price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the countervailable subsidy, or (B) select in lieu of that price a price from another source.

(c) Inclusion of amount of countervailable subsidy

If the administering authority decides, during the course of a countervailing duty proceeding that an upstream countervailable subsidy is being or has been paid or bestowed regarding the subject merchandise, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B),[1] except that in no event shall the amount be greater than the amount of the countervailable subsidy determined with respect to the upstream product.

(June 17, 1930, ch. 497, title VII, § 771A, as added Pub. L. 98–573, title VI, § 613(a), Oct. 30, 1984, 98 Stat. 3035; amended Pub. L. 99–514, title XVIII, § 1886(a)(10), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103–465, title II, §§ 233(a)(5)(GG), 268, 270(a)(1)(K), (L), (2)(B), (c)(3), Dec. 8, 1994, 108 Stat. 4901, 4916, 4917; Pub. L. 104–295, § 20(b)(2), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–295 amended directory language of Pub. L. 103–465, § 270(a)(2)(B). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103–465, § 268, inserted introductory provisions and struck out former introductory provisions which read as follows: ''The term 'upstream subsidy' means any subsidy described in section 1677(5)(B)(i), (ii), (iii), or (iv) of this title by the government of a country that—'', and in concluding provisions, inserted ''countervailable'' before ''subsidy''.

Subsec. (a)(1). Pub. L. 103–465, § 268(1), added par. (1) and struck out former par. (1) which read as follows: ''is paid or bestowed by that government with respect to a product (hereafter referred to as an 'input product') that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;''.

Subsec. (b)(2). Pub. L. 103–465, § 270(a)(1)(K), inserted ''countervailable'' before ''subsidy'' in two places.

Subsec. (c). Pub. L. 103–465, § 270(a)(2)(B), as amended by Pub. L. 104–295, inserted ''countervailable'' before ''subsidy'' in heading.

Pub. L. 103–465, § 270(a)(1)(L), (c)(3), inserted ''countervailable'' after ''upstream'' and substituted ''the countervailable subsidy determined'' for ''subsidization determined''.

Pub. L. 103–465, § 233(a)(5)(GG), substituted ''subject merchandise'' for ''merchandise under investigation''.

1986—Subsec. (a). Pub. L. 99–514 substituted ''(ii), (iii), or (iv)'' for ''(ii), or (iii)'' in introductory provisions.

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.

[1] So in original. Probably should be ''subsection (a)(2) of this section,''.

EFFECTIVE DATE

Section effective Oct. 30, 1984, see section 626(a) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment 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.

§ 1677–2. Calculation of countervailable subsidies on certain processed agricultural products

In the case of an agricultural product processed from a raw agricultural product in which—

(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

(2) the processing operation adds only limited value to the raw commodity,

countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

(June 17, 1930, ch. 497, title VII, § 771B, as added Pub. L. 100–418, title I, § 1313(a), Aug. 23, 1988, 102 Stat. 1185; amended Pub. L. 100–647, title IX, § 9001(a)(4), Nov. 10, 1988, 102 Stat. 3806; Pub. L. 103–465, title II, § 270(b)(1)(D), (2), Dec. 8, 1994, 108 Stat. 4917.)

AMENDMENTS

1994—Pub. L. 103–465 inserted ''countervailable'' before ''subsidies'' in section catchline and concluding provisions.

1988—Pub. L. 100–647 amended section generally. Prior to amendment, section read as follows: ''In the case of an agricultural product processed from a raw agricultural product in which (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and (2) the processing operation adds only limited value to the raw commodity, subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.''

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 Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

§ 1677a. Export price and constructed export price

(a) Export price

The term ''export price'' means the price at which the subject merchandise is first sold (or

agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of this section.

(b) Constructed export price

The term ''constructed export price'' means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d) of this section.

(c) Adjustments for export price and constructed export price

The price used to establish export price and constructed export price shall be—

(1) increased by—

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and

(C) the amount of any countervailing duty imposed on the subject merchandise under part I of this subtitle to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 1677(6)(C) of this title.

(d) Additional adjustments to constructed export price

For purposes of this section, the price used to establish constructed export price shall also be reduced by—

(1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—

(A) commissions for selling the subject merchandise in the United States;

(B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) any selling expenses that the seller pays on behalf of the purchaser; and

(D) any selling expenses not deducted under subparagraph (A), (B), or (C);

(2) the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e) of this section; and

(3) the profit allocated to the expenses described in paragraphs (1) and (2).

(e) Special rule for merchandise with value added after importation

Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person.

(2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis.

(f) Special rule for determining profit

(1) In general

For purposes of subsection (d)(3) of this section, profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.

(2) Definitions

For purposes of this subsection:

(A) Applicable percentage

The term ''applicable percentage'' means the percentage determined by dividing the total United States expenses by the total expenses.

(B) Total United States expenses

The term ''total United States expenses'' means the total expenses described in subsection (d)(1) and (2) of this section.

(C) Total expenses

The term ''total expenses'' means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

(i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.

(iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

(D) Total actual profit

The term ''total actual profit'' means the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph.

(June 17, 1930, ch. 497, title VII, § 772, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 181; amended Pub. L. 98–573, title VI, § 614, Oct. 30, 1984, 98 Stat. 3036; Pub. L. 103–465, title II, § 223, Dec. 8, 1994, 108 Stat. 4876.)

AMENDMENTS

1994—Pub. L. 103–465 amended section generally, substituting present provisions for provisions defining ''United States price'', ''purchase price'', and ''exporter's sales price'' and providing for adjustments to purchase price and exporter's sales price.

1984—Subsec. (b). Pub. L. 98–573 inserted ''a reseller or'' before ''the manufacturer''.

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 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.

§ 1677b. Normal value

(a) Determination

In determining under this subtitle whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value. In order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as follows:

(1) Determination of normal value

(A) In general

The normal value of the subject merchandise shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price under section 1677a(a) or (b) of this title.

(B) Price

The price referred to in subparagraph (A) is—

(i) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, or

(ii) in a case to which subparagraph (C) applies, the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if—

(I) such price is representative,

(II) the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and

(III) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price.

(C) Third country sales

This subparagraph applies when—

(i) the foreign like product is not sold (or offered for sale) for consumption in the exporting country as described in subparagraph (B)(i),

(ii) the administering authority determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States, or

(iii) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price.

For purposes of clause (ii), the aggregate quantity (or value) of the foreign like product sold in the exporting country shall normally be considered to be insufficient if such quantity (or value) is less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

(2) Fictitious markets

No pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be