

company is eligible to participate only if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

#### *Selection Criteria*

Companies will be selected for participation in the mission on the basis of:

- Consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Relevance of a company's business and product line to market opportunities in Ghana and South Africa;
- Seniority of the representative of the designated company;
- Past, present, or prospective international business activity;
- Diversity of company size, type, location, demographics, and traditional under-representation in business;
- Degree of company's commitment to corporate citizenship.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

#### **VI. Time Frame for Applications**

Applications for the trade mission to Ghana and South Africa will be made available beginning on Wednesday, August 7, 2002. The fee to participate in the mission will be between \$6,000–\$8,000 per company and will not cover travel or lodging expenses. Please note that this fee is subject to change due to the in-country travel requirements. Expenses for travel, lodging, and some meals will be the responsibility of each participant. As noted above, each participant must fund his/her own travel to Accra, Ghana, the starting point for the mission. For additional information on the trade mission or to obtain an application, contact the Department of Commerce Office of Business Liaison at 202–482–1360. Applications should be submitted to the Office of Business Liaison by September 20, 2002, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

Contact: Office of Business Liaison, Room 5062, Department of Commerce, Washington, DC 20230, Tel: (202) 482–1360, Fax: (202) 482–4054, Mission Web

Site: <http://www.doc.gov/africatrademission>.

Dated: August 9, 2002.

**Maria Cino,**

*Assistant Secretary and Director General.*

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**BILLING CODE 3510–FP–P**

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

#### **Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Request for public comment pursuant to section 123(g)(1)(C) of the Uruguay Round Agreements Act, Requirements for Agency Action.

**SUMMARY:** The Department of Commerce is requesting comments on the proposed modification of its practice concerning the determination of whether sales to affiliated parties are made in the ordinary course of trade and thus may be considered for use in calculating normal value in antidumping proceedings.

**DATES:** To be assured of consideration, written comments must be received no later than August 30, 2002. Rebuttal comments must be received no later than September 6, 2002.

**ADDRESSES:** Submit comments to Faryar Shirzad, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: Affiliated Party Sales.

**FOR FURTHER INFORMATION CONTACT:** Kris Campbell (202) 482–1032, Linda Chang (202) 482–0835, or Mimi Steward (202) 482–1439.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In July 2001, the World Trade Organization (“WTO”) Appellate Body issued a report in a dispute involving U.S. antidumping measures on certain hot-rolled steel products from Japan (“Japan Hot-Rolled”),<sup>1</sup> concerning the Department's determination of whether sales made to affiliated parties in the

comparison market were made in the ordinary course of trade and thus may be considered for use in calculating normal value.

Section 773(a)(1) of the Tariff Act of 1930, as amended (“the Act”), requires that the Department first attempt to calculate normal value using sales of the foreign like product which are, among other criteria, made “in the ordinary course of trade.” This provision implements Article 2.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the “AD Agreement”), which requires that investigating authorities exclude sales not made in the “ordinary course of trade” from calculations of normal value.<sup>2</sup>

Under current Department practice, comparison market sales by an exporter or producer to an affiliated customer are treated as having been made at arm's length, and may be considered to be within the ordinary course of trade<sup>3</sup>, if prices to that affiliated customer are, on average, at least 99.5 percent of the prices charged by that exporter or producer to unaffiliated comparison market customers. Under this 99.5 percent test, the Department determines the weighted-average selling price for each product for sales by the exporter or producer to each affiliated party. The Department also determines the weighted-average selling price for each product to the group of nonaffiliated comparison market customers. For each affiliated customer, the Department compares the weighted-average price to that affiliate for each product to the weighted-average price of the same product to all unaffiliated customers. The Department then weight averages the ratios found for all products sold to the affiliated customer. If the result shows sales prices to an individual affiliated party are, on average, at least 99.5 percent of the sales prices to all unaffiliated comparison market customers (*i.e.*, the overall ratio is at least 99.5 percent), all of the sales to that affiliated party may be treated as being made in the ordinary course of trade and may be used in calculating normal value. Otherwise, if the prices to the affiliate are, on average, less than 99.5 percent of prices to nonaffiliates, it is the Department's practice to disregard

<sup>2</sup> Article 2.1 states: “For the purpose of this Agreement, a product is to be considered as being dumped, *i.e.*, introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.”

<sup>3</sup> Such sales may be outside the ordinary course of trade for other reasons, *e.g.*, they are below cost.

<sup>1</sup> Dispute Panel Report on Japan Complaint Concerning U.S. Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/R (Feb. 28, 2001) (the “Panel Report”). Appellate Body Report on Japan Complaint Concerning U.S. Anti-dumping Measures on Certain Hot-Rolled Steel products from Japan, WT/DS184/AB/R (July 24, 2001) (the “AB Report”).

them. Additionally, for affiliates that pass this test (*i.e.*, those whose weighted-average prices are above 99.5 percent), the exporter or producer may request the exclusion of individual sales to such an affiliate upon a showing that such sales are for other reasons outside the ordinary course of trade, *e.g.*, the prices are “aberrationally” or “artificially” high.

