

**CHAPTER 6**  
**FAIR VALUE COMPARISONS**

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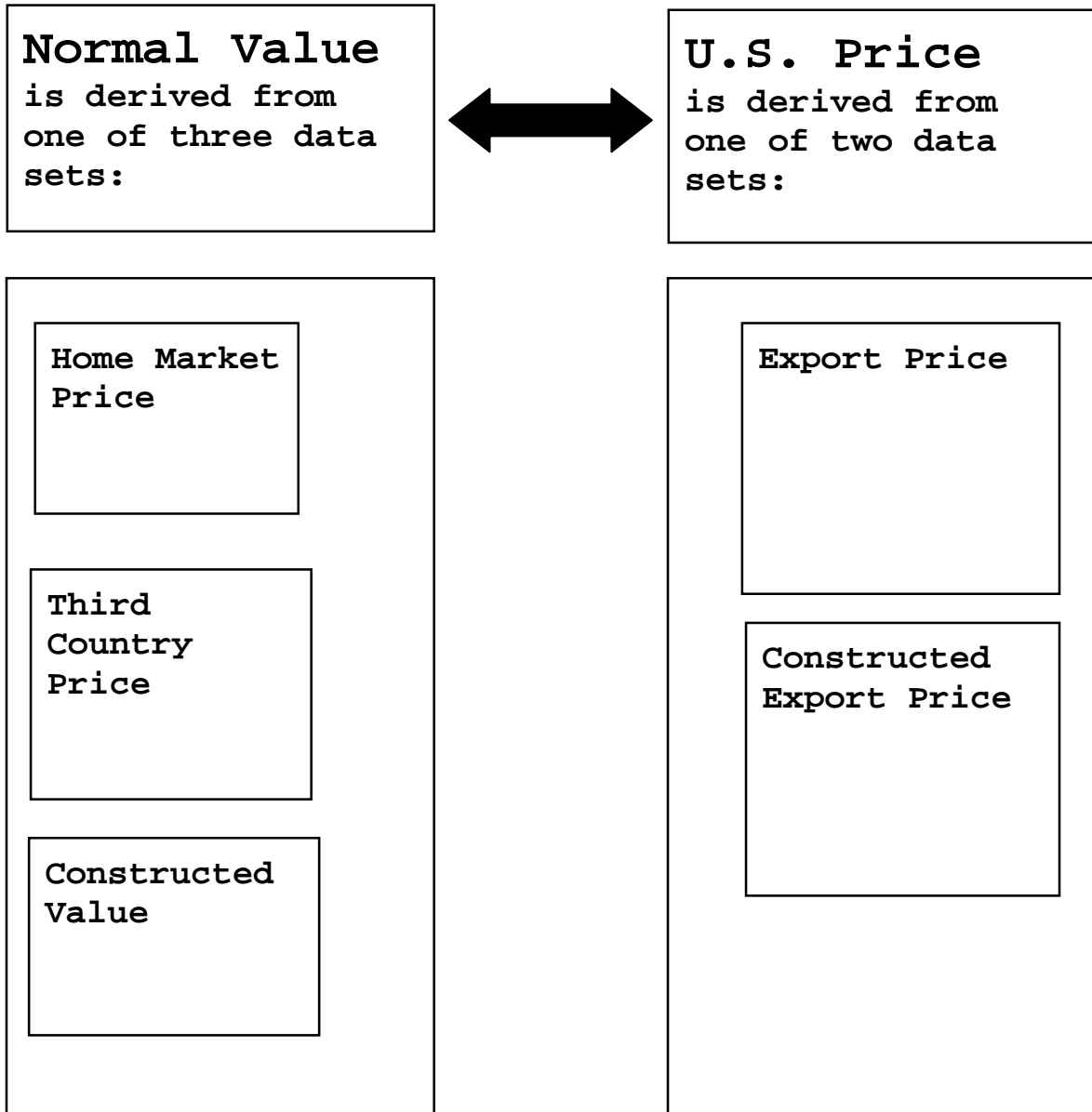
## I. INTRODUCTION

The U.S. antidumping duty law is designed to counter injurious international price discrimination, commonly referred to as “dumping.” Only when the Department determines that there are sales at less than fair value (LTFV), accompanied by a determination of material injury or threat of material injury to a domestic industry by the ITC, can antidumping duties be levied. Sales at LTFV most often occur when a foreign firm sells merchandise in the U.S. market at a price lower than the price it charges for a comparable product sold in its domestic market. Under certain circumstances, LTFV may also be identified by comparing the foreign firm's U.S. sales price to the price it charges in other export markets or to the firm's cost of producing the merchandise, taking into account the selling, general, and administrative expenses, and profit. Under the law, this latter basis for comparison is known as constructed value (CV). Finally, where the producer is located in a NME country, a comparison is made between U.S. prices and a “surrogate” NV. The difference between a company’s U.S. sales price and the NV (or surrogate NV) is called the dumping “margin,” which often is expressed as a percentage of the U.S. sales price.

