CHAPTER 7

EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

LIST OF ACRONYMS & ABBREVIATIONS

CEP	CONSTRUCTED EXPORT PRICE
C&F	COST & FREIGHT
CFR	CODE OF FEDERAL REGULATIONS
CGP	COATED GROUNDWOOD PAPER
C.I.F.	COST, INSURANCE, AND FREIGHT
CPT	COLOR PICTURE TUBES
DOC	DEPARTMENT OF COMMERCE
EC	EXPORTING COUNTRY
EP	EXPORT PRICE
F.A.S.	FREE ALONG SIDE
F.O.B.	FREE ON BOARD
FR	FEDERAL REGISTER
FTZ	FOREIGN TRADE ZONE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
LNPP	LARGE NEWSPAPER PRINTING PRESSES
NME	NON-MARKET ECONOMY

LIST OF ACRONYMS & ABBREVIATIONS

NV	NORMAL VALUE
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
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

Chapter 7

EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

INTRODUCTION

The 1994 amendments to section 772 of the Act retain the distinction in the past law between "purchase price" (now called "export price" (EP)) and "exporter's sales price" (now called "**constructed export price**" (CEP)). Notwithstanding the change in terminology, no changes occurred in the circumstances under which EP and CEP are used. EP and CEP are the prices at which the merchandise under investigation or **administrative review** is sold, or agreed to be sold, for exportation to the United States or, in the United States, to the first unaffiliated purchaser after certain adjustments are made to "starting prices" as called for in sections 772(c) for EP and 772(c) and (d) for CEP. Starting prices are net of any price adjustment that is reasonably attributable to the **subject merchandise**. These price adjustments include such things as **discounts** and **rebates** that constitute part of the net price actually paid by a customer. As specified in the "Comments" section of the preamble to the DOC antidumping regulations, 62 FR 27344 (May 19, 1997), the use of net prices as the starting point for the computation of EP and CEP, "... is consistent with the view that discounts, rebates and similar price adjustments are not expenses, but instead form part of the price itself." 19 CFR 351.401 and 351.402 contain additional information on the adjustments to starting prices that are necessary to calculate EP and CEP.

In determining whether we must calculate EP or CEP, we consider when the sale is made and, if appropriate, the functions performed by **affiliated persons** in the United States, e.g., processing of sales documentation, repackaging, or value added to the imported merchandise. See section 771(33) of the Act for information on affiliated persons and section 772(e) for information on value added.

I. EXPORT PRICE

References:

The Tariff Act of 1930, as amended (the Act)
- Section 751(a) - export price (EP) in administrative reviews
- Section 771(33) - affiliated persons
- Section 772 - calculation of EP

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Department of Commerce (DOC) Regulations
19 CFR 351.107 - bonding and cash deposit rules for non-producers
19 CFR 351.401 - general information on EP
19 CFR 351.402 - calculation of EP
SAA
Section B.2.b - EP
Antidumping Agreement
Article 2.3 - sales after importation
Article 2.4 - rules for fair comparisons between EP and **normal value** (NV)

The DOC is required to calculate EP if the first sale to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for export to the United States is made by the producer or exporter in the **exporting country market** prior to the date of importation. The unaffiliated person can be a purchaser in the United States or an unaffiliated trading company located in the **home market** or in a third country. Normally, we consider a sale to a trading company to be a sale to the United States if the manufacturer or producer knows that the merchandise is destined for the United States at the time the sale is made (see Chapter 8, section XVII for more information on affiliated persons, and section III of this chapter for information on how to compute EP).

The following examples are representative of situations you may encounter in trying to determine if the sale to the United States requires us to calculate an EP or a CEP. If you are confronted with a fact pattern that differs from these, see section II of this chapter on constructed export price (CEP). If you do not find your situation covered there, consult with your supervisor or program manager (PM) immediately.

A. Unaffiliated Purchaser in the United States

Company A in the exporting country (EC) wants to sell color television sets to the United States. On January 15, 1996, the export sales office of company A in the EC contacts the purchasing department of an unaffiliated U.S. retailer and negotiates a sale of 3,000 20-inch color television sets for a total price of US $750,000 and a per-unit price of US $250.00. On February 15, 1996, the two parties agree to the price and quantity and all

other terms of the sale, such as payment terms, delivery date, etc. Company A agrees to deliver the merchandise to the retailer's U.S. warehouse on March 15, 1996.

Based on the facts outlined above, we would compute an EP for this sale because: (1 the sale takes place on February 15, 1996, prior to the date the television sets are actually imported into the United States and (2 the foreign producer sells the merchandise directly to an unaffiliated U.S. customer. The EP would be calculated using the $250.00 per-unit amount as the starting price (there are no discounts or rebates involved in the sale). The starting price would be adjusted per the requirements of section 772(c) of the Act (see Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy), 61 FR 30326 (June 14, 1996)).

B. Unaffiliated Trading Company in the EC or Third Country - Producer Knows the Destination of the Merchandise

The example in part A above is fairly straightforward. However, given the increasingly complex nature of international trade in the 1990s, we find more and more situations of foreign producers selling merchandise to the United States through trading companies. For example, Company A might find it more efficient to sell its merchandise through a trading company which would handle the necessary paperwork for arranging shipment of the merchandise to the United States, insuring the merchandise during land and ocean transit, preparing the documentation to ship the merchandise from the EC, preparing the necessary documents for U.S. Customs purposes, etc. The trading company could be located in Company A's country or in a third country. The following example illustrates this type of transaction:

Again, Company A wants to sell the same 3,000 20-inch color television sets to the United States. For purposes of efficiency, however, Company A sells the sets to unaffiliated Trading Company B in the EC for a total of US $690,000 or $230.00 per-unit less a $10.00 discount. When Company A sells the merchandise to trading Company B, it knows that Company B will, in turn, sell the merchandise to an unaffiliated customer in the United States. Because Company A knows that trading Company B will sell the television sets to the United States and because there is no indication of a sale from Company A directly to the unaffiliated U.S. customer, we would compute an EP for this

U.S. sale. The EP would be based on a starting price of $220.00 per unit (the gross price of $230.00 per-unit less the $10.00 discount) from Company A to Company B, the unaffiliated trading company in the EC. The starting price would be adjusted per the requirements of section 772(c) of the Act (see Preliminary Determination of Sales at Less Than Fair Value: Sodium Azide from Japan, 61 FR 42585, 42588 (August 16, 1996), and 19 CFR 351.107 for information on how to set the bonding (in an investigation) or cash deposit amount for imports from Trading Company B).

If an unaffiliated trading company is located in a third country and the fact pattern is the same, the results of the analysis would be the same, i.e., EP would be computed for the sale to the United States and the $230.00 unit price from Company A to the third-country Trading Company C, net of the $10.00 discount, would be the starting price for the EP calculation. Adjustments to the starting price would be made under section 772(c) of the Act.

