

CHAPTER 6

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LIST OF ACRONYMS & ABBREVIATIONS

CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
COP	COST OF PRODUCTION
CV	CONSTRUCTED VALUE
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
FA	FACTS AVAILABLE
FV	FAIR VALUE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
HTSUS	HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES
ITC	INTERNATIONAL TRADE COMMISSION
NV	NORMAL VALUE
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
PUDD	POTENTIAL UNCOLLECTIBLE DUMPING DUTIES

LIST OF ACRONYMS & ABBREVIATIONS

SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	(REGARDING THE INTERPRETATION OF OF URUGUAY ROUND AGREEMENTS ACT)
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

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References

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

Section 733(b)(3) - de minimis **dumping** margins

Section 735(a)(4) - de minimis dumping margins

Section 735(c)(5) - how to estimate all-others dumping margin

Section 751(a) - **export price** (EP) and **constructed** export price (CEP) for **administrative reviews**

Section 771(35) - dumping margins; weighted-average dumping margins

Section 772 - EP and CEP

Section 773 - **normal value** (NV)

Section 776 - determinations on the basis of the **facts available** (FA)

Section 777A - determination of weighted-average dumping margins

Section 782(e) - use of certain information

Department of Commerce (DOC) Regulations

19 CFR 351.308 - determinations on the basis of facts available

19 CFR 351, all of Subpart D - calculation of EP, CEP, fair value (FV), and NV

SAA

Section B.2. - market **viability**, third-country sales, EP, CEP, and NV

Section B.3 - exclusion of sales at less than **cost of production** (COP)

Sections B.5. and B.6. - COP and **constructed value** (CV)

Section B.8. - price averaging

Section B.9.(e) - de minimis dumping margins

Section C.4.b. - determinations on the basis of FA

Section C.4.d.(2) - all-others margin

Antidumping Agreement

Article 2 - determination of dumping

Article 6.8 - best information available Annex II-best information available in terms of Article 6.8

INTRODUCTION

The U.S. antidumping duty law is designed to counter injurious international price discrimination, commonly referred to as "dumping." Only when the DOC determines that there are sales at less than fair value (SLFV), accompanied by a determination of material

