

GLOSSARY OF TERMS

Administrative Protective Order

An administrative protective order is the legal mechanism that controls the limited disclosure of business proprietary information to representatives of interested parties. The Department authorizes the release of proprietary information under administrative protective order only when the representatives file a request in which they agree to the following four conditions: (a) to use the information only in the antidumping proceeding, (b) to secure the information and protect it from disclosure to any person not subject to an administrative protective order, (c) to report any violation of the terms of the protective order, and (d) to acknowledge that they may be subject to sanctions if they violate the terms of the order. See section 777(c) of the Act. See also **Proprietary Information** and **Proprietary Treatment**.

Affiliated Persons

The term affiliated persons (affiliates) includes: (1) members of a family; (2) an officer or director of an organization and that organization; (3) partners; (4) employers and employees; (5) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and that organization; (6) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (7) any person who controls any other person and that other person. Control exists when a person is legally or operationally in a position to exercise restraint or direction over another person. In investigations and administrative reviews a control relationship should also have the potential to affect decisions concerning the production, pricing, or cost of the merchandise under investigation or review. See section 771(33) of the Act. See also sections 351.102(b) and 351.401(f) of the regulations.

Examples of situations which may indicate control include (but are not limited to):

(a) joint ventures and franchises; (b) lender/borrower situations; (c) a close relationship with a supplier, (sub) contractor, lender, distributor, exporter or reseller; and (d) a group of companies controlled by, for example, a family, a corporation, or the same investors. An example of affiliation by common control may be the affiliation between the owners of a joint venture when each owner is in a control position with that joint venture.

Section 351.102(b) of the Department's regulations states that the term person includes any interested party as well as any other individual, enterprise, or entity, as appropriate. In the Department's practice, the term person includes any company, individual, organization, partnership or group.

Antidumping Law and Regulations

The United States antidumping laws are set forth in Title VII of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673 *et seq.*). The Department's regulations governing antidumping proceedings are set forth at 19 CFR Part 351, published in the *Federal*

Register on May 19, 1997 (62 FR 27379-27424). For procedures governing Administrative Protective Orders and the treatment of proprietary information, please see 19 CFR Parts 351 and 354, published in the *Federal Register* on May 4, 1998 (63 FR 24391).

Arm's-length Transactions (between affiliates)

Generally, the Department may use transactions between affiliates as a basis for normal value, only if the transactions are made at arm's length. Arm's-length transactions are those in which the selling price between the affiliated parties is comparable to the selling prices in transactions involving persons who are not affiliated. The Department takes into account terms of sale, conditions of delivery, and other circumstances related to the sales in deciding if the selling prices are comparable. To determine whether sales to an affiliate should be included in the normal value calculation, the Department performs an arm's-length test. In this test, the Department compares the weighted-average price to each affiliate for each product to the weighted-average price of the same or a similar product to all unaffiliated customers. If the overall ratio calculated for an affiliate is between 98 percent and 102 percent, inclusive, of the sales prices to all unaffiliated customers, sales to that affiliate may be considered in the **ordinary course of trade** and used in the normal value calculation. Sales not made at arm's length are not considered to be within the ordinary course of trade. See Ordinary Course of Trade.

Certification of Accuracy

Any person that submits factual information to the Department must include with the submission a certification of the completeness and accuracy of the factual information. Certifications must be made by a knowledgeable official responsible for presentation of the factual information and by the party's legal counsel or other representative, if any. A sample certification form is included as Appendix IV to the questionnaire. See section 782 (b) of the Act. See also section 351.303(g) of the Department's regulations.

Circumstances of Sale

In comparing normal value to export price or constructed export price, the Department makes adjustments to normal value for certain differences in expenses or prices that exist because the conditions under which the sales are made in the two markets differ. Besides particular adjustments named in the statute (*e.g.*, differences in quantities and levels of trade), the statute also allows the Department to adjust for other differences in circumstances of sale. This adjustment normally is based only on differences in direct selling expenses that the Department does not adjust for under more specific provisions. See section 773(a)(6)(C)(iii) of the Act; section 351.410 of the regulations. See also Direct vs. Indirect Expenses.)