C. Unaffiliated Trading Company in the EC or Third Country - Producer Does Not Know the Destination of the Merchandise

Refer to the example in section B above for the details on the prices involved in the transaction between Company A and Trading Company B. In this example, Company A does not know the ultimate destination of the television sets at the time of sale to Trading Company B. Company B sells the merchandise to an unaffiliated importer in the United States prior to importation for a per-unit price of $250.00 less a $5.00 rebate. Because the sale is made to an unaffiliated buyer prior to import, the DOC will calculate an EP. The starting price for EP is the $245.00 net-of-rebate price between Trading Company B and the unaffiliated U.S. buyer. The starting price is adjusted per the requirements of section 772(c) of the Act (see Final Results of Antidumping Duty Administrative Review: Titanium Sponge from Russia, 61 FR 30437 (July 29, 1996)).

If the same facts applied to a sale by Company A to an unaffiliated Trading Company C in a third country who then sold to an unaffiliated U.S. buyer, EP would be computed for the U.S. sale. As above, the starting price for the EP calculation would be $245.00 per unit. Adjustments would be made in accordance with section 772(c).

These types of transactions are very unusual. If you should encounter one, see your supervisor or PM immediately.

D. Special Circumstances Involving Unaffiliated Middleman Sales

Very infrequently, a manufacturer or producer may sell to an unaffiliated trading company in the EC or in a third country, and this company may resell the merchandise to the United States at prices which do not permit recovery of its acquisition and selling costs. At the time of the sale to the trading company, the producer has knowledge of U.S. destination. If this is the case and the DOC receives a documented allegation that the EC or third-country trading company is reselling to the United States at prices which do not permit the recovery of its acquisition and selling costs, we will initiate a middleman **dumping** investigation. If we investigate and find the allegation is true, we would calculate an EP. The starting price for the EP would be the price (net of discounts and rebates) charged by the EC or third-country trading company to the first unaffiliated purchaser in the United States. In essence, this situation ultimately ignores the U.S. market "knowledge of destination" factor of the manufacturer. This situation is also very unusual. Consult with your supervisor PM immediately if you receive inquiries about a middleman dumping allegation or if you feel middleman dumping may be involved (see Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Brazil, 51 FR 5572 (February 14, 1986)).

E. Affiliated Trading Company Sales

In situations where trading companies located in the EC or in third countries are affiliates of the producer, we use the prices from the affiliated trading companies to unaffiliated U.S. purchasers as the basis for calculating the price to the United States. If the sales occur prior to importation, EP is used for our comparisons. Starting prices would be determined and adjustments would be made to these starting prices in the same manner specified in the preceding examples (see Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China ("Bicycles from the PRC, 61 FR 19026 (April 30, 1996), and section 771(33) of the Act for information on affiliated persons).

F. Affiliated Sales Agent in the United States

When a producer sells to the United States through an affiliated firm in the United States, we must consider certain details of the sales activities of the affiliated company in determining whether EP or CEP should be used as the basis for our comparison. If all of the elements are met, we would calculate EP. The elements we consider in making this determination are as follows:

1. The sales transaction occurs prior to importation;

2. The merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the affiliated selling agent;

3. This is a customary commercial channel for sales of this merchandise between the parties involved; and

4. The affiliated agent located in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

Where all of the elements above are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the affiliated sales agent performs them and we calculate EP. Whether these functions are performed in the United States or abroad does not change the substance of the transaction or the functions themselves. The following example illustrates this type of transaction:

Company A in the EC wants to sell the same 3,000 20-inch color television sets to an unaffiliated U.S. retailer for $250.00 per unit. Because Company A has an affiliated selling agent in the United States, i.e., Company D, it notifies the unaffiliated retailer that it will ship the television sets directly to it and Company D will handle all the required documentation. Because the television sets are not entered into Company D's U.S. inventory and because Company D merely acts as a processor of sales documentation,

these sales would be considered EP transactions. The starting price for the calculation of EP is the $250.00 per unit price (no discounts or rebates are involved) paid by the unaffiliated U.S. retailer to Company A. Adjustments are made per section 772(c) of the Act to arrive at the EP (see Final Determination of Sales at Less than Fair Value: Coated Groundwood Paper from Finland ("CGP from Finland"), 56 FR 56370 (November 4, 1991)).

The DOC almost always finds that a sale made prior to importation through an affiliated U.S. company requires an EP calculation. In recent determinations, however, the DOC has increasingly scrutinized the fourth criterion dealing with the functions of these affiliated U.S. companies (see CGP from Finland; Final Determination of Sales at Less Than Fair Value; New Minivans from Japan, 57 FR 21937 (May 26, 1992), and Final Determinations of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof from Germany, 61 FR 38166 (July 23, 1996) and from Japan 61 FR 38139 (July 23, 1996)). The extent of the affiliated selling agent's normal functions, such as the administration of warranties, advertising, in-house technical assistance, and the supervision of further manufacturing, may indicate that the agent is more than the sales facilitator envisioned for EP sales (see section II of this chapter on CEP for more information on this type of transaction, and section 771(33) for more information on affiliated parties).

II. Constructed export price

References:

The Tariff Act of 1930, as amended (the Act)
- Section 751 (a) - constructed export price (CEP) in administrative reviews
- Section 771(33) - affiliated persons
- Section 772 - calculation of CEP

The Department of Commerce (DOC)Regulations
- 19 CFR 351.107 - bonding and cash deposit rules for non-producers
- 19 CFR 351.401 - general information on CEP
- 19 CFR 351.402 - calculation of CEP

SAA
- Section B.2.b - CEP

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Article VI of the GATT 1994
Article 2.4 - rules for fair comparisons between CEP and NV

In accordance with section 772 (b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted for U.S. Selling expenses and profit. As you can see, company affiliations play a major role in identifying CEP sales. Accordingly, familiarity with the provisions of section 771(33) of the Act dealing with affiliated persons is essential in order to identify CEP scenarios (see Chapter 8, section XVII, for more information on affiliated persons and section III of this chapter for information on how to compute CEP).

The following examples are representative of situations you may encounter in trying to determine if we are required to calculate CEP for U.S. sales. If you are confronted with a fact pattern that differs from these, see section I of this chapter on export price (EP). If you do not find your situation described there, consult with your supervisor or program manager.