In learning what dumping is, it is also important to understand what dumping is not. For example, dumping is not the sale of foreign merchandise in the United States at a price less than the price charged by U.S. producers of the same merchandise. In a dumping case, the fact that foreign producers sell their products at lower prices in the U.S. market than U.S. producers becomes relevant only in the context of the ITC's determination of whether dumped imports have materially injured a U.S. industry.

Also, many people tend to confuse dumping and subsidies, mistakenly seeing them as a single phenomenon. The two are, in fact, distinct – one involves the pricing behavior of individual firms, while the other stems from the decisions of governments to provide preferential assistance to exporters or specific industries. While a foreign government's decision to provide export subsidies or to protect its domestic market may create conditions conducive to dumping, a finding of dumping will ultimately turn solely on the pricing decisions of the firm in the two markets. Other U.S. trade laws, such as the countervailing duty law, are available to address more directly the trade-distortive actions of foreign governments.

### The Antidumping Calculus: Comparing Normal Value to U.S. Price



## II. OVERVIEW OF EXPORT PRICE, CONSTRUCTED EXPORT PRICE, AND NORMAL VALUE

To determine whether LTFV sales exist in an investigation or an administrative review, an EP or CEP (see Chapter VII) as defined in section 772 of the Act is compared to a NV (see Chapter VIII) as defined in section 773 of the Act. Section 771(35) of the Act defines the dumping margin as being the amount by which the NV exceeds the EP or CEP of the subject merchandise.

### A. Determining Which U.S. Sales Transaction to Examine: EP vs. CEP

Generally, a U.S. sale is calculated as an export price sale when the first sale to an unaffiliated person by a producer or exporter *outside* of the United States occurs *before* the goods are imported into the United States. A simple example would be when a U.S. company decides to distribute a foreign product in the United States and contacts the overseas producer or an exporter directly to set up the deal in terms of price, quantity, delivery, etc. A sale is calculated as a CEP sale if the first sale to the unaffiliated person is made *in* the United States by a person affiliated with the foreign exporter, irrespective of whether it occurs *before* or after importation. As explained in AK Steel Corp. v. United States, 226 F.3d 1361, 1370 (Fed. Cir. 2000), the key distinctions between EP and CEP sales are: 1) the *location* of the sale; and 2) whether it is made by an affiliate. In a CEP situation, the U.S. sale price is typically the price charged by a U.S. subsidiary of the foreign producer/exporter to the first unaffiliated U.S. buyer less expenses incurred in selling the product in the United States and an amount for profit. However, section 772(b) also provides that a CEP sale may be a sale made in the United States by or for the account of the foreign producer or exporter. For example, a CEP sale may be a sale made in the United States by an unaffiliated consignee.

### B. Determining the Basis for Normal Value: Home Market, Third Country or Constructed Value

NV is based either on the prices at which the foreign like product is first sold for consumption in the exporting country or to a third country if the home market is not “viable,” *i.e.*, not sufficiently large or it is otherwise unuseable as a comparison market. NV may also be based on CV using cost data (rather than price data) if: 1) there are no viable markets; 2) sales below the COP, sales outside the ordinary course of trade, or sales the prices of which are otherwise unrepresentative are disregarded; 3) sales used to establish a fictitious market are disregarded; 4) no contemporaneous sales of comparable merchandise are available; or 5) where the Secretary determines that home market or third country prices are inappropriate. See sections 773(e) and (f) of the Act and 19 CFR 351.405(a).

In NME cases, NV is based upon a constructed value of sorts. Each NME respondent reports to the Department the quantities of direct materials and labor used to manufacture the subject merchandise, and the Department values these inputs using prices prevailing in a suitable market

economy (“surrogate”) country. To this derived cost of direct material and labor, the Department adds surrogate-country amounts for factory overhead, selling and general and administrative expenses, and packing and profit, resulting in a “constructed value” for the subject merchandise. For further discussion of NV calculation methodology in NME cases, see Chapter 10.

