

Anti-Dumping & Subsidies Commission

HANDBOOK

ON

HOW TO PREPARE RESPONSES

&

HOW TO FILE YOUR CONFIDENTIAL &

NON-CONFIDENTIAL SUBMISSIONS

TO CONTACT THE COMMISSION:

Mailing Address: **JAMPRO Trade & Invest Building**
18 Trafalgar Road, Kingston 10
Jamaica, West Indies

Telephone: (876) 927 - 8665
(876) 978 - 1800
(876) 946 – 9588
(876) 927-8056

Facsimile: (876) 978 - 1093

Email: **antidump@jadsc.gov.jm**

Website: **www.jadsc.gov.jm**

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INTRODUCTION



During the investigation you will be expected to comply with the following guidelines for filing documents.

1. CONFIDENTIALITY

Section 8(2) of the Customs Duties (Dumping and Subsidies) Act, 1999 specifies that:

“The Commission shall not disclose confidential information supplied to it by an interested party to the other interested parties unless the party submitting the information agrees to such disclosure”.

Sections 8 and 9 of the Customs Duties (Dumping and Subsidies) Act and the Commission’s **Practice Notice on the Designation and Disclosure of Confidential Information (Section 4 of the Handbook)** in Anti-Dumping and Subsidies Investigations address the rights and duties of interested parties and the Commission in relation to the use of information during an investigation. There are some very specific guidelines concerning the designation and disclosure of confidential information, the Practice Notice supplement the Act with specific instructions to parties that wish to submit confidential information, you must comply with the procedures set out in the Practice Notice. As a general rule, the Commission will make all information submitted to it available to the public. However, if a request for confidential status has been made to the Commission, and the Commission has granted Confidential Status to that information, the confidential information will not be made available to any other party nor to the public.

2. FORMAT OF SUBMISSIONS AND NUMBER OF COPIES TO BE SUBMITTED

Submissions must include **ten (10) copies** of the Confidential Version, (**the original plus nine copies**) and **two (2) copies** of the Non-Confidential / Public Version (**the original**

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plus one copy). Both versions must be complete, meaning they must include all attachments, samples and printouts that form your submission. An additional copy of the entire confidential submission should be submitted in an electronic format on CD Rom, or diskette in Microsoft Word. In case of any difference between the narrative response and the content of the electronic media, the narrative response will be regarded as the controlling version.

Providers of information and the person(s) submitting it, if different (e.g. a legal representative), must certify on separate certifications that each person has read the submission and that the information submitted to the Commission is true, accurate and complete. The Commission will not accept submissions that do not contain the **Certificate of Veracity and Accuracy**; a copy of the form is enclosed as **Appendix 2** for ease of reference.

If your firm will be represented by someone other than one of its employees or officers, then that person must file a **Notice of Appearance**. A copy of the Notice of Appearance is attached as **Appendix 3** for ease of reference. All parties using legal counsel will be required to use counsel called to the Jamaican Bar.

4. SERVICE OF SUBMISSIONS

You are required to serve both the Confidential Version, and Non-Confidential Version (Public) of your submissions on the Commission at the street address listed on the letterhead, and in the quantities specified.

If there are any issues not covered in this document about which you have questions, please do not hesitate to contact the Commission.

**PROCEDURAL GUIDELINES FOR THE DESIGNATION AND USE OF
CONFIDENTIAL INFORMATION IN ANTI-DUMPING AND SUBSIDIES
COMMISSION PROCEEDINGS**

INTRODUCTION

This practice notice is intended to provide guidance and assistance to parties in deciding whether information is properly designated as confidential.

The mandate of the Anti Dumping and Subsidies Commission (ADSC) is to carry out its legislative responsibilities in a fair, and transparent manner. In order to do so, it intends to develop procedures to ensure, to the greatest extent possible, that its proceedings are open and accessible to interested parties, their Counsel and to the public at large. Given the kinds of issues with which it deals in its proceedings, the Commission often requires access to commercially sensitive information submitted by parties, which, if disclosed to a business rival, could have significant adverse financial consequences. Therefore, protecting commercially sensitive information against unauthorized disclosure is of fundamental importance to the Commission.

The statutory provisions governing the designation of confidential information are found in The Customs Duties (Dumping and Subsidies Act) of 1999, Sections 8 and 9. The Commission also acts in accordance with the WTO Anti-Dumping Agreement, Articles 6.1.2, 6.1.3, 6.2 - 6.5.2.