A. The First Sale to an Unaffiliated Party Is Made after Importation

Company A in the exporting country (EC) supplies color television sets to its U.S. affiliate Company D, and the sets are placed in Company D's physical inventory. These sets are then sold out of Company D's inventory to an unaffiliated U.S. retailer for $260.00 per unit less a $15.00 discount. This constitutes a CEP sale. The starting price for the calculation of CEP is $245.00 (the gross price of $260.00 per unit less the $15.00 discount), the price charged by affiliated importer D to the unaffiliated U.S. retailer. Adjustments are made to the starting price pursuant to sections 772(c) and (d) to arrive at the CEP (see Pasta from Italy).

B. The First Sale to an Unaffiliated Party Is Made Prior to Importation

Affiliated U. S. importer D sells some automobiles from its inventory to unaffiliated retailers in the United States. However, on numerous occasions, importer D also advises affiliated EC Company A to ship large numbers of autos that are sold prior to importation directly to unaffiliated retailers. Importer D also performs many functions in the U.S. market in addition to processing the paperwork for sales for EC Company A. Among these functions are the following: 1) installing air conditioning units and stereos in many of the vehicles at the port of entry; 2) processing all warranty claims and supplying all replacement parts; 3) procuring and placing of all U.S. advertising; and 4) training all retail customers' mechanics. Even though the autos are sold prior to importation, CEPs are calculated for these sales because of the breadth of the functions performed by the affiliated importer (see Minivans from Japan at 21937 and LNPP from Japan 61 FR at 38141. Also see Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, 62 FR 24400 (May 5, 1997)). Starting prices would be determined and adjustments would be made to starting prices for these types of transactions as specified above in section II, part A.

C. Consignment Sales

Company A in the EC negotiates an agreement with an unaffiliated flower consignment agent in the United States. A consignment price of $1.00 per stem is placed on each flower for import purposes. The flowers are shipped from the EC to the consignment agent in the United States for sale to U.S. retailers. An unaffiliated U.S. retailer buys 1,000 stems from the agent, and pays the $2.00 per-stem price set by the consignment agent. CEP is used for the dumping comparison for these sales by the unaffiliated consignment agent as the first sale of the merchandise to an unaffiliated purchaser (the U.S. retailer) occurred after importation. The consignment transaction with the unaffiliated agent is not considered a sale. The starting price for CEP is the $2.00 per-stem price (no discounts or rebates are involved) from the consignment agent to the U.S. retailer. Adjustments to the starting price are made pursuant to sections 772(c) and (d) of the Act (see Final Determination of Sales at Less Than Fair Value: Roses from Colombia, 60 FR 6980 (February 6, 1995)).

III. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE CALCULATION METHODOLOGY

References:

The Tariff Act of 1930, as amended (the Act)
Section 772 - EP and CEP
Department of Commerce (DOC) Regulations
19 CFR 351.102(b) - definitions
19 CFR 351.401(b),(c),(d),(e) and (g) - general rules
19 CFR 351.402(a),(b),(c) and (d) - calculation of EP and CEP
19 CFR 351.413 - disregarding insignificant adjustments
SAA
Section B.2.b.(2) - adjustments to EP and CEP
Section B.2.b.(3) - value added after importation

Article VI of the GATT 1994
Article 2.3 - sales after importation (CEP)
Article 2.4 - rules for fair comparisons between EP or CEP and NV

A. General Principal on Adjustments

The party in possession of the relevant information bears the burden of demonstrating the nature and amount of an adjustment (19CFR 351 401(b)).

B. Price Adjustments to Arrive at the Starting Price

Price adjustments are taken into account in order to arrive at the starting price for the calculation of EP and CEP. These price adjustments constitute part of the net price actually paid by the buyer. "Price adjustment" is a term of art defined at 19 CFR 351.102(b) which refers to adjustments made to a nominal price (such as a price in a catalog or price list). Discounts and rebates are examples of price adjustments. However, price adjustments may be made either upwards or downwards.

C. Adjustments to the Starting Price

The Act requires the DOC to make a number of adjustments to the starting price before it can be compared to normal value (NV). In accordance with 19 CFR 351.401(b), the interested party that possesses relevant information about an adjustment has the burden of establishing the amount and nature of the adjustment. We prefer that respondents report actual costs and not allocated costs when reporting these adjustments. In order to allocate expenses, a respondent must establish that it is not feasible to report on a more specific basis. The respondent must also explain why its methodology does not cause distortions (see the preamble to 19 CFR 351.401(g) and the related discussion in the preamble to this regulation for discussion of allocation methodology and allocations that usually are not considered distortive). This section also addresses the problem of dealing with allocations that involve out-of-scope merchandise. The DOC will not disallow allocations based solely on the fact that out-of-scope merchandise is included in the allocation. The following are the price adjustments required by the Act or the regulations:

1. Additions

   a. Packing

      If the cost of packing is not included in the price to the first unaffiliated customer in the United States, section 772(c)(1)(A) of the Act states that the starting price for EP and CEP shall be increased by "the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States."

      Non-Market Economies: When packing costs are incurred in a NME country, we use costs in a **surrogate country** to value these costs. For example, to calculate the appropriate packing cost to add to the starting price for EP or CEP for a good produced in the PRC, we would determine the type and amount of packing materials used to pack the good for export to the United States and apply an average cost for those items from a surrogate country, e.g., India (see Bicycles from the PRC.

b. Import Duties (Duty Drawback)

Section 772(c)(1)(B) of the Act requires that the starting price for EP or CEP shall be increased by the amount of any import duties "...imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." This adjustment is necessary to offset the amount of exporting country (EC) import duties associated with materials used in the production of the foreign like product that is sold in the EC that are also used in the production of the subject merchandise sold to the United States.

In determining whether or not duty drawback should be added to the starting price, we look for a reasonable link between the duties imposed and those rebated. We do not require that the imported input, e.g., steel used in the manufacture of steel wire nails, be traced directly from importation through exportation. We do require, however, that the company meet the following elements in order for this addition to be made to EP or CEP. The first element is that the import duty and rebate be directly linked to, and dependent on, one another. The second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product. For example, the imported steel must be in quantities that are able to be tied to the production and exportation of the wire nails, thus showing a direct link between the amount of the import duty paid and the amount rebated (see, e.g. Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Japan, 53 FR 23298 (June 21, 1988)) and Final Results of Antidumping Duty Administrative Review: Steel Wire Rope from Korea, 61 FR 55965.

c. Countervailing Duties for Export Subsidies

Section 772(c)(1)(C) of the Act requires an addition to the starting price for EP or CEP for any countervailing duties imposed on the merchandise to offset an export subsidy. Where there is an ongoing countervailing duty investigation but no outstanding countervailing duty order, instead of adding

the countervailing duty amount for export subsidies to the EP or CEP, we adjust the estimated weighted-average dumping margin calculated for Customs bonding (for investigations only) or cash deposit purposes to reflect the impact of these duties on the dumping margin calculation. Where actual assessment of countervailing duties are being made under an outstanding order, the actual amount of duties would be added directly to the EP or CEP in performing the margin calculation.