Complex

With regard to suspensions of investigations, Section 734(c)(2)(B) of the Act defines the term "complex" as a large number of transactions to be investigated or adjustments to be considered, the issues raised are novel, or the number of firms involved is large.

Constructed Export Price

See **Export Price and Constructed Export Price.**

Constructed Export Price (CEP) Offset

To the extent practicable, the Department attempts to base normal value on sales made at the same level of trade as the export price or constructed export price or adjust for the differences in levels of trade. Where this is not possible, the law provides for an adjustment to normal value to account for differences in level of trade when (1) U.S. price is a constructed export price; (2) normal value is determined at a more advanced level of trade than the level of trade of the constructed export price;¹ and (3) the data available do not provide an appropriate basis for determining whether differences in levels of trade affect price comparability and quantifying the amount of a level of trade adjustment. This adjustment takes the form of a deduction from normal value of the amount of indirect selling expenses incurred in the foreign market. The amount of this deduction may not exceed (*i.e.*, it is capped by) the amount of indirect selling expenses deducted in calculating constructed export price. See section 773(a)(7)(B) of the Act; 351.412(f) of the regulations. See also **Level of Trade, Level of Trade Adjustment.**

Constructed Value

When there are no sales of the foreign like product in the foreign market suitable for matching to the subject merchandise (including, for example, when the Department disregards sales because they are below the cost of production), the Department uses constructed value as the basis for normal value. The constructed value is the sum of (1) the cost of materials and fabrication of the subject merchandise, (2) selling, general, and administrative expenses and profit in the foreign market, and (3) the cost of packing for exportation to the United States. See section 773(e) of the Act; sections 351.405 and 351.407 of the regulations.

Contemporaneous Sales

In investigations, the Department normally compares average export prices (or constructed export prices) to average normal values. The averages normally are based on sales made over the course of the period of investigation. In administrative reviews of existing antidumping orders, on the other hand, the Department normally compares the export price (or constructed export price) of an individual U.S. sale to an average normal value for a contemporaneous month. The preferred month is the month in which the

¹ More advanced refers to a more advanced stage of marketing, which generally means that the home market level of trade is more remote from the factory door than the constructed export price level of trade. A more advanced, or remote, level of trade is typically characterized by more selling activities and greater selling expenses.

particular U.S. sale was made. If, during the preferred month, there are no sales in the foreign market of a foreign like product that is identical to the subject merchandise, the Department will then employ a six-month window for the selection of contemporaneous sales. For each U.S. sale, the Department will calculate an average price for sales of identical merchandise in the most recent of the three months prior to the month of the U.S. sale. If there are no such sales, the Department will use sales of identical merchandise in the earlier of the two months following the month of the U.S. sale. If there are no sales of identical merchandise in any of these months, the Department will apply the same progression to sales of similar merchandise. See section 351.414 of the regulations.

Cost of Manufacture

The cost of manufacture is the sum of material, fabrication and other processing costs incurred to produce the products under investigation or review. See also **Cost of Production**.

Cost of Production

Cost of production means the cost of producing the foreign like product. The cost of production is the sum of (1) material, fabrication, and other processing costs, (2) selling, general, and administrative expenses, and (3) the cost of containers and other packing expenses. The Department may disregard foreign market sales in calculating normal value if they are made at prices which are less than the cost of production. The Department will disregard all sales below cost if made: (A) within an extended period of time (normally one year) in substantial quantities (at least 20 percent of the volume of the product examined is sold below cost or the weighted-average unit price is below the weighted-average cost for the period examined); and (B) at prices that do not permit recovery of costs within a reasonable period of time (*i.e.*, a price is less than the weighted-average cost of production during the period examined). Although the Department initiates any cost of production inquiries for all sales of the foreign like product, this determination is made on a product-specific basis. See section 773(b) of the Act; sections 351.406 and 351.407 of the regulations.

