

**CHAPTER 7:  
EXPORT PRICE AND CONSTRUCTED EXPORT PRICE**

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**Statute and Regulations:**

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

Section 751(a)(2)(A)(i) - EP and CEP in administrative reviews

Section 771(33) - affiliated persons

Section 772(a) and (c) - calculation of EP

Section 772(b), (c) and (d) - calculation of CEP

Section 777 - access to information

Section 782 - conduct of investigations and reviews

Section 777A(d)(1)(A)(i) - in investigations, comparison of weighted-average normal value (NV) to weighted-average export price (EP) or constructed export price (CEP) of comparable merchandise

Section 777A(d)(1)(A)(ii) - in investigations, comparison of individual NV transactions to individual EP or CEP transactions of comparable merchandise

Section 777A(d)(1)(B) - in investigations, comparison of weighted-average NV to individual EP or CEP transactions of comparable merchandise

Section 777A(d)(2) - in reviews, comparison of weighted-average NV to individual EP or CEP transactions of comparable merchandise

Department of Commerce (DOC) Regulations

Section 351.102(b) - definitions

Section 351.107 - bonding and cash deposit rules for non-producers

Section 351.301 - time limits for submission of data

Section 351.303 - filing, format, service, and certification of documents

Section 351.304(c) - treatment of business proprietary information

Section 351.401 - general information on CEP and EP

Section 351.401(h) - treatment of subcontractor sales

Section 351.402(a),(b),(c) and (d) - calculation of EP and CEP

Section 351.413 - disregarding insignificant adjustments

Section 351.414 - comparisons of NV with EP and CEP

Statement of Administrative Action

Section B.2.b - CEP and EP

Section B.2.b.(2) - adjustments to EP and CEP

Section B.2.b.(3) - value added after importation

Section B.8 - price averaging; "targeted" dumping

Section C.4 - procedural requirements for antidumping investigations

Antidumping Agreement

Article 2.3 - sales after importation

Article 2.4 - rules for fair comparisons between EP and normal value (NV)

Article 2.4.2 - comparisons of weighted-average prices and the use of individual export transactions

Article 6 - evidence

Other:

15 CFR 400.33(b)(2) and 19 CFR 146.41(e) - foreign trade zones

## I. INTRODUCTION

As defined by the Tariff Act, "export price" (EP) and "constructed export price" (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. Both EP and CEP are based upon prices to the first unaffiliated purchaser. We make adjustments for both EP and CEP as directed by section 772(c) of the Tariff Act for EP and sections 772(c) and 772(d) for CEP. The starting price for both EP and CEP 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 preamble to the Department's antidumping regulations, 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. 62 FR at 27344. Sections 351.401 and 351.402 of the Department's regulations contain additional information on the adjustments to starting prices that are necessary to calculate EP and CEP.

In determining whether the basis for U.S. price is EP or CEP, we consider where the sale to the first unaffiliated customer is made. As discussed further below, if the sale is made outside the United States to the unaffiliated customer by the foreign producer or exporter, then the sale is classified as an EP sale. If the sale is made in the United States to the unaffiliated customer by an affiliate of the foreign producer or exporter, then the sale is classified as a CEP sale. See section 771(33) of the Act for information on affiliated persons and section 772(e) of the Act for information on value added.

## II. EXPORT PRICE

The Department 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 foreign 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 section IV of this chapter for information

The following are examples of situations the analyst may encounter in trying to determine if the sale to the United States requires us to calculate EP or CEP. For how to deal with fact patterns that differ from these, see section III of this chapter on CEP.

#### **A. Unaffiliated Purchaser in the United States**

Company A in the home market wants to sell color television sets to the United States. On January 15, 2006, the export sales office of company A in the home market 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 \$750,000 and a per-unit price of \$250.00. On February 15, 2006, 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, 2006.

Based on the facts outlined above, we would compute an EP for this sale because: 1) the essential terms of sale (e.g., price and quantity) are set on February 15, 2006, 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 pursuant to the requirements of section 772(c) of the Act. See, e.g., [Notice of Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil](#), 70 FR 48668, 48669 (August 19, 2005), unchanged in [Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil](#), 70 FR 62297 (October 31, 2005).

#### **B. Unaffiliated Trading Company in the Home Market or Third-Country Producer Knows the Destination of the Merchandise**

The example in part A above is fairly straightforward. However, we occasionally find that foreign producers sell 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 home market, 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 home market for a total of \$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 Trading 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 Trading Company B, the unaffiliated trading company. The starting price would be adjusted per the requirements of section 772(c) of the Act. See, e.g., [Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results Of Antidumping Duty Administrative Reviews, Partial Rescission Of Administrative Reviews, Notice Of Intent To Rescind Administrative Reviews, And Notice Of Intent To Revoke Order In Part](#), 69 FR 5949, 5951 (February 9, 2004), unchanged in [Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part](#), 69 FR 55574, 55577 (September 15, 2004), and the accompanying [Issues and Decision Memorandum](#).

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 Home Market 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. Trading 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 outside the United States to an unaffiliated buyer prior to importation, the Department will use EP as the basis of U.S. price. 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.

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) of the Act.

As the Department has explained, “If, however, the producer has no knowledge of sales to the United States made by a reseller (where a producer believes the ultimate consumer for its sales is the customer in the home market or a third country), then those sales are not included in the Department’s margin analysis for the producer because the proper respondent for these sales to the United States is the reseller. The most accurate determination of the appropriate assessment rate would be an analysis of the reseller’s pricing practices.” See [Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties](#), 68 FR 23954, 23957 (May 6, 2003). See 19 CFR 351.107 for information on how to set the bonding (in an investigation) or cash deposit amount for imports from the unaffiliated trading company.

#### **D. Special Circumstances Involving Unaffiliated Middleman Sales**

Very infrequently, a manufacturer or producer may sell to an unaffiliated trading company, or middleman, in the home market 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 middleman, the producer has knowledge of U.S. destination. If this is the case and the Department receives a documented allegation that the 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 will calculate a dumping margin that reflects the middleman’s dumping as well as any dumping from the producer to the middleman. In investigating middleman dumping, the starting price for the EP would be the price (net of discounts and rebates) charged by the 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 for the manufacturer. This situation is very unusual. See, e.g., [Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan](#), 63 FR 66785, 66786-66787 (Dec. 3, 1998); [Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan](#), 64 FR 15493, 15493-15494 (March 31, 1999); and [Tung Mung Dev. Co. v. United States](#), 219 F. Supp. 2d 1333 (CIT 2002) *aff’d*, 2004 354 F.3d 1371 (Fed. Cir., Jan. 15, 2004).

#### **E. Affiliated Trading Company Sales**

In situations where trading companies located in the home market 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 outside the United States 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, e.g., [Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review](#), 66 FR 36754 (July 13, 2001), the accompanying [Issues and Decision Memorandum](#) at Comment 5, and [Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review](#), 66 FR 38061, July 20, 2001. See also section 771(33) of the Act for information on affiliated persons and Chapter 8 for a discussion of affiliation.

#### **F. Affiliated Seller in the United States**

When a producer is affiliated with a 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.<sup>1</sup> We calculate EP if the sale to the unaffiliated purchaser is made outside the United States by the producer or exporter. This means that the U.S. affiliate did not transfer the title or ownership to the unaffiliated purchaser.