I. DESIGNATION OF CONFIDENTIAL INFORMATION

Information provided to the Commission, for the purposes of its proceedings, is treated as public information unless it is designated as confidential. At the time of submitting a submission (complaint including attached exhibits) and any subsequent submissions, if a person wants

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information to be designated as confidential, it is required to submit both a confidential version and a public version to the Commission:

- A confidential version containing all of the confidential information and appropriately labelled "Confidential". AND
- A public (non-confidential) version, appropriately labelled, "Public Version" will have confidential data deleted and bracketed (as illustrated in Attachment B) and will have confidential information summarized into a non-confidential summary (as illustrated in Attachment C) in sufficient detail to convey a reasonable understanding of the substance of the information.

The request for designation must include an explanation of the reason why the information should be designated as confidential along with a certification in writing under oath that substantially identical information is not publicly available.

"Confidential" must be stamped or marked on the cover page of the confidential version and on the top of each page containing confidential information. "Public" need only be stamped or marked on the cover page of the public version.

After appropriately designating and marking the submission, ensure that ten (10) copies of the confidential version is submitted to the Commission and two (2) copies of the non-confidential are submitted.

NON-CONFIDENTIAL SUMMARY

The purpose of the non-confidential summary is to provide interested parties with a reasonable indication of the assertions being made and the case they have to meet. Also, to permit the Commission to disclose all relevant information which it has relied upon in arriving at its decision. The non-confidential summary must be sufficiently detailed to allow a person reading it to have a reasonable understanding of the substance of the confidential information submitted to the ADSC in the case.

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In preparing non-confidential summaries, parties may choose to either range or index numerical data. If parties choose to range numerical data, the data must be presented in terms of figures within 10 percent of the actual number. Where the number is so small that a range of 10 percent would be impractical, a range of 20 percent may be used upon receipt of approval from the ADSC. Voluminous data, such as computer printouts, may be summarized by ranging at least one percent of the data included.

II. NON-CONFORMING SUBMISSIONS

Where the Commission considers that the designation of information as confidential is unwarranted because of:

- the nature of the information,
- its extent or availability from other sources;
- the failure of the person to provide any explanation as to why it was designated as confidential;
- the failure to provide a non-confidential summary of the confidential information in sufficient detail to convey a reasonable understanding of the substance of the information

The Commission will notify the person and give its reasons, and will return the documents to the submitter. The submitter may then withdraw the designation or submit an explanation, or correct the problem and resubmit a conforming submission which, if not accepted by the Commission, would result in the Commission not taking the information into account and returning the confidential information to the submitter.

A party may indicate to the Commission that the information cannot be summarized, and the reasons there for. The Commission will grant claims that summarization is not possible only in exceptional circumstances, and will vigorously enforce the requirement for non-confidential summaries.

III. CATEGORIES OF INFORMATION

Section (8)(3) of the CDDASA sets out the categories of confidential information as: *any information that would give a commercial advantage to a competing party, or the disclosure or publication of which would cause an adverse affect to the supplier or acquirer of the information.*

(A) TYPES OF INFORMATION THAT MAY BE CONSIDERED CONFIDENTIAL

Please note that the following list is NOT exhaustive.

- i. Business or trade secrets concerning the nature of a product or production process;
- ii. Production costs (but not the identity of the production components unless a particular component is a trade secret);
- iii. Distribution costs (but not channels of distribution);
- iv. Terms of sale (but not terms of sale offered to the public);
- v. Prices of individual sales, likely sales, or other offers [but not components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (i) of this section), or order numbers];
- vi. Names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);
- vii. In an antidumping proceeding, the exact amount of the dumping margin on individual sales;
- viii. In a countervailing duty proceeding, the exact amount of the benefit applied for or received by a person from each of the programmes under investigation or review (but not descriptions of the operation of the programmes, or the amount if included in official public statements or documents or publications, or the ad valorem countervailable subsidy rate calculated for each person under a programme);
- ix. The names of particular persons from whom business proprietary information was obtained;
- x. The position of a domestic producer or workers regarding a petition; and

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- xii. Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(B) TYPICAL PUBLIC INFORMATION

In order to assist persons and counsel, the following is a non-exhaustive list of the type of information that the Commission typically considers to be public:

- i. Factual information of a type that has been published or otherwise made available to the public;
- ii. Factual information that is not designated as business proprietary by the person submitting it;
- iii. Factual information that, although designated as business proprietary by the person submitting it, is in a form that cannot be associated with or otherwise used to identify activities of a particular person;
- iv. Information that the Commission determines is not properly designated as confidential;
- v. Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and
- vi. Written argument relating to the proceeding that is not designated as business proprietary.
- vii. Aggregated data, including industry association data, where specific company data cannot be identified or deduced;
- viii. General views and opinions on the state of the market, including market competition, on consumer behaviour and preferences, on future market demand and on product trends;
- ix. Information available through public sources, including data relating to production, imports and other market indicators;
- x. Qualitative descriptions of market factors;
- xi. Published price lists and discounts;
- xii. Published financial statements and annual reports;

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- xiii. Descriptions of company history, ownership (if a public company), marketing and distribution channels; and samples of products offered for sale.
- xiv. "Rate-of-change" information for a country, a company, a market or an industry relating to various performance indicators, except for:
 - Company-specific financial information that is not in the public domain; and
 - Information that could, when taken together with other information available to a party, disclose confidential "level" information about another party.

