



CHAPTER III—INTERNATIONAL TRADE  
ADMINISTRATION,  
DEPARTMENT OF COMMERCE

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## PART 353—ANTIDUMPING DUTIES

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AUTHORITY: 5 U.S.C. 301 and 19 U.S.C. 1671 *et seq.*

SOURCE: 54 FR 12769, Mar. 28, 1989; 54 FR 13294, Mar. 31, 1989, unless otherwise noted.

### Subpart A—Scope and Definitions

#### §353.1 Scope.

(a) This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1673 *et seq.*) (“the Act”), as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 294, Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1184, and Title II of the Uruguay Round Agreements Act, Pub. L. 103-465; 108 Stat. 4809 (Dec.

8, 1994), relating to the imposition of antidumping duties. In the event of a conflict between the provisions of this part and the provisions of the Act, the Act shall be controlling.

(b) The following sections reflect amendments to the Act made by the Uruguay Round Agreements Act: §§ 353.1, 353.12(b)(2), 353.13(a), 353.15(a)(1), 353.15(b), 353.15(c), 353.22(c)(4), 353.22(c)(7), 353.22(h), 353.31(a)(1), 353.31(c), and 353.38(i). These sections shall be applicable only to proceedings that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

[60 FR 25133, May 11, 1995]

#### § 353.2 Definitions.

(a) *Act*. “Act” means the Tariff Act of 1930, as amended.

(b) *Commission*. “Commission” means the United States International Trade Commission.

(c) *Country*. “Country” means a foreign country or a political subdivision, dependent territory, or possession of a foreign country.

(d) *Customs Service*. “Customs Service” means the United States Customs Service of the United States Department of the Treasury.

(e) *Department*. “Department” means the United States Department of Commerce.

(f) *Dumping margin and weighted-average dumping margin*.

(1) *Dumping margin* means the amount by which the foreign market value exceeds the United States price of the merchandise.

(2) The *weighted-average dumping margin* is the result of dividing the aggregated dumping margins by the aggregated United States prices.

(g) *Factual information*. “Factual information” means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of fact in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

(h) *Home market country*. The “home market country” is the country in which the merchandise is produced.

(i) *Importer*. “Importer” means the person by whom, or for whose account, the merchandise is imported.

(j) *Industry*. “Industry” means the producers in the United States collectively of the like product, except those producers in the United States that the Secretary excludes under section 771(4)(B) of the Act on the grounds that they are also importers (or are related to importers, producers, or exporters) of the merchandise. Under section 771(4)(C) of the Act, an *industry* may mean producers in the United States, as defined above in this paragraph, in a particular market in the United States if such producers sell all or almost all of their production of the like product in that market and if the demand for the like product in that market is not supplied to any substantial degree by producers of the like product located elsewhere in the United States.

(k) *Interested party*. “Interested party” means:

(1) A producer, exporter, or United States importer of the merchandise, or a trade or business association a majority of the members of which are importers of the merchandise;

(2) The government of the home market country;

(3) A producer in the United States of the like product or seller (other than a retailer) in the United States of the like product produced in the United States;

(4) A certified or recognized union or group of workers which is representative of the industry or of sellers (other than retailers) in the United States of the like product produced in the United States;

(5) A trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; or

(6) An association a majority of the members of which are interested parties, as defined in paragraph (k)(3), (k)(4), or (k)(5) of this section.

(l) *Investigation*. An “investigation” begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of (1) notice of termination of

investigation, (2) notice of rescission of investigation, (3) notice of a negative determination that has the effect of terminating the proceeding, or (4) an order.

(m) *The merchandise.* “The merchandise” means the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding.

(n) *Order.* An “order” is an order issued by the Secretary under §353.21 or a finding under the Antidumping Act, 1921.

(o) *Party to the proceeding.* “Party to the proceeding” means any interested party, within the meaning of paragraph (k) of this section, which actively participates, through written submissions of factual information or written argument, in a particular decision by the Secretary subject to judicial review. Participation in a prior reviewable decision will not confer on any interested party *party to the proceeding* status in a subsequent decision by the Secretary subject to judicial review.

(p) *Person.* “Person” includes any *interested party* as well as any other individual, enterprise, or entity, as appropriate.

(q) *Proceeding.* A “proceeding” begins on the date of the filing of a petition or publication of a notice of initiation under §353.11, and ends on the date of publication of the earliest notice of (1) dismissal of petition, (2) rescission of initiation, (3) termination of investigation, (4) a negative determination that has the effect of terminating the proceeding, (5) revocation of an order, or (6) termination of a suspended investigation.

(r) *Producer; production.* “Producer” means a manufacturer or producer. “Production” means manufacture or production.

(s) *Reseller.* “Reseller” means any person (other than the producer) whose sales the Secretary uses to calculate foreign market value or U.S. price, including the foreign reseller or exporter.

(t) *Sale; likely sale.* A “sale” includes a contract to sell and a lease that is equivalent to a sale. A “likely sale” means a person’s irrevocable offer to sell.

(u) *Secretary.* “Secretary” means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make final determinations under §§353.18(i) and 353.20 and final results of review under §353.22(c). The Deputy Assistant Secretaries for Import Administration, Investigations, and Compliance have other delegated authority relating to antidumping duties.

### §353.3 Record of proceedings.

(a) *Official record.* The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in §353.31(d), an official record of each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertains to the proceeding. The record will include government memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the FEDERAL REGISTER, and transcripts of hearings. The record will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under §353.31(b)(2), 353.32(d), 353.32(g), or 353.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) *Public record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of §353.4(a), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, plus public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see §353.31(d)). The Secretary will

charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

**§ 353.4 Public, proprietary, privileged, and classified information.**

(a) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated proprietary by the person submitting it;

(3) Factual information which, although designated proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated proprietary.

(b) *Proprietary information.* The Secretary normally will consider the following factual information to be proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not (i) components of prices, such as transportation, if based on published schedules, (ii) dates of sale, (iii) product descriptions except as described in paragraph (b)(1), or (iv) order numbers);

(6) The names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or

supplier, unless the destination or designation would reveal the name);

(7) The exact amount of the dumping margin on individual sales;

(8) The names of particular persons from whom proprietary information was obtained; and

(9) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(c) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information should not be released to the public or to parties to the proceeding.

(d) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 28949) or successor executive order, if applicable.

**§ 353.5 Trade and Tariff Act of 1984—effective date.**

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573) (for purposes of this subpart, referred to as “the 1984 Act”), the amendments to the Act made by Title VI of the 1984 Act are effective as follows:

(a) Except as provided in paragraphs (b), (c), and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary are effective on October 30, 1984.

(b) Amendments made by sections 602, 609, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraph (a) or (b) of this section would prevent the

Department from complying with other requirements of law.

**§ 353.6 De minimis weighted-average dumping margins.**

(a) *Disregarding de minimis weighted-average dumping margins.* Except as provided in paragraph (b), the Secretary will disregard any weighted-average dumping margin that is less than 0.5% *ad valorem*, or the equivalent specific rate.

(b) *Assessment of de minimis margins.* For purposes of assessment of an anti-dumping duty, the Secretary will not disregard any *de minimis* dumping margin.

**Subpart B—Antidumping Duty Procedures**

**§ 353.11 Self-initiation.**

(a) *In general.* (1) If the Secretary determines from available information, including information obtained during a period of monitoring under paragraph (c) of this section, that an investigation is warranted with respect to the merchandise, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of “Initiation of Antidumping Duty Investigation.”

(2) The notice will include:

(i) A description of the merchandise, after consultation as appropriate with the Commission;

(ii) The name of the home market country and, if the merchandise is imported from a country other than the home market country, the name of the intermediate country (§ 353.47) or country through which the merchandise is transshipped (§ 353.46(c)); and

(iii) A summary of the available information that would, if accurate, support the imposition of antidumping duties.

(b) *Information provided to the Commission.* The Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Persistent dumping monitoring.*

(1) The Secretary may monitor, for a period not to exceed one year, imports from an additional supplier country of the same class or kind of merchandise as the merchandise which is subject to two or more orders under this part if the Secretary concludes from available information, including information in a request for monitoring under this paragraph, that:

(i) There is reason to believe or suspect an extraordinary pattern of persistent injurious dumping exists with regard to shipments from one or more additional supplier countries; and

(ii) This extraordinary pattern is causing a serious commercial problem for the industry.

(2) For the purposes of this section, “additional supplier country” means a country regarding which no order is in effect and no investigation is pending under this part as to the class or kind of merchandise referred to in paragraph (c)(1) of this section.

(3) To the extent practicable, the Secretary will expedite any investigation initiated under paragraph (a) of this section as a result of monitoring under paragraph (c)(1) of this section.

**§ 353.12 Petition requirements.**

(a) *In general.* Any interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, may file on behalf of an industry a petition under this section requesting the imposition of antidumping duties equal to the alleged amount of the dumping margin, if that person has reason to believe that:

(1) The merchandise is being, or is likely to be, sold at less than fair value; and

(2) That industry is materially injured, is threatened with material injury, or its establishment is materially retarded by the merchandise.

Factual information in the petition shall be certified, as provided in § 353.31(i).

(b) *Contents of petition.* The petition shall contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry, and information relating to the degree of industry support for the petition;

(3) A statement indicating whether the petitioner has filed for import relief under sections 337 or 702 of the Act (19 U.S.C. 1337, 1671a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) with respect to the merchandise;

(4) A detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of the merchandise, and its current U.S. tariff classification number.

(5) The name of the home market country and, if the merchandise is imported from a country other than the home market country, the name of the intermediate country (§353.47) or the country through which the merchandise is transshipped (§353.46(c));

(6) The names and addresses of each person the petitioner believes sells the merchandise at less than fair value and the proportion of total exports to the United States which each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(7) All factual information (particularly documentary evidence) relevant to the calculation of the United States price of the merchandise and the foreign market value of such or similar merchandise, in accordance with subpart D of this part (if unable to furnish information on foreign sales or costs, provide information on production costs in the United States, adjusted to reflect production costs in the home market country of the merchandise);

(8) If the merchandise is from a country that the Secretary has found to be a state-controlled-economy country, factual information relevant to the calculation of foreign market value, as provided in subpart D of this part, using a method described in §353.52.

(9) The volume and value of the merchandise during the most recent two-

year period and any other recent period that the petitioner believes to be more representative or, if the merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

(10) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the merchandise;

(11) Factual information regarding material injury, threat of material injury, or material retardation, as described in 19 CFR 207.11 and 207.26;

(12) If the petitioner alleges "critical circumstances" under §353.16, factual information regarding:

(i) Material injury which is difficult to repair;

(ii) Massive imports in a relatively short period; and

(iii) Either: (A) A history of dumping; or (B) The importer's knowledge that the producer or reseller was selling the merchandise at less than its foreign market value, as described in §353.16(a); and

(13) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing with Commission.* The petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(d) *Proprietary status of information.* The Secretary will not consider any factual information for which the petitioner requests proprietary treatment unless the petitioner meets the requirements of §353.32.

(e) *Amendment of petition.* The Secretary will allow timely amendment of the petition. The petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. The timeliness of new allegations is controlled under §353.31.