The following example illustrates this type of transaction:

Company A in the home market 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 Company A made the sale, i.e., transferred title and ownership, to the unaffiliated U.S. retailer, 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 EP. See, e.g., [Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit From Thailand](#), 66 FR 52744 (October 17, 2001) and accompanying [Issues and Decision Memorandum](#) at Comment 16 ([Pineapple from Thailand](#)) and [Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part](#), 69 FR 64731 (November 8, 2004) and accompanying [Issues and Decision Memorandum](#) at

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<sup>1</sup> As mentioned in the “Constructed Export Price” section of this chapter, below, according to [AK Steel Corp. v. United States](#), 226 F.3d 1361, 1374 (Fed. Cir. 2000) ([AK Steel](#)), if we determine that a U.S. affiliate sold the merchandise to the unaffiliated U.S. customer, we must classify such sales as CEP. If the U.S. affiliate transfers ownership or title, then it is a CEP sale. *Id.* at 1371. See also [Corus Staal BV v. United States](#), 259 F. Supp. 2d 1253, 1258 (CIT 2003), [aff’d](#) 395 F.3d 1343 (Fed. Cir. 2005), [cert. denied](#) 136 S. Ct. 1023 (2006).

Comment 17 (Rebar from Turkey)<sup>2</sup>. See also section III of this chapter on CEP for more information on this type of transaction, and section 771(33) for more information on affiliated parties.

### III. CONSTRUCTED EXPORT PRICE

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. CEP is calculated to account for U.S. selling expenses and profit. 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 section IV of this chapter for information on how to compute CEP.

The Department is required to calculate CEP if the first sale to an unaffiliated purchaser occurred after the importation of the subject merchandise into the United States. In cases where a U.S. affiliate of the producer or exporter in the foreign market makes the sale, the CEP classification is straightforward. Where the U.S. affiliate is involved in the sales transaction (for example, by performing certain brokerage services or accepting payment), but does not actually transfer title or ownership, the issue becomes more complicated. The Court of Appeals for the Federal Circuit (CAFC) addressed this latter issue in AK Steel Corp. v. United States, 226 F.3d 1361 (Fed. Cir. 2000) (AK Steel). According to AK Steel, when a U.S. affiliate is involved in the producer's or exporter's U.S. sales process, we must first determine where the sale or agreement to sell occurred. If a sale contract was executed in the United States and title passes in the United States, then the sale must be classified as CEP.<sup>3</sup> If we determine that the sales at issue take place outside the United States, we would classify them as EP. See, e.g., AK Steel, 226 F.3d

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<sup>2</sup> In Rebar from Turkey and the accompanying Issues and Decision Memorandum, we found that the sales invoice was issued by an entity in Turkey (i.e., the producer/exporter) to an entity in the United States (i.e., the U.S. customer), the subject sales were executed outside of the United States and title passed outside of the United States. Therefore, the Department treated the respondent's U.S. sales as EP transactions consistent with AK Steel.

<sup>3</sup> Specifically, AK Steel states:

{If} the contract for sale was between a U.S. affiliate of a foreign producer or exporter and an unaffiliated U.S. purchaser, then the sale must be classified as a CEP sale. Stated in terms of the EP definition: if the sales contract is between two entities in the United States and executed in the United States and title will pass in the United States, it cannot be said to have been a sale outside the United States; therefore, the sale cannot be an EP sale. Similarly, a sale made by a U.S. affiliate or another party other than the producer or exporter cannot be an EP sale.

See AK Steel, 226 F.3d at 1375.

at 1374; [Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part](#), 70 FR 67665 (November 8, 2005) and accompanying [Issues and Decision Memorandum](#) at Comment 22; and [Pineapple from Thailand](#) at Comment 16.

The following examples are representative of situations analysts may encounter that require the calculation of CEP for U.S. sales. If the analyst is confronted with a fact pattern that differs from these, see section II of this chapter on EP.

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

Company A in the home market 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 by Company D out of 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 Company D to the unaffiliated U.S. retailer. Adjustments are made to the starting price pursuant to sections 772(c) and (d) of the Act to arrive at the CEP. See, e.g., [Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp From Thailand](#), 69 FR 47100, 47104-105 (August 4, 2004), unchanged in [Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand](#), 69 FR 76918 (December 23, 2004) and the accompanying [Issues and Decision Memorandum](#).

#### **B. The First Sale to an Unaffiliated Party Is Made Prior to Importation by a U.S. Affiliate**

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 home market Company A to ship large numbers of autos that importer D sold prior to importation directly to unaffiliated retailers. Importer D also processes the paperwork for sales for Company A. This constitutes a CEP sale. Starting prices would be determined and adjustments would be made to starting prices for these types of transactions as specified above in section III, part A.

#### **C. Consignment Sales**

Company A in the home market 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 Company A 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, e.g., [Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy](#), 67 FR 3155 (January 23, 2002) and accompanying [Issues and Decision Memorandum](#) at Comment 38; and [Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews](#), 61 FR 42833, 42836 (August 19, 1996).

#### **IV. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE CALCULATION METHODOLOGY**

##### **A. General Principal on Adjustments**

In making adjustments to export price (EP) and constructed export price (CEP), the interested party in possession of the relevant information has the burden of establishing the amount and nature of a particular adjustment. (19 CFR 351.401 (b)(1)). See also [Fujitsu Gen. Ltd. v. United States](#), 88 F. 3d 1034, 1040 (Fed. Cir. 1996) (“Commerce has reasonably placed the burden to establish entitlement to adjustments on [respondent], the party seeking the adjustment and the party with access to the necessary information”).

##### **B. Price Adjustments to Arrive at the Starting Price**

In calculating EP or CEP, the Department starts with a price that is net of any price adjustment. “Price Adjustment” is defined as any change in the price charged for subject merchandise or the foreign like product (whichever is applicable), like discounts, rebates and post-sale price adjustments, that are reflected in the purchaser’s net outlay. See 19 CFR 351.102(b). Price adjustments may be made either upwards or downwards.

##### **C. Adjustments to the Starting Price**

The Act requires the Department 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. See also [Fujitsu Gen. Ltd. v. United States](#), 88 F. 3d at 1040. When reporting these adjustments, we prefer that respondents report transaction-specific costs and not allocated costs. However, the Department may consider allocated expenses and price adjustments when transaction-specific reporting is not possible. In order to report expenses on an allocated basis, a respondent must demonstrate that the allocation: 1) is calculated on as specific a basis as possible; and 2) does not cause inaccuracies and distortions. See 19 CFR 351.401(g) and the related discussion in the preamble to this regulation regarding allocation

methodology and allocations that usually are not distortive. This section also addresses expenses and price adjustments relating to out-of-scope merchandise. The Department will not reject an allocation methodology solely because the method includes expenses incurred or price adjustments made with respect to sales of non-subject merchandise.

The following are the price adjustments required by the Act or the regulations:

1. Additions to the Starting Price

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.”

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.”

In determining whether or not duty drawback should be added to the starting price, we look for a demonstrable 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 criteria in order for this addition to be made to EP or CEP. The first criterion is that the import duty and rebate be directly linked to, and dependent on, one another. The second criterion is that the company must demonstrate that there were sufficient import volumes of the imported material to account for the duty drawback received for the export of the manufactured product. For example, the quantity of imported steel must be at least as great as that used in the production of the exported wire nails for which drawback is claimed, thus showing a direct link between the amount of the import duty paid and the amount rebated. See, e.g., [Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty Administrative Review](#), 71 FR 7513 (February 13, 2006), and accompanying [Issues and Decision Memorandum](#) at Comment 2; and [Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review](#), 70 FR 73447 (December 12, 2005), and accompanying [Issues and Decision Memorandum](#) at Comment 7. See also [Federal-Mogul Corp. v. United States](#), 862 F. Supp. 384, 410 (CIT 1994).

