

(price used for determining normal value)); or

(ii) If the exporting country does not constitute a viable market, but a third country does constitute a viable market, the Secretary may calculate normal value on the basis of price to a third country (see section 773(a)(1)(B)(ii) of the Act (use of third country prices in determining normal value)).

(2) *Exception.* The Secretary may decline to calculate normal value in a particular market under paragraph (c)(1) of this section if it is established to the satisfaction of the Secretary that:

(i) In the case of the exporting country or a third country, a particular market situation exists that does not permit a proper comparison with the export price or constructed export price (see section 773(a)(1)(B)(ii)(III) or section 773(a)(1)(C)(iii) of the Act); or

(ii) In the case of a third country, the price is not representative (see section 773(a)(1)(B)(ii)(I) of the Act).

(d) *Allegations concerning market viability and the basis for determining a price-based normal value.* In an anti-dumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(d)(1).

(e) *Selection of third country.* For purposes of calculating normal value based on prices in a third country, where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act and this section, the Secretary generally will select the third country based on the following criteria:

(1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;

(2) The volume of sales to a particular third country is larger than the volume of sales to other third countries;

(3) Such other factors as the Secretary considers appropriate.

(f) *Third country sales and constructed value.* The Secretary normally will cal-

culate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable (see section 773(a)(4) of the Act (use of constructed value)).

§ 351.405 Calculation of normal value based on constructed value.

(a) *Introduction.* In certain circumstances, the Secretary may determine normal value by constructing a value based on the cost of manufacture, selling general and administrative expenses, and profit. The Secretary may use constructed value as the basis for normal value where: neither the home market nor a third country market is viable; sales below the cost of production are disregarded; sales outside the ordinary course of trade, or sales the prices of which are otherwise unrepresentative, are disregarded; sales used to establish a fictitious market are disregarded; no contemporaneous sales of comparable merchandise are available; or in other circumstances where the Secretary determines that home market or third country prices are inappropriate. (See section 773(e) and section 773(f) of the Act.) This section clarifies the meaning of certain terms relating to constructed value.

(b) *Profit and selling, general, and administrative expenses.* In determining the amount to be added to constructed value for profit and for selling, general, and administrative expenses, the following rules will apply:

(1) Under section 773(e)(2)(A) of the Act, “foreign country” means the country in which the merchandise is produced or a third country selected by the Secretary under § 351.404(e), as appropriate.

(2) Under section 773(e)(2)(B) of the Act, “foreign country” means the country in which the merchandise is produced.

§ 351.406 Calculation of normal value if sales are made at less than cost of production.

(a) *Introduction.* In determining normal value, the Secretary may disregard sales of the foreign like product made at prices that are less than the cost of production of that product. However,

such sales will be disregarded only if they are made within an extended period of time, in substantial quantities, and are not at prices which permit recovery of costs within a reasonable period of time. (See section 773(b) of the Act.) This section clarifies the meaning of the term “extended period of time” as used in the Act.

(b) *Extended period of time.* The “extended period of time” under section 773(b)(1)(A) of the Act normally will coincide with the period in which the sales under consideration for the determination of normal value were made.

§ 351.407 Calculation of constructed value and cost of production.

(a) *Introduction.* This section sets forth certain rules that are common to the calculation of constructed value and the cost of production. (See section 773(f) of the Act.)

(b) *Determination of value under the major input rule.* For purposes of section 773(f)(3) of the Act, the Secretary normally will determine the value of a major input purchased from an affiliated person based on the higher of:

(1) The price paid by the exporter or producer to the affiliated person for the major input;

(2) The amount usually reflected in sales of the major input in the market under consideration; or

(3) The cost to the affiliated person of producing the major input.

(c) *Allocation of costs.* In determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.

(d) *Startup costs.* (1) In identifying startup operations under section 773(f)(1)(C)(ii) of the Act:

(i) “New production facilities” includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.

(ii) A “new product” is one requiring substantial additional investment, including products which, though sold

under an existing nameplate, involve the complete revamping or redesign of the product. Routine model year changes will not be considered a new product.

(iii) Mere improvements to existing products or ongoing improvements to existing facilities will not be considered startup operations.

(iv) An expansion of the capacity of an existing production line will not qualify as a startup operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expanded facilities.

(2) In identifying the end of the startup period under clauses (ii) and (iii) of section 773(f)(1)(C) of the Act:

(i) The attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization.

(ii) The startup period will not be extended to cover improvements and cost reductions that may occur over the entire life cycle of a product.

(3) In determining when a producer reaches commercial production levels under section 773(f)(1)(C)(ii) of the Act:

(i) The Secretary will consider the actual production experience of the merchandise in question, measuring production on the basis of units processed.

(ii) To the extent necessary, the Secretary will examine factors in addition to those specified in section 773(f)(1)(C)(ii) of the Act, including historical data reflecting the same producer’s or other producers’ experiences in producing the same or similar products. A producer’s projections of future volume or cost will be accorded little weight.

(4) In making an adjustment for startup operations under section 773(f)(1)(C)(iii) of the Act:

(i) The Secretary will determine the duration of the startup period on a case-by-case basis.