IV. BREACH OF CONFIDENTIALITY

Section 8 of the Customs Duties (Dumping and Subsidies) Act provides that information treated as confidential shall not be disclosed by anyone who receives such information, otherwise than in the discharge of his functions under the Act. The sanction for violation of the aforementioned provision of the CDDASA is a fine not exceeding Five Hundred Thousand Dollars (J\$500,000) or imprisonment for a term not exceeding 2 years or both; upon a summary conviction before a Resident Magistrate.

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1. ATTACHMENT 1 – Exhibit Summary of Documents submitted to the Commission

DESCRIPTION		NATURE OF INFORMATION	REASON FOR DESIGNATION	CONFIDENTIAL BUSINESS INFORMATION	PUBLIC VERSION (NON-CONFIDENTIAL VERSION)	NON CONFIDENTIAL SUMMARY
NAME OF DOCUMENT	PAGE NUMBER					
Complaint Submission	3	Production Costs	Commercial advantage to a competing party	X	X	X

2. ATTACHMENT II

DOCUMENT A

EXAMPLE OF A HYPOTETHICAL CONFIDENTIAL DOCUMENT

During the period from 1995 to 1997, Company A's net profits declined from **17.8** to **10.2** percent. During the first quarter of 1998, profitability showed improvement, increasing from **5.6** to **12.6** percent.

Table 4 reports Company A's standard costs for domestic sales of Product X on a dollar per unit basis. Total standard costs increased by **1.5** percent in 1996 and then rose by a further **1.1** percent in 1997. During the first quarter of 1998, total standard costs declined by **17** percent.

During the period of inquiry, material costs represented close to **50** percent of total standard costs. Material costs showed the widest fluctuations among the standard cost components. In 1996, the **1** percent drop was followed by an increase in **15** percent in 1997 and a decline of **22** percent in 1998.

LEVELS	1995	1996	1997	January to March	
				1997	1998
Volume of Goods Sold (net tons)		4,339	4,926	4,291	953
1,575					
Materials	1,595	1,571	1,816	1,525	1,183
Labour	781	782	599	834	652
Overhead	491	558	529	542	586

During the period of inquiry, export sales represented between **11** and **26** percent of total company sales. Profit contribution by export sales to total company profits at the gross margin level **far exceeded** its contribution to total company sales.

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DOCUMENT B

EXAMPLE OF A PUBLIC VERSION

During the period from 1995 to 1997, Company A's net profits declined from _____ to _____ percent. During the first quarter of 1998, profitability showed improvement, increasing from _____ to _____ percent.

Table 4 reports Company A's standard costs for domestic sales of Product X on a dollar per unit basis. Total standard costs increased by _____ percent in 1996 and then rose by a further _____ percent in 1997. During the first quarter of 1998, total standard costs declined by _____ percent.

During the period of inquiry, material costs represented close to _____ percent of total standard costs. Material costs showed the widest fluctuations among the standard cost components. In 1996, the _____ percent drop was followed by an increase of _____ percent in 1997 and a decline of _____ percent in 1998.

Table 4					
STANDARD COST BREAKOUT-DOMESTIC SALES					
(\$/unit)					
LEVELS	1995	1996	1997	<u>January to March</u>	
				1997	1998
Volume of Goods Sold (net tons)					
Materials					
Labour					
Overhead					
Total Standard Costs					

During the period of inquiry, export sales represented between _____ and _____ percent of total company sales. Profit contribution by export sales to total company profits at the gross margin level _____ its contribution to total company sales.

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DOCUMENT C

EXAMPLE OF A PUBLIC VERSION THAT INCLUDES NON-CONFIDENTIAL SUMMARIES

Of the three producers, IPSCO had the smallest net sales of subject goods (Table XXIII). In line with the other members of the industry, IPSCO's best year was 1989, as indicated in Table XXIII. In that year, it earned XXX million on sales of XXX million. With the highest profits of any firms in the industry, it's gross margin stood at XXX percent and it earned a net profit of XXX percent. As with the other firms, IPSCO's selling prices per ton fell throughout the period.