(f) *Where to file; time of filing; format and number of copies.* The requirements of §353.31 (d), (e), and (f) apply to this section.

(g) *Notification of representative of the home market country.* Upon receipt of a petition, the Secretary will deliver a

public version of the petition, as described in §353.31(e)(2), to a representative in Washington, DC, of the government of the home market country.

(h) *Assistance to small businesses; additional information.*

(1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of §353.13.

(2) For additional information concerning petitions, contact the Deputy Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room B099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; (202) 377-5497.

(i) *Limitation of communication before initiation.* Before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (k)(1) or (k)(2) of §353.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

(The information collection requirements in paragraph (b) of this section have been approved by the Office of Management and Budget under control number 0625-0105)

[54 FR 12769, Mar. 28, 1989, as amended at 60 FR 25134, May 11, 1995]

#### §353.13 Determination of sufficiency of petition.

(a) *Determination of sufficiency—(1) In general.* Except as provided in paragraph (a)(2) of this section, not later than 20 days after a petition is filed under §353.12, the Secretary will determine whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, contains information reasonably available to the petitioner supporting the allegations, is filed by an interested party as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of §353.2, and is filed by or on behalf of the domestic industry.

(2) *Extension where polling required.* Where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry

under section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, apply paragraph (a)(1) of this section by substituting “a maximum of 40 days” for “20 days”.

(b) *Notice of initiation.* If the Secretary determines that the petition is sufficient under paragraph (a), the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of “Initiation of Antidumping Duty Investigation.” The notice will include the information described in §353.11(a)(2). The Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Insufficiency of petition.* If the Secretary determines that a petition is insufficient under paragraph (a) of this section, the Secretary will dismiss the petition in whole or in part and, if appropriate, terminate the proceeding. The Secretary will notify the petitioner in writing of the reasons for dismissal, notify the Commission of the dismissal and publish in the FEDERAL REGISTER notice of “Dismissal of Antidumping Duty Petition,” summarizing the reasons for dismissal.

[54 FR 12769, Mar. 28, 1989, as amended at 60 FR 25134, May 11, 1995]

#### §353.14 Request for exclusion from antidumping duty order.

(a) Any producer or reseller that desires exclusion from an antidumping duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under §353.11 or 353.13, an irrevocable written request for exclusion.

(b) The person must submit with the request: (1) The person’s certification that:

(i) There is no dumping margin on the merchandise sold or likely to be sold, as defined in §353.2(t), by the person during the minimum period described in §353.42(b)(1); and

(ii) The person will not in the future sell the merchandise at less than foreign market value; and

(2) If the person is not the producer of the merchandise, the certification under paragraph (b)(1) of this section of the suppliers and producers of the merchandise.

(c) The Secretary will investigate requests for exclusion to the extent practicable in each investigation.

**§ 353.15 Preliminary determination.**

(a) *In general.* (1) Not later than 140 days after the date on which the Secretary initiates an investigation under § 353.11 or § 353.13, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that the merchandise is being sold at less than fair value. The Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated weighted-average dumping margin, if any, for each person investigated and an appropriate rate for persons not investigated; and

(iii) A preliminary finding on critical circumstances, if appropriate, under § 353.16(b)(2)(i).

(3) If affirmative, the Secretary's determination will also:

(i) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's preliminary determination; and

(ii) Impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit or bond equal to the estimated weighted-average dumping margin.

(4) The Secretary will publish in the FEDERAL REGISTER notice of "Affirmative (Negative) Preliminary Antidumping Duty Determination," including the estimated weighted-average dumping margin, if any, and an invitation for argument consistent with § 353.38.

(5) The Secretary will notify all parties to the proceeding and the Commission.

(b) *Postponement in extraordinarily complicated investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 190 days after the date on which the Secretary initiated the investigation. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of:

(i) The large number of complex nature of the transactions or adjustments under subpart D of this part;

(ii) Novel issues raised; or

(iii) The large number of producers and resellers; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the request of the petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 190 days after the date on which the Secretary initiated the investigation, unless the Secretary finds compelling reasons to deny the request.

(d) *Notice of postponement.* If the Secretary decides to postpone the preliminary determination under paragraph (b) or (c) of this section, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date for the Secretary's preliminary determination and will publish in the FEDERAL REGISTER notice of "Postponement of Preliminary Antidumping Duty Determination," stating the reasons for the postponement.

(e) *Expedited preliminary determination.* Not later than 75 days after the initiation of an investigation under § 353.13, the Secretary will review the record of the first 60 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any party to the proceeding that has requested disclosure, all available public and proprietary information

(subject to the requirements of § 353.34). If, not later than three business days after disclosure, each party to whom disclosure was made furnishes an irrevocable written waiver of verification and agrees to a preliminary determination based on information in the record on the 60th day of the investigation, the Secretary will make an expedited preliminary determination not later than 90 days after initiation of the investigation.

(f) *Commission access to information.* The Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the determination and which the Commission may consider relevant to its injury determination.

(g) *Disclosure.* Promptly after making the preliminary determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in making the determination.

[54 FR 12769, Mar. 28, 1989, as amended at 60 FR 25134, May 11, 1995]

**§ 353.16 Critical circumstances findings.**

(a) *In general.* If a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, not later than 21 days before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in an investigation under § 353.11, the Secretary will make a finding whether:

(1) (i) There is a history of dumping in the United States or elsewhere of the same class or kind of merchandise as the merchandise subject to the investigation; or

(ii) The importer knew or should have known that the producer or reseller was selling the merchandise at less than its foreign market value; and

(2) There have been massive imports of the merchandise over a relatively short period.

(b) *Preliminary finding.* (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the

Secretary's final determination under § 353.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances as described in paragraph (a) of this section exist.

(2) The Secretary will issue the preliminary finding:

(i) Not later than the Secretary's preliminary determination under § 353.15, if the allegation is submitted not later than 20 days before the scheduled date for the preliminary determination; or

(ii) Not later than 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date for the Secretary's preliminary determination.

The Secretary will notify the Commission and publish in the FEDERAL REGISTER notice of the preliminary finding.

(c) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, either before or at the time of an affirmative preliminary determination under § 353.15, any suspension of liquidation ordered under § 353.15 will apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the order of suspension. If the Secretary makes an affirmative preliminary finding of critical circumstances after an affirmative preliminary determination under § 353.15, the Secretary will amend the order suspending liquidation to apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date suspension of liquidation was first ordered.

(d) *Final finding.* For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under § 353.20, the Secretary will make a final finding on critical circumstances. If the final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order

the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

(e) *Findings in self-initiated investigations.* In investigations initiated under §353.11, the Secretary will make a preliminary and final finding on critical circumstances without regard to the time limits in paragraphs (b) and (d) of this section.

(f) *Massive imports.* (1) In determining for the purpose of paragraph (a) of this section whether imports of the merchandise have been massive, the Secretary normally will examine:

- (i) The volume and value of the imports;
- (ii) Seasonal trends; and
- (iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the period identified in paragraph (g) of this section have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(g) *Relatively short period.* For the purpose of paragraph (a) of this section, the Secretary normally will consider the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporting producers or resellers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

**§ 353.17 Termination of investigation.**

(a) *Withdrawal of petition.* (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an

investigation upon withdrawal of the petition by the petitioner, or on the Secretary's own initiative in an investigation initiated under §353.11, after notifying all parties to the proceeding and after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

(2) If the Secretary terminates an investigation, the Secretary will publish in the FEDERAL REGISTER notice of "Termination of Antidumping Duty Investigation" together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination.

(b) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the home market country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 734(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

(2) In deciding for the purpose of paragraph (b)(1) of this section whether termination is in the public interest, the Secretary, to the extent practicable, will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not parties to the proceeding.

(c) *Negative determination.* An investigation terminates, without further comment or action, upon publication in the FEDERAL REGISTER of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(d) *End of suspension of liquidation.* If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination under paragraph (a) of this section or on the date of publication of a negative determination referred to in paragraph (c) of this section, and will

instruct the Customs Service to release any cash deposit or bond.

**§ 353.18 Suspension of investigation.**

(a) *Agreement to eliminate completely sales at less than foreign market value or to cease exports.* If the Secretary is satisfied that suspension is in the public interest, the Secretary may suspend an investigation at any time before the Secretary's final determination by accepting an agreement with exporters (producers and resellers) that account for substantially all of the merchandise:

(1) To eliminate completely sales at less than foreign market value with respect to the merchandise, effective on the date of suspension of investigation; or

(2) To cease exports of the merchandise not later than 180 days after the date of publication of the notice of suspension of investigation.

(b) *Agreement eliminating injurious effect.* (1) As provided in this paragraph and paragraph (b)(2) of this section, the Secretary may suspend an investigation at any time before the Secretary's final determination if the Secretary:

(i) Is satisfied that the proposed suspension is in the public interest;

(ii) Finds that extraordinary circumstances are present; and

(iii) Finds that the agreement will eliminate completely the injurious effect of the merchandise.

(2) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement with exporters (producers and resellers) that account for substantially all of the merchandise, if the Secretary finds that:

(i) The agreement will prevent the suppression or undercutting by the merchandise of prices of like products produced in the United States; and

(ii) The agreement will ensure that, for each entry of each exporter, the dumping margin will not exceed 15 percent of the weighted-average dumping margin for that exporter stated in the Secretary's preliminary determination (or final determination in investigations continued under § 353.18(i)).

(c) *Definition of "substantially all."* For purposes of paragraphs (a) and (b)(2) of this section, exporters which

account for "substantially all" of the merchandise means exporters (producers and resellers), that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring dumping in the investigation or such other period that the Secretary considers representative.

(d) *Definition of "extraordinary circumstances."* For purposes of paragraph (b) of this section, "extraordinary circumstances" means circumstances in which (1) suspension of the investigation will be more beneficial to the industry than continuation of the investigation, and (2) there are a large number of transactions or adjustments under subpart D of this part, the issues raised are novel, or the number of producers and resellers is large.

(e) *Monitoring.* The Secretary will not accept an agreement unless effective monitoring of the agreement by the Secretary is practicable. In monitoring an agreement under paragraph (b) of this section, the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the merchandise or of like products produced in the United States.

(f) *Exports not to increase during interim period.* The Secretary will not accept an agreement under paragraph (a)(2) of this section unless the agreement ensures that the quantity of the merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(g) *Procedure for suspension of investigation.* (1) The exporters (producers and resellers) shall:

(i) Submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary's final determination under § 353.20; and

(ii) Serve a copy of an agreement preliminarily accepted by the Secretary on other parties to the proceeding not later than the day following the Secretary's preliminary acceptance.

(2) The Secretary will:

(i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (the agreement shall contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of this section); and

(ii) Consult with the petitioner concerning the proposed suspension.

(3) The Secretary will provide all interested parties and United States government agencies an opportunity to submit, not later than 10 days before the scheduled date for the Secretary's final determination, written argument and factual information concerning the proposed suspension.

(h) *Acceptance of agreement.* (1) If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the FEDERAL REGISTER notice of "Suspension of Antidumping Duty Investigation," including the text of the agreement. If the Secretary has not already published notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(2) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release any cash deposit or bond.

(3) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or to begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 734(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after

the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond.