Credit Expense

Credit expense is a type of expense for which the Department frequently makes circumstances-of-sale adjustments. It is the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer. The Department normally imputes the expense by applying a firm's annual short-term borrowing rate in the currency of the transaction, prorated by the number of days between shipment and payment, to the unit price. If actual payment dates are not kept in a way that makes them accessible, the calculation may be based on the average of the number of days that accounts receivable remain outstanding. See **Imputed Expenses**.

Date of Sale

Because the Department attempts to compare sales made at the same time, establishing the date of sale is an important part of the dumping analysis. The Department will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Department may use a date other than the date of invoice (e.g., the date of contract in the case of a long-term contract) if satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (e.g., price, quantity). See section 351.401(i) of the Department's regulations.

Difference in Merchandise Adjustments

When normal value is based on sales in the foreign market of a product which is similar, but not identical, to the product sold in the United States, the Department may adjust normal value to account for differences in the variable costs of producing the two products. Generally, the adjustment is limited to differences in the costs of materials, labor and variable production costs that are attributable to physical differences in the merchandise. The Department will not adjust for differences in fixed overhead or administrative expenses or profit. (Section 351.411 of the regulations.)

Direct vs. Indirect Expenses

In calculating export price, constructed export price, and normal value, the Department treats selling expenses differently depending on whether they are direct expenses or indirect expenses. For instance, circumstances-of-sale adjustments normally involve only direct expenses, while the constructed export price offset involves indirect expenses.

Direct expenses generally must be (1) variable and (2) traceable in a company's financial records to sales of the merchandise under investigation or review.

1. Variable vs. fixed expenses: Direct expenses are typically variable expenses that are incurred as a direct and unavoidable consequence of the sale (*i.e.*, in the absence of the sale these expenses would not be incurred). Indirect expenses are fixed expenses that are incurred whether or not a sale is made. The same expense may be classified as fixed or variable depending on how the expense is incurred. For example, if an exporter pays an unaffiliated contractor to perform a service, this fee would normally be considered variable and treated as a direct expense (provided that condition 2, below, is also satisfied). However, if the exporter provides the service through a salaried employee, the fixed salary expense will be treated as an indirect expense.
2. Tying of the expense to sales of the merchandise under investigation or review: Selling expenses must be reasonably dependent upon sales of the merchandise under investigation or review to qualify as direct selling expenses. However, even if a fixed expense is allocable to the merchandise under investigation or review, the Department normally will treat it as an indirect expense.

Common examples of direct selling expenses include credit expenses, commissions, and the variable portions of guarantee, warranty, technical assistance, and servicing expenses. Common examples of indirect selling expenses include inventory carrying costs, salesmen's salaries, and product liability insurance. The fixed portion of expenses, such as salaries for employees who perform technical services or warranty repairs, are indirect expenses.

The Department also treats assumptions of expenses as direct expenses, provided they are attributable to a later sale of the merchandise. For example, the Department treats expenses incurred for advertising aimed at retailers as if they were direct selling expenses when the exporter is selling to wholesalers.

Discounts

See Price Adjustments.

Dumping

Dumping occurs when imported merchandise is sold in, or for export to, the United States at less than the normal value of the merchandise, *i.e.*, a price that is less than the price at which identical or similar merchandise is sold in the foreign market, or less than the constructed value of the merchandise. The dumping margin is the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise. The weighted-average dumping margin is the sum of the dumping margins divided by the sum of the export prices and constructed export prices.

Export Price and Constructed Export Price

Export price and constructed export price refer to the two types of calculated prices for merchandise imported into the United States. The Department compares these prices to normal values to determine whether goods are dumped. Both export price and constructed export price are calculated from the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs *before* the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is usually the sale subject to investigation or review. If, on the other hand, the manufacturer sold the merchandise to a trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to investigation or review.

Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs *after* importation. Constructed export price also applies if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter before importation.

The Department makes adjustments to the price to the first unaffiliated customer in calculating the export price or constructed export price. For both export price and constructed export price the Department adds packing charges, if not already included in the price, rebated import duties, and, if applicable, certain countervailing duties. Also for both, the Department deducts transportation costs and export taxes or duties. No other adjustments are made in calculating export price. However, in calculating the constructed export price, the Department also deducts selling commissions and other expenses incurred for selling activities in the United States performed in selling the subject merchandise to unaffiliated U.S. customers, the cost of any further manufacture or assembly performed in the United States, and profit. These expenses and profits represent activities undertaken in the United States to support the U.S. resale to an unaffiliated customer. Generally these activities are undertaken by the affiliated U.S. reseller. However, the Department will also deduct any selling expenses incurred to support the U.S. resale that are paid by the producer or exporter on behalf of its affiliated U.S. reseller. See section 772 of the Act. See also section 351.402(b) of the regulations.

Extraordinary Circumstances

With regard to suspensions of investigations, section 734(c)(2)(A) of the Act defines the term "extraordinary circumstances" as those circumstances in which the suspension of the investigation will be more beneficial to domestic industry than continuation of the investigation, and the investigation is complex.

Facts Available

The Department seeks to make its antidumping determinations on the basis of responses to its antidumping questionnaires. However, for a variety of reasons, the data needed to make such determinations may be unavailable or unusable. In such instances, the law requires the Department to make its determinations on the basis of "the facts otherwise available" (more commonly referred to as "the facts available"). More specifically, the Department must use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, the Department must use the facts available where an interested party or any other person: (1) withholds information requested by the Department; (2) fails to provide requested information by the requested date or in the form and manner requested; (3) significantly impedes an antidumping proceeding; or (4) provides information that cannot be verified.

In selecting the information to use as the facts available, the law authorizes the Department to make an inference that is adverse to an interested party if the Department finds that party failed to cooperate by not acting to the best of its ability to comply with a request for information. Submitted information that does not meet all of the requirements may be used if: (1) the information is submitted within applicable deadlines; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for a determination; (4) the party establishes that it acted to the best of its ability; and (5) the Department can use the information without undue difficulties. Finally,

if an interested party promptly informs the Department of difficulties it is having in responding to a request for information, the Department will consider modifying its request to the extent necessary to avoid imposing an unreasonable burden on the party. See sections 776 and 782(c)-(e) of the Act. See also section 351.308 of the regulations.

Foreign Like Product

The term foreign like product refers to merchandise that is sold in the foreign market and that is identical or similar to the subject merchandise. When used in the questionnaire, foreign like product means all merchandise that is sold in the foreign market and that fits within the description of merchandise provided in Appendix III to the questionnaire. See section 771(16) of the Act. See also **Identical Merchandise** and **Similar Merchandise**.

Foreign Market

The foreign market is the home or third-country market from which the Department selects the prices used to establish normal values. See **Viability**.

Further Manufacturing Adjustment

In calculating constructed export price, the Department normally deducts from the price of the merchandise sold in the United States the cost of any further manufacture or assembly performed in the United States by, or for, the exporter or an affiliate. However, if the value of the further processing is more than the value of the subject merchandise as imported, the Department may instead use an alternative basis for the constructed export price. The Department normally will determine that the value added in the United States meets this requirement if the value of the further processing in the United States by the affiliated person is estimated to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as it is sold in the United States. In such cases, if possible, the Department will use the price of identical or similar subject merchandise sold to an unaffiliated customer by the producer, exporter, or affiliated seller. If there is an insufficient quantity of such sales or it is not appropriate to use such sales, the Department may rely on any other reasonable basis. See sections 772(d)(2) and 772(e) of the Act. See also sections 351.402 (b) and (c) of the Department's regulations.