In its report in Japan Hot-Rolled, the WTO Appellate Body found that the Department’s “99.5%” arm’s-length test is inconsistent with the obligations of the United States under Article 2.1 of the AD Agreement. In the view of the Appellate Body, “[i]f a Member elects to adopt general rules to prevent distortion of normal value through sales between affiliates, those rules must reflect, even-handedly, the fact that both high and low-priced sales between affiliates might not be ‘in the ordinary course of trade.’” *United States—Antidumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted August 23, 2001 (“AB Report”), para. 148. Furthermore, “the duties of investigating authorities, under Article 2.1 of the Anti-Dumping Agreement, are precisely the same, whether the sales price is higher or lower than the ‘ordinary course’ price, and irrespective of the reason why the transaction is not in the ordinary course of trade. Investigating authorities must exclude, from the calculation of normal value, all sales which are not made in the ordinary course of trade.” *AB Report*, para. 145. However, investigating authorities do not need to utilize identical rules to scrutinize each category of sales that is potentially not in the ordinary course of trade. *AB Report*, para. 146. WTO Members are afforded discretion in this determination, but such discretion must be exercised in an “even-handed” manner. *AB Report*, para. 148.

The United States and Japan entered into arbitration over the period of time in which to implement the Appellate Body’s findings in the Japan Hot-Rolled dispute. The arbitrator found that the United States has until November 23, 2002, for implementation.

Pursuant to section 123(g)(1) of the Uruguay Round Agreements Act (“the URAA”), the Department must meet certain requirements before modifying or rescinding a practice that is found to be inconsistent with any of the Uruguay Round Agreements. Section 123(g)(1)(C) requires that the Department provide opportunity for public comment by publishing the proposed modifications in the **Federal Register**. The Department is soliciting comments pertaining to the following proposed modifications to the

current policy for determining whether comparison market sales to affiliated parties are made at “arm’s length,” and thus in the ordinary course of trade absent other factors such as below-cost sales, in light of the Appellate Body’s report in the Japan Hot-Rolled dispute.

### Proposed Arm’s-Length Methodology

The Department proposes to alter its current test by requiring that, in order for sales by the exporter or producer to an affiliate to be included in the normal value calculation, those sales prices must fall, on average, within a defined range, or band, around sales prices of the same merchandise sold by that exporter or producer to all unaffiliated customers. The new test would require that the overall ratio calculated for an affiliate (as currently calculated) be between 98 percent and 102 percent, inclusive, in order for sales to that affiliate to be considered “in the ordinary course of trade” and used in the normal value calculation. Therefore, this new test is consistent with the view, expressed by the WTO Appellate Body, that rules aimed at preventing the distortion of normal value through sales between affiliates should reflect, “even-handedly”, that “both high and low-priced sales between affiliates might not be “in the ordinary course of trade.”

We will continue our present practices with regard to the use of so-called “downstream” sales (sales made by an affiliated buyer to that buyer’s subsequent customer). Specifically:

1. If sales to all affiliates account for less than five percent of all comparison market sales, we normally will disregard downstream sales.
2. If sales to an affiliate fail the arm’s-length test, and (1) does not apply, we normally will request the affiliate’s downstream sales and use these instead of the sales which failed that test.
3. If a respondent has cooperated to the best of its ability and is unable to obtain downstream sales, we will not use adverse facts available.

### Discussion

This test would require no change in the mathematical calculations the Department performs to determine which sales are made at arm’s length. It only alters the standard applied to the numerical outcome of those calculations. Instead of using sales to an affiliate for normal value purposes when the prices to the affiliate are, on average, at or above a *threshold* of 99.5 percent of prices to unaffiliated parties, the Department would normally use sales to an affiliate when that overall ratio is within a *band* ranging from 98 percent to 102 percent, inclusive, of the prices

for sales to unaffiliated parties. Because this band is symmetrical in its treatment of higher and lower priced sales, it meets the concern of the Appellate Body that any arm’s-length test be “even-handed.”

Because it adds a price ceiling to our current definition of “normal” sales, this test would likely result in using sales to affiliates less frequently than under the current methodology. Moreover, the narrower the band, the fewer sales to affiliates would be used, potentially resulting in fewer price-to-price comparisons and more use of constructed value in determining normal value. These considerations have influenced the choice of the size of the band used for this test.

Narrowing the band significantly (such as using a 99.5 percent–100.5 percent test) would reduce the utility of such a test, as few affiliates would pass. Thus the test would serve little purpose. For this reason, the Department is concerned that the band not be overly narrow. Yet the Department must balance these concerns against the fact that widening the band significantly could increase the potential for manipulating normal value through clustering of sales prices to affiliates at the lower end of the band.

Finally, we note that, in reaching this proposal, the Department examined a wide range of approaches. The more prominent among these are listed below, together with a brief indication of the primary reasons why we have not selected these options.

- Automatic exclusion of all affiliated party sales in determining normal value.

This would constitute a much more drastic change in policy than is necessary to implement the AB Report. Such a practice would not accord with the assumptions of 19 CFR 351.403(c) that sales to an affiliated party could be used under certain circumstances. Second, the automatic elimination of sales to affiliated parties from use in determining normal value would likely lead to significantly fewer instances where dumping is determined on the preferred basis: comparison of pricing in the home market with pricing in the U.S. market.