(4) If the Commission undertakes a review of an agreement under section 734(h) of the Act and determines that the agreement will not eliminate the injurious effect, the Secretary will resume the investigation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement will eliminate the injurious effect, the Secretary will continue the suspension of investigation, order the suspension of liquidation ended on the date of publication of the Commission's determination, and instruct the Customs Service to release any cash deposit or bond.

(i) *Continuation of investigation.*

(1) Not later than 20 days after the date of publication of the notice of suspension of investigation, an exporter or exporters accounting for a significant proportion of exports of the merchandise or an interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, may request in writing that the Secretary continue the investigation. The party shall simultaneously file a request with the Commission to continue its investigation.

(2) Upon receiving the request, the Secretary and the Commission will continue the investigation.

(i) If the Secretary and the Commission make affirmative final determinations, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.

(ii) If the Secretary or the Commission makes a negative final determination, the agreement shall have no force or effect.

(j) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may

instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by paragraph (f) or by an agreement under paragraph (a) of this section.

(2) Imports in excess of the quantity allowed by paragraph (f) or by an agreement under paragraph (a) of this section may be exported or destroyed under Customs service supervision.

**§ 353.19 Violation of agreement.**

(a) *Immediate determination.* If the Secretary determines that a signatory exporter has violated a suspension agreement, the Secretary, without right of comment, will:

(1) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (i) 90 days before the date of publication of the notice of cancellation of agreement or (ii) the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under § 353.18(i), resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under paragraph (a)(1) of this section a cash deposit or bond equal to the estimated weighted-average dumping margin determined in the affirmative preliminary determination;

(3) If the investigation was completed under § 353.18(i), issue an antidumping duty order for all entries subject to suspension of liquidation under paragraph (a)(1) of this section and instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit equal to the estimated weighted-average dumping margin determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission, and if the Secretary determines

that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the FEDERAL REGISTER notice of "Antidumping Duty Order (Resumption of Antidumping Duty Investigation); Cancellation of Suspension Agreement."

(b) *Determination after notice and comment.* (1) If the Secretary has reason to believe that a signatory exporter has violated an agreement or that an agreement no longer meets the requirements of section 734(d) of the Act, but does not have sufficient information to take action under paragraph (a) of this section, the Secretary will publish in the FEDERAL REGISTER notice of "Invitation for Comment on Antidumping Duty Suspension Agreement."

(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:

(i) If the Secretary determines that any signatory exporter has violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section; or

(ii) If the Secretary determines that the agreement no longer meets the requirements of section 734(d) of the Act:

(A) Take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section, except that, for paragraph (a)(1)(ii) of this section, the date shall be the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 734(d) of the Act;

(B) Continue the suspension of investigation by accepting a revised suspension agreement under § 353.18(a) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 734(d) of the Act, and publish in the FEDERAL REGISTER notice of "Revision of Agreement Suspending Antidumping Duty Investigation;" or

(C) Continue the suspension of investigation by accepting a revised suspension agreement under § 353.18(b) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary

accepts the revised agreement, meets the applicable requirements of section 734(d) of the Act, and publish in the FEDERAL REGISTER notice of "Revision of Agreement Suspending Antidumping Duty Investigation." If the Secretary continues to suspend an investigation based on a revised agreement accepted under §353.18(b), the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the agreement under section 734(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 734(h) of the Act, the provisions of §353.18(h)(4) will apply.

(iii) If the Secretary decides neither to consider the order violated nor to revise the agreement, the Secretary will publish in the FEDERAL REGISTER notice of the Secretary's decision under paragraph (b)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(c) *Additional signatories.* If the Secretary decides that the agreement no longer meets the requirements of §353.18(b)(1)(iii) or that the signatory exporters no longer account for substantially all of the merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(d) *Definition of "violation."* For the purpose of this section, "violation" means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

**§353.20 Final determination.**

(a) *In general.* (1) Not later than 75 days after the date of the Secretary's preliminary determination, the Secretary will make a final determination whether the merchandise is being sold at less than fair value.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated weighted-average dumping margin, if any, for each person investigated; and

(iii) If appropriate, a final finding on critical circumstances under §353.16.

(3) If affirmative, the Secretary's determination will also:

(i) Unless previously ordered by the Secretary, order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's final determination; and

(ii) Instruct the Customs Service to require, for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the Secretary's final determination, a cash deposit or bond equal to the estimated weighted-average dumping margin determined under paragraph (a) of this section.

(4) The Secretary will publish in the FEDERAL REGISTER notice of "Affirmative (Negative) Final Antidumping Duty Determination," including the estimated weighted-average dumping margins, if any.

(5) The Secretary will notify all parties to the proceeding and the Commission.

(b) *Postponement of final determination.* (1) If, not later than the scheduled date for the Secretary's final determination, the petitioner in a proceeding in which the Secretary issued a negative preliminary determination, or the producers or resellers of a significant proportion of the merchandise in a proceeding in which the Secretary issued an affirmative preliminary determination, request in writing a postponement and state the reasons for the request, the Secretary will postpone the final determination to not later than 135 days after the date of publication of the preliminary determination, unless the Secretary finds compelling reasons to deny the request.

(2) If the Secretary decides to postpone the final determination under paragraph (b)(1) of this section, the Secretary will notify all parties to the

proceeding and will publish in the FEDERAL REGISTER notice of “Postponement of Final Antidumping Duty Determination,” stating the reason for the postponement.

(c) *Commission access to information.* The Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the final determination and which the Commission may consider relevant to its injury determination.

(d) *Effect of negative final determination.* An investigation terminates, without further comment or action, upon publication in the FEDERAL REGISTER of the Secretary’s or the Commission’s negative final determination. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of negative final determination and will instruct the Customs Service to release any cash deposit or bond.

(e) *Disclosure.* Promptly after making the final determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in making the determination.

#### § 353.21 Antidumping duty order.

Not later than seven days after receipt of notice of the Commission’s affirmative final determination under section 735 of the Act, the Secretary will publish in the FEDERAL REGISTER an “Antidumping Duty Order” that:

(a) Instructs the Customs Service to assess antidumping duties on the merchandise, in accordance with the Secretary’s instructions at the completion of each administrative review requested under § 353.22(a) or, if not requested, in accordance with the Secretary’s instructions under § 353.22(e);

(b) For each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order, instructs the Customs Service to require a cash deposit of estimated antidumping duties equal to the amount of the estimated weighted-average dumping margin

stated in the Secretary’s final determination;

(c) Excludes from the application of the order any producer or reseller for which the Secretary finds that there was no weighted-average dumping margin during the period for which the Department measured dumping in the investigation; and

(d) Orders the suspension of liquidation ended for all entries of the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission’s final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of liquidation ordered under § 353.15(a), it would have found material injury.

#### § 353.22 Administrative review of orders and suspension agreements.

(a) *Request for Administrative Review; Withdrawal of Request for Review.* (1) Each year during the anniversary month of the publication of an order (the calendar month in which the anniversary of the date of publication of the order or finding occurs), an interested party, as defined in paragraph (k)(2), (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers.

(2) During the same month, a producer or reseller covered by an order may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only a producer or reseller of the merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation (the calendar

month in which the anniversary of the date of publication of the suspension of investigation occurs), an interested party, as defined in §353.2(k), may request in writing that the Secretary conduct an administrative review of all producers or resellers covered by an agreement on which suspension of investigation was based.

(5) The Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. When a request for review is withdrawn, the Secretary will publish in the FEDERAL REGISTER notice of "Termination of Antidumping Duty Administrative Review" or, if appropriate, "Partial Termination of Antidumping Duty Administrative Review."

(b) *Period under review.* (1) Except as provided in paragraph (b)(2) of this section, an administrative review under paragraph (a) of this section normally will cover, as appropriate, entries, exports, or sales of the merchandise during the 12 months immediately preceding the most recent anniversary month.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a) of this section will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the month immediately preceding the first anniversary month.

(c) *Procedures.* After receipt of a timely request under paragraph (a) of this section, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Not later than 15 days after the anniversary month, publish in the FEDERAL REGISTER notice of "Initiation of Antidumping Duty Administrative Review;"

(2) Normally not later than 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of inter-

ested parties questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under §353.36;

(4) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 245 days after the last day of the anniversary month, issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person reviewed; and

(iii) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and an invitation for argument consistent with §353.38, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(7) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 120 days after the date on which the preliminary results are published, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person reviewed; and

(iii) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the FEDERAL REGISTER notice of "Final Results of Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and notify all parties to the proceeding;

(9) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(10) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated antidumping duties on future entries.

(d) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that a signatory exporter has violated a suspension agreement or that the agreement no longer meets the requirements of § 353.18, the Secretary will take appropriate action under § 353.19. The Secretary may suspend the time limit in paragraph (c)(7) of this section while taking action under § 353.19(b).

(e) *Automatic assessment of duty.* (1) For orders, if the Secretary does not receive a timely request under paragraph (a)(1), (a)(2), or (a)(3) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (b) of this section at rates equal to the cash deposit of, or bond for, estimated antidumping duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(1), (a)(2), or (a)(3) of this section, the Secretary in accordance with paragraph (e)(1) of this section will instruct the Customs Service to assess antidumping duties, and to continue to collect the cash deposits, on the merchandise not covered by the request.

(f) *Changed circumstances review.* (1) If the Secretary concludes from available information, including information in a request under this paragraph for an administrative review, that changed circumstances sufficient to warrant a review exist, the Secretary will:

(i) Publish in the FEDERAL REGISTER notice of "Initiation of Changed Cir-

cumstances Antidumping Duty Administrative Review;"

(ii) If necessary, send to appropriate interested parties, or a sample of interested parties, questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a verification under § 353.36;

(iv) Issue preliminary results of review based on the available information that include the factual and legal conclusions on which the preliminary results are based and any action the Secretary proposes based on the preliminary results;

(v) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review," including an invitation for argument consistent with § 353.38;

(vi) Notify all parties to the proceeding of the preliminary results;

(vii) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(viii) Not later than 270 days after the date of the Secretary's initiation of the review, issue final results of review that include the factual and legal conclusions on which the final results are based and any action, including action under paragraph (c)(9) of this section and § 353.25(d), that the Secretary will take based on the final results;

(ix) Publish in the FEDERAL REGISTER notice of "Final Results of Changed Circumstances Antidumping Duty Administrative Review;"

(x) Notify all parties to the proceeding; and

(xi) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the final results.

(2) Changed circumstances reviews may be requested at any time, including periods other than anniversary months.

(3) The Secretary will not initiate an administrative review under paragraph (f) of this section before the end of the second annual anniversary month (the calendar month in which the anniversary of the date of publication of the order or suspension occurs) after the date of publication of the Secretary's

affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.

(4) If the Secretary concludes that expedited action is warranted, the Secretary may combine the notices identified in paragraphs (f)(1)(i) and (f)(1)(v) of this section in a notice of "Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review." In that event, the notification required in paragraph (f)(1)(vi) of this section will be given to all interested parties included on the Department's service list described in § 353.31(h).

