

affiliated customer as being within the ordinary course of trade, if said prices were, on average, at least 99.5 percent of the prices charged by that exporter or producer to unaffiliated comparison market customers. Sales to affiliates at prices less than 99.5 percent of prices to non-affiliates were disregarded. In contrast, requests by an exporter or producer to exclude from normal value calculations individual high-priced sales to affiliates were judged according to a different standard: DOC generally required a showing that the prices were "aberrationally" high. A decision adopted by the WTO Dispute Settlement Body (DSB) in 2002 found this approach to be inconsistent with Article 2.1 of the Agreement on Anti-Dumping. Following an August 15, 2002 request for public comment, DOC changed its methodology. Under the new approach, sales to an affiliate are considered to be "in the ordinary course of trade" and included in the normal value calculation where their prices are, on average, between 98 percent and 102 percent of prices charged by the exporter or producer to unaffiliated customers.⁶

(b) Export price. Significant developments since 2000 with respect to export price and constructed export price (CEP) include the following:

i) Treatment of safeguard duties. Section 772(c)(2)(A) of the Tariff Act requires DOC to deduct from export price and CEP any "United States import duties" included in the price. In 2003, a long-standing disagreement between DOC, whose practice had limited this provision to normal Customs duties, and petitioners, who believed that it should apply equally to remedial duties like safeguard and CVD, took on added importance as AD proceedings began to focus on entries on which steel safeguard duties had been imposed beginning in March 2002. In September 2003 DOC requested public comment on the appropriate treatment of Section 201 duties and CVD in AD calculations. With regard to safeguard duties, DOC concluded that a deduction from export price was neither statutorily required nor appropriate.⁷

ii) Duty drawback. Section 772(c)(1)(B) of the Tariff Act provides for the price used to establish export price and CEP to 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 October 2006, DOC announced intended modifications to the test, by which it allowed an adjustment for duty drawback. DOC stated that it would:

- begin allocating the total amount of duty drawback received across all exports that may have incorporated the duty-paid input in question, regardless of destination; and
- permit a full adjustment for duty drawback received only where the foreign producer/claimant can trace the imported duty-paid inputs through subsequent

6 67 Fed. Reg. 69, 186 (November 2002).

7 Stainless Steel Wire Rod from the Republic of Korea, 69 Fed. Reg. 19,153, 19,157-59 (April. 12, 2004).