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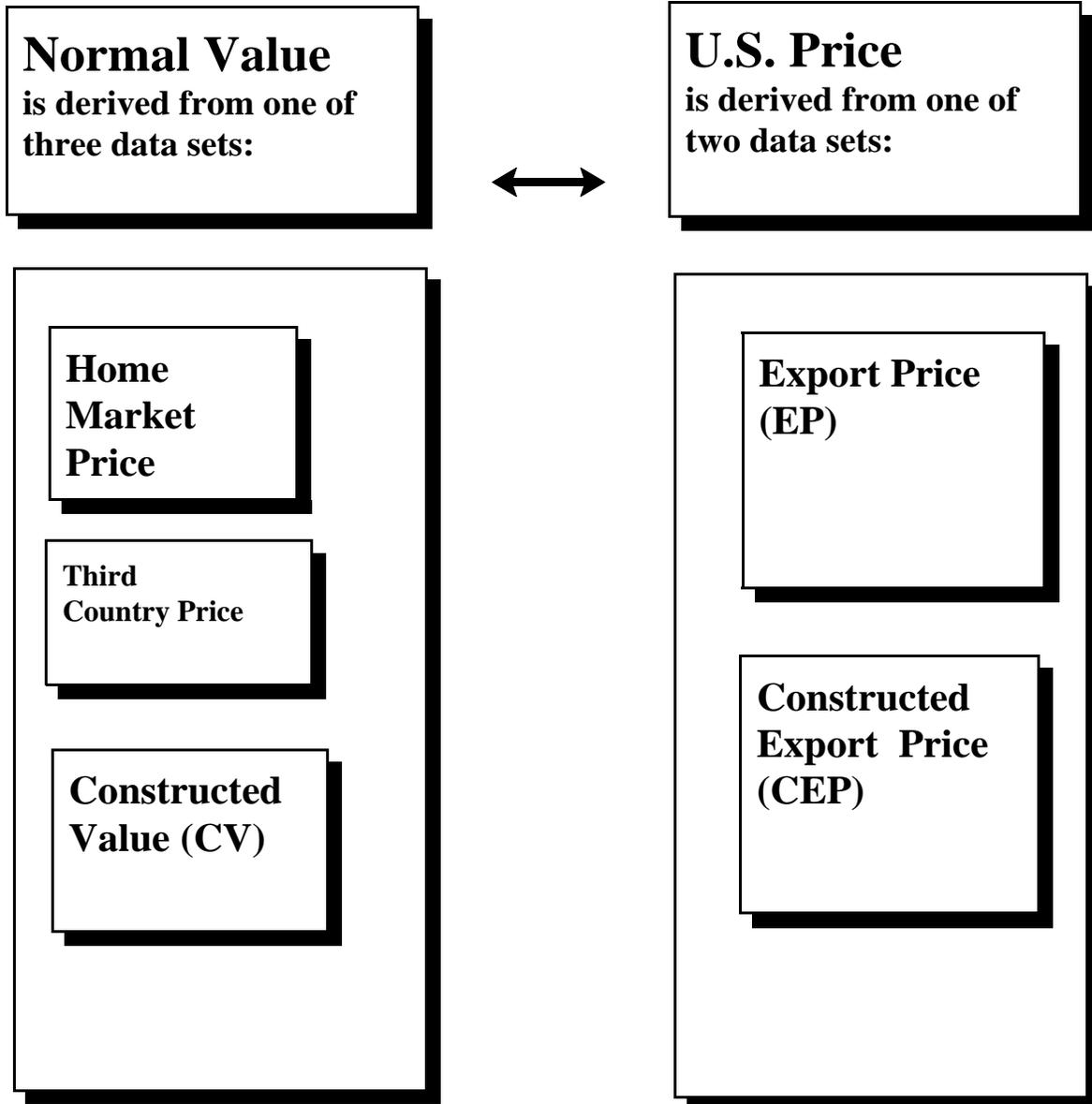
injury or threat of material injury to domestic industry by the International Trade Commission (ITC), can antidumping duties be levied. SLFV most often occur when a foreign firm sells merchandise in the U.S. market at a price lower than the price it charges for a comparable product sold in its domestic market. Under certain circumstances, SLFV may also be identified by comparing the foreign firm's U.S. sales price to the price it charges in other export markets or to the firm's cost of producing the merchandise, taking into account the selling, general, and administrative expenses, and profit. Under the law, this latter basis for comparison is known as constructed value (CV). Finally, where the producer is located in a non-market-economy country (NME), a comparison is made between U.S. prices and a "surrogate" NV. The difference between a company's U.S. sales price and the NV is called the dumping "margin" which is expressed as a percentage of the U.S. sales price.

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

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

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



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I. OVERVIEW OF EXPORT PRICE, CONSTRUCTED EXPORT PRICE, AND NORMAL VALUE

To determine whether SLFV exist in an investigation or an administrative review, an EP or CEP as defined in section 772 of the Act and 19 CFR 351.401 (see Chapter 7) is compared to a NV as defined in section 773 of the Act and 19 CFR 351.401 (see Chapter 8). Section 772(35) defines the dumping margin as being the amount by which the NV exceeds the EP or CEP of the **subject merchandise**.

A. Determining which U.S. sales transaction to examine: EP vs. CEP

A transaction is classified as export price (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 overseas producer or exporter prior to the date of importation. A simple example would be when a U.S. company decides to distribute a foreign product in the United States and contacts the overseas producer or an exporter directly to set up the deal in terms of price, quantity, delivery, etc. If, before or after the time of importation, the first sale to an un **affiliated person** is made by (or for the account of) the producer or exporter or by a seller in the United States who is affiliated with the producer or exporter, an export price must be constructed (CEP). This typically is the price charged by a U.S. subsidiary of the foreign producer/exporter to the first unaffiliated U.S. buyer less expenses incurred in selling the product in the United States and U.S. profit.

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

Finally, NV is based either on the prices at which the **foreign like product** is first sold for consumption in the exporting country or to a third country if the **home market** is not “viable,” i.e., not sufficiently large or it is otherwise unuseable as a **comparison market**. NV may also be based on CV using cost data (rather than price data) if there are no viable markets or if all of the foreign market sales are found to be at prices that are less than the cost of production (COP).

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In NME cases, NV is based upon a constructed value of sorts. Each NME respondent reports to DOC the quantities of direct materials and labor used to manufacture the subject merchandise, and DOC values these inputs using prices prevailing in a suitable market economy (“surrogate”) country. To this derived cost of direct material and labor, DOC adds surrogate-country amounts for factory overhead, selling and general and administrative expenses, packing and profit, resulting in a “constructed value” for the subject merchandise.

