

## [Unreliable Prices]

International Antidumping Code:

2 (e) In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2 (f) (last sentence) In the cases referred to in Article 2 (e) allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

Antidumping Act, 1921, As Amended:

Section 207 defines specific relationships that will require use of Section 204 Exporter's Sales Price which is the price at which imported merchandise is sold or agreed to be sold in the United States, by or for the account of the exporter.

U.S. law does not contain the flexibility to use a "reasonable basis as the authorities may determine" where no resale to an independent buyer or no resale at all in the condition as imported.

Section 206 (b) and (c) dealing with constructed value allow valuations to be disregarded if transactions between related parties do not reflect market value. Resort is to best evidence available.

Section 205 (last sentence) dealing with foreign market value authorizes use of prices at which such or similar merchandise is sold through a sales agency or other organization related to the seller to determine foreign market value.

U.S. Treasury Regulations:

One type of compensatory arrangement exists where foreign exporters offer to reimburse U.S. importers for the payment of any dumping duties which may be incurred. This usually takes the form of a warranty of non-applicability of dumping duties. Under the Treasury Regulations such a warranty will reduce purchase price or exporter's sales price except to the extent that it covers merchandise which is (1) purchased or agreed to be purchased before publication of a withholding of appraisement notice, and (2) exported prior to a dumping determination by Treasury. 14.9 (f)