### 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 subject 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 U.S. Customs and Border Protection (CBP) bonding (for investigations only) or cash deposit purposes to reflect the impact of these duties on the dumping margin calculation. See, e.g., [Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil](#), 67 FR 62134, 62135 (October 3, 2002) and the accompanying Issues and Decision Memorandum. In instances where the countervailing duty amount reduces the dumping margin to de minimis, the respondent is still included in the antidumping duty order and liquidation is still suspended; however, the antidumping cash deposit rate will be zero. See [Dupont Teijin Films USA, LP, Mitsubishi Polyester Film of America, LLC, and Toray Plastics \(American\), Inc. v. United States](#), Slip Op. 04-70 (CIT June 18, 2004), aff'd, 2005 U.S. App. Lexis 8300 (Fed. Cir. May 12, 2005). 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 analysts are conducting an administrative review of an antidumping duty order for a product which is also subject to a countervailing duty order, they should contact the countervailing duty analyst to determine what, if any, export subsidies are involved.

## 2. Deductions to the Starting Price

### 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 U.S. import duties incident to bringing the subject 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. See 19 CFR 351.401(e)(1). 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, but rather costs of production. However, any off-site movement expenses are considered movement charges.

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. However, movement and related expenses from the producer to the unaffiliated reseller's premises are not deductible movement expenses. See 19 CFR 351.401(e)(1). The purpose of this approach is to avoid deduction of expenses which are part of the cost of acquisition of the reseller.

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); and
- Foreign brokerage, handling, and port charges.

In addition, under 19 CFR 351.401(e)(2), we also 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 expenses incurred for each sale. However, we may use allocated movement charges when the respondent cannot provide transaction-specific expense information. 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. Hence, there is no need for the Department to deduct movement expenses paid by the customer 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, U.S. brokerage; and
- Delivered: includes all of the charges in C.I.F., duty paid plus U.S. inland freight and insurance.

#### b. Export Taxes

Export taxes, duties or other charges imposed by the exporting country on the exportation of the subject merchandise to the United States included in the EP or CEP are also deducted in accordance with section 772(c)(2)(B) of the Act. We make an exception for those export taxes specifically imposed to offset a countervailable subsidy received. In such instances, no deduction is made.

#### c. Reimbursed Antidumping Duties

For duty assessment purposes, when calculating EP or CEP in an administrative review, 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 calculations. Additionally, the importer must file a certificate with the District Director of CBP 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 CBP doubles the amount of duties owed. Only one deduction is made for reimbursed duties. See 19 CFR 351.402(f) for detailed information on reimbursements; see also [Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review](#), 65 FR 30068 (May 10, 2000) and accompanying [Issues and Decision Memorandum](#) at Comment 1.

#### 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, for certain other 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 transaction-specific amounts for these expenses, allocations will be permitted, if appropriate. See the introduction to section IV.C, above, 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, or the affiliated seller 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:
  - Commissions paid to unaffiliated agents for selling the merchandise under investigation or review in the United States. See section 772(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 expenses, guarantees and warranties. See section 772(d)(1)(B) of the Act; Torrington Co. v. United States, 82 F.3d 1039 (Fed. Cir. 1996); and Koyo Seiko Co., Ltd. v. United States, 92 F.3d 1162 (Fed. Cir. 1996). See also Chapter 8, section VI (U.S. repacking 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; and
  - 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 associated with economic activity occurring in the United States. The SAA also specifies that direct selling expenses may be deducted to the extent they are incurred after importation. See SAA at 823. Accordingly, all 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 a 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 [Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy](#), 61 FR 30326, 30365 (June 14, 1996) (Pasta From Italy) at “Delverde” Comment 2. See also <http://ia.ita.doc.gov/frn/1997/frnmay97/a588840.txt>, 62 FR 24394, 24398-406 (May 5, 1997).

However, if such foreign expenses are direct in nature they may be treated as circumstance of sale adjustments to NV. See 19 CFR 351.410.

As a general matter, 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, if liability insurance purchased in the foreign country is only associated with economic activities in the United States, it 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.

- b. Any additional costs, including additional material and labor costs, 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.”

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 Department 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. This value added test normally is applied collectively to all of the subject merchandise that undergoes a further manufacturing process. The test normally is not applied to individual subject merchandise products within the value-added pool.

Section 351.402(c)(2) of the Department's regulations states that the Secretary normally will determine that the value added in the U.S. by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the U.S. If the estimated value added exceeds 65 percent, section 351.401(c)(3) of the regulations states that the Secretary may use the weighted-average dumping margin calculated on sales of identical or other subject merchandise sold to the unaffiliated person. For example,

in the [Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico](#), 70 FR 54013 (September 13, 2005).<sup>4</sup>

In order to use the alternative methods set forth in section 772(e)(1) and (e)(2) of the Act as a basis for determining the amount of dumping, the Department also must determine that there is a sufficient quantity of such sales to provide a basis for comparison and that the use of such sales is appropriate.

If we determine that there is not a sufficient quantity of such sales or that neither method is appropriate, we may use “any other reasonable basis” to calculate CEP for further-manufactured sales. Although we have considerable latitude in determining what constitutes any other reasonable basis (including, according to the SAA at 826, the use of the transfer price from the exporter or producer to the affiliated importer), we should evaluate potential methods using the same “sufficient quantity” and “appropriateness” standards. Further, we should identify and use a method that not only satisfies the overall purpose of the provision - the reduction of the burden on the Department - but also furthers the goal of accuracy. The best alternative may be our standard further-processing analysis if we determine that the increase in the accuracy of the result would outweigh the burden of applying the standard methodology.

When evaluating whether the use of either of the two alternative methods identified in section 772(e)(1) and (e)(2) is appropriate, we have considered such factors as the relative burden to the Department of applying the standard methodology and the extent to which it would lead to more accurate results. In TRBs from Japan, for example, we determined that using either of the two alternatives was not appropriate, because the gains in accuracy that we would achieve would outweigh any burden resulting from the use of the standard calculation. Accordingly, we determined that using the standard methodology was appropriate in that case. See [Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews](#), 66 FR 15078 (March 15, 2001), and accompanying [Issues and Decision Memorandum](#) at Comment 1. The burden of applying the standard methodology to calculate the CEP of further-manufactured merchandise may vary from case to case depending on factors such as the nature of the further-manufacturing process and the finished products. The accuracy gained by applying the standard methodology may also vary significantly from case to case, depending upon such factors as the amount of value added in the United States and the proportion of U.S. sales which undergo further processing. If the burden is relatively low and we have reason to believe that the application of the standard methodology will lead to more accurate results, this may render the alternatives set forth in section 772(e)(1) and (e)(2) inappropriate and the standard methodology a reasonable basis for the determination.

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<sup>4</sup>This was unchanged in the final results. See <http://ia.ita.doc.gov/frn/2006/0601frn/E6-484.txt>, 71 FR 2909 (Jan. 18, 2006), and the accompanying [Issues and Decision Memorandum](#).

- 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 19 CFR 351.402(d) 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:

$$\text{CEP profit} = (\$0.45/8,200,000) \times \$800,000 = \$0.0439$$

In order to derive the expenses and profit used in the above scenario, analysts 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
<u>2,750,000</u>	
\$9,000,000	

\$4,750,000	
Cost of exporting market merchandise	1,900,000
U.S. selling expenses	1,000,000
250,000	
50,000	
<u>250,000</u>	
\$8,200,000	

Total profit for CEP	\$800,000
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For an actual example of a profit calculation involving CEP, see [Pasta from Italy](#).