Home Market

The home market refers to the market for sales of the foreign like product in the country in which the merchandise under investigation or review is produced. Home market sales are the preferred basis for normal value. See **Third-Country Market** and **Viability**.

Identical Merchandise

The Department prefers to compare U.S. sales to foreign market sales of identical merchandise. The identical merchandise is merchandise that is produced by the same manufacturer in the same country as the subject merchandise, and which the Department determines is identical or virtually identical in all physical characteristics with the subject

merchandise, as imported into the United States. See also **Similar Merchandise and Foreign Like Product**.

Imputed Expenses

Imputed expenses generally are opportunity costs (rather than actual costs) that are not reflected in the financial records of the company being investigated, but which must be estimated and reported for purposes of an antidumping inquiry. Common examples of imputed expenses include credit expenses and inventory carrying costs.

Indirect Expenses

See **Direct vs. Indirect Expenses**.

Inventory Carrying Costs

Inventory carrying costs are the interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer. The Department normally calculates these costs by applying the firm's annual short-term borrowing rate in the currency of the country where the inventory is being held, prorated by the number of days between leaving the production line and shipment to the customer, to the unit cost or price. See **Imputed Expenses**.

Level of Trade

To the extent practicable, the Department calculates normal values based on sales made in the foreign market at the same level of trade as the constructed export price (ACEP) or export price, or adjusts for the differences in levels of trade. In a CEP situation, economic activities occurring in the United States are not considered in determining the level of trade. The level of trade of the U.S. sale is that associated with the constructed export price.

In order to establish whether differences in levels of trade exist, the Department reviews distribution systems, including categories of customers, selling activities, and levels of selling expenses for each type of sale. Different levels of trade are typically characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively and/or quantitatively different selling activities. Different levels of trade necessarily involve differences in selling activities, although differences in selling activities alone are not sufficient to establish differences in levels of trade. Similarly, customer categories such as distributor, wholesaler, retailer, and end-user are often useful in identifying levels of trade, although they, too, are insufficient in themselves to establish differences in levels of trade. Rather, the Department evaluates differences in levels of trade based on a seller's entire marketing process. See section 773(a)(1) and 773(a)(7)(A) of the Act. See also sections 351.412(a)-(c) of the Department's regulations.

Level of Trade Adjustment

When the Department bases normal value on sales in the foreign market at a level of trade that is different from that of the EP or CEP, the Department may adjust the normal value to account for differences in levels of trade between the two markets. The Department makes these adjustments only when there is a difference in the levels of trade and that difference affects price comparability. The Department determines whether there is an effect on price comparability by determining whether there is a pattern of consistent price differences between sales at the different levels of trade in the foreign market. The Department normally calculates any adjustment for level of trade based on the percentage difference between an average of the prices at the different levels of trade in the foreign market, less any expenses adjusted for elsewhere in the normal value calculation. See sections 773(a)(1) and (7) of the Act. See also sections 351.412(c), (d), and (e) of the regulations.

Monitoring

The DOC will not accept a suspension agreement unless effective monitoring of the agreement is practicable. See section 734(d)(2) of the Act. In monitoring agreements under section 734(c) or 734(l) to eliminate injurious effect or an NME agreement, the DOC is not obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products

Movement Expenses

Movement expenses are expenses directly attributable to bringing the merchandise from the original place of shipment to the place of delivery to the United States or in the foreign market. These expenses may include freight and freight insurance charges, brokerage and handling fees, export taxes, and warehousing expenses incurred after the merchandise leaves the original place of shipment. Normally, the production facility is considered to be the original place of shipment. However, where export price, constructed export price, or normal value is based on a sale made by a reseller unaffiliated with the producer, the Department may treat the place from which the reseller shipped the merchandise as the original place of shipment. See sections 772(c)(2)(A) and 773(a)(6)(B)(ii) of the Act. See also section 351.401(e) of the regulations.