### III. OVERVIEW OF ADJUSTMENTS

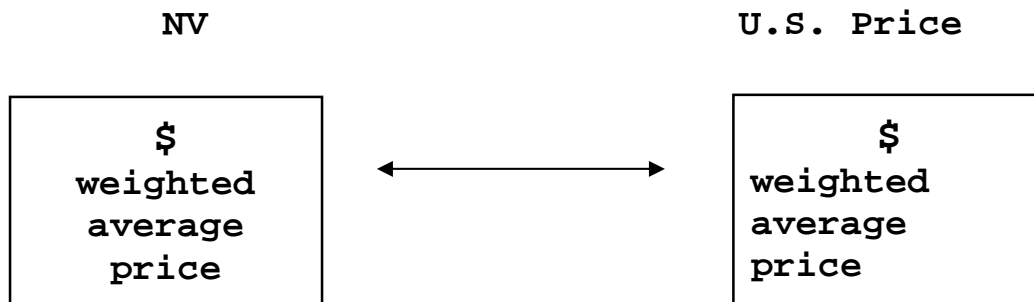
In order to achieve an “apples-to-apples” price comparison, various statutory adjustments are made to calculate NV (see Chapter 8). The need for adjustments arises because there are often physical differences between the merchandise exported to the United States and the merchandise sold in the exporting country or third-country markets and differences in the circumstances under which the merchandise is sold in each market. Therefore, to make certain that our comparisons are not distorted by factors extraneous to the central issue of price discrimination between markets, we adjust the NV “starting” prices to account for any differences in the prices resulting from differences in physical characteristics, quantities sold, levels of trade, circumstances of sale, applicable taxes and duties, and packing and delivery costs. Because the CEP must be constructed from a later resale of the merchandise in the United States, there are additional deductions detailed in Sections 772(d) and (f) that must be made, but which are not made in calculating EP (see Chapter 7). We calculate EP or CEP before determining what adjustments to NV for differences are necessary.

### IV. OVERVIEW OF CALCULATIONS OF MARGINS

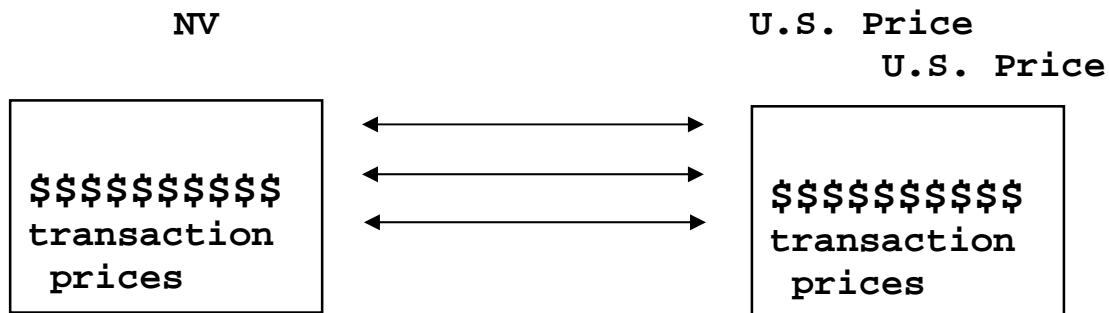
To calculate a dumping margin, we must determine what sets of data will be compared, and how the comparison will be made. The following illustration presents three possible methods for comparing NV to U.S. price.

#### Possible Methods for AD calculations:

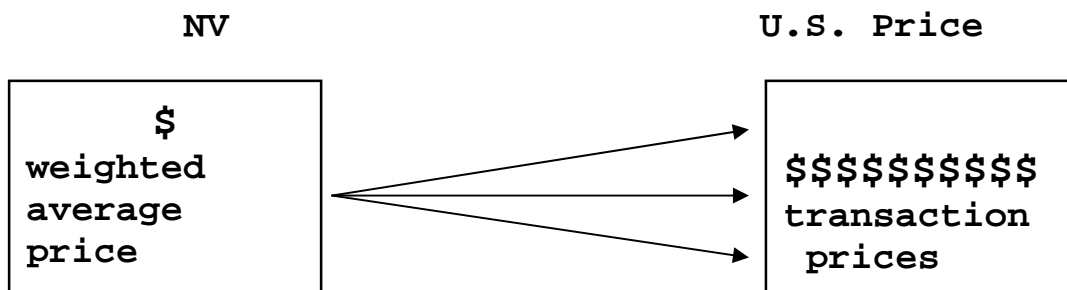
#### Weighted Average Price to Weighted Average Price



**Comparing Individual Transaction to Individual Transaction**



**Weighted Average Price to Individual Transaction Prices**



**A. Calculation of Margins for U.S. Sales for Investigations and Administrative Reviews**

19 CFR 351.204 provides that, in an investigation, the POI typically covers the four most recently completed fiscal quarters or, in an investigation involving merchandise imported from a NME country, normally the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed.