II. OVERVIEW OF ADJUSTMENTS

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

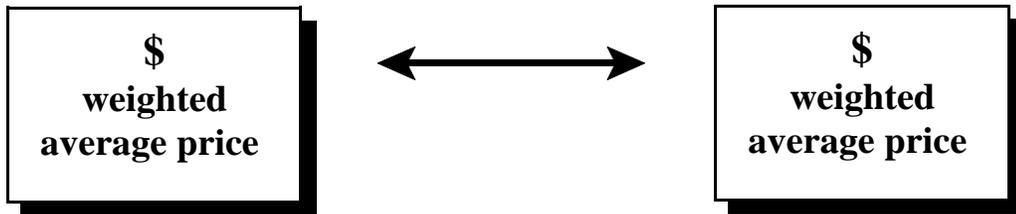
III. OVERVIEW OF CALCULATIONS OF MARGINS

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

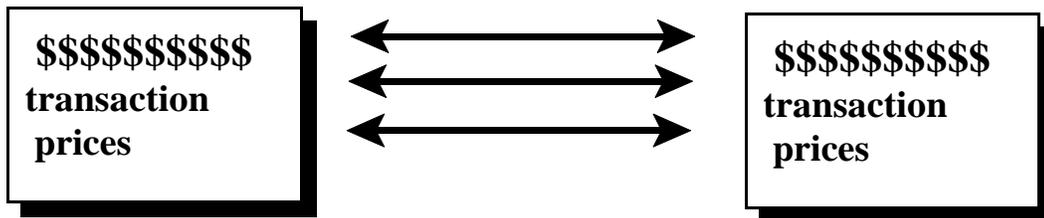
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Possible Methods for AD calculations:

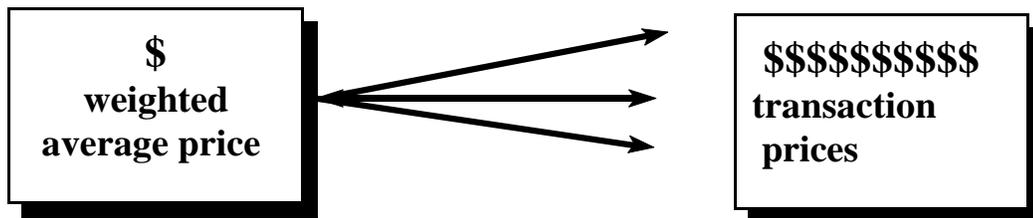
Weighted Average Price to Weighted Average Price



Comparing Individual Transaction to Individual Transaction



Weighted Average Price to Individual Transaction Prices



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

In an investigation, 19 CFR 351.204 provides that the **period of investigation** (POI) typically covers the four most recently completed fiscal quarters or, in an investigation involving merchandise imported from a non-market-economy country, normally the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed.

Under section 777A of the Act we normally compare the weighted-average EP or CEP to the weighted-average NV for a comparable product sold during the POI. We may also establish dumping margins by comparing NV and EP or CEP on a transaction-to-transaction basis. This is normally done only for large capital goods made to order, such as transformers. The difference between these custom-made products render average prices meaningless. Lastly, where these comparisons are inappropriate, we may compare a weighted-average NV to individual export sales transactions, provided that there is a pattern of prices that differs significantly and we are convinced that a weighted-average-to-weighted-average or transaction-to-transaction comparison is not appropriate.

For administrative reviews, the DOC generally bases NV for the **period of review** (POR) on monthly weighted-average prices and compares them to individual EPs or CEPs. Where no sales of the like product are made in the exporting country in the month of the U.S. sale, the DOC will attempt to find a weighted-average monthly price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. If unsuccessful, we will then look one month after and finally two months after the month of the U.S. sale. This practice is commonly referred to as the 90 60-day guideline. If no months with sales in the foreign market exist in this window constructed value is NV.

In certain instances, the DOC may use a shorter period than the whole POI to determine weighted-average NVs. In Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey, 62 FR 9738 (March 4, 1997), the DOC used monthly weighted-average prices for EPs and NVs because of significant inflation (see Chapter 8, section XV). In Final Determination of Sales at Less Than Fair Value:

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Polyvinyl Alcohol from Taiwan, 61 FR 14064 (March 29, 1996), the DOC separated the POI into two periods to compute weighted-average NVs. This was done for one respondent because its exporting country sales prices were relatively low in the last 45 days of the POI which would have distorted a single POI weighted average NV. Also, for one of the respondent companies in Final Determination of SLFV of Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit and Above from the Republic of Korea, 54 FR 15467 (March 23, 1993), we based fair value on weighted-average monthly prices. Here, the respondent argued that using weighted-average monthly prices was necessary to reflect the declining prices in both the U.S. and third-country market during the POI. We examined the time-price correlation and observed a consistent downward trend in both U.S. and third country prices over the POI. Therefore, we found that monthly weighted-average prices for fair value were more representative of respondent's pricing than a single POI weighted-average. Although DRAMs is a pre-1995 investigation, the reason for subdividing the six-month POI into monthly weighted-averages would still be valid for today's investigations.