IPSCO INCOME STATEMENT SUBJECT GOODS - DOMESTIC SALES FROM DOMESTIC PRODUCTION (Fiscal Year Ending December 31) (\$ 000)										
	1989	%	1990	%	1991	%	9 mos.	%	9 mos.	%
									1991	
Volume (000's net tons)	XXX		XXX		XXX		XXX		XXX	
Net Sales	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Cost of Goods Sold	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Gross Margin	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
G.S.A.	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Financial expenses	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Net Income (loss) Before Taxes	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
<hr/> Some figures may not add due to rounding.										
Source: reply to Questionnaire										

Table XXIII IPSCO Income Statement - \$'000

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SAMPLE PHRASES FOR PUBLIC REPORTS

When information has been provided to the Commission stamped "confidential", some of the following phrases may be appropriate to provide a reasonable understanding of the substance of the confidential information.

An important part of a firm's operations...

Relative poor financial situation...

Significant... market share, profits,

Exports account for only a minor part of sales...

Firm a currently hold a dominant position in the domestic market...

Evidence demonstrates a deterioration in the firm's financial performance...

Profits have decreased by a meaningful amount...

The subject goods account for a significant percentage of the firm's profits.

Substantial downward price pressure exists...

Financial results showed persistent losses in the production of the subject goods.

GLOSSARY OF TERMS

This glossary is intended to provide parties with a basic understanding of many technical terms that appear in an investigation and throughout the questionnaire. These explanations are not rules with the force of law but are provided as a guide to parties that interact with the Anti-Dumping and Subsidies Commission (the Commission).

If questions arise from using this glossary, parties should seek clarification from the Customs Duties (Dumping and Subsidies) Act, its attended Regulations, and the Commission, rather than attempting to derive precise guidance from these general explanations.

Associated or Affiliated Persons

Associated or affiliated persons include (1) individuals related by blood marriage or adoption, (2) an officer or director of an organization and that organization, (3) each individual who is an officer or director of the same two corporations, associations, partnerships or other organizations, (4) partners, (5) employers and their employees, (6) individuals who directly or indirectly control or are controlled by the same person, and (7) an individual who directly or indirectly controls or is controlled by another person. “Control” exists where one person or organization is legally or operationally in a position to influence decisions concerning the production, pricing, or cost of the subject goods or foreign like good.

Antidumping Law and Regulations

The Laws are set forth in the Customs Duties (Dumping and Subsidies) Act, 1999 and the Customs Duties (Dumping and Subsidies) Regulations 2000.

Arm’s-length Transactions (between associated or affiliated persons)

Generally, the Commission may use transactions between associated or affiliated parties as a basis for normal value, only if the transactions are made at arm’s length. Arm’s-length transactions are those in which the selling price between the associated or affiliated parties is comparable to the selling prices in transactions involving persons who are not associated or affiliated. The Commission takes into account terms of sale, conditions of delivery, and other circumstances related to the sales in deciding if the selling

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prices are comparable. Sales not made at arm's length are not considered to be within the ordinary course of trade. (See also **Ordinary Course of Trade**.)

Certification of Accuracy

Any person that submits factual information to the Commission must include with the submission a certification of the completeness and accuracy of the factual information. Certifications must be made by a knowledgeable official responsible for presentation of the factual information and also by the party's legal counsel. A sample certification form is included as Appendix IV to the questionnaire.

Circumstances of Sale (COS)

These are direct expense adjustments that are made for differences that exist in selling conditions in different markets. Besides particular adjustments named in the Regulations (*e.g.*, differences in quantities and levels of trade), the Regulations also allows the Commission to adjust for other differences in circumstances of sale. [This adjustment normally is based only on differences in direct selling expenses that the Commission does not adjust for under more specific provisions. (See also **Direct vs. Indirect Expenses**.)

Constructed Export Price

(See **Export Price**)

Constructed Value (CV)

When there are no sales of the foreign like good in the foreign market suitable for matching to the goods under consideration (including, for example, when the Commission disregards sales because they are not of sufficient quantity to form the basis of fair market price, the Commission uses constructed value (CV) as the basis for normal value. The constructed value is the sum of (1) the cost of materials and fabrication of the goods under consideration, (2) selling, general, and administrative expenses and profit in the foreign market, and (3) the cost of packing for exportation to the Jamaica.