Under section 777A of the Act, in an investigation, we normally compare the weighted-average EP or CEP to the weighted-average NV for a comparable product sold during the POI. We may also establish dumping margins by comparing NV and EP or CEP on a transaction-to-transaction basis. This is normally done only for large capital goods made to order. [See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan](#), 61 FR 46621 (September 4, 1996). The differences between these

custom-made products render average prices meaningless. Lastly, where these comparisons are inappropriate, we may compare a weighted-average NV to individual export sales transactions, provided that there is a pattern of EP/CEP prices that differ significantly by customer, region or time period, and that cannot be accounted for through a weighted-average-to-weighted-average or transaction-to-transaction comparison.

In certain instances, the Department may use a shorter period than the whole POI to determine weighted-average NVs. For example, in [Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey](#), 62 FR 9737 (March 4, 1997), the Department used monthly weighted-average prices for EPs and NVs because of significant inflation (see Chapter 8). In [Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan](#), 61 FR 14064, 14069 (March 29, 1996), the Department separated the POI into two periods to compute weighted-average NVs. This was done for one respondent because its home market sales prices were relatively low in the last 45 days of the POI, which would have distorted a single POI weighted-average NV. Also, in [Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea](#), 63 FR 8934, 8935 (February 23, 1998) ([SRAMS from Korea](#)), the Department compared prices and conducted the sales below cost of production test using quarterly instead of annual data in recognition of the significant and consistent price declines in the static random access memory semiconductor market during the POI.

For administrative reviews, the Department generally bases NV on monthly weighted-average prices and compares them to individual EPs or CEPs. Where no sales of the like product are made in the exporting country in the month of the U.S. sale, the Department will attempt to find a weighted-average monthly price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. If unsuccessful, we will then look one month after and finally two months after the month of the U.S. sale. This practice is commonly referred to as the 90/60-day guideline. If there are no sales that can be used for comparison in the foreign market within this window, we would use CV as NV. As in investigations, in reviews we normally only make comparisons between sales in the same month in cases involving significant inflation, and we have limited comparisons to sales within a quarter in certain cases involving significant and consistent price declines. See, e.g., [SRAMS from Korea](#).

For U.S. sales where dumping occurred (e.g., in an investigation, where the adjusted weighted-average NV exceeds the adjusted weighted-average EP or CEP under our preferred method of comparison), the difference in the two prices is the dumping margin. In an investigation, we calculate a single weighted-average dumping margin for an exporter/producer which will be used for bonding or cash deposit purposes until there is an administrative review. For an administrative review, a weighted-average margin is also established for each producer/exporter, and an assessment rate is established for each U.S. importer because an exporter/producer may have dumped at different rates to different unaffiliated importers.

Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise.” (Emphasis added). Historically, for both investigations and administrative reviews, the Department has interpreted this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. Accordingly, as no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department did not permit these non-dumped sales to offset the amount of dumping found with respect to other sales under investigation or review.<sup>1</sup> However, effective February 22, 2007, in calculating the weighted-average dumping margin in investigations using the preferred weighted-average-to-weighted-average price comparison methodology, the Department provides offsets for non-dumped comparisons. That is, the Department allows the results of averaging groups for which the weighted-average EP or CEP exceeds the NV to offset the results of averaging groups for which the weighted-average EP or CEP is less than the weighted-average NV. This recent change in practice results from the Department’s implementation of the recommendations of the World Trade Organization Dispute Settlement Body, which found the Department’s denial of offsets (i.e., “zeroing”) when using the average-to-average comparison methodology in certain antidumping investigations challenged by the European Communities was inconsistent with Article 2.4.2. of the Antidumping Agreement.<sup>2</sup> The Department’s practice with respect to “zeroing” in administrative reviews has not changed.

Normally, there are many (sometimes hundreds or thousands) of U.S. sales made during a POI or POR. In the simplified example shown below for an investigation and an administrative review, there are only two U.S. sales during the POI and POR, one EP sale involving 9,773 units at \$1.36 per unit and one CEP sale involving 10,000 units at \$1.27 per unit.

<u>EP</u>		<u>CEP</u>	
WT-AVG NV	\$2.17	WT-AVG NV	\$1.89
LESS:		LESS:	
<u>WT-AVG EP</u>	<u>\$1.36</u>	<u>WT-AVG CEP</u>	<u>\$1.27</u>
WT-AVG MARGIN	\$0.81	WT-AVG MARGIN	\$0.62

<sup>1</sup> The U.S. Court of Appeals for the Federal Circuit had held that this was a reasonable interpretation of the statute. See [Timken Co. v. United States](#), 354 F.3d 1334, 1342 (Fed. Cir.), cert. denied sub nom., [Koyo Seiko Co. v. United States](#), 543 U.S. 976 (2004). See also [Corus Staal BV v. Department of Commerce](#), 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006).

<sup>2</sup> See [Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification](#), 71 FR 77722 (December 27, 2006); [Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification](#), 72 FR 1704 (January 16, 2007); and [Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification](#), 72 FR 3783 (January 26, 2007).



