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of other property which is not subject to such liability. See paragraph (c)(6) of §1.971–1 for treatment of export trade assets which constitute working capital to which section 971(c)(1) applies and which also constitute inventory to which section 971(c)(2) applies or evidences of indebtedness to which section 971(c)(4) applies.

(iii) *Treatment of certain liabilities.* For purposes of subdivisions (i) and (ii) of this subparagraph, a current liability, or a specific charge created with respect to any item of property, principally for the purpose of artificially increasing or decreasing the amount of a controlled foreign corporation's investments in export trade assets shall be taken into account in such a manner as to properly reflect the controlled foreign corporation's investments in export trade assets; whether a specific charge or current liability is created principally for such purpose will depend upon all the facts and circumstances of each case. One of the factors that will be considered in making such a determination with respect to a loan is whether the loan is from a related person, as defined in section 954(d)(3) and paragraph (e) of §1.954–1.

(iv) *Statement required.* If for purposes of this section a United States shareholder of a controlled foreign corporation reduces the adjusted basis of property which constitutes an export trade asset on the ground that such property is subject to a liability, he shall attach to his return a statement setting forth the adjusted basis of the property before the reduction and the amount and nature of the reduction.

(2) *Increase in investments in export trade assets.* For purposes of section 970(a) and paragraph (b) of this section, the amount of increase in investments in export trade assets of a controlled foreign corporation for a taxable year shall be, except as provided in §1.970–2, the amount by which—

(i) The amount of its investments in export trade assets at the close of such taxable year, exceeds

(ii) The amount of its investments in export trade assets at the close of the preceding taxable year.

(3) *Decrease in investments in export trade assets.* For purposes of section 970(b) and paragraph (c) of this section, the amount of the decrease in investments in export trade assets of a controlled foreign corporation for a taxable year shall be, except as provided in §1.970–2, the amount by which—

(i) The amount of its investments in export trade assets at the close of the preceding taxable year, minus

(ii) An amount equal to the excess of recognized losses over recognized gains on sales, exchanges, involuntary conversions, assets or other dispositions, of export trade during the taxable year, exceeds

(iii) The amount of its investments in export trade assets at the close of the taxable year.

For purposes of subdivision (ii) of this subparagraph, recognized losses include a write-down of inventory to lower of cost or market in accordance with a method of inventory valuation established or adopted by or on behalf of such foreign corporation under paragraph (c) of §1.964–1.

[T.D. 6755, 29 FR 12704, Sept. 9, 1964, as amended by T.D. 6795, 30 FR 947, Jan. 29, 1965; T.D. 6892, 31 FR 11144, Aug. 23, 1966; T.D. 7293, 38 FR 32802, Nov. 28, 1973; T.D. 7893, 48 FR 22511, May 19, 1983]

§1.970–2 Elections as to date of determining investments in export trade assets.

(a) *Nature of elections*—(1) *In general.* In lieu of determining the increase under the provisions of paragraph (d)(2) of §1.970–1, or the decrease under the provisions of paragraph (d)(3) of §1.970–1, in a controlled foreign corporation's investments in export trade assets for a taxable year in the manner provided in such provisions, a United States shareholder of such corporation may elect, under the provisions of section 970(c)(4) and this section, to determine such increase or decrease in accordance with the provisions of subparagraph (2) of this paragraph or, in the case of export trade assets which are facilities described in section 971(c)(3), in accordance with the provisions of subparagraph (3) of this paragraph. Separate elections may be made under subparagraph (2) and/or (3) of this paragraph with respect to each controlled foreign corporation with respect to which a person is a United States shareholder, within the meaning of section 951(b).

