

duction costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation or review under this subtitle, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation or review. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the merchandise, producer, or industry concerned is achieved.

(2) Transactions disregarded

A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

(3) Major input rule

If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

(June 17, 1930, ch. 497, title VII, § 773, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 182; amended Pub. L. 98-573, title VI, §§ 615, 620(b), Oct. 30, 1984, 98 Stat. 3036, 3039; Pub. L. 99-514, title XVIII, § 1886(a)(11), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 100-418, title I, §§ 1316(a), 1318, 1319, Aug. 23, 1988, 102 Stat. 1186, 1189; Pub. L. 103-465, title II, § 224, Dec. 8, 1994, 108 Stat. 4878.)

AMENDMENTS

1994—Pub. L. 103-465 amended section generally, substituting present provisions for provisions relating to foreign market value, which provided for determination of value in subsec. (a), sales at less than cost of production in subsec. (b), treatment of merchandise from nonmarket economy countries in subsec. (c), special rule for certain multinational corporations in subsec. (d), determination of constructed value in subsec. (e), and exportation from an intermediate country in subsec. (f).

1988—Subsec. (a)(5). Pub. L. 100-418, § 1319, added par. (5).

Subsec. (c). Pub. L. 100-418, § 1316(a), amended subsec. (c) generally, substituting provisions relating to nonmarket economy countries, for provisions relating to State-controlled economies.

Subsec. (e)(2) to (4). Pub. L. 100-418, § 1318, substituted “(4)” for “(3)” wherever appearing in par. (2), added par. (3), and redesignated former par. (3) as (4) and in introductory provisions substituted “paragraphs (2) and (3)” for “paragraph (2)”.

1986—Subsecs. (f), (g). Pub. L. 99-514 redesignated subsec. (g) as (f).

1984—Subsec. (a)(1). Pub. L. 98-573, § 615(1), substituted “time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) of this section with respect to such person” for “time of exportation of such merchandise to the United States” in provisions before subpar. (A).

Subsecs. (a)(1)(A), (4)(A), (e)(1)(B). Pub. L. 98-573, § 615(2), substituted “commercial quantities” for “wholesale quantities” wherever appearing.

Subsec. (f). Pub. L. 98-573, § 620(b), struck out subsec. (f) which related to the authority to use sampling techniques and to disregard insignificant adjustments.

Subsec. (g). Pub. L. 98-573, § 615(3), added subsec. (g).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103-465, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1316(a) and 1318 of Pub. L. 100-418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, and amendment by section 1319 of Pub. L. 100-418 applicable with respect to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, and to reviews initiated under such sections which are pending on Aug. 23, 1988, and in which a request for revocation is pending on Aug. 23, 1988, see section 1337(b), (f) of Pub. L. 100-418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 615 of Pub. L. 98-573 effective Oct. 30, 1984, and amendment by section 620(b) of Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98-573, as amended, set out as a note under section 1671 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1677b-1. Currency conversion

(a) In general

In an antidumping proceeding under this subtitle, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise, except that, if

it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency. Fluctuations in exchange rates shall be ignored.

(b) Sustained movement in foreign currency value

In an investigation under part II of this subtitle, if there is a sustained movement in the value of the foreign currency relative to the United States dollar, the administering authority shall allow exporters at least 60 days to adjust their export prices to reflect such sustained movement.

(June 17, 1930, ch. 497, title VII, § 773A, as added Pub. L. 103-465, title II, § 225(a), Dec. 8, 1994, 108 Stat. 4886.)

EFFECTIVE DATE

Section effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103-465, set out as an Effective Date of 1994 Amendment note under section 1671 of this title.

§ 1677c. Hearings

(a) Investigation hearings

(1) In general

Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 1671d or 1673d of this title.

(2) Exception

If investigations are initiated under part I and part II of this subtitle regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(b) Procedures

Any hearing required or permitted under this subtitle shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, or to section 702 of such title.

(June 17, 1930, ch. 497, title VII, § 774, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat.

186; amended Pub. L. 98-573, title VI, § 616, Oct. 30, 1984, 98 Stat. 3037.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573 designated existing provisions as par. (1), inserted “Except as provided in paragraph (2),”, and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

§ 1677d. Countervailable subsidy practices discovered during a proceeding

If, in the course of a proceeding under this subtitle, the administering authority discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition, or if the administering authority receives notice from the Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, then the administering authority—

(1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information (other than confidential information) concerning the practice, subsidy, or subsidy program to the library maintained under section 1677f(a)(1) of this title, if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to any other merchandise.

(June 17, 1930, ch. 497, title VII, § 775, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 186; amended Pub. L. 98-573, title VI, § 617, Oct. 30, 1984, 98 Stat. 3037; Pub. L. 99-514, title XVIII, § 1886(a)(12), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103-465, title II, § 283(b), Dec. 8, 1994, 108 Stat. 4930.)

AMENDMENTS

1994—Pub. L. 103-465 substituted “Countervailable subsidy” for “Subsidy” in section catchline and amended text generally. Prior to amendment, text read as follows: “If, in the course of a proceeding under this subtitle, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

“(1) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

“(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 1677f(a)(1) of this title, if the practice appears to be a subsidy with respect to any other merchandise.”

1986—Pub. L. 99-514 substituted “a proceeding” for “an proceeding” in introductory provisions.

1984—Pub. L. 98-573 substituted “proceeding” for “investigation” wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and peti-