For an investigation, the two margins are combined to form a single exporter/producer weighted-average dumping margin. See section C below. For an administrative review, we would do the same thing for publication of a weighted-average rate in our review results. However, when we send instructions to Customs and Border Protection (CBP) to collect the final duty, an importer-specific rate will be calculated for that purpose (see Chapter 22).

$$\begin{aligned} \text{Weighted-average margin} &= \text{PUDD}^3 / \text{Total Value of U.S. sales} = \\ & \$14,116.13 / (\$13,291.28 + \$12,700.00) = \\ & \$14,116.13 / \$25,991.28 = 54.31\% \end{aligned}$$

To illustrate the concept of not allowing offsets (also referred to as “zeroing”), discussed above, in making weighted-average to transaction-specific or transaction-specific to transaction-specific price comparisons, assume that the EP sale was dumped with a weighted-average margin of \$0.81, as described above, but the CEP sale had a negative weighted-average margin of -\$0.62 and, therefore, was not dumped. The EP sale would have a PUDD of \$7,916.13, as above, but the PUDD for the CEP sale would be zero. The weighted-average margin would be calculated as follows:

$$\begin{aligned} \text{Weighted average margin} &= \text{Total PUDD} / \text{Total Value of U.S. sales} = \\ & \$7,916.13 / (\$13,291.28 + \$12,700.00) = \\ & \$7,916.13 / \$25,991.28 = 30.46\% \end{aligned}$$

## **B. Calculation of Potential Uncollectible Dumping Duties (PUDD)**

The PUDD is the amount of dumping duties that would have been collected from the U.S. sales under investigation had an antidumping duty order been in effect during the POI (*i.e.*, before the investigation began). The PUDD is used to establish a dumping margin which will remain in effect until the subsequent annual review establishes a rate based upon the entries for which liquidation was suspended pursuant to the preliminary determination in the investigation and for the year following the antidumping duty order.

The calculation of the PUDD is, in effect, a two-step process. First, PUDD is determined for each U.S. sale by multiplying the per-unit dollar margin for that sale by the total number of items sold. Second, the PUDD for each of the U.S. sales are summed to arrive at a total PUDD. The total PUDD is then used to calculate a weighted-average margin for the investigation as shown in part C below.

U.S. Sale No. 1 PUDD: Unit margin x number of units sold

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<sup>3</sup> PUDD refers to the potential uncollectible dumping duties. It is calculated by multiplying the unit margin by the number of units sold in the United States on a transaction-specific basis. These amounts are then summed and divided by the total value of the firm’s sales to arrive at a weighted-average margin. See Section B below for further discussion.

$$\$0.81 \times 9,773 = \$7,916.13$$

U.S. Sale No. 2 PUDD:

$$\$0.62 \times 10,000 = \$6,200.00$$

Total PUDD:

$$\$7,916.13 + \$6,200.00 = \$14,116.13$$

### **C. Calculation of Weighted-Average Margins for Individual Companies and the Calculation of the “All Others” Rate**

In an investigation in market economy cases, once individual weighted-average margins are calculated for each producer or exporter, the weighted-average margins for these individual firms are then weight-averaged to calculate an “All Others” rate to be applied to imports from firms that were not investigated.

If a company under investigation has a zero or *de minimis* margin, it normally would not be included in the calculation of the “All Others” rate. See discussion in Section IV.D. below regarding *de minimis* margins. If a company under investigation has a margin based entirely on facts available, this margin would also not be included in the calculation of the “All Others” rate. Finally, margins calculated for voluntary respondents are not included in the “All Others” rate (see 19 CFR 351.204(d)(3)). See section 735(c)(5)(B) of the Act, 19 CFR 351.204(e), and section C.4.d.(2) (at 873) of the SAA for information on how to treat situations where some, or all margins are zero, *de minimis*, or based on facts available. See also sections 733(b)(3) and 735(a)(4) of the Act and section B.9.(e) (at 844) of the SAA for more information on *de minimis* rates.

For administrative reviews, a single weighted-average margin based on all EP and CEP sales examined for the POR is calculated for each company. It is calculated in the same way we calculate a weighted-average margin for an investigation except in this instance the amounts for duties will be actual duties as opposed to PUDD. This weighted-average margin is then used as the new cash deposit rate for the company. The “All Others” rate from the investigation stays in effect for all companies which have never received their own rates. We do not compute a new “All Others” rate in the form of an overall weighted-average margin which incorporates the margins of all companies subject to the review.