- Statistical testing (*e.g.*, standard deviation, difference in means, nonparametric tests).

The primary problems with such tests are that they do not adequately screen sales for antidumping purposes and would be difficult to apply in many situations we encounter. Such tests, properly applied, would allow certain affiliated party sales to be deemed to be in the ordinary course of trade, including affiliated party sales with

prices below unaffiliated sales prices, that we believe would distort dumping calculations. This is because such tests typically are much more conservative about what constitutes an outlier than is appropriate in an antidumping context. While we might use more restrictive versions of such tests than are normally applied in other contexts, this would likely reduce the statistical credibility of the tests. In addition, applying such tests in situations involving multiple products would significantly complicate the Department's analysis.

- Broader-band test with an additional requirement for overall affiliated party sales.

This test would allow for a broader band of sales to individual affiliates to pass the arm's-length test *provided* the Department finds that, in the aggregate, the respondent sells to affiliated and unaffiliated parties at comparable price levels. Under this two-part test, sales to an individual affiliate priced on average at, for instance, 95 percent of prices to unaffiliated parties might be found to be within the ordinary course of trade if we determine that the company's overall sales to affiliates are not systematically lower than prices to nonaffiliates. This would address manipulation concerns regarding companies that price to affiliates generally at the low end of the band. In essence, a company that sells to some affiliates at 95 percent of unaffiliated prices would have to sell to other affiliates at prices higher than unaffiliated prices in order to demonstrate that its overall sales prices to affiliated and unaffiliated parties are comparable. In order to adhere to the WTO's "even-handedness" requirement, the test would include higher-priced sales to an individual affiliate (*e.g.*, prices at 105 percent of unaffiliated prices) only if it is found that the company does not systematically price to affiliates at levels higher than nonaffiliates.

Problems with such an approach would include determining how the second part of the test should be structured to demonstrate whether overall sales to affiliates were "comparable" to those to unaffiliated parties. This would likely involve a second, narrower-band test applied to affiliated party sales in the aggregate.

- "Quantity-cushion" test.

Unlike the previous tests, this one would include or exclude sales to affiliates on the basis of a comparison of the quantity of merchandise sold to an affiliate to the quantity sold to unaffiliated customers at prices *at or below* the price to the affiliate and to the quantity sold to unaffiliated customers at prices *at or above* the price to the

affiliate. Thus, sales to an affiliate could be considered "in the ordinary course of trade" and used in the normal value calculation only if there were a sufficient "cushion" of sales to unaffiliated parties priced *below* the average price to the affiliate, and a similar "cushion" of sales to unaffiliated parties priced *above* the average price to the affiliate. The primary concerns with this test were its complexity, calibrating the appropriate "cushion" size, determining how to apply the test by affiliate and whether it would be better applied to all affiliates combined by product, and questions as to whether this might not be an overly narrow definition of the "normal" price range of sales to affiliated parties.

#### Timetable

After considering all comments received, the Department intends to publish in the **Federal Register** a final notice of the new arm's-length methodology. See section 123(g)(1)(F) of the URAA (19 U.S.C. 3533(g)(1)(F)). This new methodology will address the objectives described above. In accordance with section 129(b) of the URAA (19 U.S.C. 3538(b)), this methodology will be utilized to prepare an amended final determination in the Japan Hot-Rolled investigation. In accordance with section 129(c)(1) of the URAA (19 U.S.C. 3538(c)(1)), this amended final determination will establish new cash deposit rates for all producers for whom the investigation rates are still applicable and will apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date on which the United States Trade Representative directs the Department to implement the amended final determination. With respect to other proceedings and other segments of the Japan hot-rolled proceeding, the new methodology will be applied in all reviews initiated on the basis of requests received on or after the first day of the month following the date of publication of the Department's final notice of the new arm's-length methodology, all investigations and other segments of proceedings initiated on the basis of petitions filed or requests made on or after such publication date, and all segments of proceedings self-initiated on or after such publication date.

#### Comments—Format

Parties wishing to comment should submit a signed original and six copies of each set of comments, including reasons for any recommendations, along

with a cover letter identifying the commenter's name and address. To help simplify the processing and distribution of comments and rebuttals, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5" diskette in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect.

Comments received on diskette will be made available to the public on the Web at the following address: <http://ia.ita.doc.gov/>. In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5" diskettes (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482-0866 or via e-mail at [andrew\\_lee\\_beller@ita.doc.gov](mailto:andrew_lee_beller@ita.doc.gov).

Dated: August 8, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 080602C]

#### South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Shrimp Advisory Panel (AP) and Shrimp Bycatch Reduction Device (BRD) Advisory Panel in Charleston, SC.

**DATES:** The Shrimp AP and Shrimp BRD AP will meet jointly September 3, 2002 from 1:30 p.m. until 5 p.m. and September 4, 2002 from 8:30 a.m. until 5 p.m.

**ADDRESSES:** These meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843-571-1000.

*Council address:* South Atlantic Fishery Management Council, One