#### 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	<u>1.50</u>
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 <sup>5</sup>	2.80
- warranty expense	4.00
- assumed advertising expense	3.50
- indirect selling expense incurred in the U.S. <sup>6</sup>	31.25
- inventory carrying expense	3.00
CEP Profit	<u>5.00</u>

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<sup>5</sup> In cases where some of the sales reported to the United States have not yet been shipped or paid for, we have calculated an average number of days for credit based on the reported data for sales that have been shipped and paid for, 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 use the same formula and add the amount for credit income to the price. We have also used supplemental response dates, verification dates, or date of final determination to make this computation.

<sup>6</sup> 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 exporting country that are associated with economic activity occurring in the United States.

CEP = \$183.04

## V. COLLAPSING AFFILIATED PARTIES

Collapsing involves treating affiliated parties as a single entity for the purposes of calculating dumping margins. When the Department determines that two companies are affiliated and there exists a significant potential for manipulation, it treats the companies as a single entity and determines a single weighted-average margin (and cash deposit rate) for that entity, in order to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law. See Queen's Flowers de Colombia v. United States, 981 F. Supp 617, 622-23 (CIT 1997) (Commerce's collapsing practice has been approved by the court as a reasonable interpretation of the AD statute.) Once the decision has been made to collapse two or more entities, we consider the actions of one member of the entity to represent the actions of the whole. For example, if we made an adverse facts available (AFA) determination with respect to one member of a collapsed entity, that AFA decision would apply to the entire entity.

Collapsing of producers is covered in the regulations at 19 CFR 351.401(f). Although the collapsing regulation specifically addresses affiliated producers, the Department's recent practice has been to consider collapsing affiliated exporters and processors. See e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Final Court Decision and Amended Final Determination of Sales at Less Than Fair Value, 68 FR 55587 (September 26, 2003) in which we collapsed two affiliated producers. See also Certain Frozen and Canned Warmwater Shrimp from Brazil: Final Determination of Sales at Less Than Fair Value, 69 FR 76910 (December 23, 2004) (Shrimp from Brazil) and the accompanying Issues and Decision Memorandum, in which we collapsed an exporter and an affiliated processor.

Under 19 CFR 351.401(f)(1), the Department collapses affiliated entities where: (1) they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) where there is a significant potential for the manipulation of price or production. Section 351.401(f)(2) sets forth three non-exclusive factors to consider when identifying a significant potential for manipulation of price or production. Those factors include: (i) the level of common ownership between the entities; (ii) the extent to which they share common management or board members; and (iii) whether the operations are intertwined, such as through the sharing of sales information, involvement in each other's production and pricing decisions, the sharing of facilities or employees, or the occurrence of significant transactions between the affiliated producers. See e.g., Shrimp from Brazil 69 FR 76913 at Comment 5 of the accompanying Issues and Decision Memorandum.

In determining the potential for manipulation, a finding of actual manipulation is not necessary, as a significant potential for manipulation between affiliated parties is sufficient enough to

satisfy this requirement. To determine whether a significant potential for manipulation exists, the analyst must consider the totality of the circumstances particular to the case at hand in analyzing the three factors, as no one factor is more important than another and not all three factors are required. See [Final Determination of Less-Than-Fair Value Investigation: Steel Concrete Reinforcing Bars from the Republic of Korea](#), 69 FR 19399 (April 13, 2004) and the accompanying [Issues and Decision Memorandum](#); and [Dongkuk Steel Mill Co. v. U.S.](#), 2005 CIT LEXIS 88; Slip Op. 05-75 (CIT June 22, 2005).

Lastly, because each antidumping proceeding is specific to subject merchandise from a single country, the Department does not collapse affiliated parties across countries subject to separate investigations or reviews. See [Stainless Steel Bar From France; Final Determination of Sales at Less Than Fair Value](#), 67 FR 3146 (January 23, 2002) and the accompanying [Issues and Decision Memorandum](#); and [Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy](#), 67 FR 3155 (January 23, 2002), and the accompanying [Issues and Decision Memorandum](#).

## VI. SUBSTANTIAL TRANSFORMATION

### Overview

Generally, the term “substantial transformation” applies to a significant degree of processing that modifies a product from its original state, resulting in a new and different article. Through that modification, the new article becomes a product of the country in which it was processed or manufactured, i.e., last substantially transformed. See, e.g., [Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review](#), 69 FR 74495 (December 14, 2004) (SSPC from Belgium), and accompanying [Issues and Decision Memorandum](#) at Comment 4. 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 and undergo certain changes before being imported into the United States. Our investigations and reviews concern the imports of specific products originating from specific countries. In this context, it is important to determine whether a product exported from a third country to the United States is covered.

### Practice

Antidumping proceedings are confined to subject merchandise from a particular country.<sup>7</sup> The statute defines country, for antidumping proceedings, as a “foreign country, a political subdivision, dependent territory or possession of a foreign country.”<sup>8</sup> One factor used to

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<sup>7</sup> See <http://ia.ita.doc.gov/frn/2004/0412frn/E4-3641.txt>, 69 FR 74495 (December 14, 2004) and accompanying [Issues and Decision Memorandum](#).

<sup>8</sup> See Section 771(3) of the Act.

consider whether a product is covered by an antidumping proceeding is whether or not the product is substantially transformed in a third country by a further process that might alter what is considered the country of origin. A product is generally not subject to investigation or review if it is substantially transformed so that it becomes a product of a third country.<sup>9</sup> Alternatively, if a situation exists whereby a respondent subject to a review or investigation in one country has contracted with a company, whether or not affiliated, in another country to process non-subject merchandise into subject merchandise through a tolling arrangement, the location where the subject merchandise was actually produced in its final form will normally determine its country of origin.<sup>10</sup> For example, Company A in France indicated that it had contracted the services of its Italian affiliate (Company I) to process non-subject merchandise (of French origin) into subject merchandise, which Company A then sold through its affiliate (Company U) in the U.S. market. After examining Company A's claims in the context of the Department's tolling regulation,<sup>11</sup> (even though Company A may be the manufacturer of these sales) the product was produced by Company A in Italy and, therefore, the product is subject to the LTFV proceeding involving subject merchandise from Italy. More importantly, the Department has stated in such a situation that the tolling regulation is not intended to apply for the purpose of determining the country of origin of merchandise.<sup>12</sup> The Court of International Trade (CIT) found that the Department's tolling regulation "addresses the relationship of the parties in the manufacturing process, not the nationality of the merchandise itself."<sup>13</sup> Rather, the country in which substantial transformation occurred was dispositive for purposes of determining country of origin.

## Application

The Department determines whether a product has been substantially transformed on a case-by-case basis. Not every alteration or process constitutes substantial transformation: The modification must be substantial. The transformation must result in a new and different article.<sup>14</sup>

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<sup>9</sup> However, situations involving circumvention of an antidumping duty order must be considered pursuant to section 781 of the Act. SAA at 844. See Chapter 26 for a discussion on anticircumvention.

<sup>10</sup> See <http://ia.ita.doc.gov/frn/2001/0108frn/01-19349.txt>, 66 FR 40201, 40204 (August 2, 2001) (SS Bar from France Prelim), unchanged in <http://ia.ita.doc.gov/frn/2002/0201frn/02-1651.txt> 67 FR 3143 (December 21, 2001) (SS Bars from France), and accompanying Issues and Decision Memorandum.