### **D. De Minimis Margins**

Depending upon whether we are conducting an investigation or a review, separate definitions of

what constitutes a *de minimis* margin apply. Sections 733(b)(3) (LTFV prelims) and 735(a)(4) (LTFV finals) establish that investigation margins of 2 percent or less are *de minimis* for purposes of dumping. In contrast, section 351.106 of our regulations establishes that review margins of less than 0.5 percent are *de minimis*. Calculation of a *de minimis* margin has the same effect as would calculation of a margin of zero. That is, if a *de minimis* final LTFV margin is found, the result of the dumping investigation is negative. As in investigations, if a *de minimis* margin is found in an administrative review, we would require no cash deposit for shipments subsequent to publication of the final results.

## V. DETERMINATIONS ON THE BASIS OF FACTS AVAILABLE

### A. Introduction

The Department normally bases its margin calculations on information provided by respondents about their sales, expenses, costs, etc. The questionnaire is designed to elicit all necessary information. In some cases, however, the Department finds that it does not have information it needs to perform its calculations. In such cases, the Department must use the “facts otherwise available,” which is any acceptable information which the Department can find to substitute for a respondent’s missing or otherwise deficient information. However, the Department will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements if certain conditions are met, as described further below.

### B. Use of Facts Available

Section 776(a) of the Act<sup>4</sup> states that the Department will use facts otherwise available in reaching a determination whenever:

- (1) necessary information is not available on the record, or
- (2) an interested party or any other person –
  - (A) withholds information requested, or
  - (B) fails to provide information requested in a timely manner or in the form and manner required, subject to subsections (c)(1)<sup>5</sup> and (e)<sup>6</sup> of section 782, or

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<sup>4</sup> See also 19 CFR 351.308.

<sup>5</sup> Section 782(c)(1) of the Act states:

(1) Notification by Interested Party.—If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the

(C) significantly impedes a proceeding under this title, or

(D) provides such information but the information cannot be verified as provided in section 782(i).

When the Department resorts to facts available, it must determine the most appropriate information to form the basis of the dumping margin calculation. In doing so, the Department may also determine whether an adverse inference is warranted. According to section 776(b) of the Act, if the Department finds that a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information, it may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. See Nippon Steel v. United States, 337 F.3d 1373 (Fed. Cir. Aug. 8, 2003). The sources from which an adverse inference may be derived include the following: 1) the petition; 2) a final determination; 3) the final results from a prior segment of the proceeding; and 4) any other information placed on the record.

Under section 776(c) of the Act and 19 CFR 351.308(d), when using “secondary information” as facts available, the Department must, to the extent practicable, corroborate them from independent sources reasonably available to the Department. Not all facts available are “secondary information.” “Secondary information” for an investigation may be information from the petition. For a review, “secondary information” can come from a previous review or the investigation (e.g., a margin from a previous review or the investigation or information from the petition). Independent corroborative sources identified in the regulations include the following: 1) published price lists; 2) official import statistics and customs data; and 3) information obtained from interested parties during the instant investigation or review. However, the Department may still use “secondary information” even though it is not practicable to corroborate that information with independent sources. See SAA at 870.

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information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

<sup>6</sup> Section 782(e) of the Act states:

(e) Use of Certain Information.—In reaching a determination under section 703, 735, 751, or 753 the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if –

- (1) the information is submitted by the deadline established for its submission,
- (2) the information can be verified,
- (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,
- (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and
- (5) the information can be used without undue difficulties.

The SAA states that “corroborate” means to determine that the information used has probative value. See section C.4.b. (at 870) of the SAA. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

We do not question the reliability of calculated margins from an investigation or review because the margins were based on an official proceeding and there are no independent sources for calculated dumping margins. The Department must still, however, consider the relevance of the selected margin to the respondent.

### C. Examples of Use of Facts Available

Facts available and adverse facts available determinations can be made with respect to portions of a respondent’s response or the entire response, as appropriate.

1. The following is an example of a case in which the Department used non-adverse partial facts available:

In [Honey from the People’s Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review](#), 70 FR 38872 (July 6, 2005) and accompanying [Issues and Decision Memorandum](#), one of the respondents, Wuhan Bee, claimed to be affiliated with a particular company and, therefore, provided a CEP sales database in response to the Department’s questionnaire. Subsequently, the Department concluded the companies were affiliated for only part of the POR. Because the Department did not request, and Wuhan Bee did not report, an EP sales database, the Department found it necessary to use facts available in determining the margin for these sales. Finding that Wuhan Bee had not failed to cooperate to the best of its ability as it had not withheld information or otherwise impeded the review, the Department found adverse facts available were not warranted. Instead, as a proxy for an EP U.S. sales database, the Department used the fully verified invoice price and quantity data for sales from Wuhan Bee to Presstek based on the invoice list collected at verification.

See also [Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries from Chile](#), 70 FR 6618 (February 8, 2005), and accompanying [Issues and Decision Memorandum](#) at Comment 3.