(g) *Expedited review.* (1) Not later than seven days after publication of an antidumping duty order, a producer or reseller may request in writing that the Secretary conduct an expedited administrative review for that producer's or reseller's shipments of the merchandise entered, or withdrawn from warehouse, for consumption:

(i) On or after the date of publication of the Secretary's affirmative preliminary determination or, if the Secretary's preliminary determination was negative, the Secretary's final determination, and

(ii) Before the date of publication of the Commission's final determination.

(2) The request must be accompanied by information the Secretary deems necessary to calculate the dumping margin, if any.

(3) If, based upon the information submitted with the request, the Secretary concludes that the dumping margin may be determined not later than 90 days after the date of publication of the order, the Secretary may conduct an expedited administrative review of the requesting producer or reseller.

(4) If the Secretary decides to conduct an expedited review, the Secretary will:

(i) Publish in the FEDERAL REGISTER notice of "Initiation of Expedited Antidumping Duty Administrative Review," which will include an invitation for argument consistent with § 353.38, and notify all parties to the proceeding;

(ii) Instruct the Customs Service to accept, in lieu of the cash deposit of es-

timated antidumping duties under § 353.21(b), a bond for each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation and through the date not later than 90 days after the date of publication of the order;

(iii) Conduct a verification under § 353.36;

(iv) Provide to parties to the proceeding which request disclosure an explanation of the calculation methodology used for the Secretary's analysis;

(v) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based; and

(B) The weighted-average dumping margin, if any, during the period of review for each person reviewed;

(vi) Publish in the FEDERAL REGISTER notice of "Final Results of Expedited Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and notify all parties to the proceeding;

(vii) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure an explanation of the calculation methodology used for the Secretary's analysis; and

(viii) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (g)(1) of this section and to collect a cash deposit of estimated antidumping duties on future entries.

(h) *Determination of antidumping duties for new shippers*—(1) *In general.* If the Secretary receives a request, accompanied by the information described in paragraph (h)(2) of this section, from an exporter or producer of the merchandise establishing that:

(i) Such exporter or producer did not export the merchandise that was the subject of an antidumping duty order to the United States (or, in the case of an order described in section 736(d) of the Act, did not export the merchandise for sale in the region concerned) during the period of investigation;

(ii) Such exporter or producer is not affiliated with (within the meaning of section 771(33) of the Act) any exporter

or producer who exported the merchandise to the United States (or in the case of an order described in section 736(d) of the Act, who exported the merchandise for sale in the region concerned) during that period; and

(iii) The Secretary has not previously established a weighted-average dumping margin for such exporter or producer, the Secretary will conduct a review to establish a weighted-average dumping margin for such exporter or producer.

(2) *Certification of new shipper status.* A request described in paragraph (h)(1) of this section shall include, with appropriate certifications:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot certify as to the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) A list of the firms with which the exporter or producer making the request is affiliated; and

(iii) A statement from the exporter or producer making the request and from each firm with which the exporter or producer is affiliated that it did not, under its current or a former name, export the merchandise during the period of investigation.

(3) *Time for new shipper review*—(i) *In general.* The Secretary will commence a review under paragraph (h)(1) of this section in the calendar month beginning after the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the semiannual anniversary month.

(ii) *Semiannual anniversary month.* The semiannual anniversary month is:

(A) The calendar month in which the anniversary of the date of publication of the order occurs; or

(B) The calendar month which is 6 months after the calendar month in which the anniversary of the date of publication of the order occurs.

(4) *Posting bond or security.* The Secretary will, at the time a review under paragraph (h)(1) of this section is initiated, direct the Customs Service to

allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise.

(5) *Period under review.* A review under paragraph (h)(1) of this section will cover, as appropriate, entries, exports, or sales during a period to be determined by the Secretary.

(6) *Procedures.* After receipt of a request satisfying the requirements of paragraphs (h)(1), (h)(2) and (h)(3) of this section, the Secretary will:

(i) Not later than 20 days after the semiannual anniversary month, issue a notice of “Initiation of New Shipper Antidumping Duty Review;”

(ii) Normally not later than 30 days after the date of issuance of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a verification under §353.36;

(iv) Issue preliminary results of review, based on the available information, that include:

(A) The factual and legal conclusions on which the preliminary results are based; and

(B) The weighted-average dumping margin, if any, for each person reviewed;

(v) Publish in the FEDERAL REGISTER notice of “Preliminary Results of New Shipper Antidumping Duty Administrative Review,” including the weighted-average dumping margins, if any, and an invitation for argument consistent with §353.38, and notify all parties to the proceeding;

(vi) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(vii) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based;

(B) The weighted-average dumping margins, if any, for each person reviewed;

(viii) Publish in the FEDERAL REGISTER notice of “Final Results of New

Shipper Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and notify all parties to the proceeding;

(ix) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(x) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (h)(4) of this section, and to collect a cash deposit of estimated antidumping duties on future entries.

(7) *Time limits—(i) In general.* The Secretary will issue preliminary results in a review conducted under paragraph (h)(1) of this section within 180 days after the date on which the review is initiated, and final results within 90 days after the date the preliminary results are issued.

(ii) *Exception.* If the Secretary concludes that the case is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(8) *Results of reviews.* The results of a review under paragraph (h)(1) of this section shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(9) *Multiple reviews.* Notwithstanding any other provision of this section, if a review (or a request for a review) under paragraph (a), (f), or (g) of this section covers merchandise of an exporter or producer subject to a review (or to a request for a review) under paragraph (h)(1) of this section, the Secretary may:

(i) Terminate, in whole or in part, a review in progress under this section; or

(ii) Decline to commence, in whole or in part, a review under this section.

[54 FR 12769, Mar. 28, 1989; 54 FR 13294, Mar. 31, 1989, as amended at 60 FR 25134, May 11, 1995]

### **§ 353.23 Provisional measures deposit cap.**

This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of affirmative final determination. If the cash deposit or bond required under the Secretary's affirmative preliminary or affirmative final determination is different from the dumping margin the Secretary calculates under § 353.22, the Secretary will instruct the Customs Service to disregard the difference to the extent that the cash deposit or bond is less than the dumping margin, and to assess antidumping duties equal to the dumping margin calculated under § 353.22 if the cash deposit or bond is more than the dumping margin.

### **§ 353.24 Interest on certain overpayments and underpayments.**

(a) *In general.* The Secretary will instruct the Customs Service to pay or collect, as appropriate, interest on the difference between the cash deposit of estimated antidumping duties and the assessed antidumping duties on entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of an antidumping duty order.

(b) *Rate.* The rate or rates of interest payable or collectible under paragraph (a) of this section for any period of time are the rates established under section 6621 of the Internal Revenue Code of 1954.

(c) *Period.* The Secretary will instruct the Customs Service to calculate interest for each entry from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

### **§ 353.25 Revocation of orders; termination of suspended investigation.**

(a) *Revocation or termination based on absence of dumping.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:

(i) All producers and resellers covered at the time of revocation by the order or the suspension agreement have sold the merchandise at not less

than foreign market value for a period of at least three consecutive years; and

(ii) It is not likely that those persons will in the future sell the merchandise at less than foreign market value.

(2) The Secretary may revoke an order in part if the Secretary concludes that:

(i) One or more producers or resellers covered by the order have sold the merchandise at not less than foreign market value for a period of at least three consecutive years;

(ii) It is not likely that those persons will in the future sell the merchandise at less than foreign market value; and

(iii) For producers or resellers that the Secretary previously has determined to have sold the merchandise at less than foreign market value, the producers or resellers agree in writing to their immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Secretary concludes under § 353.22(f) that the producer or reseller, subsequent to the revocation, sold the merchandise at less than foreign market value.

(b) *Request for revocation or termination.* During the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurs), a producer or reseller may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a) of this section with regard to that person if the person submits with the request:

(1) The person's certification that the person sold the merchandise at not less than foreign market value during the period described in § 353.22(b), and that in the future the person will not sell the merchandise at less than foreign market value; and

(2) If applicable, the agreement described in paragraph (a)(2)(iii) of this section.

(c) *Procedures.* (1) After receipt of a timely request under paragraph (b) of this section, the Secretary will consider the request as including a request for an administrative review and will conduct a review under § 353.22(c).

(2) In addition to the requirements of § 353.22(c), the Secretary will:

(i) Publish with the notice of initiation, under § 353.22(c)(1), notice of "Request for Revocation of Order (in part)" or, if appropriate, "Request for Termination of Suspended Investigation;"

(ii) Conduct a verification under § 353.36;

(iii) Include in the preliminary results of review, under § 353.22(c)(4), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary's preliminary decision under paragraph (c)(2)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 353.22(c)(5), notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(v) Include in the final results of review, under § 353.22(c)(7), the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary's final decision under paragraph (c)(2)(v) of this section is affirmative, publish with the notice of final results of review, under § 353.22(c)(8), notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(d) *Revocation or termination based on changed circumstances.* (1) The Secretary may revoke an order, revoke an order in part, or terminate a suspended investigation if the Secretary concludes that:

(i) The order or suspended investigation no longer is of interest to interested parties, as defined in paragraphs (k)(3), (k)(4), (k)(5), and (k)(6) of § 353.2; or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information, including an affirmative statement of no interest from the petitioner in the proceeding, that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct an administrative review under § 353.22(f).

(3) In addition to the requirements of § 353.22(f), the Secretary will:

(i) Publish with the notice of initiation, under § 353.22(f)(1)(i), notice of “Consideration of Revocation of Order (in Part)” or, if appropriate, “Consideration of Termination of Suspended Investigation;”

(ii) If the Secretary’s conclusion, as described in paragraph (d)(2) of this section, is not based on a request, the Secretary, not later than the date of publication of the notice described in paragraph (d)(3)(i) of this section, will serve written notice of the consideration of revocation or termination on each interested party listed on the Department’s service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product;

(iii) Conduct a verification, if appropriate, under § 353.36;

(iv) Include in the preliminary results of review, under § 353.22(f)(1)(iv), the Secretary’s decision whether there is a reasonable basis to believe that the requirements for revocation or termination based on changed circumstances are met;

(v) If the Secretary’s preliminary decision under paragraph (d)(3)(iv) of this section is affirmative, publish with the notice of preliminary results of review, under § 353.22(f)(1)(v), notice of “Intent to Revoke Order (in Part)” or, if appropriate, “Intent to Terminate Suspended Investigation;”

(vi) Include in the final results of review, under § 353.22(f)(1)(viii), the Secretary’s final decision whether the requirements for revocation or termination based on changed circumstances are met; and

(vii) If the Secretary’s final decision under paragraph (d)(3)(vi) of this section is affirmative, publish with the notice of final results of review, under § 353.22(f)(1)(ix), notice of “Revocation

of Order (in Part)” or, if appropriate, “Termination of Suspended Investigation.”

(4)(i) If for four consecutive annual anniversary months no interested party has requested an administrative review, under § 353.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the FEDERAL REGISTER notice of “Intent to Revoke Order” or, if appropriate, “Intent to Terminate Suspended Investigation.”

(ii) Not later than the date of publication of the notice described in paragraph (d)(4)(i) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each interested party listed on the Department’s service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product.

(iii) If by the last day of the fifth annual anniversary month no interested party objects, or requests an administrative review under § 353.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(1)(i) for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the FEDERAL REGISTER the notice described in paragraph (d)(3)(vii) of this section.