<sup>11</sup> See 19 CFR 351.401(h).

<sup>12</sup> See <http://ia.ita.doc.gov/frn/2004/0412frn/E4-3641.txt>, 69 FR 74495 (December 14, 2004) and accompanying Issues and Decision Memorandum.

<sup>13</sup> See E. I. DuPont v. Unites States, 8 F. Supp. 2d at 858-859.

<sup>14</sup> CBP decisions and customs regulations regarding substantial transformation and country of origin are not binding on the Department because the Department makes such decisions with different aims in mind (e.g., anticircumvention).

The following cases illustrate different types of substantial transformation analysis:

- In a case involving wax and wax/resin thermal transfer ribbons (TTR) from France,<sup>15</sup> petitioners alleged that the respondents in the case would attempt to circumvent the order by slitting TTR jumbo rolls in third countries. The petitioners requested that the Department determine that slitting does not change the country of origin of TTR for antidumping purposes. The Department determined that the jumbo roll of TTR is the “essential component” of the product and therefore performing subsequent slitting operations on the jumbo rolls in a third country does not constitute “substantial transformation” and thus does not change the country of origin of the final product. In other words, the Department determined that for antidumping purposes the country of origin of the jumbo roll would be the country of origin of the final product regardless of where it was slit.<sup>16</sup>
- In Stainless Steel Plate in Coils (SSPC) from Belgium, the respondent (located in Belgium) sent slabs to its affiliate in Germany, which hot-rolled the slabs into SSPC in Germany. In this case, the Department determined that because hot rolling constitutes substantial transformation, the country of origin of the respondent’s merchandise, which is hot-rolled in Germany, and not further cold-rolled in Belgium, is Germany. Therefore, this merchandise is not subject to the order on SSPC from Belgium because the antidumping duty orders must be applied on a country-specific basis.<sup>17</sup> The Act limits the term "country" for purposes of antidumping proceedings. See section 771(3) of the Act. Thus, because the SSPC order covers subject merchandise from Belgium which is exported to the United States, the statute requires the Department to limit its review to merchandise whose country of origin is Belgium.
- In a case involving stainless steel bar from France<sup>18</sup>, the respondent contracted through a tolling arrangement with its Italian affiliate to have its raw material further processed into the subject merchandise in Italy (the merchandise was subsequently sold to the United States). Because the substantial transformation of the raw material (non-subject merchandise) into the subject merchandise occurred in Italy, the Department considered the country of origin of the final product to be Italy and therefore not subject to the stainless steel bar from France investigation.<sup>19</sup>

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<sup>15</sup> See <http://ia.ita.doc.gov/frn/2004/0403frn/04-5163.txt>, 69 FR 10674 (March 8, 2004).

<sup>16</sup> Id at 10675 - 76.

<sup>17</sup> See <http://ia.ita.doc.gov/frn/2004/0412frn/E4-3641.txt>, 69 FR 74495 (December 14, 2004) and accompanying [Issues and Decision Memorandum](#).

<sup>18</sup> See <http://ia.ita.doc.gov/frn/2001/0108frn/01-19349.txt>, 66 FR 40201, 40204 (August 2, 2001), unchanged in <http://ia.ita.doc.gov/frn/2002/0201frn/02-1651.txt>, 67 FR 3143 (January 23, 2002), and accompanying [Issues and Decision Memorandum](#).

<sup>19</sup> See <http://ia.ita.doc.gov/frn/2001/0108frn/01-19349.txt>, 66 FR 40201, 40204 (August 2, 2001),

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

### Overview

In an antidumping investigation or administrative review, a company is usually required to report to the Department all of its U.S. and home market sales made during the applicable period of investigation (POI) or period of review (POR). We then compare the U.S. sales prices (EP or CEP) to NV sales prices to determine whether the investigated or reviewed company is dumping.

Where the comparison methodology calls for the use weighted-average prices, we identify those sales of subject merchandise to the U.S. that are comparable, and will include such sales in an “averaging group.” The U.S. averaging groups are compared to the weighted-average NVs of such averaging groups. Averaging groups are defined in the regulations as consisting of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the U.S. at the same level of trade. See 19 CFR 351.414(d)(2).

In practice, the building blocks for averaging groups are the unique control numbers (CONNUMs) that we assign to each reported sales transaction. A CONNUM is a number assigned to each unique product reported in the sales database based on set of physical characteristics identified in the questionnaire issued to respondents (*i.e.*, model match characteristics). Products sharing the identical product physical characteristics should be assigned the same CONNUM. All respondents are instructed to use the same physical characteristics in reporting their CONNUMs. Some respondents may construct their CONNUMs from the codes assigned to the physical characteristics in the questionnaire, while others may create their own CONNUM codes.

In addition to assigning each sales transaction a CONNUM, we also assign each transaction a unique level of trade (see 19 CFR 351.412 and Chapter 8 of this manual). In investigations, identical CONNUMs at the same level of trade normally form an averaging group.

### Investigations

#### A. Statute

Section 777A(d)(1) of the Act provide guidance on weighted-average pricing and price comparisons in investigations. Section 777A(d)(1)(A) covers the “general” comparison methodologies in investigations, while 777A(d)(1)(B) covers the “exception” comparison methodology in investigations. Specifically, the statute states that in making determinations of less than fair value, the Department:

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unchanged in <http://ia.ita.doc.gov/frn/2002/0201frn/02-1651.txt>, 67 FR 3143 (January 23, 2002), and accompanying [Issues and Decision Memorandum](#).

shall determine whether the subject merchandise is being sold in the United States at less than fair value-

(i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or

(ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise. Section 777A(d)(1)(A)

or,

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).

Section 777A(d)(1)(B). The exception addressed in section 777A(d)(1)(B) is commonly referred to as “targeted dumping.” The SAA 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.” SAA, at 843. The targeted dumping exception applies to investigations only.<sup>20</sup> Section 777A(d)(1), 19 CFR 351.301(d)(5), and 19 CFR 351.414(f)(1).

## B. Practice

### Weighted-Average Price Comparisons

#### a. Weighted-Average Price to Weighted-Average Price

Under section 777A(d)(1)(A)(i) of the Act and section 19 CFR 351.414(b), the Department 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.<sup>21</sup> These weighted-average

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<sup>20</sup> See <http://ia.ita.doc.gov/frn/2005/0509frn/E5-5090.txt>, 70 FR 54711 (September 16, 2005) and accompanying [Issues and Decision Memorandum](#) at Comment 1 ([Ball Bearings](#)).

<sup>21</sup> See <http://ia.ita.doc.gov/frn/2005/0503frn/E5-1029.txt>, 70 FR 12181 (March 11, 2005) and

prices are usually calculated for the entire POI. Only in situations where the Department finds that significant differences in prices over the POI would lead to a distorted dumping margin has the Department used an averaging period shorter than the entire POI. See 19 CFR 351.414(d)(3). Examples of these types of situations are dramatic exchange rate variations<sup>22</sup>, high inflation economies<sup>23</sup>, and dramatic fluctuations in material costs.<sup>24</sup>

Effective February 22, 2007, in calculating the weighted-average dumping margin in investigations using the average-to-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. The Department's practice in investigations did not allow for such offsets prior to February 22, 2007. 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>25</sup> See Chapter 6 for further discussion.