Normal Value

Normal value is the adjusted price of the foreign like product in the home or third-country (foreign) market, or the constructed value of the subject merchandise. The Department compares the normal value to the export price or constructed export price to determine the margin of dumping, if any.

The Department initially seeks to calculate normal values based on price. If there are adequate sales in the home market (see **Viability**), the Department calculates normal value based on the price at which the foreign like product is first sold (generally, to unaffiliated parties) in that market; otherwise, if there are adequate sales in a third-country market, the Department calculates normal value based on the price at which the foreign like product is first sold (generally, to unaffiliated parties) in the third-country

market. If there are no appropriate home or third-country market sales, the Department determines normal value by calculating the constructed value.

To ensure a fair comparison between normal value and export price or constructed export price, the Department makes adjustments to the price used to calculate the normal value. The Department adds U.S. packing charges and deducts any of the following expenses included in the foreign market price: packing charges, transportation costs, and any internal tax² that was rebated or not collected on the subject merchandise. The Department may make additional adjustments to account for differences in the conditions under which sales are made in the United States and the foreign market. Thus, the Department may increase or decrease the normal value to account for differences in quantities, physical characteristics of the merchandise, levels of trade, and other circumstances of sale. See section 773(a) and 773(c) of the Act.

Ordinary Course of Trade

In calculating normal value, the Department considers only those sales in the foreign market that are in the ordinary course of trade. Generally, sales are in the ordinary course of trade if made under conditions and practices that, for a reasonable period of time prior to the date of sale of the subject merchandise, have been normal for sales of the foreign like product. See section 771(15) of the Act. See also section 351.102(b) of the regulations. See also **Arms-length Transactions**.

Public Interest

In order to determine whether a suspension agreement is in the public interest, the DOC considers the views of all interested parties, an industrial user of the subject merchandise or a representative of a consumer organization, and U.S. government agencies. See 19 CFR 351.208(f) and section 734(a) of the Act for information on public interest factors that are considered. The 734(a) public interest factors only apply to quantitative restriction agreements under the same section of the Act. Public interest considerations for other types of suspension agreements are in section 734(d) of the Act. For an example of a suspension agreement in which the DOC articulated the public interest requirements under section 734(d) of the Act, see *Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38792 (July 19, 1999). Note: There are several opinions from the CIT criticizing Commerce's failure to articulate a legal standard for the public interest determination in the Brazil Hot Rolled Steel cases, hence the language change recommended above.

Price Adjustments

A price adjustment is any change in the price charged for subject merchandise or the foreign like product that is reflected in the purchaser's net outlay. Discounts and rebates

² Any internal tax other than an export tax or duty, or other charge described in section 771(6)(C) of the Act.

are examples of price adjustments.

A discount is a reduction to the gross price that a buyer is charged for goods. Although the discount need not be stated on the invoice, the buyer remits to the seller only the face amount of the invoice, less discounts. Common types of discounts include early payment discounts, quantity discounts, and loyalty discounts.

Similar to discounts, rebates are reductions in the gross price that a buyer is charged for goods. Unlike discounts, rebates do not result in a reduction in the remittance from the buyer to the seller for the particular merchandise with which the rebate is associated. Rather, a rebate is a refund of monies paid, a credit against monies due on future purchases, or the conveyance of some other item of value by the seller to the buyer after the buyer has paid for the merchandise. When the seller establishes the terms and conditions under which the rebate will be granted at or before the time of sale, the Department reduces the gross selling price by the amount of the rebate. See section 351.102(b) of the regulations. See also **Direct vs. Indirect Expenses**.

Proprietary Information

Proprietary information is sensitive business data that would cause substantial harm to the submitting party if disclosed publicly. Examples of information that the Department normally treats as proprietary, if requested and not already in the public domain, include trade secrets concerning the production process, production and distribution costs, terms of sale, individual prices, and the names of customers and suppliers.