(5) If the Secretary under paragraph (d) of this section revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release any cash deposit or bond.

(e) *Revocation or termination based on injury reconsideration.* If the Commission determines in an administrative review under section 751(b) of the Act that an industry in the United States would not be materially injured, or would not be threatened with material injury, or the establishment of an industry in the United States would not be materially retarded, by reason of imports of the merchandise covered by an antidumping duty order or suspension agreement, the Secretary will revoke, in whole or in part, the order or

terminate the suspended investigation, and will publish in the FEDERAL REGISTER notice of “Revocation of Order (in Part)” or, if appropriate, “Termination of Suspended Investigation.”

**§ 353.26 Reimbursement of antidumping duties.**

(a) *In general.* (1) In calculating the United States price, the Secretary will deduct the amount of any antidumping duty which the producer or reseller:

(i) Paid directly on behalf of the importer; or

(ii) Reimbursed to the importer.

(2) The Secretary will not deduct the amount of the antidumping duty paid or reimbursed if the producer or reseller granted to the importer before initiation of the investigation a warranty of nonapplicability of antidumping duties with respect to the merchandise which was:

(i) Sold before the date of publication of the Secretary’s order suspending liquidation; and

(ii) Exported before the date of publication of the Secretary’s final determination.

Ordinarily, the Secretary will deduct for reimbursement of antidumping duties only once in the calculation of the United States price.

(b) *Certificate.* The importer shall file prior to liquidation a certificate in the following form with the appropriate District Director of Customs:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter, of all or any part of the antidumping duties assessed upon the following importations of \_\_\_\_\_ (commodity) from \_\_\_\_\_ (country): (List entry numbers) which have been purchased on or after \_\_\_\_\_ (date of publication of notice suspending liquidation in the FEDERAL REGISTER) or purchased before \_\_\_\_\_ (same date) but exported on or after \_\_\_\_\_ (date of final determination of sales at less than fair value).

(c) *Presumption.* The Secretary may presume from an importer’s failure to file the certificate required in paragraph (b) that the producer or reseller paid or reimbursed the antidumping duties.

**§ 353.27 Procedures for initiation of downstream product monitoring.**

(a) *In general.* A domestic producer of an article that is like a component part or a downstream product may file an application pursuant to this section requesting that the Secretary designate a downstream product for monitoring.

(b) *Contents of application.* The application shall contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product incorporated into such downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the home market country of both the downstream and component products and the name of any intermediate country through which these products are transhipped;

(5) The name and address of all known producers of component parts and downstream products in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21 on merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18 or antidumping or countervailing orders issued under § 353.21 or § 355.21 on merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component parts into increased production and exportation to the United States of such downstream product.

(c) *Determination of sufficiency of application*—(1) *In general.* Within 14 days after an application is filed under paragraph (b) of this section, the Secretary will determine the sufficiency of the application. An application is considered to be filed at the time it is received by the Secretary. In order to determine that an application is sufficient, the Secretary must find:

(i) There is a reasonable likelihood that imports of the downstream product into the United States will increase as an indirect result of any diversion with respect to the component part; and

(ii) That—

(A) The component part is already subject to monitoring with respect to the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984, or

(B) Merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21, or

(C) Merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least two antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing orders issued under § 353.21 or § 355.21.

(2) In making a determination under paragraph (c)(1)(i) of this section, the Secretary will consider all factors the Secretary considers relevant and may, if appropriate, take into account such factors as:

(i) The value of the component part in relation to the value of the downstream product;

(ii) The extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and

(iii) The relationship between the producers of the component part and producers of the downstream product.

(d) *Notice of Determination.* The Secretary will publish in the FEDERAL REGISTER notice of each affirmative or negative “monitoring” determination made under paragraph (c) of this section and if the determination under (c)(1)(i) and under any clause of (c)(1)(ii) are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission, and to its employees directly involved in the monitoring, all information upon which the Secretary based the initiation.

(e) *Action on basis of monitoring reports.* The Secretary will review the information in any monitoring reports submitted to the Department by the Commission under section 780 of the Act and will:

(1) Consider the information in determining whether to initiate an investigation under § 353.11 regarding any downstream product; and

(2) Request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to the component part.

(f) *Definitions*—(1) *Downstream product* means any manufactured product imported into the United States into which a component part is incorporated.

(2) *Component part* means any imported article which:

(i) During the previous five-year period, ending on the date on which the application is filed under paragraph (b) of this section, has been subject to—

(A) An antidumping or countervailing duty order issued under §353.21 or §355.21 that required the deposit of estimated antidumping or countervailing duties, applicable to the particular manufacturer or exporter, at a rate of at least 15 percent *ad valorem* or,

(B) A suspension agreement entered into under §353.18 or §355.18 after a preliminary determination under §353.15 or §355.15 was made by the Secretary which included a determination that the estimated net antidumping margin or subsidy rate, applicable to the particular manufacturer or exporter, was at least 15 percent *ad valorem*; and

(ii) Due to its inherent characteristics, is routinely used as a major part, material, component, assembly, or sub-assembly in a downstream product.

(g) *Where to file; time of filing; format and number of copies.* The requirements of §353.31(d), (e), (f), and (g) apply to this section.

[55 FR 9047, Mar. 9, 1990]

**§353.28 Procedures for the correction of ministerial errors.**

(a) *In general.* The Secretary will disclose the calculations performed in connection with a final antidumping duty determination pursuant to §353.20, or in a final results of an administrative review of an antidumping duty order pursuant to §353.22, to any party to the proceeding making a request in accordance with this section. A party to the proceeding must file such a request in writing with the Secretary within five business days of the date of publication of the relevant final determination or final results of administrative review. A party to whom the Secretary has disclosed final calculations may submit comments concerning any ministerial errors in such calculations.

(b) *Time limits.* Comments must be filed within five business days after the date of disclosure unless the Secretary extends the time limit based upon a written request for extension that is filed within five business days after the date of disclosure and showing cause for such extension. Comments shall be submitted in writing to the Secretary and shall be served on all interested parties on the Department's service list. Interested parties may file replies to any comments submitted under

paragraph (a) of this section. Any replies must be filed with the Secretary within five business days after the date the relevant comments under paragraph (a) of this section are received by that party and shall be served on all interested parties on the Department's service list. All service of interested parties on the Department's service list pursuant to this paragraph shall be in accordance with §353.31(g). Notwithstanding the provisions of §353.34(d), the Secretary may permit representatives to retain proprietary information released under administrative protective order under §353.34 until the expiration of the time for filing for judicial review of the Secretary's correction of any ministerial errors. If the Secretary determines there are no ministerial errors, proprietary information will be returned in accordance with the provisions of §353.34(d).

(c) *Corrections.* The Secretary will analyze any comments received and, if appropriate, correct any ministerial errors by amending the final antidumping determination or final results of administrative review. Such corrections will be published in the FEDERAL REGISTER. A correction notice does not alter the anniversary month of an order or suspension of investigation for purposes of requesting an administrative review under §353.22.

(d) *Definition of "ministerial error."* For purposes of this section, "ministerial error" means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.

[55 FR 9048, Mar. 9, 1990]

**§353.29 Scope determination.**

(a) *Self-initiation.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of an antidumping order, the Secretary will initiate an inquiry and notify all interested parties on the Department's service lists of its initiation of a scope inquiry.

(b) *By application.* Any interested party, as defined in §353.2(k), may file an application to determine whether a

particular product is within the scope of an order. The application shall contain the following, to the extent reasonably available to the interested party:

(1) A detailed description of the product, including technical characteristics and uses of the product, and its current U.S. Tariff Classification number;

(2) A statement of the interested party's position as to whether the product is within the scope of an antidumping order, including—

(i) A summary of the reasons for this conclusion,

(ii) Citations to any applicable statutory authority, and

(iii) Attachment of any factual support for this position, including applicable portions of the Secretary's or the Commission's investigation.

Where all of these conditions are met, the Secretary will evaluate the application. If the Secretary determines that no inquiry is warranted to determine whether a product is included within the scope of an order, the Secretary will issue a final ruling as to whether the merchandise which is the subject of the application is included in the existing order. The Secretary will, by mail, notify all interested parties on the Department's service lists of its determination. If, however, the Secretary determines that a scope inquiry is warranted, the Secretary will, by mail, notify all interested parties on the Department's service lists of the initiation of a scope inquiry.

(c) *Notice.* Any initiation of a scope inquiry issued pursuant to paragraphs (a) or (b) of this section will include:

(1) A description of the product that is the subject of the scope inquiry; and

(2) An explanation of the reasons for the Secretary's decision to initiate a scope inquiry; and

(3) A schedule for submission of comments.

(d) *Procedures for scope inquiry.* Except as provided under paragraph (d)(6) of this section, the procedures for scope inquiries will be as follows:

(1) Interested parties shall file any comments not later than twenty days after receipt of the notification described in paragraph (c) of this section, unless the Secretary alters this time limit;

(2) Not later than the time limit stated in the notification described in paragraph (c) of this section (ordinarily five days after the time limit for filing the comments described in paragraph (d)(1) of this section), any interested party may submit rebuttal comments;

(3) Whenever the Secretary determines that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order. The Secretary will, by mail, notify all interested parties on the Department's service lists of its preliminary scope ruling and provide an invitation for comment. Unless otherwise specified, the Secretary will provide all interested parties thirty days from the date of receipt of the notification for comment;

(4) The Secretary may issue questionnaires or verify submissions received, where appropriate;

(5) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included in the existing order, including an explanation of the factual and legal conclusions on which the final ruling is based. The Secretary will, by certified mail, return receipt requested, notify all interested parties on the Department's service lists of its final scope ruling;

(6) When a § 353.22 review is in progress at the time the Secretary provides the notification outlined in paragraph (c) of this section, the scope inquiry, in the Secretary's discretion, may be conducted in conjunction with a § 353.22(c) review;

(7) Prior to issuing a ruling in accordance with paragraph (d) (3) or (5) of this section or § 353.22(c)(4) or § 353.22(c)(8) to include products within the scope of an order pursuant to—

(i) Paragraph (e) of this section, other than operations in the United States involving minor completion or assembly,

(ii) Paragraph (f) of this section, or

(iii) Paragraph (h) of this section, with respect to later-developed products which incorporate a significant

technological advance or significant alteration of an earlier product, the Secretary will notify the Commission in writing of the proposed inclusion of such products in the order. Upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion, and any such consultation will be completed within 15 days after the date of such request. If the Commission believes, after such consultation, that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order is based; and

(8) On a quarterly basis, the Secretary will publish in the FEDERAL REGISTER a list of scope rulings completed within the last three months. This list will include the case name, reference number, and a brief description of the ruling.

(e) *Products completed or assembled in the United States.*

(1) *In General.* If—

(i) A product sold in the United States is of the same class or kind as merchandise that is the subject of an order, and

(ii) Such product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and

(iii) The difference between the value of such product sold in the United States and the value of the imported parts and components referred to in paragraph (e)(1)(ii) is small,

the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include within the scope of such order the imported parts or components referred to in paragraph (e)(1)(ii) that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include parts or components in an order under paragraph (e)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in paragraph (e)(1) of this section applies; and

(iii) Whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order.