If you are conducting an administrative review of an antidumping duty order for a product which is also subject to a countervailing duty order, you should contact the countervailing duty analyst to determine what, if any, export subsidies are involved and then discuss with your supervisor or PM how to make the appropriate adjustment given your factual situation.

2. Deductions

a. Movement Charges

Section 772(c)(2)(A) of the Act states that the starting prices for EP and CEP sales shall be reduced by the amount included in the price of any additional costs, charges, and expenses and normal U.S. import duties incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States. These expenses are referred to as movement charges.

In other words, in order to arrive at the EP or CEP used in our dumping margin calculations, we must deduct those movement charges included in the price paid by the customer. We normally consider the place of shipment to be the factory at which the merchandise was produced. Costs incurred in moving merchandise from the production line to a warehouse or loading area that is a part of the production facility are not considered movement charges; however, any off-site movement expenses are considered movement charges. See 351.401(e)(1) 19CFR

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When the subject merchandise is sold by an unaffiliated reseller (i.e., a person who purchased rather than produced the subject merchandise), the adjustment may encompass movement and related expenses incurred after the goods leave the place of shipment of the reseller but not movement and related expenses from the producer to the unaffiliated reseller's premises. The purpose of this approach is to avoid deduction of expenses which are really part of the cost of acquisition of the reseller. See 19CFR 351.401(e)(1)

The following are examples of the costs, charges, expenses, or duties that are typically deducted from both EP and CEP:

- U. S. inland freight and insurance (port to customer)
- U.S. brokerage, handling, and port charges
- U.S. customs duties
- International freight (ocean, air, or land) and insurance
- Foreign inland freight and insurance (production facility or a reseller's warehouse to port)
- Foreign brokerage, handling, and port charges.

In addition, under 19 CFR 351.401(e)(2), we will now adjust for warehousing expenses that occur after shipment under the movement charge provision.

As mentioned above, whenever possible, we calculate these charges on the basis of the actual costs incurred for each sale. However, we may use allocated movement charges when the transaction-specific cost information is not available. When actual movement charges are not

available on a shipment-by-shipment basis, we allocate the charges on the basis on which they are incurred.

For example, freight charges would normally be incurred and, therefore, allocated on the basis of weight or volume, while insurance would usually be incurred and allocated on the basis of value.

Terms of Sale: The reported movement charges should also reflect each shipment's terms of sale. In other words, where the terms of sale require the customer to procure some or all of its own transportation, that portion of the movement expense will not be included in the price of the merchandise and there is no need for the DOC to deduct it from the starting price. The common terms of sale, along with the associated charges, are indicated below:

- Ex-factory: no charges are included since this represents the price at the door.

- F.O.B. (free on board): includes inland freight to the port of exportation, inland insurance, handling, and loading charges.

- F.A.S. (free along side): includes inland freight and insurance to the port of exportation.
- C.& F. (cost & freight): includes inland freight and insurance to the port of exportation, handling, loading charges, foreign brokerage, and international freight

- C.I.F. (Cost, insurance, and freight): includes the charges in a C&F term, plus insurance on the international movement.

- C.I.F., duty paid: includes all of the charges in C.I.F. plus U.S. duty and, in some cases, brokerage.

- Delivered: includes all of the charges in C.I.F., duty paid plus U.S. inland freight and insurance.

  Non-Market Economies: When movement charges are incurred in a non-market economy (NME) country, we use costs in a surrogate country to value the movement charges. For example, to calculate the appropriate foreign inland freight deduction for a good produced in the People's Republic of China, we would determine the distance from the factory to the port of exportation and then apply the average freight rate charged in a surrogate country, e.g., India (see Bicycles from the PRC,). In addition, where ocean freight and insurance are supplied by state- controlled companies, these elements would also have to be valued based on data from a market-economy surrogate source.

  However, if movement charges are source from a market-economy supplier and paid for in a market-economy currency, we use the actual cost incurred rather than the surrogate value (see Bicycles from the PRC). For example, if the NME producer used a U.S. ocean freight company to ship its goods to the United States and paid for the freight in U.S. dollars, then we would use the actual expense incurred rather than a surrogate value for ocean freight.

b. Export Taxes

Export taxes included in the EP or CEP are also deducted in accordance with section 772(c)(2)(B) of the Act, except those specifically imposed to offset a countervailable subsidy received.

c. Reimbursed Antidumping Duties

When calculating EP or CEP for duty assessment purposes in an administrative review for an antidumping duty order, if the exporter or producer reimburses the importer for antidumping duties or pays these duties directly on behalf of the importer, a deduction for the total amount of

the reimbursement must be made from the EP or the CEP. If we find evidence that the producer or exporter is paying directly or reimbursing the importer for antidumping or countervailing duties we will make the deduction from EP or CEP in our margin calculation. Additionally the importer must file a certificate with the District Director of Customs prior to liquidation of an entry that states that it has not been reimbursed. If the certificate is not filed, then reimbursement is presumed and Customs doubles the amount of duties due. Only one deduction is made for reimbursed duties. See 19 CFR 351.402(f) for detailed information on reimbursements (see, Preliminary Results of Antidumping Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 61 FR 51891 (October 4, 1996)), and Preliminary Results of Administrative Review: Furfuryl Alcohol from the Republic of South Africa 62 FR 36488 (July 8, 1997).

3. Additional Deductions Made to CEP

Pursuant to section 772(d) of the Act, we also reduce the starting price for CEP by the amount, if any, of certain expenses. The purpose of making these additional adjustments is to "construct" a price which is equivalent to an export price from the foreign country. While we prefer the reporting of actual amounts for these expenses, allocations will be permitted, if appropriate (see the introduction to Section C for more information on the reporting of allocated expenses). These additional adjustments are as follows:

a. Expenses generally incurred by or for the account of the producer or exporter in the United States in selling the merchandise under investigation or review are deducted from the starting price. These expenses are referred to as "CEP deductions." They include:

   o Commissions paid to unaffiliated agents for selling the merchandise under investigation or review in the United States. Where affiliated party commissions are involved, check with your supervisor or PM (see Section(d)(1)(A) of the Act.; LMI - LaMetalli Industriale, S.p.A. v.

United States, 912 F.2d 455 (Fed. Cir.) 1990, and Chapter 8, section VIII, for an explanation of normal value (NV) commission offsets).

- Expenses that result from, and bear a direct relationship to, the sale, such as **credit expense**s, guarantees and warranties (see Section 772(d)(1)(B) of the Act; Torrington Co. v. United States, F.3d (Fed. Cir. 1996), and Koyo Seiko Co., Ltd. v. United States, F.3d (Fed. Cir. 1996)). See Chapter 8, section VI (US re packing charges) and section VIII (**circumstances of sale**), for a complete description of these and other direct expenses. The Chapter 8 NV principles for direct expenses apply with equal force to CEP deductions.