Contemporaneous Sales

In investigations, the Commission normally compares average export prices (or constructed export prices) to average normal values. The averages normally are based on sales made over the course of the period of investigation. The preferred month is the month in which the particular Jamaican sale was made. If,

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during the preferred month, there are no sales in the foreign market of a foreign like good that is identical to the subject goods, the Commission will then employ a six-month window for the selection of contemporaneous sales. For

each Jamaican sale, the Commission will calculate an average price for sales of identical goods in the most recent of the three months prior to the month of the Jamaican sale. If there are no such sales, the Commission will use

sales of identical goods in the earlier of the two months following the month of the Jamaican sale. If there are no sales of identical goods in any of these months, the Commission will apply the same progression to sales of similar goods.

Cost of Production (COP)

Cost of production means the total cost of producing the foreign like good. The total cost of production is the sum of material, fabrication, and other costs associated with the production of the good. The normal value may be constructed on the basis of the cost of production in cases where sales in the domestic market are inappropriate, where: such sales are (A) not viable; (B) below the cost of production and are made within an extended period of time (normally one year), in substantial quantities (at least 20 percent of the volume of the product examined is sold below cost or the weighted-average unit price is below the weighted-average cost for the period examined) and at a price which does not permit recovery of cost within a reasonable period of time (*i.e.*, a price is less than the weighted-average cost of production during the period examined); (C) outside the ordinary course of trade on account of market conditions; and (D) not representative or no contemporaneous sales of comparable merchandise exist.

Credit Expense

Credit expense is a type of expense for which the Commission frequently makes circumstances-of-sale adjustments. It is the interest expense incurred (or interest revenue foregone) between shipment of goods to a customer and receipt of payment from the customer. The Commission normally imputes the expense by applying a firm's annual short-term borrowing rate in the currency of the transaction, prorated by the number of days between shipment and payment, to the unit price. If actual payment dates are not kept in a way that makes them accessible, the calculation may be based on the average of the number of days that accounts receivable remain outstanding. (See also **Imputed Expenses**.)

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Date of Sale

Because the Commission attempts to compare sales made at the same time, establishing the date of sale is an important part of the dumping analysis. The Commission will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Commission may use a date

other than the date of invoice (*e.g.*, the date of contract in the case of a long-term contract) if satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.*, price, quantity etc)

Difference in Goods Adjustments

When normal value is based on sales in the foreign market of a product, which is similar, but not identical, to the product sold in the Jamaica, the Commission may adjust normal value to account for differences in the variable costs of producing the two products. Generally, the adjustment is limited to differences in the costs of materials, labor and variable production costs that are attributable to physical differences in the goods. The Commission will not adjust for differences in fixed overhead or administrative expenses or profit.

Direct vs. Indirect Expenses

In calculating export price, constructed export price, and normal value, the Commission treats selling expenses differently depending on whether they are direct expenses or indirect expenses. For instance, circumstances-of-sale adjustments normally involve only direct expenses.

Direct expenses generally must be (1) variable and (2) traceable in a company's financial records to sales of the goods under investigation.

1. Variable vs. fixed expenses: Direct expenses are typically variable expenses that are incurred as a direct and unavoidable consequence of the sale (*i.e.*, in the absence of the sale these expenses would not be incurred). Indirect expenses are fixed expenses that are incurred whether or not a sale is made.

The same expense may be classified as fixed or variable depending on how the expense is incurred. For example, if an exporter pays an unassociated or unaffiliated contractor to perform a service, this fee would normally be considered variable and treated as a direct expense (provided

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that condition 2, below, is also satisfied). However, if the exporter provides the service through a salaried employee, the fixed salary expense will be treated as an indirect expense.

2. Tying of the expense to sales of the goods under investigation: Selling expenses must be reasonably dependent upon sales of the goods under investigation to qualify as direct selling expenses. However, even if a fixed expense is allocable to the goods under investigation, the Commission normally will treat it as an indirect expense.

Common examples of direct selling expenses include credit expenses, commissions, and the variable portions of guarantee, warranty, technical assistance, and servicing expenses. Common examples of indirect selling expenses include inventory carrying costs, salesmen's salaries, and product liability insurance. The fixed portions of

expenses, such as salaries for employees who perform technical services or warranty repairs, are indirect expenses.

The Commission also treats assumptions of expenses as direct expenses, provided they are attributable to a later sale of the goods. For example, the Commission treats expenses incurred for advertising aimed at retailers as if they were direct selling expenses when the exporter is selling to wholesalers.

Discounts

See **Price Adjustments**

Dumping

Dumping occurs when an exporter sells goods to Jamaica at a price less than the normal value prevailing in the country of export. The dumping margin is the amount by which the normal value exceeds the export price.