#### b. Weighted-Average Price to Individual Price

The weighted-average to individual price comparison methodology may only be applied if the criteria of section 777A(d)(1)(B) are satisfied. If the petitioner makes a targeted dumping allegation or a party proposes using this methodology in an investigation, consult your PM.

In those few investigations in which the petitioner has alleged targeted dumping, the Department has stated that the petitioner must support its allegation by supplying any relevant source of comparison benchmark prices and sufficiently demonstrate that the price differences (among

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accompanying [Issues and Decision Memorandum](#) at Comment 5 ([Live Swine](#)).

<sup>22</sup> See <http://ia.ita.doc.gov/frn/1999/9906frn/99-608.txt>, 64 FR 30664, 30676 (June 8, 1999).

<sup>23</sup> See <http://ia.ita.doc.gov/frn/2004/0404frn/04-8377.txt>, 69 FR 19390, 19396 (April 13, 2004) as affirmed in <http://ia.ita.doc.gov/frn/2004/0409frn/E4-2044.txt>, 69 FR 53675 (September 2, 2004), and the accompanying [Issues and Decision Memorandum](#).

<sup>24</sup> See <http://ia.ita.doc.gov/frn/2005/0503frn/E5-1029.txt> and accompanying [Issues and Decision Memorandum](#) at Comment 5; and [Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea](#), 58 FR 15467 (March 23, 1993).

<sup>25</sup> See <http://ia.ita.doc.gov/frn/2006/0612frn/E6-22178.txt>, 71 FR 77722 (December 27, 2006); <http://ia.ita.doc.gov/frn/2007/0701frn/E7-1276.txt>, 72 FR 1704 (January 16, 2007); and <http://ia.ita.doc.gov/frn/2007/0701frn/E7-1276.txt>, 72 FR 3783 (January 26, 2007).

purchasers, regions, or periods of time) are “significant.”<sup>26</sup> Moreover, when making such an allegation, the petitioner’s statistical analysis must provide more than a simple comparison of average prices to different customers, because such a comparison, without further statistical analysis, does not yield meaningful conclusions about a pattern of export prices differing significantly among purchasers.<sup>27</sup>

Although the Department has accepted targeted dumping allegations in certain recent antidumping investigations,<sup>28</sup> finding that the petitioner had met the statutory requirement for showing that there was a pattern of prices that differ significantly among purchasers and/or regions, the Department has not yet established a general set of standards for analyzing an allegation of targeted dumping. The Department continues to develop its practice in this area.

### Individual Price Comparisons

Only in limited situations has the Department calculated dumping margins by comparing the NV of individual transactions to the EP or CEP of individual transactions for comparable merchandise.<sup>29</sup> The Department has used this method sparingly and usually when there are very few sales and the merchandise sold in each market is unique, or is custom-made.<sup>30</sup>

### Reviews

#### A. Statute

Section 777A(d)(2) of the Act provides guidance on weighted-average prices and price comparisons in reviews. Specifically, the statute states that

{i}n a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the

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<sup>26</sup> See <http://ia.ita.doc.gov/frn/1996/frnjun96/a475818.html>, 61 FR 30326, 30329 (June 14, 1996).

<sup>27</sup> See <http://ia.ita.doc.gov/frn/1998/9803frn/a583828.htm>, 63 FR 10836, 10837 (March 5, 1998), unchanged in <http://ia.ita.doc.gov/frn/1998/9807frn/98-729c.txt>, 63 FR 40461 (July 29, 1998).

<sup>28</sup> See e.g., <http://ia.ita.doc.gov/frn/2007/0710frn/E7-21035.txt>, 72 FR 60630 (October 25, 2007), and accompanying *Issues and Decision Memorandum* at Comment 3; <http://ia.ita.doc.gov/frn/2008/0801frn/E8-1109.txt>, 73 FR 3945, 3947-3948 (January 23, 2008); <http://ia.ita.doc.gov/frn/2008/0801frn/E8-1106.txt>, 73 FR 3928, 3931, 3939 (January 23, 2008); <http://ia.ita.doc.gov/frn/2008/0802frn/E8-2273.txt>, 73FR 7254 (February 7, 2008); unchanged in <http://ia.ita.doc.gov/frn/2008/0806frn/E8-13474.txt>, 73 FR 33977 (June 16, 2008) and accompanying *Issues and Decision Memorandum*.

<sup>29</sup> See <http://ia.ita.doc.gov/frn/1996/frnjul96/a588837.html>, 61 FR 38139, 318141 (July 23, 1996), which cites <http://ia.ita.doc.gov/frn/1996/frnmar96/a588837.htm>, 61 FR 8023, 8032 (March 1, 1996).

<sup>30</sup> *Id.*

administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

Section 777A(d)(2).

## B. Practice

### Weighted-Average Price Comparisons

Under section 777A(d)(2) of the Act and 19 CFR 351.414(c)(2), the method for calculating dumping margins for most administrative reviews is to compare individual U.S. sale prices to weighted-average NVs that are limited to a period of one calendar month that is within a six-month window that includes the month of the individual EP or CEP sale, the three prior months and two following months (see Chapter 6 for an explanation of the guideline for the calculation of NVs based on weighted-average monthly prices for administrative reviews).

As in investigations, the Department may find in an administrative review a situation where significant differences in prices over the POR lead to a distorted dumping margin caused by dramatic exchange rate variations, high inflation economies<sup>31</sup>, and dramatic fluctuations in material costs.<sup>32</sup> In such instances, the Department may limit the price averaging period for comparison purposes as well.<sup>33</sup>

## VIII. LIMITED EXAMINATION, SAMPLING PROCEDURES AND SIMPLIFICATION OF SALES REPORTING

### A. Limited Examination and Sampling

#### Overview

At times, the Department may be unable to examine each firm individually in an antidumping duty investigation or administrative review due to resource constraints. This situation requires the Department to limit the number of respondent firms by choosing a certain number of them to be examined. Selecting firms is often done by simply choosing those that collectively account for the largest volume of exports of subject merchandise to the United States. As the need for limiting the number of firms occurs more often in cases with numerous respondents, the

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<sup>31</sup> See <http://ia.ita.doc.gov/frn/2001/0106frn/01-16299.txt>, 66 FR 34410, 34411 (June 28, 2001), unchanged in <http://ia.ita.doc.gov/frn/2002/0201frn/02-126.txt>, 67 FR 298 (January 3, 2002) and the accompanying [Issues and Decision Memorandum](#).

<sup>32</sup> *Id.* at 34412.

<sup>33</sup> *Id.*

Department has considered using, to a greater extent, sampling techniques in market and non-market economy (“NME”) antidumping proceedings. Below is a summary of the Department’s practice in dealing with this issue.

### Statute

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise in an antidumping investigation or, where requested, an administrative review of an antidumping order. Where it is not practicable to examine all known producers or exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to determine weighted-average dumping margins for a reasonable number of exporters or producers by limiting its examination to either (A) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

The authority to select respondents, whether by using a statistically valid sample or by examining respondents accounting for the largest volume of exports of subject merchandise, rests exclusively with the Department. However, when the Department employs sampling methods to limit the number of firms examined, it “shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers or types of products.” Section 777A(b) of the Act. See also SAA, at 872. The Department recognizes that it may not have the information needed to select the most representative sample at the very early stages of review, when it must decide on a sampling technique. SAA at 872-873.

### Practice

In investigations and administrative reviews, the Department’s most common method of limiting the number of respondents has been to select the exporters and producers accounting for the largest volume of exports of subject merchandise, rather than employing a sampling method.<sup>34</sup> When the Department decides to sample, it strives to obtain the most statistically valid sample of the population that is possible given its resource constraints. The resource constraints necessarily result in a maximum number of firms that can be examined, no matter the number of potential respondents.

