

Claimed adjustments may also be disallowed where the transfer price is lower than the market price. Parties are considered to be related if:

- ◆ one directly or indirectly controls the other;
- ◆ a third party directly or indirectly controls both; or
- ◆ both directly or indirectly control a third party, and there is reason to believe that the relationship causes the U.S. producer to act differently from a non-producer.³⁵

A 5% equity ownership is considered sufficient to give rise to a relationship of "affiliated party" although "control" can be found to exist even in the absence of any equity ownership.

7.4 Constructed Export Price

Constructed export price is a term used for the calculation of the export price when sales to the United States are made through a related party. Sales to related parties are discarded and Commerce instead calculates a constructed export price, based on the price charged by the producer or exporter of the merchandise, or by an affiliated seller, before or after importation, to the first unrelated U.S. buyer.³⁶ To calculate the equivalent of an ex-factory price for sales made through an affiliated party, in addition to those adjustments used for the calculation of export price, several other adjustments are made.

Constructed export price is further reduced by:

- ◆ *direct selling expenses* incurred by or for the account of the seller, that result from, and bear a direct relationship to, the sale (such as credit expenses, guarantees and warranties) and any selling expenses that the seller pays on behalf of the purchaser;
- ◆ *other (indirect) selling expenses* that relate to economic activity in the United States (such as Canadian and U.S. inventory carrying costs and product liability premiums);
- ◆ *cost of any further manufacture or assembly* in the United States; and
- ◆ *profit allocatable to the selling, distribution and further manufacturing in the United States* by the affiliated party (the deduction is calculated by multiplying the total actual profit, both on the U.S. and the home market, by the ratio of total U.S. manufacturing and selling expenses to total manufacturing and selling expenses).³⁷

35 19 U.S.C. § 1677 (33) (1994).

36 19 U.S.C. § 1672 (b).

37 19 U.S.C. § 1672 (c) and (d), 1677a (d) (3).