Export Price and Constructed Export Price

Export price and constructed export price refer to the two methods of calculating prices for goods imported into the Jamaica. The Commission compares these prices to normal values to determine whether goods are dumped. Both export price and constructed export price are calculated from the price at which the subject goods is first sold to a person not associated or affiliated with the foreign producer or exporter.

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Generally, a Jamaican sale is classified as an **export price sale** when the first sale to an unassociated or unaffiliated person occurs *before* the goods are imported into Jamaica. In cases where the foreign manufacturer knows or has reason to believe that the goods is ultimately destined for Jamaica, the manufacturer's sale is usually the sale subject to investigation or review. If, on the other hand, the manufacturer sold the goods to a trader without knowledge of the trader's intention to export the goods to Jamaica, then the trader's first sale to an unassociated or unaffiliated person is the sale subject to investigation or review.

Generally, a Jamaican sale is classified as a **constructed export price sale** when the first sale to an unassociated or unaffiliated person occurs *after* importation. However, if the first sale to the unassociated or unaffiliated person is made by a person in Jamaica associated or affiliated with the foreign exporter, constructed export price applies, unless the Jamaican associate or affiliate performs only clerical functions in connection with the sale.

The Commission makes adjustments to the price to the first unassociated or unaffiliated customer in calculating the export price or constructed export price. For both export price and constructed export price, the Commission adds packing charges, if not already included in the price, rebated import duties, and, if applicable, certain countervailing duties. Also for both, the Commission deducts transportation costs and export taxes or duties. No other adjustments are made in calculating export price. However, in calculating the constructed export price, the Commission also deducts selling commissions and other expenses incurred in selling the goods under consideration, the cost of any further manufacture or assembly performed in the Jamaica, and profit. These expenses and profits represent activities undertaken to support the Jamaican resale to an unassociated or unaffiliated customer.

Facts Available

The Commission seeks to make its antidumping determinations on the basis of responses to its antidumping questionnaires. However, for a variety of reasons, the data needed to make such determinations may be unavailable or unusable. In such instances, the law requires the Commission to make its determinations on the basis of the information or the facts available to it (more commonly referred to as "the facts available"). The Commission may use the facts available where an interested party or any other person: (1) refuses access to or otherwise does not provide necessary information

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within a reasonable period (2) significantly impedes an antidumping proceeding; or (3) provides information that cannot be verified.

An interested party should promptly inform the Commission of difficulties it is having in responding to a request for information, so that the Commission may consider modifying its request to the extent necessary to avoid delaying the investigation and imposing an unreasonable burden on the party.

Foreign Like Good

The term “foreign like good” refers to goods that are sold in the foreign market and that are identical or similar to the goods under consideration. When used in the questionnaire, foreign like good means all goods that are sold in the foreign market that fit within the description of goods provided in Appendix III to the questionnaire. (See also **Identical Goods** and **Similar Goods**.)

Foreign Market

The foreign market is the home market from which the Commission selects the prices used to establish normal values. (See also **Viability**.)

Further Manufacturing Adjustment

In calculating constructed export price, the Commission normally deducts from the price of the goods sold in Jamaica, the cost of any further manufacture or assembly performed in Jamaica by, or for, the exporter or an associated or affiliated person. However, if the value of the further processing is more than the value of the goods under consideration as imported, the Commission may use an alternative basis for the constructed export price. If possible the Commission would use the price of the goods under consideration sold to an unassociated or unaffiliated customer by the producer, exporter, or associated or affiliated seller. If there is an insufficient quantity of such sales or it is not appropriate to use such sales, the Commission may rely on any other reasonable basis

Goods Under Consideration

Those goods imported into Jamaica that are subject to investigation or review. That is the goods described in Appendix III of the questionnaire.

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Home Market

The home market refers to the market for sales of the foreign like good in the country in which the goods under consideration are produced (see Foreign Market). Home market sales are the preferred basis for normal value.

Identical Goods

The Commission prefers to compare Jamaican sales to foreign market sales of identical goods. Identical goods are goods that are produced by the same manufacturer in the same country as the **goods under consideration**, and which the Commission determines is identical or similar in physical characteristics with the goods under consideration, as imported into Jamaica. (See also **Similar Goods** and **Foreign Like Good**.)

Imputed Expenses

Imputed expenses generally are opportunity costs (rather than actual costs) that are not reflected in the financial records of the company being investigated, but which must be estimated and reported for purposes of an antidumping investigation. Common examples of imputed expenses include credit expenses and inventory carrying costs.

Indirect Expenses

See **Direct vs. Indirect Expenses**.

