§ 351.403 Sales used in calculating normal value; transactions between affiliated parties.

(a) Introduction. This section clarifies when the Secretary may use offers for sale in determining normal value. Additionally, this section clarifies the authority of the Secretary to use sales to or through an affiliated party as a basis for normal value. (See section 773(a)(5) of the Act (indirect sales or offers for sale).)

(b) Sales and offers for sale. In calculating normal value, the Secretary normally will consider offers for sale only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(c) Sales to an affiliated party. If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

(d) Sales through an affiliated party. If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter’s or producer’s sales of the foreign like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.

§ 351.404 Selection of the market to be used as the basis for normal value.

(a) Introduction. Although in most circumstances sales of the foreign like product in the home market are the most appropriate basis for determining normal value, section 773 of the Act also permits use of sales to a third country or constructed value as the basis for normal value. This section clarifies the rules for determining the basis for normal value.

(b) Determination of viable market—(1) In general. The Secretary will consider the exporting country or a third country as constituting a viable market if the Secretary is satisfied that sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value.

(2) Sufficient quantity. “Sufficient quantity” normally means that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity (or value) of its sales of the subject merchandise to the United States.

(c) Calculation of price-based normal value in viable market—(1) In general. Subject to paragraph (c)(2) of this section:

(i) If the exporting country constitutes a viable market, the Secretary will calculate normal value on the basis of price in the exporting country (see section 773(a)(1)(B)(i) of the Act...