(2) *Election of 75-day rule.* A United States shareholder of a controlled foreign corporation may elect with respect to a taxable year of such corporation to make the determinations under subparagraphs (2)(i) and (3)(iii) of paragraph (d) of §1.970–1 of the amount of such corporation's investments in export trade assets as of the 75th day after the close of the taxable year referred to in such subparagraphs of paragraph (d) of §1.970–1. The election provided by this subparagraph may be made with respect to export trade assets other than facilities described in section 971(c)(3) or with respect to export trade assets which are facilities or with respect to both types of export trade assets (but the election under this paragraph with respect to export trade assets which are facilities or with respect to both types of export trade assets may be made only if the election provided by subparagraph (3) of this paragraph is not made). If the election provided by this subparagraph is made, the amount of export trade assets with respect to which such election is made at the close of the preceding taxable year which is described in subparagraphs (2)(ii) and (3)(i) of paragraph (d) of §1.970–1 shall be the amount of export trade assets which was considered by application of the 75-day rule to be the amount of export trade assets at the close of such preceding taxable year; except that for the first taxable year of the controlled foreign corporation for which the 75-day rule is elected the amount of investments in export trade assets with respect to which such election is made at the close of such preceding year described in subparagraphs (2)(ii) and (3)(i) of paragraph (d) of §1.970–1 shall be the amount of investments in export trade assets at the actual close of such preceding year. In the case of a taxable year of such corporation beginning after December 31, 1962, and before December 31, 1963, the amount of investments in export trade assets with respect to which such election is made alternatively may be determined by the United States shareholder as of the 75th day after the close of the preceding taxable year referred to in subparagraphs (2)(ii) and (3)(i) of paragraph (d) of §1.970–1 rather than as of the close of such preceding taxable year.

(3) *Election for export trade assets which are facilities.* A United States shareholder of a controlled foreign corporation may elect with respect to a taxable year of such corporation to make the determinations under subparagraphs (2)(i) and (3)(iii) of paragraph (d) of §1.970–1 of the amount of such corporation's investments in export trade assets which are facilities described in section 971(c)(3) as of the close of such corporation's taxable year following the taxable year referred to in such subparagraphs of paragraph (d) of §1.970–1. The election provided by this subparagraph may be made only if the United States shareholder does not elect the 75-day rule of subparagraph (2) of this paragraph with respect to export trade assets which are facilities. If the election provided by this subparagraph is made, the amount of investments in export trade assets which are facilities at the close of the preceding taxable year which is described in subparagraphs (2)(ii) and (3)(i) of paragraph (d) of §1.970–1 shall be the amount of export trade assets which are facilities which was considered, by reason of the application of the following-year rule provided in this subparagraph with respect to such preceding taxable year, to be the amount of export trade assets which are facilities at the close of such preceding taxable year; except that for the first taxable year of the controlled foreign corporation for which such following-year rule is elected the amount of investments in export trade assets which are facilities at the close of the preceding taxable year described in subparagraphs (2)(ii) and (3)(i) of paragraph (d) of §1.970–1 shall be the amount of investments in export trade assets which are facilities at the actual close of such preceding taxable year.

(b) *Time and manner of making elections*—(1) *Without consent.* A United States shareholder may, with respect to any controlled foreign corporation, make one or both of the elections described in paragraph (a)(2) or (3) of this section without the consent of the Commissioner by filing a statement to such effect with his return for his taxable year in which or with which ends

the first taxable year of such corporation in which—

(i) Such shareholder owns, within the meaning of section 958(a), or is considered as owning, by applying the rules of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such corporation, and

(ii) Such corporation realizes subpart F income which is reduced under section 970(a) and paragraph (b) of §1.970–1.

The statement shall contain the name and address of the controlled foreign corporation, identification of such first taxable year of such corporation, and an indication as to which election or elections described in paragraph (a) of this section the United States shareholder is making. If such return has been filed on or before the 90th day after the date these regulations are published in the FEDERAL REGISTER, such United States shareholder shall file such statement with the district director with which the return was filed on or before such 90th day.