For U.S. sales where dumping is occurring (i.e., the adjusted weighted-average NV exceeds the adjusted weighted-average EP or CEP under our preferred method of comparison), the differences in the two prices are the dumping margins. In an investigation, we only need to calculate a single weighted-average dumping margin for an exporter/producer which will be used for bonding or cash deposit purposes until there is an administrative review. Accordingly, for each foreign producer/exporter in an investigation, the unit margins are multiplied by the number of units sold in the United States on a transaction-specific basis; these amounts are then summed and divided by the total value of the firm's U.S. sales to arrive at a weighted-average margin. For an administrative review, margins for EP sales are usually established for each individual U.S. importer because an exporter/producer may have dumped at different rates to different unaffiliated importers.

For administrative review of CEP sales, a single weighted-average margin is calculated for all CEP transactions during the POR. Individual, unaffiliated U.S. buyer margins are not calculated for CEP transactions. Normally, there are many (sometimes hundreds or thousands) of U.S. sales made during a POI or POR. In the simplified example shown

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below for an investigation and an administrative review, there are only two U.S. sales during the POI and POR, one EP sale involving 9,773 units at \$1.36 per unit and one CEP sale involving 10,000 units at \$1.27 per unit.

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

For an investigation, the two margins are combined to form a single exporter/producer margin. See section C below. For an administrative review, we would do the same thing for publication of a weighted-average rate in our results. When we send instructions to Customs to collect the final duty, an importer-specific rate will be calculated for that purpose (see Chapter 18).

B. Calculation of Potential Uncollectible Dumping Duties (PUDD)

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

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

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

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

U.S. Sale No. 2 PUDD:

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

Total PUDD:

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

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

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

In an investigation, once individual weighted-average margins are calculated for each producer or exporter, the dumping margins for these individual firms are then weight-averaged to calculate an "All Others rate" to be applied to sales by firms that were not investigated. If a company under investigation has a zero or de minimis margin (less than 2%), it would not be included in the calculation of the “All Others rate.” If a company under investigation has a margin based entirely on facts available, this margin would also not be included in the calculation of the “All Others rate.” Finally, margins calculated for voluntary respondents are not included in the “All Others rate” (see 19 CFR 351.204(d)(3)). See section 735(c)(5)(B) of the Act, 19 CFR 351.204(e), and section C.4.d.(2) of the SAA for information on how to treat situations where some, or all, margins are zero, de minimis, or based on facts available. Also see sections 733(b)(3) and 735(a)(4) of the Act and section B.9.(e) of the SAA for more information on de minimis rates.

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

IV. DETERMINATIONS ON THE BASIS OF FACTS AVAILABLE

A. Introduction

The DOC normally bases its margin calculations on information provided by respondents about their sales, expenses, costs, etc. The questionnaire is designed to elicit all necessary information. In some cases, however, the DOC finds that it does not have information it needs to perform its calculations. In such cases, the DOC must use the “facts otherwise available,” which is any acceptable information which the DOC can find to substitute for a respondent’s missing information. However, under 19 CFR 351.308(e), the DOC will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements if the conditions under 782(e) of the Act are met.

B. When to Use Facts Available

Section 776(a) of the Act and 19 CFR 351.308 state that the DOC will use facts otherwise available in reaching a determination whenever:

1. necessary information is not available on the record, or
2. an interested party or any other person:
 - a. withholds information requested, or

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- b. fails to provide information requested in a timely manner and in the form required, or
- c. significantly impedes a proceeding, or
- d. provides information that cannot be verified.

