

those prices appropriate under section 773(a)(6) of the Act and this subpart;

(2) Calculating the average of the percentage differences between those weighted-average prices; and

(3) Applying the percentage difference to normal value, where it is at a different level of trade from the export price or constructed export price (whichever is applicable), after making any other adjustments to normal value appropriate under section 773(a)(6) of the Act and this subpart.

(f) *Constructed export price offset*—(1) *In general.* The Secretary will grant a constructed export price offset only where:

(i) Normal value is compared to constructed export price;

(ii) Normal value is determined at a more advanced level of trade than the level of trade of the constructed export price; and

(iii) Despite the fact that a person has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability.

(2) *Amount of the offset.* The amount of the constructed export price offset will be the amount of indirect selling expenses included in normal value, up to the amount of indirect selling expenses deducted in determining constructed export price. In making the constructed export price offset, “indirect selling expenses” means selling expenses, other than direct selling expenses or assumed selling expenses (see § 351.410), that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales.

(3) *Where data permit determination of affect on price comparability.* Where available data permit the Secretary to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability, the Secretary will not grant a constructed export price offset. In such cases, if the Secretary determines that price comparability has been affected, the Secretary will make a level of trade adjustment. If the Secretary determines that price comparability has

not been affected, the Secretary will not grant either a level of trade adjustment or a constructed export price offset.

§ 351.413 Disregarding insignificant adjustments.

Ordinarily, under section 777A(a)(2) of the Act, an “insignificant adjustment” is any individual adjustment having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be. Groups of adjustments are adjustments for differences in circumstances of sale under § 351.410, adjustments for differences in the physical characteristics of the merchandise under § 351.411, and adjustments for differences in the levels of trade under § 351.412.

§ 351.414 Comparison of normal value with export price (constructed export price).

(a) *Introduction.* The Secretary normally will average prices used as the basis for normal value and, in an investigation, prices used as the basis for export price or constructed export price as well. This section explains when and how the Secretary will average prices in making comparisons of export price or constructed export price with normal value. (See section 777A(d) of the Act.)

(b) *Description of methods of comparison*—(1) *Average-to-average method.* The “average-to-average” method involves a comparison of the weighted average of the normal values with the weighted average of the export prices (and constructed export prices) for comparable merchandise.

(2) *Transaction-to-transaction method.* The “transaction-to-transaction” method involves a comparison of the normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(3) *Average-to-transaction method.* The “average-to-transaction” method involves a comparison of the weighted average of the normal values to the export prices (or constructed export

prices) of individual transactions for comparable merchandise.

(c) *Preferences.* (1) In an investigation, the Secretary normally will use the average-to-average method. The Secretary will use the transaction-to-transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.

(2) In a review, the Secretary normally will use the average-to-transaction method.

(d) *Application of the average-to-average method—(1) In general.* In applying the average-to-average method, the Secretary will identify those sales of the subject merchandise to the United States that are comparable, and will include such sales in an “averaging group.” The Secretary will calculate a weighted average of the export prices and the constructed export prices of the sales included in the averaging group, and will compare this weighted average to the weighted average of the normal values of such sales.

(2) *Identification of the averaging group.* An averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold, and such other factors as the Secretary considers relevant.

(3) *Time period over which weighted average is calculated.* When applying the average-to-average method, the Secretary normally will calculate weighted averages for the entire period of investigation or review, as the case may be. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation or review, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate.

(e) *Application of the average-to-transaction method—(1) In general.* In applying the average-to-transaction method

in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

(2) *Contemporaneous month.* Normally, the Secretary will select as the contemporaneous month the first of the following which applies:

(i) The month during which the particular U.S. sale under consideration was made;

(ii) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sale in which there was a sale of the foreign like product.

(iii) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sale in which there was a sale of the foreign like product.

(f) *Targeted dumping—(1) In general.* Notwithstanding paragraph (c)(1) of this section, the Secretary may apply the average-to-transaction method, as described in paragraph (e) of this section, in an antidumping investigation if:

(i) As determined through the use of, among other things, standard and appropriate statistical techniques, there is targeted dumping in the form of a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and

(ii) The Secretary determines that such differences cannot be taken into account using the average-to-average method or the transaction-to-transaction method and explains the basis for that determination.

(2) *Limitation of average-to-transaction method to targeted dumping.* Where the criteria for identifying targeted dumping under paragraph (f)(1) of this section are satisfied, the Secretary normally will limit the application of the average-to-transaction method to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section.

(3) *Allegations concerning targeted dumping.* The Secretary normally will

examine only targeted dumping described in an allegation, filed within the time indicated in §351.301(d)(5). Allegations must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.

(g) *Requests for information.* In an investigation, the Secretary will request information relevant to the identification of averaging groups under paragraph (d)(2) of this section and to the analysis of possible targeted dumping under paragraph (f) of this section. If a response to a request for such information is such as to warrant the application of the facts otherwise available, within the meaning of section 776 of the Act and §351.308, the Secretary may apply the average-to-transaction method to all the sales of the producer or exporter concerned.

§ 351.415 Conversion of currency.

(a) *In general.* In an antidumping proceeding, the Secretary will convert foreign currencies into United States dollars using the rate of exchange on the date of sale of the subject merchandise.

(b) *Exception.* If the Secretary establishes that a currency transaction on forward markets is directly linked to an export sale under consideration, the Secretary will use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency.

(c) *Exchange rate fluctuations.* The Secretary will ignore fluctuations in exchange rates.

(d) *Sustained movement in foreign currency value.* In an antidumping investigation, if there is a sustained movement increasing the value of the foreign currency relative to the United States dollar, the Secretary will allow exporters 60 days to adjust their prices to reflect such sustained movement.

Subpart E—Identification and Measurement of Countervailable Subsidies

SOURCE: 63 FR 65407, Nov. 25, 1998, unless otherwise noted.

§ 351.501 Scope.

The provisions of this subpart E set forth rules regarding the identification and measurement of countervailable subsidies. Where this subpart E does not expressly deal with a particular type of alleged subsidy, the Secretary will identify and measure the subsidy, if any, in accordance with the underlying principles of the Act and this subpart E.

§ 351.502 Specificity of domestic subsidies.

(a) *Sequential analysis.* In determining whether a subsidy is *de facto* specific, the Secretary will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of their appearance. If a single factor warrants a finding of specificity, the Secretary will not undertake further analysis.

(b) *Characteristics of a “group.”* In determining whether a subsidy is being provided to a “group” of enterprises or industries within the meaning of section 751(5A)(D) of the Act, the Secretary is not required to determine whether there are shared characteristics among the enterprises or industries that are eligible for, or actually receive, a subsidy.

(c) *Integral linkage.* Unless the Secretary determines that two or more programs are integrally linked, the Secretary will determine the specificity of a program under section 771(5A)(D) of the Act solely on the basis of the availability and use of the particular program in question. The Secretary may find two or more programs to be integrally linked if:

(1) The subsidy programs have the same purpose;

(2) The subsidy programs bestow the same type of benefit;

(3) The subsidy programs confer similar levels of benefits on similarly situated firms; and

(4) The subsidy programs were linked at inception.

(d) *Agricultural subsidies.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector (domestic subsidy).