(2) *With consent.* A United States shareholder may make one or both of the elections described in paragraph (a)(2) or (3) of this section with respect to any controlled foreign corporation at any time with the consent of the Commissioner. Consent will not be granted unless the shareholder and the Commissioner agree to the terms, conditions, and adjustments under which the election will be effected. The application for consent to elect shall be made by the shareholder's mailing a letter for such purpose to the Commissioner of Internal Revenue, Washington, DC 20224. The application shall be mailed before the close of the first taxable year of the controlled foreign corporation with respect to which the shareholder desires to determine an exclusion under section 970(a) in accordance with one or both of the elections provided in paragraph (a) of this section. The application shall include the following information:

(i) The name, address, and taxable year of the United States shareholder;

(ii) The name, address, and taxable year of the controlled foreign corporation;

(iii) A statement indicating which of the elections the shareholder desires to make;

(iv) The amount of the foreign corporation's investments in export trade assets (by a category which includes export trade assets other than facilities and a category which includes only export trade assets which are facilities) at the close of its preceding taxable year;

(v) The shareholder's pro rata share of the sum of the amounts by which the subpart F income of the foreign corporation, for all prior taxable years during which such shareholder was a United States shareholder of such corporation, was reduced under section 970(a) and paragraph (b) of §1.970–1;

(vi) The shareholder's pro rata share of the sum of the amounts which were not included in the subpart F income of the foreign corporation, for all prior taxable years during which such shareholder was a United States shareholder of such corporation, by reason of the application of section 972 and §1.972–1; and

(vii) The shareholder's pro rata share of the sum of the amounts which were previously included in his gross income, for all prior taxable years during which such shareholder was a United States shareholder of such corporation, under section 951(a)(1)(A)(ii) by reason of the application of section 970(b) and paragraph (b) of §1.970–1 to the foreign corporation.

(c) *Effect of elections*—(1) *In general.* Except as provided in subparagraphs (3) and (4) of this paragraph, an election made under paragraph (a) of this section with respect to a controlled foreign corporation shall be binding on the United States shareholder and—

(i) In the case of the election described in paragraph (a)(2) of this section, shall apply to all investments in export trade assets with respect to which such election is made acquired, or disposed of, by such corporation during the 75-day period following its taxable year for which subpart F income is first computed under the election and during all succeeding corresponding 75-day periods of such corporation, or

(ii) In the case of the election described in paragraph (a)(3) of this section, shall apply to all investments in

export trade assets which are facilities acquired, or disposed of, by such corporation during the taxable year following its taxable year for which subpart F income is first computed under the election and during all succeeding corresponding taxable years of such corporation.

(2) *Returns.* Any return of a United States shareholder required to be filed before the completion of a period with respect to which determinations are to be made as to a controlled foreign corporation's investments in export trade assets for purposes of computing such shareholder's taxable income shall be filed on the basis of an estimate of the amount of such corporation's investments in export trade assets at the close of the period. If the actual amount of such investments is not the same as the amount of the estimate, the shareholder shall immediately notify the Commissioner. The Commissioner will thereupon redetermine the amount of such shareholder's tax for the year or years with respect to which the incorrect amount was taken into account. The amount of tax, if any, due upon such redetermination shall be paid by the shareholder upon notice and demand by the district director. The amount of tax, if any, shown by such redetermination to have been overpaid shall be credited or refunded to the shareholder in accordance with the provisions of sections 6402 and 6511 and the regulations thereunder.

(3) *Revocation*—(i) *In general*—(*a*) *Consent required.* Upon application by the United States shareholder, an election made under paragraph (a) of this section may, subject to the approval of the Commissioner, be revoked. Approval will not be granted unless the shareholder and the Commissioner agree to the terms, conditions, and adjustments under which the revocation will be effected.

(*b*) *Revocation of 75-day rule.* In the case of the revocation of an election described in paragraph (a)(2) of this section, the change in the controlled foreign corporation's investments in export trade assets with respect to which such election was made for its first taxable year for which subpart F income or a decrease in investments in export trade assets is computed without regard to the election previously made shall, unless the agreement with the Commissioner provides otherwise, be considered to be the amount by which—

(*1*) Such corporation's investments in export trade assets with respect to which such election was made at the close of such taxable year exceeds or, if applicable, is exceeded by

(*2*) Such corporation's investments in export trade assets with respect to which such election was made at the close of the 75th day after the close of the preceding taxable year of such corporation.

