

will be based on current data, and will be made available to the public.

(4) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

§ 351.409 Differences in quantities.

(a) *Introduction.* Because the quantity of merchandise sold may affect the price, in comparing export price or constructed export price with normal value, the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential (or lack thereof) is wholly or partly due to that difference in quantities. (See section 773(a)(6)(C)(i) of the Act.)

(b) *Sales with quantity discounts in calculating normal value.* The Secretary normally will calculate normal value based on sales with quantity discounts only if:

(1) During the period examined, or during a more representative period, the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country; or

(2) The exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities.

(c) *Sales with quantity discounts in calculating weighted-average normal value.* If the exporter or producer does not satisfy the conditions of paragraph (b) of this section, the Secretary will calculate normal value based on weighted-average prices that include sales at a discount.

(d) *Price lists.* In determining whether a discount has been granted, the existence or lack of a published price list reflecting such a discount will not be controlling. Ordinarily, the Secretary will give weight to a price list only if, in the line of trade and market under consideration, the exporter or producer demonstrates that it has adhered to its price list.

(e) *Relationship to level of trade adjustment.* If adjustments are claimed for both differences in quantities and differences in level of trade, the Secretary will not make an adjustment for differences in quantities unless the Secretary is satisfied that the effect on price comparability of differences in quantities has been identified and established separately from the effect on price comparability of differences in the levels of trade.

§ 351.410 Differences in circumstances of sale

(a) *Introduction.* In calculating normal value the Secretary may make adjustments to account for certain differences in the circumstances of sales in the United States and foreign markets. (See section 773(a)(6)(C)(iii) of the Act.) This section clarifies certain terms used in the statute regarding circumstances of sale adjustments and describes the adjustment when commissions are paid only in one market.

(b) *In general.* With the exception of the allowance described in paragraph (e) of this section concerning commissions paid in only one market, the Secretary will make circumstances of sale adjustments under section 773(a)(6)(C)(iii) of the Act only for direct selling expenses and assumed expenses.

(c) *Direct selling expenses.* "Direct selling expenses" are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.

(d) *Assumed expenses.* Assumed expenses are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.

(e) *Commissions paid in one market.* The Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under considerations, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

(f) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the exporter or producer but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

§ 351.411 Differences in physical characteristics.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the foreign market, and that the difference has an effect on prices. In calculating normal value, the Secretary will make a reasonable allowance for such differences. (See section 773(a)(6)(C)(ii) of the Act.)

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for differences in physical characteristics, the Secretary will consider only differences in variable costs associated with the physical differences. Where appropriate, the Secretary may also consider differences in the market value. The Secretary will not consider differences in cost of production when compared merchandise has identical physical characteristics.

§ 351.412 Levels of trade; adjustment for difference in level of trade; constructed export price offset.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. The Secretary is authorized to adjust normal value to account for such a difference. (See section 773(a)(7) of the Act.)

(b) *Adjustment for difference in level of trade.* The Secretary will adjust normal value for a difference in level of trade if:

(1) The Secretary calculates normal value at a different level of trade from the level of trade of the export price or the constructed export price (whichever is applicable); and

(2) The Secretary determines that the difference in level of trade has an effect on price comparability.

(c) *Identifying levels of trade and differences in levels of trade—(1) Basis for identifying levels of trade.* The Secretary will identify the level of trade based on:

(i) In the case of export price, the starting price;

(ii) In the case of constructed export price, the starting price, as adjusted under section 772(d) of the Act; and

(iii) In the case of normal value, the starting price or constructed value.

(2) *Differences in levels of trade.* The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

(d) *Effect on price comparability—(1) In general.* The Secretary will determine that a difference in level of trade has an effect on price comparability only if it is established to the satisfaction of the Secretary that there is a pattern of consistent price differences between sales in the market in which normal value is determined:

(i) At the level of trade of the export price or constructed export price (whichever is appropriate); and

(ii) At the level of trade at which normal value is determined.

(2) *Relevant sales.* Where possible, the Secretary will make the determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Where this is not possible, the Secretary may use sales of different or broader product lines, sales by other companies, or any other reasonable basis.

(e) *Amount of adjustment.* The Secretary normally will calculate the amount of a level of trade adjustment by:

(1) Calculating the weighted-averages of the prices of sales at the two levels of trade identified in paragraph (d), after making any other adjustments to