- Any selling expenses that the seller pays on behalf of the purchaser (see Chapter 8, section VIII, C for information on "assumed" expenses. The Chapter 8 NV principles apply with equal force to CEP deductions).

- Any other selling expenses not identified above. (see Chapter 8, section IX for an explanation of "indirect" selling expenses. The Chapter 8, NV principles apply with equal force to CEP deductions).

The CEP deduction is limited to the expense of economic activity occurring in the United States. The SAA also specifies that direct selling expenses may only be deducted to the extent they are incurred after importation. (See SAA at 153/823) Accordingly, all U. S. direct expenses incurred in the United States associated with the sale to the first unaffiliated U.S. customer would be included in this deduction, as would all **indirect expenses** incurred in the United States by a U.S. affiliate of the foreign exporter. Direct and indirect expenses incurred in the foreign market on behalf of U.S. sales (e.g., lodging expenses paid for by the respondent for U. S. customer's technicians taking training in the respondent's country (direct) and salaries of salesmen in the respondent's country who take orders from the U.S. affiliate, and foreign **inventory carrying costs** (indirect)) do not form part of the deduction (see Pasta from Italy, "Delverde" Comment 2. See also Final

Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, 62 FR 24396 and 24406 (May 5, 1997)). However, if such foreign expenses are direct in nature they may be treated as a circumstance of sale adjustment to NV. Always consult with your supervisor or PM before making a decision on where economic activities occur.

As a rule of thumb, if the expense is incurred in the United States by the affiliated importer or the exporter, it should be deducted. However, if the expense is for a foreign activity, it should not be deducted. Thus, for example, liability insurance purchased in the foreign country is only associated with economic activities in the United States, and should only be deducted to the extent it covers the subject merchandise while it is in the United States (see Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Wire Rods from France, 61 FR 47874, 47881 (September 11, 1996)).

As noted in 19 CFR 351.402(b), the relevant factor in determining whether an expense should be treated as part of the CEP deduction is where the economic activity associated with the expense occurs, not who pays for the expense. For example, if the home market company arranges for billboards with product-specific ads to be displayed across the United States, this would be an expense associated with economic activity (the billboards) occurring in the United States.

CEP deductions must be made in both market and non-market-economy cases, as required by the Act (see Bicycles from the PRC).

b. Any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after importation and before its sale to the first unaffiliated customer. This adjustment is sometimes referred to as "further manufacturing." Under the old law this deduction included an allocated amount of profit. However, under the 1994 amendments to the Act, the

"further manufacturing profit" is subsumed in the general profit deduction discussed below.

Section 772(e) of the Act sets forth the special rule for analysis of imports which have substantial value added to them after importation. Specifically, this provision states that the DOC will use an alternative method for determining the amount of dumping in situations where the subject merchandise is imported by an affiliated party and the value added in the United States is likely to substantially exceed the value of the subject merchandise. According to 19 CFR 351.402(c)(2), in order for the special rule to apply, the value added must be at least 65 percent of the price charged to the first unaffiliated purchaser. The 65-percent value added test is applied collectively to all of the subject merchandise that undergoes a further manufacturing process. The test is not applied to individual subject merchandise products within the value added pool. In order to use an alternative method, DOC also must determine that there is a sufficient quantity at sales to provide a basis for comparison and that the use of such sales is appropriate. If you come across a situation involving the special rule for value added, you should consult your supervisor immediately (see Preliminary Results of Administrative Review of Antidumping Duty Order: Gray Portland Cement and Clinker from Mexico 61 FR 51676 (October 3, 1996)). In this review, a 60-percent value added test was applied based on the DOC's February 1996 proposed antidumping regulations. Because the U.S. value added exceeded the 60-percent guideline used in the proposed regulations (note that the May 1997 final antidumping regulations increase the guideline to 65 percent), the DOC substituted other CEP sales made by the producer that required no value added process as an alternative approach for calculating the CEP for these value added transactions.

c. The profit allocated to the expenses described above (i.e., CEP deductions and further manufacturing costs) also is deducted from the starting price). Section 773(f) of the Act and section 351.402(d) of the

regulations provide the special rule for determining the amount of CEP profit to be deducted under section 773(d)(3).

In a market-economy case, CEP profit is calculated by first deriving the ratio of per-unit U.S. expenses to the respondent's total expenses and then multiplying this ratio by the total actual profit earned by the respondent.

For example, assume the following:

Total U.S. expenses (per unit) =$0.45
Total expenses = $8,200,000
Total profit = $800,000

In this case, CEP profit would equal $0.0439 per unit, calculated using the following formula:

CEP profit = (.45/8,200,000)x 800,000 = $.0439

In order to derive the expenses and profit used in the above scenario, you must know the total revenues, costs, selling expenses and packing expenses for both the exporting and U.S. markets.

For example:

U.S. market sales revenue:	$6,250,000
Exporting market sales revenue	2,750,000
Total revenue	$9,000,000
Cost of U.S. merchandise	$4,750,000
Cost of exporting market merchandise	1,900,000
U.S. selling expenses	1,000,000
Exporting market selling expenses	250,000

U.S. movement/packing costs	50,000
Exporting market movement/packing costs	250,000
Total expenses for CEP	$8,200,000
Total profit for CEP	$800,000

For an actual example of a profit calculation involving CEP, see Pasta from Italy.

In a NME case, the calculation is much simpler. CEP profit is calculated by multiplying the per-unit CEP deductions by the surrogate profit rate used in the normal value calculations. For example, if total CEP deductions were 0.45 and the surrogate profit percentage were 10 percent, then the deduction for CEP profit would be $0.045 (or $0.45 x .10) (see Bicycles from the PRC).

D. Sample Calculations for EP and CEP

1. EP

Company A in the exporting country sells color television sets to an unaffiliated U.S. retailer on a delivered basis. The currency exchange rate is ¥150 to US$1 or ¥1 = $0.0067.

gross selling price (per set)		$250.00
- HM inland freight (¥50 x 0.0067)	.34	
- HM inland insurance (¥10 x 0.0067)	.07	
- HM brokerage & handling (¥75 x 0.0067)	.50	
- ocean freight	1.00	
- marine insurance	.75	
- U.S. duty	12.50	
- U.S. brokerage and handling	.75	
- U.S. inland freight	1.50	

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EP = $232.59

2. CEP

Company A ships televisions to its U.S. affiliate, Company C, which places them in its inventory for future sale. Company C then sells the sets to an unaffiliated retailer from its inventory at a later date.

gross selling price (per set)		$250.00
- movement expenses (see EP example)	17.41	
- credit expense[1]	2.80	
- warranty expense	4.00	
- assumed advertising expense	3.50	
- indirect selling expense incurred in the U.S.[2]	31.25	
- inventory carrying expense incurred in the U.S.	3.00	
- CEP Profit	5.00	

[1]In cases where some of the sales reported to the United States have not yet been shipped or paid, we have calculated an average number of days for credit based on the reported data for sales that have been shipped and paid, and we have applied the calculated average to these sales. Note that in cases where the customer paid for the sales prior to shipment, we have used the same formula and added the amount for credit income to the price. We have also used supplemental response and **verification** dates to make this computation. Consult with your supervisor or PM for the appropriate methodology for the circumstances of your case.