(*c*) *Revocation of following-year rule.* In the case of the revocation of an election described in paragraph (a)(3) of this section, the change in the controlled foreign corporation's investments in export trade assets which are facilities for its first taxable year for which subpart F income or a decrease in investments in export trade assets is computed without regard to the election previously made shall, unless the agreement with the Commissioner provides otherwise, be considered to be zero.

(ii) *Time and manner of applying for consent to revocation*—(*a*) *Application to Commissioner.* The application for consent to revocation of an election shall be made by the United States shareholder's mailing a letter for such purpose to the Commissioner of Internal Revenue, Washington, DC, 20224. The application shall be mailed before the close of the first taxable year of the controlled foreign corporation with respect to which the shareholder desires to determine an exclusion under section 970(a) or an inclusion under section 970(b) without regard to such election.

(*b*) *Information required.* The application shall include the following information:

(*1*) The name, address, and taxable year of the United States shareholder;

(*2*) The name, address, and taxable year of the controlled foreign corporation;

(*3*) A statement indicating the election the shareholder desires to revoke under this subparagraph;

(*4*) The information required under subdivisions (iv) through (vii) of paragraph (b)(2) of this section;

(*5*) In the case of an application for consent to revocation of an election made under paragraph (a)(2) of this section, the amount of the foreign corporation's investments in export trade assets with respect to which such election was made at the close of the 75th day after the close of such corporation's taxable year immediately preceding the taxable year of such corporation; and

(*6*) The reasons for the request for consent to revocation.

(4) *Transfer of stock*—(i) *Election of 75-day rule in force.* (*a*) If during any taxable year of a controlled foreign corporation—

(*1*) A United States shareholder who has made the election described in paragraph (a)(2) of this section with respect to such corporation sells, exchanges, or otherwise disposes of all or part of his stock in such corporation, and

(*2*) The foreign corporation is a controlled foreign corporation immediately after the sale, exchange, or other disposition,

then, with respect to the stock so sold, exchanged, or disposed of, the successor in interest shall consider the controlled foreign corporation's change during the first 75 days of such taxable year in investments in export trade assets with respect to which such election is made to be zero.

(*b*) If the United States shareholder's successor in interest makes an election under paragraph (a)(2) of this section in order to determine an exclusion under section 970(a) for the taxable year of such corporation in which the acquires such stock, the amount of the controlled foreign corporation's investments in export trade assets with respect to which such election is made at the close of its preceding taxable year shall be considered, with respect to the stock so acquired, to be the amount of such corporation's investments in export trade assets with respect to which such election is made at the close of the 75th day after the close of such preceding taxable year.

(*c*) If the United States shareholder's successor in interest makes an election under paragraph (a)(2) of this section in order to determine an exclusion under section 970(a) for a taxable year of such corporation subsequent to the taxable year in which he acquired the stock, the amount of the controlled foreign corporation's investments in export trade assets with respect to which such election is made at the close of its taxable year immediately preceding such subsequent taxable year shall, with respect to the stock so acquired, be the amount of such corporation's investments in such assets at the actual close of such preceding taxable year.

(ii) *Election in force with respect to export trade assets which are facilities*—(*a*) If during any taxable year of a controlled foreign corporation—

(*1*) A United States shareholder who has made the election described in paragraph (a)(3) of this section with respect to such corporation sells, exchanges, or otherwise disposes of all or part of his stock in such corporation, and

(*2*) The foreign corporation is a controlled foreign corporation immediately after the sale, exchange or other disposition,

then, with respect to the stock so sold, exchanged, or disposed of, the successor in interest shall consider the controlled foreign corporation's change for such taxable year in investments in export trade assets which are facilities to be zero.