### Investigations

Selecting the largest exporters is the least resource-consuming option for limiting the number of

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<sup>34</sup> See e.g., <http://ia.ita.doc.gov/frn/1996/frnjan96/a475818.htm>, 61 FR 1344, 1345 (January 19, 1996), unchanged in <http://ia.ita.doc.gov/frn/1996/frnjun96/a475818.html>, 61 FR 30326, 30365 (June 14, 1996).

respondents in a proceeding as it only requires the Department to have information on export volumes. In investigations, the Department normally does not have sufficient time (because of statutory time constraints) or resources to acquire sufficient knowledge of all of the exporters or industry with respect to the subject merchandise for purposes of considering or developing appropriate sampling methods. A decision to sample in the early stages of an investigation would require the Department to consult with interested parties and gather substantial information before selecting respondents.<sup>35</sup> This, in turn, would reduce the resource savings and therefore undermine the reason for sampling. For these reasons, the Department normally will not sample respondents in investigations; rather, it will limit its examination to the largest exporters if it lacks sufficient resources to examine all exporters.

### Administrative Reviews

While the Department has more often selected respondents using its authority to select the entities accounting for the largest volume of exports, the Department has under certain circumstances used sampling instead. In these instances, the Department has exercised its authority to use a statistically valid sample because of concerns regarding enforcement of antidumping orders and the equity of giving each firm a chance to be selected. Although lack of information may also be an issue in reviews, the Department is likely to have more knowledge of the industry and the exporters for which a review has been requested such that there may be a sufficient basis to choose a sampling methodology and thereby address these concerns. In reviews, the Department considers its understanding of the industry, the firms in the population, and the additional information that would be necessary to develop a sampling method when deciding whether to sample or to choose the largest exporters. Specifically, the Department may determine that sampling is appropriate when the firms the Department chooses as the largest exporters of subject merchandise are substantially the same each year. This may result in a number of firms and a substantial portion of exports never receiving a full review. Consistently choosing only the largest exporters to be examined may prevent the smaller firms from receiving a rate based on their own information.

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<sup>35</sup> See <http://ia.ita.doc.gov/frn/2001/0111frn/01-27854.txt>, 66 FR 56062 (November 6, 2001), unchanged in the <http://ia.ita.doc.gov/frn/2002/0204frn/02-7848.txt>, 67 FR 15539 (April 2, 2002) and the accompanying <http://ia.ita.doc.gov/frn/2002/0204frn/02-7848.txt>.

The factors mentioned above are merely examples of concerns that have led the Department to use sampling in previous cases. Moreover, as sampling sometimes requires the Department to gather more information,<sup>36</sup> the burden of gathering that information may outweigh the benefit of addressing these concerns. For this reason, the Department's method of respondent selection in administrative reviews is determined on a case-by-case basis. Sampling methods are also determined case-by-case, based on the record of the case and the information available. The Department's application of sampling methods continues to evolve in order to meet the challenges faced in administering the antidumping law in a fair, equitable, and effective manner.<sup>37</sup>

## **B. Simplification of Sales Reporting**

### Overview

Unlike sampling techniques used to select specific respondents, sampling methods designed to limit a specific respondent's reporting requirements have focused on sales or products covered by the scope of the investigation or antidumping order. Specifically, depending on the case and product, a respondent may have (1) a voluminous number of sales transactions or (2) sales of products covered by the scope of the investigation or antidumping duty order which account for an insignificant amount of the total quantity and/or value of all sales made during the POI or POR. In such instances, the Department may also apply a sampling technique in order to reduce a respondent's reporting requirements if it receives acceptable written justification and/or the Department is faced with an administrative burden in calculating individual margins for all of these transactions.

### Statute

Section 777A(a)(1) of the Act allows the Department to: (1) use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise or a significant number or types of products; and (2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

### Application

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<sup>36</sup> An example would be the distribution between small and large profit margins within a particular industry in a given country.

<sup>37</sup> See <http://ia.ita.doc.gov/frn/2006/0605frn/E6-6988.txt>, 71 FR 26736, 26737 (May 8, 2006), unchanged in <http://ia.ita.doc.gov/frn/2006/0611frn/E6-19187.txt>, 71 FR 66304 (November 14, 2006), and the accompanying [Issues and Decision Memorandum](#).

As noted above, in some instance the Department has used sampling techniques which have limited a respondent's sales reporting requirements. Such sampling techniques may involve reviewing U.S. sales that occurred during selected time periods covered by the POI or POR.<sup>38</sup>

In addition to sampling, the Department has also allowed respondents not to report U.S. sales of specific products covered by the scope of the investigation or antidumping duty order in exceptional instances. For example, if there is a multitude of products and extremely large volume of transactions accompanied by a resulting administrative burden in calculating individual margins for all of those transactions, the Department has limited a respondent's sales reporting requirements by examining only the products which account for the vast majority of sales by volume so long as it does not compromise the integrity of the investigation or review.<sup>39</sup>

Other situations may involve a respondent's U.S. sales of a product (covered by the scope of the investigation or antidumping duty order) which are further manufactured after importation and for which the value added in the United States is likely to "exceed substantially" the value of the imported product. If the special rule in accordance with Section 772(e) of the Act applies in this situation, then the Department has allowed the respondent not to report such sales.<sup>40</sup> See section IV.C. above for further discussion of the special rule for merchandise with value added after importation.

## IX. SUBCONTRACTOR SALES (TOLLING)

The Department's regulations at 19 CFR 351.401(h) provide that the Department will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not (1) acquire ownership of the subject merchandise, and (2) does not control the relevant sale of the subject merchandise or foreign like product. The purpose of the regulation is to enable the Department to identify the appropriate seller of subject merchandise and foreign like product for purposes of calculating export price, constructed export price, and normal value. For example, where a party owning the components of subject merchandise has a subcontractor manufacture or assemble the merchandise for a fee, the Department will usually consider the owner to be the manufacturer, regardless of the proportion of production attributable to the subcontracted operation. This is because the owner of the components has the ultimate authority over how the merchandise is produced and the manner in which prices are set and the

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<sup>38</sup> See <http://ia.ita.doc.gov/frn/2005/0505frn/05-9623.txt>, 70 FR 25538, 25540 (May 13, 2005), unchanged in <http://ia.ita.doc.gov/frn/2005/0509frn/E5-5090.txt>, 70 FR 54711 (September 16, 2005) and the accompanying [Issues and Decision Memorandum](#).

<sup>39</sup> See <http://ia.ita.doc.gov/frn/2004/0406frn/04-13073.txt>, 69 FR 33235, 33236 (June 14, 2004), unchanged in the <http://ia.ita.doc.gov/frn/2004/0412frn/E4-3751.txt>, 69 FR 75921 (December 20, 2004) and the accompanying [Issues and Decision Memorandum](#).

<sup>40</sup> See <http://ia.ita.doc.gov/frn/2002/0212frn/02-31625.txt>, 67 FR 77225 (December 17, 2002) and accompanying [Issues and Decision Memorandum](#) at Comment 8A and 8B.

merchandise is sold. Therefore, in this example, the owner of the subject merchandise is the first person that sells the subject merchandise and is considered the producer for purposes of establishing the export price, constructed export price, and normal value. See [Taiwan Semiconductor Manufacturing Company, Ltd. v. United States](#), Slip Op. 00-48 (CIT May 2, 2000) (because a subcontractor does not sell subject merchandise, but rather only sells services and/or inputs, we do not derive the EP (or CEP) from the subcontractor's sales.)

