of currency conversion in high-inflation-economy investigations or reviews.

Sample calculations throughout this chapter include illustrations of the mechanics of currency conversion.

XX. EXPORTATION FROM AN INTERMEDIATE COUNTRY

References:
- The Tariff Act of 1930, as amended (the Act)
  - Section 773(a)(3) - exportation from an intermediate country
- Department of Commerce (DOC) Regulations
  - None
- SAA
  - Section B.9 - intermediate country sales
- Antidumping Agreement
  - Article 2.5 - exportation from an intermediate country

When merchandise is shipped through an intermediate country, Section 773(a)(3) of the Act requires that normal value (NV) will be based on prices for the merchandise in the intermediate country. However, NV can be based on sales prices in the country of origin if any of the following conditions are met: 1) the producer knew at the time of the sale that the merchandise was destined for exportation; 2) the subject merchandise is merely transhipped through the intermediate country; 3) sales of the foreign like product in the intermediate country do not meet the market viability requirements of Section 773(1)(C) of the Act; or 4) the foreign like product is not produced in the intermediate country.

Consult your supervisor or program manager if your investigation or review involves merchandise shipped through an intermediate country.