[2]Includes all selling and general and administrative expenses for Company C, the affiliated importer (i.e., those expenses not directly related to a particular sale) incurred in the United States as well as indirect expenses of affiliated Company A in the EC that are associated with economic activity occurring in the United States.

CEP = $183.04

IV. Date of sale

Establishing the proper **date of sale**, among other things, allows you to determine which sales will be included in the POI or POR and is, therefore, of critical importance in our analysis (see Chapter 8, section III for references and a complete discussion of date of sale).

V. COLLAPSING AFFILIATED PARTIES

References:
The Tariff Act of 1930, as amended (the Act)
Section 771(53) - definition of related persons
Department of Commerce (DOC) Regulations
19 CFR 351.401(f) - treatment of affiliated producers
SAA
The Antidumping Agreement
None

Although not expressly required by the Act, the DOC has a longstanding practice of calculating separate rates for each manufacturer or producer examined. Collapsing companies and calculating a single margin requires more than simple affiliation. When the DOC determines that two companies are sufficiently affiliated for purposes of an analysis for an investigation or review, it may calculate a single weighted-average margin for those companies. Under 19 CFR 351.401(f), the DOC treats affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and where there is a significant potential for the manipulation of price or production, as evidenced by common ownership, interlocking boards of directors or shared management, or intertwined operations.

- In Pasta from Italy 61FR 30326 (June 14, 1996), the administrative record established a close, intertwined relationship between two companies. Verification

of both companies confirmed the reported information concerning ownership, boards of directors, transactions, and production processes. Such information demonstrated that these affiliated producers had similar production processes and exhibited a significant potential for price manipulation as evidenced by interlocking boards of directors and shared transactions.

- In Final Results of Administrative Review: Gray Portland Cement and Clinker from Mexico, 62 FR 17154 (April 9, 1997), two manufacturing companies were collapsed based on percentage of ownership, control by common members on boards of directors, and close intertwined business relationships.

Consult with your supervisor or PM for cases involving the possible collapsing of two or more companies or if you are unsure whether an importer and exporter are affiliated.

VI. SUBSTANTIAL TRANSFORMATION OF A PRODUCT IN A THIRD COUNTRY

References:

Tariff Act of 1930, as amended
None
Department of Commerce Regulations
None
SAA
Section B.9 - intermediate country sales
The antidumping agreement
None

Given the nature of international trade, it is not uncommon for merchandise to originate in one country and pass through one or more additional countries before being imported into the United States. Our investigations and reviews concern the imports of specific products from specific countries. Consequently, the question may arise whether a product exported from a third country to the United States is covered in your case.

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In determining the answer to the question of product coverage, we must consider whether or not the product is substantially transformed in the third country by a further manufacturing process. Outside of a case where **circumvention** of an antidumping duty order is involved, the product would not be subject to the investigation or review if it is substantially transformed in the third country because it would then be subsumed as a product of that country. Our determination of "substantial transformation" does not necessarily parallel the Customs Service definition.

Two key tests are used in determining the appropriate country of origin for the purposes of antidumping proceedings. These tests are: 1) does the product enter the commerce of the third country; and 2) is the product substantially transformed in the third country? A "no" to both of these questions indicates the product merely passes through the third country and enters the U.S. unchanged from its export condition from the originating country. Under these circumstances, the product is considered a product of the originating country, and its sale would be included in an investigation or review involving that country.

The following cases illustrate substantial transformation analysis:

- In Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from Japan, 53 FR 44171 (November 18, 1987), color picture tubes (CPT) contained in kits were shipped from Japan to the United States through Mexico. These CPTs did not enter the commerce of Mexico, were not removed from the original container until their arrival in the United States, and did not undergo further manufacture or assembly in Mexico. Furthermore, it was clear that the Japanese manufacturer knew at the time of exportation that the CPTs would ultimately be exported to the United States. Therefore, we determined that these CPTs were covered in the investigation.

- In Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof from Japan, 54 FR 6433 (February 10, 1989), we found that microdisks were shipped from Japan to Canada prior to importation into the United States. While in Canada, we found that finishing processes were conducted on the microdisks. Based on the facts on the record, we found that the

finishing process was so significant and sophisticated that it resulted in a substantial transformation of the product. As such, we considered these finished micro disks to be products of Canada and, thus, not covered in our investigation of micro disks from Japan.

EP or CEP for merchandise that is not substantially transformed in a third country is computed pursuant to sections I, II, and III of this chapter. For information on how to compute the NV for this merchandise, see Chapter 8. Always consult with your supervisor or PM if your investigation or review involves claims for substantially transformed merchandise.

VII. THE USE OF WEIGHTED-AVERAGE PRICE AND INDIVIDUAL SALE PRICE COMPARISONS TO DETERMINE DUMPING MARGINS

References:

- The Tariff Act of 1930, as amended (the Act)
  - Section 777A(d)(1)(A)(i) - comparison of weighted-average sales prices for investigations
  - Section 777A(d)(1)(A)(ii) - use of individual sale prices for comparisons for investigations
  - Section 777A(d)(1)(B) - differing export price patterns
  - Section 777A(d)(2) - less than fair value sales in reviews
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.414 - comparison of normal value (NV) with export price (EP) and constructed export price (CEP); "targeted" dumping
- SAA
  - Section B.8 p. 172/842- price averaging; "targeted" dumping
- The Antidumping Agreement
  - Article 2.4.2 - comparisons of weighted-average prices and the use of individual export transactions

Under section 777A(d)(1)(A)(i) of the Act, the DOC measures dumping margins in investigations, in most instances, on the basis of a comparison of a weighted-average of NVs for an identical or most similar like product with a weighted-average of EPs or CEPs

for each different type of the subject merchandise. These weighted-average prices are usually calculated for the entire **period of investigation** (POI).