(f) *Products completed or assembled in other foreign countries—(1) In General.* If—

(i) A product imported into the United States is of the same class or kind as the merchandise that is the subject of an order,

(ii) Before importation into the United States, such imported product is completed or assembled in another foreign country from merchandise which is subject to such order, or is produced in the foreign country with respect to which such order applies,

(iii) The difference between the value of such imported product and the value of the merchandise described in paragraph (f)(1)(ii) is small, and

(iv) The Secretary determines that action is appropriate under this paragraph to prevent evasion of such order, the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include such imported products within the scope of such order at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include a product in an order under paragraph (f)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the product described in paragraph (f)(1)(ii) is related to the person who uses the merchandise described in paragraph (f)(1)(ii) to assemble or complete in the foreign country the product that is subsequently imported into the United States; and

(iii) Whether imports into the foreign country of the product described in

paragraph (f)(1)(ii) have increased after the issuance of such order.

(g) *Minor alterations of merchandise—*

(1) *In general.* The class or kind of merchandise subject to an investigation or order will include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) *Exception.* Paragraph (g)(1) of this section will not apply with respect to altered merchandise if the Secretary determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation or order.

(h) *Later-developed products—*(1) *In general.* For purposes of determining whether a product developed after an antidumping investigation is initiated (hereafter in this paragraph referred to as the “later-developed merchandise”) is within the scope of an order, the Secretary will consider whether:

(i) The later-developed product has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the “earlier merchandise”);

(ii) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier merchandise;

(iii) The ultimate use of the earlier merchandise and the later-developed product are the same;

(iv) The later-developed product is sold through the same channels of trade as the earlier merchandise; and

(v) The later-developed product is advertised and displayed in a manner similar to the earlier merchandise.

The Secretary will take into account any advice provided by the Commission under paragraph (d)(7) of this section before making a determination under this paragraph.

(2) *Exclusion from orders.* The Secretary may not exclude later-developed products from an order merely because the products:

(i) Are classified under a tariff classification other than that identified in the petition or the Secretary’s prior notices during the proceeding; or

(ii) Permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the products.

(i) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraph (e) through (h) of this section, in considering whether a particular product is within the class or kind of merchandise described in an existing order, the Secretary will take into account the following:

(1) The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product; and

(iv) The channels of trade.

(j) *Suspension of liquidation.*

(1) When the Secretary initiates a scope inquiry pursuant to paragraph (c) of this section, and the subject product is already subject to suspension of liquidation, that suspension of liquidation will be continued pending a preliminary or a final scope ruling. Any suspension of liquidation will be at the cash deposit of estimated duty rate that will apply if the subject product is ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling pursuant to paragraph (d)(3) of this section to the effect that the subject product is included within the scope of the order, any suspension of liquidation described in paragraph (j)(1) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each suspended entry of the product entered, or withdrawn

from warehouse, for consumption on or after the date of the preliminary scope ruling. If the Secretary issues a preliminary scope ruling to the effect that the subject product is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(3) If the Secretary issues a final scope ruling, pursuant to either paragraph (b) or (d) (5) of this section, to the effect that the subject product is included within the scope of the order, any suspension of liquidation pursuant to paragraph (j)(1) or (j)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the final scope ruling. If the Secretary's final scope ruling is to the effect that the subject product is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(k) *Where to file; time of filing; format and number of copies.* The requirements of § 353.31 (d), (e), (f), and (g) apply to this section.

[55 FR 9049, Mar. 9, 1990]

### Subpart C—Information and Argument

#### § 353.31 Submission of factual information.

(a) *Time limits in general.* (1) Except as provided in § 353.32(b) and paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, seven days before the scheduled date on which the verification is to commence;

(ii) For the Secretary's final results of an administrative review under § 353.22 (c) or (f), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review;

(iii) For the Secretary's final results of an administrative review under § 353.22(h), the earlier of the date of publication of notice of preliminary results of review or 120 days after the date of publication of notice of initiation of the review; or

(iv) For the Secretary's final results of an expedited review under § 353.22(g), a date specified by the Secretary.

(2) Any interested party, as defined in paragraphs (k)(3), (k)(4), (k)(5), and (k)(6) of § 353.2, may submit factual information to rebut, clarify, or correct factual information submitted by an interested party, as defined in paragraph (k)(1) or (k)(2) of § 353.2, at any time prior to the deadline provided in this section for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party or, if appropriate, made available under administrative protective order to the interested party.

(3) The Secretary will not consider in the final determination or the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit. The Secretary will return such information to the submitter with written notice stating the reasons for return of the information.

(b) *Questionnaire responses and other submissions on request.*

(1) Notwithstanding paragraph (a) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(2) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response. The Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication

of the Secretary's preliminary determination. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any untimely or unsolicited questionnaire responses rejected by the Department.

(3) Ordinarily, the Secretary will not extend the time limit stated in the questionnaire or request for other factual information. Before the time limit expires, the recipient of the Secretary's request may request an extension. The request must be in writing and state the reasons for the request. Only the following employees of the Department may approve an extension: the Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Investigations, the Deputy Assistant Secretary for Compliance, and the office or division director responsible for the proceeding. An extension must be approved in writing.

(4) Except as provided in §353.32(b) and subject to the other provisions of paragraph (b) of this section, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

(c) *Time limits for allegations of sales below cost of production.* (1) The Secretary will not consider any allegation of sales below the cost of production that is submitted by the petitioner or other interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of §353.2, later than:

(i) In an investigation 45 days before the scheduled date for the Secretary's preliminary determination, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review under §353.22 (c) or (f), 120 days after the date of publication of the notice of initiation of the review, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit;

(iii) In an administrative review under §353.22(h), 60 days after the date of publication of the notice of initi-

ation of the review, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit; or

(iv) In an expedited review under §353.22(g), 10 days after the date of publication of the notice of initiation of the review.

(2) Any interested party may request in writing not later than the time limits specified in paragraph (c)(1) of this section an extension of those time limits. If the Assistant Secretary for Import Administration concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

(d) *Where to file; time of filing.* Address and submit documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th St., NW., Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days. For all time limits in this part, the Secretary will consider documents received when stamped by the Central Records Unit with the date and time of receipt. If the time limit expires on a non-business day, the Secretary will accept documents that are filed on the next following business day.

(e) *Format and number of copies—(1) In general.* Unless the Secretary alters the requirements of this section, submitters shall make all submissions in the format specified in paragraph (e) of this section. The Secretary may refuse to accept for the record of the proceeding any submission that does not conform to the requirements of paragraph (e) of this section.

(2) *Documents.* In an investigation, submit 10 copies of any document, except a computer printout, and, if a person has requested that the Secretary treat portions of the document as proprietary information, submit five copies of a public version of the document, including any public summaries required under §353.32(b) as substitutes for the portions for which the person has requested proprietary treatment;

and if administrative protective order versions are required to be served pursuant to § 353.31(g) (1) or (2), submit one copy of the cover page, marked as described in paragraph (e)(2)(v), together with only those pages that differ from the public or proprietary versions. In an administrative review, scope inquiry, or downstream product monitoring application, submit seven copies of any document, except a computer printout; and if a person has requested that the Secretary treat portions of the document as proprietary information, submit three copies of a public version of the document, as described above; and submit one copy of any administrative protective order versions required to be served pursuant to § 353.31(g) (1) or (2), as described above. In an investigation, administrative review, scope inquiry, or downstream product monitoring application, submit documents, if prepared for that segment of the proceeding, on letter-size paper, single-sided and double-spaced. Securely bind each copy as a single document with any letter of transmittal as the first page of the document. Mark the first page of each document in the upper right-hand corner with the following information in the following format:

(i) On the first line, except for a petition, the Department case number;

(ii) On the second line, the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

(iii) On the third line, state whether the document is for an investigation, scope inquiry, downstream product monitoring application, or an administrative review and, if the latter, the inclusive dates of the review;

(iv) On the fourth and subsequent lines, state whether any portion of the document contains classified, privileged, or proprietary information and, if so, list the applicable page numbers and state either “Document May be Released Under APO” or “Document May Not be Released Under APO” (see §§ 353.32(c) and 353.34); and

(v) For administrative protective order versions, described in § 353.31(g) (1) or (2), complete the marking as required in paragraphs (i)–(iv) above for the proprietary document, but con-

spicuously mark the first page “APO Version Prepared for [Name of party entitled to receive materials]”; and

(vi) For public versions of proprietary documents, required by § 353.32(b), complete the marking as required in paragraphs (e)(2) (i)–(iv) of this section for the proprietary document, but conspicuously mark the first page “Public Version.”

(3) *Computer tapes and printouts.* The Secretary may require submission of factual information on computer tape unless the Secretary decides that the submitter does not maintain records in computerized form and cannot supply the requested information on computer tape without unreasonable additional burden in time and expense. In an investigation or administrative review, the tape shall be accompanied by three copies of any computer printout and three copies of the public version of the printout.

(f) *Translation to English.* Unless the Secretary waives in writing this requirement for an individual document, any document submitted which is in a foreign language must be accompanied by an English translation.

(g) *Service of copies on other parties.* With the exception of petitions, proposed suspension agreements submitted under § 353.18(g)(1)(i), and factual information submitted under § 353.32(a) that is not required to be served on an interested party, the submitter of a document shall, at the same time, serve a copy of the document on all interested parties on the Department’s service list by first class mail or personal service. In addition, where proprietary information is involved, the submitter shall serve the following administrative protective order versions.

(1) With respect to parties to the proceeding that are subject to administrative protective orders under § 353.34, the submitter of a document shall include that proprietary information that the interested party is entitled to receive under the terms of the administrative protective order, as well as the party’s own proprietary information, but no other proprietary information;

(2) With respect to interested parties that are not subject to an administrative protective order, but when the submission contains that interested

party's proprietary information, the submitter of a document shall serve the interested party with a version that contains just the interested party's own proprietary information.

The Secretary will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served, and, for each, indicating the date and method of service.

(h) *Service list.* The Central Records Unit will maintain and make available a service list for each proceeding. Each interested party which asks to be on the service list shall designate a person to receive service of documents filed in a proceeding.

(i) *Certifications.* Any interested party which submits factual information to the Secretary must submit with the factual information the certification in paragraph (i)(1) and, if the party has legal counsel or another representative, the certification in paragraph (i)(2) of this section:

(1) For the interested party's official responsible for presentation of the factual information:

I, (name and title), currently employed by (interested party), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For interested party's legal counsel or other representative:

I, (name), of (law or other firm), counsel or representative to (interested party), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (interested party), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

[53 FR 12769, Mar. 28, 1988, as amended at 55 FR 9051, Mar. 9, 1990; 57 FR 30902, July 13, 1992; 60 FR 25135, May 11, 1995]

**§353.32 Request for proprietary treatment of information.**

(a) *Submission and content of request.*

(1) Any person who submits factual information to the Secretary in connection with a proceeding may request that the Secretary treat that information, or any specified part, as proprietary.

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page containing such information "Proprietary Treatment Requested" and the warning "Bracketing of proprietary information not final for one business day after date of filing." The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. After the bracketing becomes final, recipients may divulge the public version of the document to anyone not subject to the administrative protective order. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information are permitted after the deadline. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

(3) The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under §353.4. The request and explanation shall be a part of or securely bound with the document containing the information.