Inventory Carrying Costs

Inventory carrying costs are the interest expenses incurred (or interest revenue foregone) between the time the goods leave the production line at the factory to the time the goods are shipped to the first unassociated or unaffiliated customer. The Commission normally calculates these costs by applying the firm's annual short-term borrowing rate in the currency of the country where the inventory is being held, prorated by the number of days between leaving the production line and shipment to the customer, to the unit cost or price. (See also **Imputed Expenses**.)

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Level of Trade

To the extent practicable, the Commission calculates normal values based on sales made in the foreign market at the same level of trade as the constructed export price (“CEP”) or export price (“EP”), or adjustments for the differences in levels of trade. In a CEP situation, economic activities occurring in Jamaica are not considered in determining the level of trade, only the price to the first unassociated purchaser. (See **Export Price**)

In order to establish whether differences in levels of trade exist, the Commission reviews distribution systems, including categories of customers, selling activities, and levels of selling expenses for each type of sale. Different levels of trade are typically characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively and/or quantitatively different selling activities. Different levels of trade necessarily involve differences in selling activities, although differences in selling activities alone are not sufficient to establish differences in levels of trade. Similarly, customer categories such as “distributor,” “wholesaler,” “retailer,” and “end-user” are often useful in identifying levels of trade, although they, too, are insufficient in themselves to establish differences in levels of trade. Rather, the Commission evaluates differences in levels of trade based on a seller’s entire marketing process.

Level of Trade Adjustment

When the Commission bases normal value on sales in the foreign market at a level of trade that is different from that of the EP or CEP, the Commission may adjust the normal value to account for differences in levels of trade between the two markets.

The Commission makes these adjustments only where the difference in the levels of trade affects price comparability. The Commission determines whether there is an effect on price comparability by determining whether there is a pattern of consistent price differences between sales at the different levels of trade in the foreign market. Normally, the Commission calculates any adjustment for level of trade based on the percentage difference between an average of the prices at the different levels of trade in the foreign market, less any expenses adjusted for elsewhere in the normal value calculation.

HANDBOOK

Movement Expenses

Movement expenses are expenses directly attributable to bringing the goods from the original place of shipment to the place of delivery of the Jamaican market sale. That is transportation and other expenses, including warehousing expenses, inland insurance, loading, forwarding, unloading, brokerage and handling, incurred by the seller after the goods leave the original place of shipment in the foreign market (home market). Normally, the production facility is considered to be the original place of shipment. However, where export price, constructed export price, or normal value is based on a sale made by a reseller unassociated or unaffiliated with the producer, the Commission may treat the place from which the reseller shipped the goods as the original place of shipment.

Normal Value

Normal value is the adjusted price of the foreign like good in the home or third-country (foreign) market, or the constructed normal value of the goods under consideration. The Commission compares the normal value to the export price or constructed export price to determine the margin of dumping, if any.

The Commission initially seeks to calculate normal values based on price. If there are adequate sales in the home market (see **Viability**), the Commission calculates normal value based on the price at which the foreign like good is first sold (generally, to unassociated or unaffiliated parties) in that market; otherwise the Commission determines normal value by calculating the constructed value.

To ensure a fair comparison between normal values and export price or constructed export price, the Commission makes adjustments to the price used to calculate the normal value. The Commission adds Jamaican packing charges and deducts any of the following expenses included in the foreign market price: packing charges, transportation costs, and any internal tax that was rebated or not collected on the subject goods. The Commission may also make additional adjustments to account for differences in the conditions under which sales are made in the Jamaican and the foreign market. Thus, the Commission may increase or decrease the normal value to account for differences in quantities, physical characteristics of the goods, levels of trade, and other circumstances of sale.

HANDBOOK

Ordinary Course of Trade

In calculating normal value, the Commission considers only those sales in the foreign market that are in the ordinary course of trade. Generally, sales are in the ordinary course of trade if made under conditions and practices that, for a reasonable period of time prior to the date of sale of the subject goods, have been normal for sales of the foreign like good. (See also **Arms-length Transactions**)

Price Adjustments

A price adjustment is any part of the net price actually paid by the buyer. These are adjustments that are made to a nominal price. Discounts and rebates are examples of price adjustments; these are not expenses but rather form part of the price itself. These adjustments can either be upwards or downwards.

A discount is a reduction to the gross price that a buyer is charged for goods. Although the discount need not be stated on the invoice, the buyer remits to the seller only the face amount of the invoice, less discounts. Common types of discounts include early payment discounts, quantity discounts, and loyalty discounts. If a discount is not already taken out then it is deducted from the gross price, and the net price is used for normal value calculations.