Recent investigations where the DOC used facts available resulting from a respondent's failure to provide a complete and accurate response to the DOC's questionnaire include the following: 1) Final Determination of SLFV: Beryllium Metal and High Beryllium Alloys from Kazakstan, 62 FR 2649 (January 17, 1997); 2) Final Determination of SLFV: Melamine Dinnerware from The People's Republic of China, 62 FR 1709 (January 13, 1997); 3) Final Determination of SLFV: Circular Welded Non-Alloy Steel Pipe from South Africa 61 FR 94 (May 14, 1996) (Pipe from South Africa); 4) Final Determination of SLFV: Certain Pasta from Turkey, 61 FR 30309 (June 14, 1996) ("Certain Pasta from Turkey"); 5) Final Determination of SLFV: PVA from Japan, 61 FR 14063 (March 29, 1996); and 6) Final Determination of SLFV: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996) ("Certain Pasta from Italy").

Recent administrative reviews where the DOC used facts available include the following: 1) Final Results of Administrative Review of Antidumping Duty Order: Granular Polytetrafluoroethylene Resin from Italy, 62 FR 5590 (February 6, 1997); Final Results of Administrative Review of Antidumping Duty Order: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al., 62 FR 2081 (January 15, 1997); Final Results of Administrative Review and **Termination** in Part: Chrome Plated Lug Nuts from Taiwan, 61 FR 58372 (November 14, 1996); and Final Results of Administrative Review of Antidumping Order: Chrome Plated Lug Nuts from the People's Republic of China, 61 FR 58519 (November 15, 1996).

Specific examples of different circumstances under which the DOC used facts available in an investigation are as follows:

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- o Where a respondent failed **verification**:

In Pipe from South Africa, the DOC found at verification numerous inaccuracies in the sales information provided by the respondent in its questionnaire response. The DOC determined that the inaccuracies of the information were so material and pervasive as to make the response unreliable for purposes of calculating dumping margins. Therefore, the DOC applied total facts available in the final determination.

In the case of Certain Pasta from Turkey, the DOC found at verification systematic flaws in the cost of production data submitted by one of the two respondents in the case. Accordingly, the DOC resorted to the use of facts available for the respondent's cost data. Moreover, the DOC determined that because of the flawed nature of the cost data, the respondent's reported home market sales could not be relied upon to make price-to-price comparisons (NV to EP). Therefore, the DOC applied total facts available for the respondent in the final determination.

- o Where a respondent failed to provide requested information at verification (partial facts available):

Facts available may also be used for a portion of the response deemed inadequate. For example, in Certain Pasta from Turkey, where the DOC applied total facts available for one of the respondents, the DOC applied partial facts available for the other respondent. In the later situation, the respondent refused to provide certain financial information which was requested by the DOC in its questionnaire and at verification. Without having examined this information, the DOC could not verify the accuracy of certain elements of cost and sales data. Accordingly, the DOC determined that use of facts available for these elements of the cost and sales data was appropriate for the final determination.

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C. Adverse Inferences

When the DOC decides to resort to facts available in an investigation, it must determine the most appropriate information to form the basis for the dumping margin calculation. In doing so, the DOC determines whether an adverse inference is warranted. According to section 776(b) of the Act, if the DOC finds that a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information, we may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. The adverse inference in an investigation may be derived from the following information: 1) the petition; 2) a final determination margin for another respondent in the investigation; 3) any other information placed on the record; and 4) final results from a prior segment of the proceeding.

The following are examples of cases where non-compliance of a respondent warranted an adverse inference when determining which facts (otherwise available) to use. The adverse facts available employed in each of these cases were based on information contained in the petition.

- o Where no response to the questionnaire was received by the DOC:

In PVA from Japan, all respondents failed to respond in full to the DOC's antidumping questionnaire. Facts available was, therefore, warranted determining the dumping margins for the respondents and, since no party had acted to the best of its ability, the DOC applied adverse facts available. The petition was the only information on the record that could form the basis for a dumping calculation. The DOC considered using some pricing information that one respondent submitted in its section A response as facts available. However, because of the danger of self-serving statements by respondents who do not cooperate, such information could not be used to adjust the margin alleged in the petition. Therefore, the margins for all parties, and the all others rate, were based on the highest calculated margin derived from information contained in the petition.

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

In the preliminary determination of Certain Pasta from Italy, the DOC determined that the questionnaire responses of one respondent provided an inadequate basis for attempting to calculate a SLFV margin because the responses did not contain sales and cost data regarding an affiliated party. This information had been specifically requested by the DOC but the company repeatedly failed to submit it. The DOC determined that the company was an uncooperative party and used inferences adverse to the interests of this uncooperative party. The petition was determined to be the appropriate source of facts available for assigning a margin.