(b) *Public summary.* Except as provided in paragraph (b)(3) of this section, not later than one business day after submitting information for which proprietary treatment is requested, any person who requests proprietary treatment shall provide to the Secretary.

(1) An adequate public summary of all proprietary information, incorporated in the public version of the document (generally, numeric data are adequately summarized if grouped or presented in terms of indices, or figures

within 10 percent of the actual figure, and if an individual portion of the data is voluminous, at least one percent representative of that portion is individually summarized in this manner); or

(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.

(3) All requests for proprietary treatment of information contained in petitions submitted under § 353.12 and proposed suspension agreements submitted under § 353.18(g)(1)(i) shall be accompanied by a public summary and statement described in paragraphs (b)(1) and (b)(2) of this section.

(c) *Agreement to release.* All requests for proprietary treatment shall include either an agreement to permit disclosure under administrative protective order, or a statement itemizing which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion. The Secretary ordinarily will not provide the submitter further opportunity for argument on whether to grant a request for disclosure under administrative protective order.

(d) *Return of information as a result of nonconforming request.* The Secretary may return to the submitter any factual information for which the submitter requested proprietary treatment when the request does not conform to the requirements of this section and in any event will not consider the information. If the Secretary returns the information, the Secretary will provide a written explanation of the reasons why it does not conform and will not consider it unless it is resubmitted with a new request which complies with the requirements of this section not later than two business days after receipt of the Department's explanation for rejection of the information.

(e) *Status during consideration of request.* While considering whether to grant a request for proprietary treatment, the Secretary will not disclose or make public the information. The Secretary normally will decide not later than 14 days after the Secretary receives the request.

(f) *Treatment of proprietary information.* Unless the Secretary otherwise provides, the person to whom the Secretary discloses information shall not disclose the information to any other person. The Secretary may disclose factual information which the Secretary decides is proprietary only to:

(1) A representative of an interested party who requests and is granted an administrative protective order under § 353.34;

(2) An employee of the Department directly involved in the proceeding for which the information is submitted;

(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;

(4) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an anti-dumping duty proceeding on the merchandise;

(5) Any person to whom the submitter specifically authorizes (in writing) disclosure; and

(6) A charged party or counsel for the charged party under part 354 of this title (19 CFR Part 354).

(g) *Denial of request for proprietary treatment.* If the Secretary decides that the factual information does not warrant proprietary treatment in whole or in part, the Secretary will notify the submitter. Unless the submitter agrees that the information be considered public, the Secretary will return the information to the submitter with written notice stating the reasons for return of the information and will not consider it in the proceeding.

[54 FR 12769, Mar. 28, 1989; 54 FR 13294, Mar. 31, 1989, as amended at 57 FR 30903, July 13, 1992]

**§ 353.33 Information exempt from disclosure.**

Privileged or classified information is exempt from disclosure to the public or to representatives of interested parties.

**§ 353.34 Disclosure of proprietary information under administrative protective order.**

(a) *In general.* Upon receipt of an application (before or after receipt of the information requested) which describes

in general terms the information requested and sets forth the reasons for the request, the Secretary shall require all proprietary information presented to, or obtained by it, during a segment of a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) to be disclosed to interested parties who are parties to the proceeding under a protective order described in this section, regardless of when the information is submitted during the segment of the proceeding.

(b) *Request for disclosure.* (1) A representative must file a request for disclosure under administrative protective order not later than the later of:

(i) 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation under § 353.11 or § 353.13, or the notice of initiation of administrative review under § 353.22; or

(ii) 30 days after the initiation of a scope inquiry pursuant to § 353.29(a) or (b); or

(iii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 353.38 are due.

(2) The representative must file the request for disclosure on the standard form provided by the Secretary (Form ITA-367). The standard form will require only such particularity in the description of the requested information as is consistent with both the criteria the Secretary uses to decide whether to disclose, and with the fact that a request may be made for factual information not yet submitted.

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized by an administrative protective order to have access to the information;

(ii) To use the information solely for the segment of the proceeding in which it was submitted;

(iii) To ensure the security of the proprietary information at all times; and

(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.

(4) The request shall contain an acknowledgment by the representative that:

(i) A representative determined to have violated a protective order may be subject to any or all of the sanctions listed in part 354 of this title; and

(ii) The firm of which a person determined to have violated a protective order is a partner, associate, or employee, and any partner, associate, employer, or employee of such person, may be subject to any or all of the sanctions listed in part 354 of this title.

(5) The Secretary will decide whether to disclose information under administrative protective order:

(i) Not later than 14 days after the date on which the information is submitted; or

(ii) If—

(A) The person who submitted the information raises objection to its release, or

(B) The information is usually voluminous or complex,

not later than 30 days after the date on which the information is submitted.

(6) If the Secretary decides that disclosure of information under administrative protective order is proper under paragraph (5), above:

(i) With respect to proprietary information submitted to the Secretary on or before the date of the decision to disclose, the submitting party shall, within two business days of the date of decision, serve the party which requested such disclosure, in accordance with § 353.31(g); and

(ii) The submitting party shall serve all future submissions of proprietary information directly on the requesting party as required by § 353.31(g).

(c) *Opportunity to withdraw proprietary information.* If the Secretary decides to require disclosure of proprietary information under administrative protective order without the consent of the submitter, the Secretary will provide to the submitter written notice of the decision and the reasons therefor and will permit the submitter to withdraw the information from the official record within two business days. The Secretary will not consider

withdrawn information. Furthermore, if the submitter does not withdraw the information but fails to serve the party requesting such information, in accordance with § 353.34(b)(6), the Secretary will not consider such information.

(d) *Disposition of proprietary information disclosed under administrative protective order.* (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary decides appropriate, the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information (such as notes or memoranda). The representative at that time must certify to the Secretary full compliance with the terms of the protective order and the return or destruction of all proprietary information.

(2) The representative of a party to the proceeding that files for judicial review or intervenes in the judicial review may retain the proprietary information, provided that the party applies for a court protective order for the information not later than 15 days after the Secretary files the administrative record with the court. If the court denies the party's application for a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information not later than 48 hours after the court's decision and certify to the Secretary as provided under paragraph (d)(1) of this section.

(e) *Violation of administrative protective order.* The procedures for investigating any alleged violation of an administrative protective order issued under this section and for imposing sanctions for a violation of such order are set forth in part 354 of this title (19 CFR Part 354).

[53 FR 12769, Mar. 28, 1988, as amended at 55 FR 9052, Mar. 9, 1990]

**§ 353.35 Ex parte meeting.**

The Secretary will prepare for the official record a written memorandum of any *ex parte* meeting between any person providing factual information in connection with a proceeding and the

person to whom the Secretary has delegated the authority to make the decision in question or the person making a final recommendation to that person. The memorandum will include the date, time, and place of the meeting, the identity and affiliation of all persons present, and a public summary of the factual information submitted.

**§ 353.36 Verification of information.**

(a) *In general.* (1) The Secretary will verify all factual information the Secretary relies on in:

(i) A final determination under § 353.18(i) or § 353.20;

(ii) The final results of an expedited review under § 353.22(g);

(iii) A revocation under § 353.25;

(iv) The final results of an administrative review under § 353.22 (c) or (f) if the Secretary decides that good cause for verification exists; and

(v) The final results of an administrative review under § 353.22(c) if:

(A) An interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) If the Secretary decides that, because of the large number of producers and resellers included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample. The Secretary will apply the results of the verification of the sample to all producers and resellers included in the investigation or review.

(b) *Notice of verification.* In publishing a notice of final determination, revocation, or final results of administrative review, the Secretary will report the methods and procedures used to verify under this section.

(c) *Procedures for verification.* In verifying under this section, the Secretary will notify the government of the foreign country in which verification takes place that employees of the Department will visit with producers or

resellers in order to verify the accuracy and completeness of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, resellers, importers, or unrelated purchasers which the Secretary considers relevant to factual information submitted.

**§ 353.37 Best information available.**

(a) *Use of best information available.* The Secretary will use the best information available whenever the Secretary:

(1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or

(2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

(b) *What is best information available.* The best information available may include the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2. If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available.

**§ 353.38 Written argument and hearings.**

(a) *Written argument.* The Secretary will consider in making the final determination under § 353.18(i) or § 353.20 or the final results under § 353.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary (and received within the time limit specified by the Secretary), that is submitted after the time limits specified in this section. At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States government agency. The Secretary will return to the submitter, with written notice stating the reasons for return of

the document, any written argument submitted after the time limits specified in this section or by the Secretary.

(b) *Request for hearing.* Not later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters this time limit, any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs. To the extent practicable, a party requesting a hearing shall identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a "case brief":

(i) Not later than 50 days after the date of publication of the Secretary's preliminary determination in an investigation, unless the Secretary alters this time limit;

(ii) Not later than 30 days after the date of publication of the preliminary results of administrative review under § 353.22 (c) or (f); or

(iii) At any time specified by the Secretary in an expedited review under § 353.22(g).

(2) The case brief shall separately present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results.

(d) *Rebuttal brief.* Not later than the time limit stated in the notice of the Secretary's preliminary determination or preliminary results (or otherwise specified by the Secretary for an expedited review under § 353.22(g)), ordinarily five days in an investigation and seven days in an administrative review after the time limit for filing the case brief, any interested party or U.S. Government agency may submit a "rebuttal brief." The rebuttal brief shall separately present in full all rebuttal arguments, responding only to arguments raised in case briefs.

(e) *Service of briefs.* The submitter of either a case or rebuttal brief shall serve a copy of that brief on any interested party on the Department's service list and on any U.S. Government agency that has submitted in the segment of the proceeding a case or rebuttal brief. If the party has designated under § 353.31(h) an agent in the United States, service shall be either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United States, service shall be by first class airmail. The submitter shall attach to each brief a certificate of service listing the parties (including agents) served and, for each, the date and method of service.

(f) *Hearings.* If an interested party submits a request under paragraph (b) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review (or otherwise specified by the Secretary in an expedited review under § 353.22(g)), unless the Secretary alters the date. Ordinarily, the hearing will be held, in an investigation, two days after the scheduled date for submission of rebuttal briefs and, in an administrative review, seven days after the scheduled date for submission of rebuttal briefs.

(1) The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

(2) One of the following employees of the Department will chair the hearing: the Assistant Secretary for Import Administration; the Deputy Assistant Secretary for Import Administration; the Deputy Assistant Secretary for Investigations; the Deputy Assistant Secretary for Compliance; or the office or division director responsible for the proceeding.

(3) The hearing is not subject to the Administrative Procedure Act. Witness testimony, if any, shall not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any interested party or wit-

ness and may request interested parties to present additional written argument.

(g) *Where to file; time of filing.* The requirements in § 353.31(d) apply to this section.

(h) *Format and number of copies.* The requirements in § 353.31(e) apply to this section, except that in an administrative review submit 10 copies of each brief and five copies of the public version, including the public summary required under § 353.32(b).

(i) *Public comment on information.* In any investigation or review under this part, the Secretary will specify a date on which the Secretary will cease collecting information and on which the Secretary will release to parties that have participated in the investigation or review all information on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 353.34. Parties shall have an opportunity to file written comments on any information released to them, and the date on which such comments must be filed will be specified by the Secretary. The Secretary will disregard comments containing new factual information.