Because the normal method of comparison in an investigation is weighted-average EP or CEP to weighted-average NV, the boundaries of the averaging groups are extremely important. We do not simply calculate one weighted-average price for all products within the scope of the investigation to determine EP, CEP, or NV. While easy to do a comparison of such averages, it would be meaningless. The items within the averaging groups should share as many common characteristics as feasible. For example, we nearly always calculate model-specific weighted-average prices. We also compute different averages for the same product if different levels of trade are involved. Furthermore, although the normal period for averaging is the entire POI in an investigation, we do construct averages over a shorter time span if the prices appear to vary by time. Calculation of these "narrower" weighted-average prices yields more accurate results than broad averages which mix sales with different characteristics which affect prices (see Pasta from Italy for an example of model-specific and level of trade weighted averaging and Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14068 (March 29, 1996) for an example of using periods that are shorter than the total POI for computing weighted-average prices in an investigation).
Under section 777A(d)(2) of the Act, the method for calculating dumping margins for most administrative reviews are individual U.S. sale prices are compared to weighted-average monthly prices that are limited to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale (see Chapter 6, section IV for an explanation of the 90/60-day guideline for the calculation of NVs based on weighted-average monthly prices for administrative reviews).

Under certain circumstances, section 777A(d)(1)(A)(ii) permits the calculation of dumping margins by comparing the NV of individual transactions to the EP or CEP of individual transactions for comparable merchandise. As explained in section B.8 of the SAA, p. 172/842 this type of transaction-by-transaction comparison is appropriate in those situations where there are very few sales and the merchandise sold in each market is either identical or very similar, or is made-to-order. The SAA states that this methodology will be used sparingly. In LNPP from Japan, the DOC used EPs and CEPs based on individual transaction prices because there were very few sales and because of

the unique nature of each printing press. An individual NV (based on CV) was also calculated for each press.

Section 777A(d)(1)(B) addresses an exception to the use of weighted-average EPs or CEPs for dumping comparisons in investigations. This exception involves "targeted dumping." The SAA, in section B.8, p. 173/843 explains that weighted-averages could conceal an exporter's practice of selling at especially low dumped prices to particular customers or regions "... while selling at higher prices to other customers or regions."

Section 777A(d)(1)(B) addresses targeted dumping as follows:

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted-average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if --

(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

The SAA, the statute, and the legislative history of the provision do not prescribe any method for analyzing databases to determine whether targeted dumping is evident. Rather, it has been left to the DOC to determine the appropriate method of analysis. 19 CFR 351.414 specifies that the DOC will not normally consider targeted dumping unless it receives a sufficient allegation that such targeting is taking place and that the average-to-average or, when appropriate, transaction-to-transaction methods cannot adequately deal with the targeted dumping. The language of the regulation is intended to give the DOC flexibility to self-initiate a targeted dumping analysis; however, these types of analyses will normally flow from allegations filed by petitioners. In accordance with 19 CFR 351.414(f)(2), the DOC will normally limit the application of the average-to-transaction method in investigations to those sales that constitute targeted dumping.

- In Pasta from Italy, the DOC rejected the petitioners' allegation of targeted dumping on the following grounds:

  The petitioners' allegation was the result of their having selected groups of customers on the basis of relatively higher and lower prices. After the groups had been selected, petitioners ran statistical procedures to establish that the prices of certain groups were lower than those of other groups. These results, however, were predetermined by the initial composition of the different groups. Moreover, by not supplying any relevant source of comparison benchmark prices, petitioners failed to demonstrate that the price differences were "significant," as required by section 777A(d)(1)(B)(i) of the Act.

  Even if the petitioners had shown targeting, in order for the targeted dumping provision to be applied, section 777A(d)(1)(B)(ii) requires that it be explained why the price differences cannot be taken into account by comparing the weighted-average normal values to the weighted-average U.S. prices. The petitioners' allegation failed to make this demonstration.

  The DOC position in this final determination indicated that we will not find a sufficient basis for invoking the targeted dumping provision upon a mere showing that groups of higher and lower prices are present in the reported U.S. sales.

  See your supervisor or PM if your investigation or review involves an allegation of targeted dumping.

VIII. SAMPLING TECHNIQUES AND SIMPLIFICATION OF SALES REPORTING

References:

The Tariff Act of 1930, as amended (the Act)
  Section 777A(a-c) - determination of dumping margin
Department of Commerce (DOC) Regulations
  19 CFR 351.204(c) - exporters and producers examined
SAA Section C.4.d p. 872 - sampling, all other rates and voluntary respondents

EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

The Antidumping Agreement

Article 6.10 - individual margins for exporters and producers

A. Sampling Techniques for Producers/Exporters

Section 777A (c)(1) of the Act sets forth the general rule that the DOC will determine the individual weighted-average dumping margin for each known exporter and producer of the subject merchandise under investigation. (In a review, we receive exporter specific requests for review.). Section 777A(c)(2) establishes exceptions from this requirement by specifying that where a large number of exporters or producers are involved in an investigation or review, the DOC may limit its examination to either --

(A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or

(B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that reasonably can be examined.

The DOC has conducted investigations and reviews under this section of the Act when they were so large that administrative resource constraints limited the number of exporters that could be investigated or reviewed. The number of companies selected has been based on the number that the DOC could reasonably examine given the administrative resources available to it at the time the respondents needed to be selected.

In such investigations and reviews, the DOC typically has relied upon the exception in subsection (B). For example, in the investigations involving pasta from Italy and Turkey (1995), the petitions listed 73 Italian and 15 Turkish companies as possible producers or exporters of pasta to the United States. The DOC determined that the largest number of companies from both countries that could be handled by the staff available was ten (see Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 1344-1346 (January 19, 1996)). 1996 investigations of bicycles from the PRC and of tomatoes from Mexico also presented situations that required limiting our examination to

less than 100 percent of all exporters and producers. We relied upon subsection (B) in these cases as well.

In situations where the DOC has sufficiently detailed information about the universe of foreign producers and exporters to select "representative samples," the DOC may choose to rely upon subsection (A). For example, during the second administrative review of certain fresh-cut flowers from Colombia, the DOC employed a sampling technique for dealing with the hundreds of Colombian flower growers. In that review, the DOC selected samples from "large/medium" and "small" firms, based on their volume of exports. Also, in the 1990 investigation of fresh and chilled salmon from Norway, the DOC considered, among other things, the geographical location of the fish farms in identifying an appropriate sample of respondents.

In practice, the two methods of selecting respondents--selecting the largest exporters and selecting a representative sample--generally differ in how we select the respondents but not in the number of respondents selected. Using either method, administrative resource constraints dictate the maximum number of exporters the DOC can investigate or review.

If your investigation or review involves a situation that requires sampling techniques, you should always consult with your supervisor or PM. In most instances, comments are requested from the parties on the appropriate methodology to be employed in the respondent selection process. Personnel from the Office of Policy always assist in determining the final methodology for selecting a sample of exporters or producers (see Chapter 4, section II, for more information on the selection of exporters or producers).