- o Where a respondent failed to provided information in a timely manner:

Prior to the final determination of Certain Pasta from Italy, the DOC issued a decision memorandum announcing that it would not verify a respondent's cost of production (COP) and sales responses. It was determined that one respondent submitted a completely new COP response in an untimely manner and the acceptance of a new response would have imposed undue difficulties on the DOC in completing the case within the statutory deadlines. (It was not possible for the DOC to analyze the new responses, issue necessary supplemental questionnaire(s), receive responses to the supplemental questionnaire(s), and conduct verification within the statutory time limits.) Accordingly, the DOC resorted to the use of facts available for the respondent's cost data. Moreover, the DOC determined that, because of the flawed nature of the cost data, the respondent's home market sales could not be relied upon to make price-to-price comparisons (NV to EP). Therefore, the DOC applied total adverse facts available for the respondent in the final determination.

The company had failed to cooperate to the best of its ability in this investigation because it failed to provide complete and accurate information in a timely manner and failed to clarify inconsistencies in its submissions to

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the record. Thus, the DOC also determined that, in selecting among the facts otherwise available, an adverse inference was warranted.

After comparing the sizes of the calculated margins for the other respondents to the estimated margins in the petition, the DOC concluded that the petition was the most appropriate information on the record on which to base a dumping calculation for the company.

For administrative review situations, adverse inferences can lead to the use of margins calculated in previous reviews or the investigation as facts available. See Final Results and Partial Recission of Antidumping Administrative Review: Sulfanilic Acid from the People's Republic of China, 61 FR 53708 (October 15, 1996).

- o In this administrative review, the DOC determined that a total adverse inference was warranted because of the untimely filing of a response by a company. Accordingly, the margin for this company from the investigation was used as adverse facts available because it was the highest rate from any segment of the proceeding.

Adverse facts available can also be selected for portions of the response as was the case in Final Results of Antidumping Administrative Review: Certain Internal-Combustion Industrial Forklift Trucks from Japan, 62 FR 5594, 5595 (February 2, 1997):

- o For this administrative review, the DOC determined that the respondent did not cooperate to the fullest extent for the submission of certain home market selling expense information. Accordingly, information from the respondent's U.S. CEP sales response was used as adverse facts available.

D. Corroboration of Secondary Information

Under section 776(c) of the Act and 19 CFR 351.308(d), when using "secondary information" as facts available, the DOC must, to the extent practicable, corroborate them from independent sources reasonably available to the DOC.

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Not all facts available are “secondary information.” “Secondary information” for an investigation is only information from the petition. For a review, “secondary information” can come from a previous review or the investigation (such as the same company’s margin from a previous review or the investigation).

Independent corroborative sources identified in the regulations include the following: 1) published price lists; 2) official import statistics and customs data; and 3) information obtained from interested parties during the investigation.

However, the DOC may still use “secondary information” even though it cannot find independent sources necessary to corroborate that information. Calculated margins from an investigation or review need not be corroborated to establish reliability because it was based on an official proceeding and there is no independent source of corroboration for margins.

- o The following is an example of how the DOC corroborated petition information:

In PVA from Japan, the DOC attempted to corroborate the petition information by comparing the petition information on export price to U.S. Customs data and Japanese export statistics. However, both of these sources record prices based on the HTSUS subheading 3905.20.00, which includes both subject and non-subject merchandise. Therefore, each of these sources of information was not useful in corroborating the prices contained in the petition. However, on the record of the investigation was a price quote from an independent source which tended to corroborate the export price used in the petition.

As to NV starting price, or any other foreign costs, the DOC was not aware of any practicable means of corroborating such information. For the ocean freight charge reported in the petition, which was a significant adjustment to the U.S. price, the DOC found it to have probative value based on our examination of the supporting documentation contained in the petition.

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- o In the following example, the information did not need corroboration because it was based on margins established in official proceedings: In Final Results of Antidumping Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) from France, et al., 62 FR 2087 (January 15, 1997), the DOC used the margin for the company from a previous review as adverse facts available. The DOC stated that it did not have to corroborate this margin, but margins from a prior segment are secondary data. They just do not need corroboration as they are calculated, verified results.

The DOC's reason for making this determination was based on the fact that there were no independent sources from which to verify the antidumping margin from the previous review for the company under review.

When the DOC Declines to Use Fact Available

Section 782(e) of the Act and Section 351.308(e) of the Department's Regulations provide guidance regarding when the DOC will decline to use Facts Available.

Section 782(e) provides:

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