2. The following is an example where a respondent’s non-compliance warranted an adverse inference for portions of the response:

In <http://ia.ita.doc.gov/frn/2005/0505frn/E5-2236.txt>, 70 FR 24506 (May 10, 2005) ([Chlorinated Isocyanurates from Spain](#)), and the accompanying [Issues and Decision Memorandum](#), the Department determined that the respondent failed to cooperate by not acting to the best of its ability to comply with the Department’s request for information. The respondent expressly and

repeatedly claimed to have reported actual home market inland freight expenses. At verification, however, it acknowledged that it had not reported the actual expenses, and the Department was unable to verify the allocation methodology used to estimate freight expenses. Because the respondent misrepresented its reporting, and, by failing to acknowledge the misrepresentation until verification, prevented the Department from soliciting additional information, the Department found that the application of partial adverse facts available was warranted. As partial adverse facts available, we applied the lowest verified inland freight expense amount to all home market sales made by the respondent during the POI, except for those sales examined at verification and sales of a particular CONNUM for which the respondent provided actual, invoiced inland freight expenses during verification (and the Department successfully tested for accuracy).

See also [Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less than Fair Value](#), 70 FR 9041 (February 24, 2005), and the accompanying [Issues and Decision Memorandum](#); [Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries from Chile](#), 70 FR 6618 (February 8, 2005), and accompanying [Issues and Decision Memorandum](#) at Comment 3; [Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews](#), 69 FR 33626 (June 16, 2004) and the accompanying [Issues and Decision Memorandum](#); and [Stainless Steel Wire Rods from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review](#), 69 FR 29923, 29924 (May 26, 2004).

3. The following example illustrates where adverse facts available can also be applied to the entire response:
  - a. Where no response to the questionnaire was received by the Department:

In [Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review](#), 70 FR 18369 (April 11, 2005) (unchanged in the [Final Results](#), 70 FR 37759 (June 30, 2005)), the Department applied adverse facts available. The respondent failed to respond to the Department's antidumping questionnaire. The application of facts available was, therefore, warranted in determining the dumping margin for the respondent, and, since the respondent had not acted to the best of its ability to comply with the Department's request for information, the Department applied adverse facts available. The dumping margin was based on the highest margin alleged in the petition for any Japanese producer, which was the highest rate on the record of the proceeding.

- b. Where a respondent failed to provide information on an affiliated party:

In [Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China](#), 70 FR 7475, 7477 (February 14, 2005), and the accompanying [Issues and Decision Memorandum](#), the Department determined that, among other

failures, a particular respondent failed to report sales of subject merchandise to the United States made by one of its affiliates. Moreover, certain information regarding the financial statements of the respondent's three affiliated companies involved in the production and sale of subject merchandise called into question the reliability of the reported data that would be used to calculate a margin. Consequently, the Department determined that the company failed to cooperate to the best of its ability and used inferences adverse to its interests to determine a dumping margin. The PRC-wide rate was applied to this respondent as adverse facts available.

c. Where a respondent failed to provide information in a timely manner:

In both [Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from the United Kingdom](#), 66 FR 40192 (August 2, 2001) (SS Bar from the UK) and [Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from the United Kingdom](#), 67 FR 3146 (January 23, 2002) and the accompanying [Issues and Decision Memorandum](#), despite repeated requests, respondent Firth Rixson failed to completely respond to the Department's questionnaires, thereby precluding the Department from calculating an accurate dumping margin, and, consequently, causing the Department to cancel verification. Specifically, Firth Rixson failed to provide any cost information for the home market and U.S. sales made by its affiliate during the POI, Spencer Clark, claiming that the data pertaining to Spencer Clark no longer existed. Although Firth Rixson provided some sales information, it did not provide any cost information for its affiliate or a viable alternative of calculating the costs associated with Spencer Clark's sales. The Court of International Trade sustained the Department's finding that Firth Rixson had failed to cooperate to the best of its ability in responding to the Department's questionnaires. See [Firth-Rixson Special Steels Ltd. v. United States](#), Slip Op. 03-70 (June 27, 2003).

The Department determined that Firth Rixson had not cooperated to the best of its ability and therefore based its dumping margin on adverse facts available. We determined that the petition was the appropriate source of information for assigning a margin based on adverse facts available. In order to corroborate the petition margins for purposes of using them as adverse facts available, we re-examined the price and cost information provided in the petition in light of information developed during the investigation.

d. Where a respondent failed verification or declined to participate in verification:

In [Notice of Final Results of Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy](#), 69 FR 6255, 6256 (February 10, 2004), and accompanying [Issues and Decision Memorandum](#) at Comment 10, the Department found at verification that a respondent had failed to report two-thirds of its home market sales and that there were additional deficiencies in its U.S. database. Given the magnitude of the deficiencies, the Department found the response was unreliable for purposes of calculating a dumping margin. Therefore, the Department applied total adverse facts available in both the preliminary and final results. As

adverse facts available, the Department assigned the respondent the highest margin upheld during the proceeding. In corroborating the margin, the Department considered that other respondents in the review had individual sales transactions at or above the adverse facts available margin.