B. Simplification of Sales Reporting

Large cases often involve enormous quantities of transactions. In the 1988 investigations of antifriction bearings (other than tapered roller bearings), one respondent reported that it produced over 30,000 different regular products and thousands more custom-made products. Other respondents reported that they would each have to report over 500,000 transactions. To simplify the investigations, the DOC told respondents that if at least 33 percent by volume of their U.S. sales could be compared to home market sales of identical products, then the fair value comparisons would be limited to identical

comparisons. If a respondent company failed to reach the 33-percent requirement with identical matches, we would compare the largest volume products sold in the United States to similar products sold in the home market until the 33-percent threshold was met (see Appendix B, Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19027 (May 3, 1989)).

In the 1992 investigation of carbon steel flat products from France, the respondent requested that it be permitted to limit its reporting of sales to related U.S. steel service centers to the one U.S. plant with a computer system in place capable of tracing sales back to the imported steel. Instead, the DOC permitted the respondent to report only one out of every twenty invoices for the U.S. plants without the computer facilities.

In the administrative reviews of antifriction bearings from France, et. al., which have been conducted since 1990, the DOC allowed respondents with over 2,000 U.S. sales transactions for the period of review (POR) to report one week's sales for each two-month period of the POR. The DOC selected the weeks (see Preliminary Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof from France, et. al., 61 FR 35716 (July 8, 1996)).

During the investigation phase of an antidumping duty proceeding, the DOC, upon receipt of acceptable written justification, will sometimes disregard U.S. sales of products if the volumes of those sales are insignificant. These situations usually involve the following: 1) CEP or U.S. value added transactions which require the collection of substantial amounts of information and the addition of a U.S. verification site to the investigation; 2) U.S. transactions where there are no like products sold in the home market which would necessitate the collection of detailed **constructed value** information to calculate NV; or 3) sales involving small quantities (see Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland, 56 FR 56363 (November 4, 1991), wherein the DOC disregarded small quantity sales involving trial and damaged merchandise). For administrative reviews, the DOC calculates margins for all sales.

Always consult your supervisor or PM if you think your investigation or review may require the application of sampling techniques. Also, consult with your supervisor or PM

if a request is made for the simplification of sales reporting requirements for an investigation.

IX. SUBCONTRACTOR SALES (TOLLING)

References:

The Tariff Act of 1930, as amended

None

Department of Commerce (DOC) Regulations

19 CFR 351.401(h) - treatment of subcontractor sales

SAA

None

The Antidumping Agreement

None

Although in some past investigations or reviews the DOC has treated subcontractors or "tollers," as respondents, the current regulations at 19 CFR 351.401(h) provide that a subcontractor or toller is not a manufacturer or producer unless the subcontractor or toller acquires ownership and controls the relevant sale of the subject merchandise. Very infrequently, the analyst may encounter U.S. transactions where a subcontractor or toller receives a raw material from a seller and performs a manufacturing process on this material. For example, in a case involving pipe products, Company A, a producer of steel sheet in the exporting country (EC), supplies steel sheet to company B, an unaffiliated toller for conversion into steel pipe. Company A retains title to the steel sheet while Company B is making the pipe. After paying a conversion fee, Company A has Company B export the pipes to Company C, Company A's affiliated U.S. importer. Because Company A retained title to the steel during the conversion process, Company B cannot be considered the manufacturer or producer of the subject pipe products. In this scenario, if Company C sells the pipe to an unaffiliated U.S. purchaser D after importation, the sale price of the pipe from Company C to Company D would be the starting price for a CEP calculation. In Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 61 FR 14070 (March 29, 1996), the DOC determined it was not necessary to analyze tolled sales. However, it was noted that the party contracting for the tolling (not the toller) would be considered the manufacturer/exporter of the merchandise if a

dumping analysis was performed. If you encounter a situation in an investigation or review that involves subcontractors or tollers, see your supervisor or PM.

X. FOREIGN TRADE ZONES

References:
15 CFR 400.33(b)(2)
19 CFR 146.41.41(e)

In some investigations or reviews, the merchandise being investigated enters through a U.S. foreign trade zone (FTZ). FTZs are restricted-access sites in or near ports of entry which are licensed by the Foreign Trade Zone Board and operated under the supervision of the U.S. Customs Service. Merchandise may be moved into FTZs for operations not otherwise prohibited by law involving storage, exhibition, assembly, manufacture or other processing (see Foreign Trade Zones in the United States: Final Rule, 56 FR 50790 (October 8, 1991)).

Merchandise subject to an antidumping duty order must be classified as "privileged" foreign merchandise on admission to the FTZ and will, therefore, be subject to antidumping duties upon entry into the customs territory of the United States, even if transformed in the FTZ into goods not subject to the order (See 15 CFR 400.33(b)(2) and 19 CFR 146.41.41(e).) (see Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-resistent Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany, 58 FR 37192 (July 9, 1993)). Merchandise admitted into an FTZ that is subject to an antidumping duty order but which is re-exported and, never enters the commerce of the United States is not assessed duties.

In certain cases, merchandise is further manufactured in the FTZ or warehoused there and then sold in the United States; other times, the merchandise has been sold prior to admission into the FTZ. For merchandise sold after admission into a FTZ, we would use constructed export price (CEP) as the U.S. basis for our calculation. For merchandise sold before admission into a FTZ, we would use export price (EP). If the merchandise is re-exported from the FTZ to another country, the Act does not apply.

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A. EP and FTZs

Company A in the exporting country sells 3,000 television sets at $240.00 per unit to Company D, an unaffiliated distributor in the United States. The television sets are shipped directly to Company D, but enter the United States through the FTZ at Wilmington, Delaware, where they are warehoused before delivery. Because these television sets were sold prior to importation into the Wilmington FTZ, this is an EP comparison. We would use the $240.00 price charged to Company D as the starting price for an EP calculation (see Final Determination of Sales at Less Than Fair Value: Frozen Concentrated Orange Juice from Brazil, 52 FR 8324, 8328 (March 17, 1987)).

B. CEP and FTZs

Company A ships 3,000 television sets to Company C, its wholly-owned subsidiary in the United States. Company C is located in the FTZ in Wilmington, Delaware. The television sets enter the FTZ on July 1 and are then re-packed for shipment to customers in the United States. On August 1, these television sets are sold at $250.00 per-unit by Company C to Company D, an unaffiliated distributor in the United States, and are shipped out the following day. Because these television sets were sold after importation into the United States, CEP is used for our comparison. We would use the $250.00 price charged to Company D as the starting price for a CEP calculation.

Consult your supervisor or PM if FTZ sales are part of your investigation or review. The Executive Secretary of the FTZ Board, which is part of Import Administration, should be notified of all determinations involving goods entering FTZs.