

of the exporter or producer. Special adjustments to production costs are made to account for costs associated with start-up operations in cases involving new production facilities or new products requiring substantial additional investment.

Beside sales below the cost of production, other types of sales may be excluded from the calculation of normal value because Commerce deems them not to be in the ordinary course of trade. Examples include sales of samples, off-quality merchandise, close-outs, trial sales and very small quantities.

### 6.3 Home-Market Viability / Third-Country Sales

Normal value is based upon sales of the like product in the producer's or exporter's home market if the sales volume is considered sufficient to provide a "viable" comparison to the export price and the sales are in the "ordinary course of trade." To be considered viable, the volume of home-market sales must be equivalent to at least 5% of the volume of sales of the subject goods to unaffiliated buyers in the United States.

When home-market sales are deemed inadequate according to this standard, or are outside the ordinary course of trade, normal value may be based upon sales to a single third-country ("foreign") market. Commerce is instructed to choose a third country whose market is the most similar in terms of organization and development to the country whose home-market sales are deemed inadequate, and that exports goods most similar to those being exported to the United States. Commerce will match a given U.S. sale to the third-market sales of the most similar foreign like product made in the ordinary course of trade. The volume of sales to the third-country market must also meet the benchmark of 5% of the volume sold to the United States.<sup>28</sup>

Commerce has the discretion not to apply the 5% threshold in "unusual situations," or to decline to use home-market or third-country sales if such sales are deemed not to be representative or if a "particular market situation" exists that does not permit proper comparison.<sup>29</sup> The Statement of Administrative Action (SAA) to the URAA indicates that such "unusual" or "particular market situations" could include cases where: (1) a single sale in a foreign market constitutes 5% of sales to the United States; (2) there are such extensive government controls over pricing in a foreign market that prices in that market cannot be considered competitively set; and (3) there are differing patterns of demand between the United States and a foreign market.

Furthermore, as discussed below, affiliated party sales may not be useable for normal value calculations in certain situations. If neither home-market nor third-country sales are appropriate, constructed value is used.

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28 19 U.S.C. §§ 1677b (a) (1) (B) (ii) (III), (a) (1) (C) (1994).

29 19 U.S.C. § 1677b (a) (1) (B) (ii) (III), (C) (iii).