An example of an EP tolling scenario is as follows. Company A, a company in the exporting country, supplies raw material to Company B, an unaffiliated toller. Company A retains title to the raw material while Company B makes the subject merchandise and collects a tolling fee from Company A. Company A exports the subject merchandise to Company C, an unaffiliated U.S. purchaser. Because Company A retained title to the raw material during the tolling process and is the first party to sell the subject merchandise, we do not consider Company B the manufacturer or producer of the subject merchandise. The price of the subject merchandise from Company A to Company C would be the starting price for the EP calculation. The tolling fees are considered to be a production cost of Company A. See, e.g., [Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands](#), 66 FR 50408 (October 3, 2001), and the accompanying [Issues and Decision Memorandum](#).

An example of a CEP tolling scenario is as follows. Company A, a producer in the exporting country, supplies raw material to Company B, an unaffiliated toller. Company A retains title to the raw material while Company B makes the subject merchandise. After paying the tolling fee, Company A has Company B export the subject merchandise to Company C, Company A's affiliated U.S. importer. Because Company A retained title to the raw material during the tolling process and is the first party to sell the subject merchandise, we do not consider Company B the manufacturer or producer of the subject merchandise. If Company C sells the subject merchandise to Company D, an unaffiliated U.S. purchaser, the sale price of the subject merchandise from Company C to Company D would be the starting price for a CEP calculation. Similarly, when analyzing home market sales, the Department would base normal value on Company A's sales of finished goods in its home market.

In [Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Duty Administrative Review](#), 63 FR 32810 (June 16, 1998) ([PVA Taiwan](#)) the Department stated that when a tolling arrangement exists, it will make the decision as to whether a party is a manufacturer or producer for purposes of determining EP, CEP, and NV based upon the totality of the circumstances. In [PVA Taiwan](#),<sup>41</sup> the respondent, DuPont, had a tolling arrangement with another respondent, Chang Chun. Specifically, DuPont produced the main input, vinyl acetate monomer (AVAM@), which it then shipped to Chang Chun for conversion into subject merchandise, after which DuPont exported the PVA back to the United States and to third-country markets. Dupont claimed that Chang Chun was the producer of the PVA at issue. We determined that DuPont was the manufacturer of the tolled merchandise, and hence the appropriate respondent.

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<sup>41</sup> See also <http://ia.ita.doc.gov/frn/1998/9802frn/a583824.htm>, 63 FR 6526, 6527 (February 9, 1998).

The Department has further recognized that, while examining the production activities of a party may not be decisive in every case, whether a party has engaged directly or indirectly in some aspect of production is an important consideration in identifying the appropriate party as the producer. In [PVA Taiwan](#), 63 FR at 32813, a U.S. importer of PVA, Perry, asserted that it was also the producer of the PVA it imported from Taiwan, claiming it met the requirements set forth in 19 CFR 351.401(h). We determined that the tolling arrangement between Perry and another respondent, Chang Chun, did not establish Perry as the producer of the PVA. We noted that Perry had been a long-time importer and reseller of PVA produced and exported by Chang Chun, but Perry had never been in the business of producing or manufacturing PVA or any other chemical. In addition, prior to the tolling agreement with Chang Chun, Perry had never been in the business of subcontracting any kind of chemical production or processing. Finally, Perry had no production facilities. Perry simply purchased VAM, the main PVA input, through a U.S. trading company. The trading company, in turn, purchased the VAM from a Taiwanese producer of VAM affiliated with Chang Chun, a fact known to Perry. Under the tolling arrangement, Perry also had Chang Chun produce the subject merchandise. As both the primary input and the final product were produced by Chang Chun and its affiliate, we found that Perry was not the producer of the PVA it imported into the United States. Finally, when a respondent contracts with a processor in another country to process non-scope merchandise into within-scope merchandise through a tolling arrangement, the respondent may not have to report these sales to the Department even if the merchandise was re-exported back to the respondent's country. This is because the country of origin of the tolled merchandise may be that of the processor. See [Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From France](#), 66 FR 40201 (August 2, 2001), unchanged in [Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from France](#), 67 FR 3143 (January 23, 2002), and the accompanying [Issues and Decision Memorandum](#). See section VI, above, for further discussion of substantial transformation.

## **X. Foreign Trade Zones**

### Overview

Foreign trade zones (FTZs) were established in the United States in 1934 with the Foreign Trade Zones Act. 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 U.S. Customs and Border Protection (CBP). Merchandise in international trade related activities may be moved into FTZs for operations not otherwise prohibited by law involving storage, exhibition, assembly, manufacture or other processing.<sup>42</sup> The primary benefits of using a FTZ is that it allows certain types of merchandise to be brought into the United States without filing formal customs entry documentation or immediate payment of duties. All import duties, including those related to

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<sup>42</sup> See [Foreign Trade Zones in the United States: Final Rule](#), 56 FR 50790 (October 8, 1991)

AD/CVD orders, and excise taxes are deferred on merchandise admitted into an FTZ until this merchandise is brought out of the FTZ and entered into the U.S. Customs territory for consumption. If the merchandise is exported, destroyed or becomes scrap, then no duties or taxes are paid.

### Practice

The nature of FTZs can complicate the normal relationship between an imported good and an antidumping duty order. FTZs are considered to be outside of U.S. Customs territory for the purpose of customs duty payment. In certain cases, merchandise is further manufactured in the FTZ or warehoused there for later sale in the United States. The FTZ regulations require that merchandise subject to an antidumping duty order must be classified as “privileged” foreign merchandise upon admission to the FTZ. This status requires CBP to assess customs duties based on the condition of the merchandise at the time it was admitted to the zone. Therefore, FTZ merchandise that was subject to antidumping duties at the time it was admitted to the zone will still be subject to the those AD duties upon entry into the customs territory of the United States, even if transformed in the FTZ into goods not subject to the order.<sup>43</sup>

### Application

As mentioned above, merchandise that is admitted into a FTZ may or may not be sold before entering the customs territory of the United States. In cases where the merchandise has been sold after admission into a FTZ, we would use constructed export price (CEP) as the basis for our U.S. price calculation. For merchandise sold before admission into a FTZ, we may use EP. Note that in cases where the merchandise is re-exported from the FTZ to another country, this merchandise is not subject to U.S. antidumping laws.

#### **A. EP and FTZs**

Company A in the exporting country sells 3,000 television sets at \$240.00 per unit to Company B, an unaffiliated distributor in the United States. The television sets are shipped directly to Company B, but enter the United States through a FTZ in Wilmington, Delaware, where they are warehoused before delivery. Because these television sets were sold outside the United States prior to admittance into the Wilmington FTZ, this is an EP comparison. We would use the \$240.00 price charged to Company B as the starting price for an EP calculation.

#### **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 a 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

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<sup>43</sup> See 15 CFR 400.33(b)(2) and 19 CFR 146.41(e). See also <http://ia.ita.doc.gov/frn/2003/0303frn/03-6478.txt>, 58 FR 13262 (March 19, 2003), and the accompanying [Issues and Decision Memorandum](#).

distributor in the United States, and are shipped out the following day. Because these television sets were sold after they were admitted into the FTZ, 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. The Executive Secretary of the FTZ Board, which is part of Import Administration, should be notified of all determinations involving goods entering FTZs.