In [Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China](#), 70 FR 24502 (May 10, 2005) and the accompanying [Issues and Decision Memorandum](#), respondent Tien Yuan decided to terminate its participation in the investigation and declined verification of its Section A responses shortly before the Department's scheduled verification. Tien Yuan's failure to participate in the Department's verification did not allow the Department to examine the accuracy and completeness of its Section A responses and, therefore, significantly impeded the proceeding. Accordingly, the Department applied adverse facts available to Tien Yuan in the final determination. Because the Department could not verify Tien Yuan's Section A response, Tien Yuan failed to show it was entitled to a separate rate and, thus, Department assigned it the PRC-wide rate.

See also [Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review](#), 70 FR 61432 (October 24, 2005); [Canned Pineapple Fruit From Thailand: Preliminary Results of Antidumping Duty Administrative Review](#), 70 FR 45651 (August 8, 2005) (corrected in [Canned Pineapple Fruit From Thailand: Preliminary Results of Antidumping Duty Administrative Review](#), 70 FR 58506 (October 6, 2005)).

e. Where a respondent misrepresented information to the Department:

In [Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review](#), 68 FR 41304 (July 11, 2003) and the accompanying [Issues and Decision Memorandum](#), the Department rejected data regarding sales between Gerber and Green Fresh and based their cash deposit and assessment rates on total adverse facts available because it found at verification that Gerber and Green Fresh had made material misrepresentations regarding their business relationship with respect to a significant percentage of their total U.S. sales made during the POR. The companies had claimed that Green Fresh had acted as Gerber's agent/exporter in return for payment of a commission, but, at verification, the Department discovered that Gerber had simply purchased Green Fresh's invoices, so that when merchandise entered the United States it appeared to be Green Fresh's, thereby evading payment of the legally-required antidumping duties.<sup>7</sup>

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<sup>7</sup>Pursuant to two court remands, the second of which is still pending before the CIT, the Department recalculated the final results margins applicable to Gerber and Green Fresh by applying adverse facts available only to those sales for which Gerber used Green Fresh's invoices, and not to the remaining sales reported by the companies, as it had done in the original final results. While the CIT agreed that both companies had failed to cooperate to the best of their abilities in the review, it ruled that the Department had not provided a sufficient basis to assign the same transactions to both companies because the record evidence demonstrated that the affected sales were made by Gerber and not by



See also [Shanghai Taoen Int'l Trading Co., Ltd. v. United States](#), 360 F. Supp.2d 1339 (CIT Feb. 17, 2005); and [Shandong Huarong General Group Corp. v. United States](#), Slip Op. 2003-135 (CIT Oct. 22, 2003).

#### **D. Examples of Corroboration of Secondary Information**

The following are examples of how the Department corroborated petition information:

In [SS Bar from the UK](#), the Department stated that when analyzing the petition for purposes of the initiation, we reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins, and determined that the margins in the petition were appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margins for purposes of using them as adverse facts available, we compared the price and cost information provided in the petition to data submitted by a cooperative respondent in order to determine if the petition information was reliable and relevant.

In accordance with section 776(c) of the Act, we were able to corroborate the information in the petition using information from independent sources that were reasonably at our disposal. As a result, as adverse facts available, we assigned the uncooperative respondents in the LTFV investigation the highest rate contained in the petition.

In [Certain Preserved Mushrooms from India: Final Results of Administrative Review](#), 67 FR 46172 (July 12, 2002), and accompanying [Issues and Decision Memorandum](#) at Comment 8, the Department determined not to use the petition rate of 243.87 percent because, in light of the circumstances, we questioned the relevance, and hence the probative value, of this rate with respect to a non-responsive company, Saptarishi Agro. We found that the next highest rate, the calculated rate of 66.24 percent from a respondent in a previous administrative review, was sufficiently adverse. We did not question the reliability of the margin because it was established in an official proceeding and there are no independent sources of a calculated dumping margin. With respect to the relevance aspect of corroboration, there was no information to suggest it was aberrational or inappropriate.

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Green Fresh. See [Gerber Food \(Yunnan\) Co., Ltd. and Green Fresh \(Zhangzhou\) Co., Ltd. v. United States](#), Slip Op. 05-84 (CIT July 18, 2005); and [Gerber Food \(Yunnan\) Co., Ltd. and Green Fresh \(Zhangzhou\) Co., Ltd. v. United States](#), Slip Op. 07-85 (CIT May 24, 2007).