Similar to discounts, rebates are reductions in the gross price that a buyer is charged for goods. Unlike discounts, rebates do not result in a reduction in the remittance from the buyer to the seller for the particular goods with which the rebate is associated. Rather, a rebate is a refund of monies paid, a credit against monies due on future purchases, or the conveyance of some other item of value by the seller to the buyer after the buyer has paid for the goods. When the seller establishes the terms and conditions under which the rebate will be granted at or before the time of sale, the Commission reduces the gross selling price by the amount of the rebate, to arrive at the net price used for normal value calculations. (See also **Direct vs. Indirect Expenses.**)

HANDBOOK

Proprietary Information

Proprietary (confidential) information is sensitive business data that would cause substantial harm to the submitting party if disclosed publicly. Examples of information that the Commission normally treats as proprietary (confidential), if requested and not already in the public domain, include trade secrets concerning the production process, production and distribution costs, terms of sale, individual prices, and the names of customers and suppliers.

Proprietary Treatment

If a party requests confidential treatment of information, and if the Commission agrees that the information is proprietary (confidential), the Commission will protect the information from public disclosure. If the Commission does not agree that the information is proprietary (confidential), it will return the information and not rely on it in the proceeding, unless the submitting party agrees that it may be made public.

Rebates

See **Price Adjustments**

Regulations

See **Antidumping Law and Regulations**

Similar Goods

In deciding which sales of the foreign like good to compare to sales of the goods under consideration, the Commission first seeks to compare sales of identical goods. If there are no sales of the identical foreign like good, the Commission will compare sales of the foreign like good similar to the goods under consideration. The similar foreign like good are goods that are produced by the same manufacturer in the same country as the goods under consideration, and which, in order of preference, is either (1) similar to the goods under consideration in component materials, use, and value, or (2) similar in use to, and reasonably comparable to, the goods under consideration. (See also **Identical Goods, Foreign like good**)

HANDBOOK

Technical Service Expenses

Technical service expenses are typically incurred when a producer provides technical advice to customers, which are industrial users of the product. Generally, the Commission considers travel expenses and contract services performed by unassociated or unaffiliated technicians to be direct expenses. The Commission treats salaries paid to the seller's employees who provide technical services as indirect expenses.

Verification

To establish the adequacy and accuracy of information submitted in response to questionnaires and other requests for information, the Commission examines the records of the party that provided the information and interviews company personnel who prepared the questionnaire response and are familiar with the sources of the data in the response. This process is called verification. The Commission must verify information relied upon in making a final determination in an investigation. (Section 782(i) of the Act; section 351.307 of the regulations.) (See also **Facts Available**)

Viability

To calculate normal value based on sales in the home market, the Commission must determine that the volume of sales are of sufficient quantity. The Commission normally finds sales to be of sufficient quantity if the quantity of the foreign like good sold is 5 percent or more of the quantity sold to the Jamaica, over the period under investigation. In unusual situations, the Commission may find that sales below the 5-percent threshold are adequate, or that sales above the threshold are not. Also in unusual situations, the Commission may apply the 5-percent test on the basis of value, rather than quantity.

Warehousing Expenses

See **Movement Expenses**

APPENDIX 1

CERTIFICATE OF SERVICE

(Note: This certificate should be reproduced and signed on your company's letter)

This is to certify that, on _____, I served a copy of the enclosed document upon the following parties via hand/courier delivery at the following addresses.

NAME : _____

COMPANY : _____

ADDRESS : _____

NAME : _____

COMPANY : _____

ADDRESS : _____

(please replicate the names and addresses as many times as applicable)

Signed: _____

Name of Signatory: _____

Date: _____

Telephone No. of Signatory: _____

Fax No. of Signatory: _____

APPENDIX 2

Certificate of Veracity, Accuracy and Completeness

[Note: This certificate should be reproduced and signed on your company's letterhead]

I, _____, _____ of _____
(Print Name) (Print Position) (Print Name of Company)

certify that the information submitted to the Commission is response to the application of (Date) is TRUE, ACCURATE and COMPLETE, and understand that the information submitted is subject to audit and verification by the Commission.

Signed: _____

Date: _____

Telephone No. of Signatory: _____

Fax No. of Signatory: _____

Address of Signatory: _____

Witnessed by:
Justice of the Peace

APPENDIX 3

NOTICE OF APPEARANCE

IN THE MATTER OF:

The Executive Director
Anti-Dumping & Subsidies Commission
The Roswind, 25 Windsor Avenue
Kingston 5

Notice is hereby given that the undersigned appears as Counsel/Representative for _____ a party before the Commission in the above matter.

The undersigned's address for service is _____

Dated at _____ this _____ day of _____ 200__.

Signature:

Name (Print):

Firm:

Address:

.....

.....

.....

Telephone no.