(*b*) If the United States shareholder's successor in interest makes an election under paragraph (a)(3) of this section in order to determine an exclusion under section 970(a) for the taxable year of such corporation in which he acquires such stock, the amount of the controlled foreign corporation's investments in export trade assets which are facilities at the close of its preceding taxable year shall be considered, with respect to the stock so acquired, to be the amount of such corporation's investments in export trade assets which are facilities at the close of the taxable year in which such stock is acquired.

(*c*) If the United States shareholder's successor in interest makes an election under paragraph (a)(3) of this section in order to determine an exclusion under section 970(a) for a taxable year of such corporation subsequent to the taxable

year in which he acquired the stock, the amount of the controlled foreign corporation's investments in export trade assets which are facilities at the close of its taxable year immediately preceding such subsequent taxable year shall, with respect to the stock so acquired, be the amount of such corporation's investments in such assets at the actual close of such preceding taxable year.

(d) *Illustrations.* The principles contained in this section are illustrated by the examples set forth in paragraph (d) of § 1.955.3.

[T.D. 6755, 29 FR 12707, Sept. 9, 1964]

§ 1.970–3 Effective date of subpart G.

Sections 970 through 972 and §§ 1.970–1 through 1.972–1 shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end.

[T.D. 6755, 29 FR 12709, Sept. 9, 1964]

§ 1.971–1 Definitions with respect to export trade corporations.

(a) *Export trade corporations*—(1) *In general.* For purposes of sections 970 through 972 and §§ 1.970–1 to 1.972–1, inclusive, the term ''export trade corporation'' means a controlled foreign corporation which for the period specified in subparagraph (2) of this paragraph satisfies the conditions specified in subparagraph (3) of this paragraph. However, no controlled foreign corporation may qualify as an export trade corporation for any taxable year beginning after October 31, 1971, unless it qualified as an export trade corporation for any taxable year beginning before such date. In addition, if a corporation fails to qualify as an export trade corporation for a period of any 3 consecutive taxable years beginning after October 31, 1971, then for any taxable year beginning after such 3-year period, such corporation shall not be included within the term ''export trade corporation''.

(2) *Three-year period.* The period referred to in subparagraph (1) of this paragraph is the 3-year period ending with the close of the controlled foreign corporation's current taxable year, or such part of such 3-year period as occurs on and after the beginning of the corporation's first taxable year beginning after December 31, 1962, whichever period is shorter.

(3) *Gross income requirements.* The conditions referred to in subparagraph (1) of this paragraph are that the controlled foreign corporation derives—

(i) 90 percent or more of its gross income from sources without the United States, and

(ii)(*a*) 75 percent of more of its gross income from transactions, activities, or interest described in section 971(b) and paragraph (b) of this section, or

(*b*) 50 percent or more of its gross income from transactions, activities, or interest described in section 971(b) and paragraph (b) of this section in respect of agricultural products grown in the United States.

(4) *Determination of sources of gross income.* The sources of gross income of a controlled foreign corporation shall be determined for purposes of subparagraph (3)(i) of this paragraph in accordance with the rules for determining sources of gross income set forth in sections 861 through 864 and the regulations thereunder.

(b) *Export trade income*—(1) *General rule.* For purposes of sections 970 through 972 and §§ 1.970–1 to 1.972–1, inclusive, the term ''export trade income'' means the gross export trade income of a controlled foreign corporation derived from transactions, activities, or interest described in subdivisions (i) through (vii) of this subparagraph, less deductions allowed under subdivision (viii) of this subparagraph.

(i) *Sale of export property.* Gross export trade income of a controlled foreign corporation includes gross income it derives from the sale of export property (as defined in paragraph (e) of this section) which it purchases, if the sale is made to an unrelated person for use, consumption, or disposition outside the United States. See section 971(b)(1). As a general rule, property will be presumed to have been sold for use, consumption, or disposition in the country of destination of the sale. However, if at the time of the sale the controlled foreign corporation knows, or should