

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.