Proprietary Treatment

If a party requests proprietary treatment of information, and if the Department agrees that the information is proprietary, the Department will protect the information from public disclosure. If the Department does not agree that the information is proprietary, it will return the information and not rely on it in the proceeding, unless the submitting party agrees that it may be made public. When requested, the Department will disclose proprietary information only to United States International Trade Commission and United States Customs Service officials and, under limited administrative protective orders, representatives of interested parties. See section 777(b) of the Act. See also **Administrative Protective Order**.

Rebates

See **Price Adjustments**

Regulations

See **Antidumping Law and Regulations**

Similar Merchandise

In deciding which sales of the foreign like product to compare to sales of the subject merchandise, the Department first seeks to compare sales of identical merchandise. If

there are no sales of the identical foreign like product, the Department will compare sales of the foreign like product similar to the subject merchandise. The similar foreign like product is merchandise that is produced by the same manufacturer in the same country as the subject merchandise, and which, in order of preference, is either (1) similar to the subject merchandise in component materials, use, and value, or (2) similar in use to, and reasonably comparable to, the subject merchandise. See section 771 (16) of the Act. See also **Identical Merchandise, Foreign Like Product**, and Appendix V.

Subject Merchandise

Subject merchandise is the merchandise under investigation or review, *i.e.*, the merchandise described in Appendix III to the questionnaire, and sold in, or to, the United States. See section 771(25) of the Act.

Substantially All

With regard to suspension agreements, exporters which account for substantially all of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the imports of the subject merchandise during the period of investigation or another period that the DOC considers representative. See 19 CFR 351.208(c).

Technical Service Expenses

Technical service expenses are typically incurred when a producer provides technical advice to customers which are industrial users of the product. Generally, the Department considers travel expenses and contract services performed by unaffiliated technicians to be direct expenses. The Department treats salaries paid to the seller's employees who provide technical services as indirect expenses.

Third-Country Market

When the Department cannot use home market sales as the basis for normal value, the preferred alternative method is the use of sales to a third-country market, *i.e.*, export sales of the foreign like product to a country other than the United States. Generally, in selecting a third-country market to be used as the foreign market, the Department will choose one of the three third-country markets with the largest aggregate quantity of sales of the foreign like product. In selecting which country, the Department will consider product similarity, the similarity of the third-country and U.S. markets, and whether the sales to the third country are representative. See section 773(a)(1) of the Act; section 351.404 of the regulations. See also **Home Market** and **Viability**.

Verification

To establish the adequacy and accuracy of information submitted in response to questionnaires and other requests for information, the Department examines the records of the party that provided the information and interviews company personnel who prepared the questionnaire response and are familiar with the sources of the data in the response. This process is called verification. The Department must verify information

relied upon in making a final determination in an investigation or administrative review when revocation of an antidumping order is properly requested. The Department also must verify information submitted in an administrative review if an interested party so requests and no verification of the producer or exporter had been conducted during the two immediately preceding reviews of that producer or exporter, or if good cause for verification is shown. See section 782(i) of the Act. See also section 351.307 of the regulations.

Viability

To calculate normal value based on sales in the home market, the Department must determine that the volume of sales is adequate in that market and that a particular market situation does not make their use inappropriate. To calculate normal value based on sales in a third-country market, the Department must make the same determinations with respect to sales to the third country, and in addition the sales must be representative. These determinations establish whether a market is viable.

The Department normally finds sales to be adequate if the quantity of the foreign like product sold is 5 percent or more of the quantity sold to the United States. In unusual situations, the Department may find that sales below the 5-percent threshold are adequate, or that sales above the threshold are not. Also in unusual situations, the Department may apply the 5-percent test on the basis of value, rather than quantity. The terms particular market situation and representative are undefined in the statute or the regulations. A particular market situation might exist, for example, where there was a single sale in the foreign market that constituted 5 percent or more of the quantity sold to the United States, or where government control of pricing is such that prices cannot be competitively set. See section 773(a)(1) of the Act. See also section 351.404(b)(2) of the Department's regulations.

Warehousing Expenses
See Movement Expenses