[54 FR 12769, Mar. 28, 1989, as amended at 60 FR 25136, May 11, 1995]

## Subpart D—Calculation of United States Price, Fair Value, and Foreign Market Value

### § 353.41 Calculation of United States price.

(a) *In general.* *United States price* means the purchase price or the exporter's sales price of the merchandise, as appropriate. In calculating the United States price, the Secretary will use sales or, in the absence of sales, likely sales, as defined in § 353.2(t).

(b) *Purchase price.* "Purchase price" means the price at which the merchandise is sold or likely to be sold prior to the date of importation, by a producer or reseller of the merchandise for exportation to the United States. The Secretary will make appropriate adjustments for costs and expenses under

paragraph (d) of this section if they are not reflected in the sales price to the importer. Whenever purchase price is used and there is reason to believe that the sales price to the importer does not reflect the cost and expenses incident to bringing the merchandise from the country of exportation, then the Secretary will make appropriate adjustments for such cost and expenses under paragraph (d) of this section.

(c) *Exporter's sales price.* "Exporter's sales price" means the price at which merchandise is sold or likely to be sold in the United States, before or after the time of importation, by or for the account of the exporter (defined in section 771(13) of the Act), as adjusted under paragraphs (d) and (e).

(d) *Adjustments to United States price.* (1) The Secretary will increase the United States price by:

(i) When not included in the price, the cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready for shipment to the United States;

(ii) 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 exportation of the merchandise;

(iii) The amount of any taxes imposed in the country of exportation directly on the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise, but only to the extent that such taxes are added to or included in the price of such or similar merchandise sold in the country of exportation; and

(iv) The amount of any countervailing duty imposed on the merchandise to offset an export subsidy.

(2) The Secretary will reduce the United States price by the amount, if included in the price, of:

(i) Except as provided in paragraph (d)(1)(iv), any cost and expenses, and United States import duties incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(ii) Any export tax, duty, or other charge imposed by the country of exportation on the exportation of the

merchandise, other than an export tax, duty, or other charge described in section 771(6)(C) of the Act.

(e) *Additional adjustments to exporter's sales price.* The Secretary also will reduce the exporter's sales price by the amount of:

(1) Commissions for selling in the United States the merchandise;

(2) Expenses generally incurred by or for the account of the exporter in selling the merchandise, or attributable under generally accepted accounting principles to the merchandise; and

(3) Any increased value resulting from a process of production or assembly performed on the merchandise after importation and before sale to a person who is not the exporter of the merchandise, which value the Secretary generally will determine from the cost of material, fabrication, and other expenses incurred in such production or assembly.

#### § 353.42 Fair value.

(a) *Relationship to foreign market value.* Fair value, used during the investigation, is an estimate of foreign market value. Except as otherwise specifically noted, a reference in this subpart to "foreign market value" applies to "fair value," but a reference to "fair value" in this subpart does not necessarily apply to "foreign market value."

(b) *Sales examined.* (1) The Secretary normally will examine not less than 60 percent of the dollar value or volume of the merchandise sold during a period of at least 150 days prior to and 30 days after the first day of the month during which the petition was filed or the Secretary initiated the investigation under § 353.11, but the Secretary may examine the merchandise for any additional or alternative period the Secretary concludes is appropriate.

(2) If the Secretary examines less than 85 percent of the dollar value or volume of the merchandise sold during the period described in paragraph (b)(1), the Secretary will notify the affected foreign government what percentage of total sales are being examined.

**§ 353.43 Sales used in calculating foreign market value.**

(a) *Sales and offers for sale.* In calculating foreign market value, the Secretary will use sales, as defined in § 353.2(t), and offers for sale, but the Secretary normally will consider offers only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(b) *Fictitious sales and offers.* In calculating foreign market value, the Secretary will reject any fictitious sale or offer.

(c) *Restricted sales.* When sales used to calculate foreign market value are restricted, the Secretary will adjust the price, as appropriate, to compensate for restrictions that affect the value of the merchandise to the purchasers.

**§ 353.44 Sales at varying prices.**

(a) *Weighted-average price or prices.* If the sales which the Secretary may use to calculate foreign market value vary in price (after allowances provided for in §§ 353.55, 353.56, 353.57, and 353.58), the Secretary normally will calculate foreign market value based on the weighted average of those prices.

(b) *Preponderant price.* If not less than 80 percent of the sales which the Secretary may use to calculate foreign market value during the period under examination were made at the same price, the Secretary will calculate foreign market value based on the sales at that price.

(c) *Other reasonable method.* If the Secretary decides that paragraph (b) does not apply and that paragraph (a) is inappropriate, the Secretary will use any other method for calculating foreign market value which the Secretary deems appropriate.

(d) *Sales below cost of production.* For purposes of paragraph (a) or (b), the Secretary will not use sales disregarded under § 353.51.

**§ 353.45 Transactions between related persons.**

(a) *Sales to a related person.* If a producer or reseller sold such or similar merchandise to a person related as described in section 771(13) of the Act, the Secretary ordinarily will calculate foreign market value based on that sale

only if satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.

(b) *Sales through a related person.* If a producer or reseller sold such or similar merchandise through a person related as described in section 771(13) of the Act, the Secretary may calculate foreign market value based on the sale by such related person.

**§ 353.46 Calculation of foreign market value based on price in the home market country.**

(a) *In general.* (1) The Secretary ordinarily will calculate the foreign market value of the merchandise based on the price at which such or similar merchandise is sold or offered for sale in the principal markets of the home market country, in the usual commercial quantities and in the ordinary course of trade for home consumption, plus, when not included in the price, the cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready for shipment to the United States.

(2) When United States price is based on purchase price, under § 353.41(b), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the producer or reseller sells the merchandise for exportation to the United States.

(3) When United States price is based on exporter's sales price, under § 353.41(c), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the importer sells the merchandise in the United States to a person not related under section 773(e)(4) of the Act.

(b) *Ordinary course of trade.* In determining the ordinary course of trade, the Secretary will consider the conditions and practices which, for a reasonable period prior to the time described in paragraph (a), have been normal in the trade of merchandise of the same class or kind in the home market country.

(c) *Transshipments.* If the merchandise is not imported directly from the home market country but is merely transshipped through another country, the Secretary will not, except under

§353.47, calculate foreign market value based on the price at which such or similar merchandise is sold in the country of transshipment.

**§353.47 Exportation from an intermediate country.**

The Secretary will calculate the foreign market value of such or similar merchandise based on sales in the intermediate country rather than sales in the home market country if:

- (a) A reseller in an intermediate country purchases the merchandise from the producer;
- (b) The producer of the merchandise does not know (at the time of the sale to that reseller) the country to which such reseller intends to export the merchandise;
- (c) The merchandise enters the commerce of the intermediate country but is not substantially transformed in that country; and
- (d) The merchandise subsequently is exported to the United States.

**§353.48 Calculation of foreign market value if sales in the home market country are inadequate.**

(a) *In general.* Except as provided in §353.53, if the quantity of such or similar merchandise sold during the period being examined for consumption in the home market country is so small in relation to the quantity sold for exportation to third countries (normally, less than five percent of the amount sold to third countries) that it is an inadequate basis for the foreign market value of the merchandise, the Secretary will calculate the foreign market value of the merchandise under either §353.49 or §353.50.

(b) *Preference for third country sales.* The Secretary normally will prefer foreign market value based on sales to a third country rather than on constructed value if adequate information is available and can be verified, if a verification is conducted, within the time required.

(c) *Definition of "third country."* For purposes of this section and of §353.49, a *third country* means any country other than the home market country or the United States.

**§353.49 Calculation of foreign market value based on sales to a third country.**

(a) *In general.* (1) If foreign market value is based on sales to a third country, the Secretary will calculate the foreign market value based on the price at which such or similar merchandise is sold or offered for sale to a third country, plus, when not included in the price, the cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready for shipment to the United States.

(2) When United States price is based on purchase price, under §353.41(b), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the producer or a reseller sells the merchandise for exportation to the United States.

(3) When United States price is based on exporter's sales price, under §353.41(c), the Secretary will calculate foreign market value, under paragraph (a)(1), based on the price at the time the importer sells the merchandise in the United States to a person not related under section 773(e)(4) of the Act.

(b) *Selection of third country.* The Secretary generally will select the third country based on the following criteria:

(1) Such or similar merchandise exported to the country is more similar to the merchandise exported to the United States than is such or similar merchandise exported to other countries, and the Secretary decides that the volume of sales to the country is adequate;

(2) The volume of sales to the country is the largest to any country other than the home market country or the United States; and

(3) The market in the country, in terms of organization and development, is most like the United States market.

(c) *Selection of more than one third country.* In order to find adequate sales under paragraph (b), the Secretary may aggregate sales to more than a single third country.

**§ 353.50 Calculation of foreign market value based on constructed value.**

(a) *Method of calculating constructed value.* If foreign market value is based on constructed value, the Secretary will calculate the foreign market value by adding:

(1) The cost of materials used in producing such or similar merchandise (exclusive of any internal tax in the home market country applied directly to the materials or their disposition, but remitted or refunded upon exportation) and the cost of fabrication or other processing of any kind used in producing such or similar merchandise, at a time specified in paragraph (b) which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) General expenses and profit usually reflected in sales of merchandise of the same class or kind as the merchandise by producers in the home market country, in the usual commercial quantities and in the ordinary course of trade, except that the amount for general expenses shall not be less than 10 percent of the cost under paragraph (a)(1) and the amount for profit shall not be less than 8 percent of the sum of the amount for general expenses and the cost under paragraph (a)(1); and

(3) The cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready for shipment to the United States.

(b) *Time for calculating constructed value.* (1) When United States price is based on purchase price, under § 353.41(b), the Secretary will calculate constructed value, under paragraph (a), based on the relevant costs and expenses at a time preceding the time the producer or a reseller sells the merchandise for exportation to the United States.

(2) When United States price is based on exporter's sales price, under § 353.41(c), the Secretary will calculate constructed value, under paragraph (a), based on the relevant costs and expenses at a time preceding the time the importer sells the merchandise in the United States to a person not related under section 773(e)(4) of the Act.

(c) *Transactions with related parties.* In calculating constructed value under paragraph (a), the Secretary may disregard any direct or indirect transaction between persons related under section 773(e)(4) of the Act for any element of value required to be considered under paragraph (a) that does not fairly reflect the usual amount for sales in that market of that element. If the Secretary disregards a transaction and there are no other transactions available for consideration, the Secretary will calculate the amount based on available information as to what the amount would have been if the transaction had occurred between persons not related.

**§ 353.51 Calculation of foreign market value if sales are made at less than cost of production.**

(a) *Disregarding sales at less than cost.* If the Secretary has reasonable grounds to believe or suspect that the sales on which the Secretary could base the calculation of foreign market value under § 353.46, § 353.49, or § 353.53 are at prices less than the cost of production, the Secretary, in calculating foreign market value, will disregard such sales if they:

(1) Have been made over an extended period and in substantial quantities; and

(2) Are not at prices which permit recovery of all costs within a reasonable period in the normal course of trade.

(b) *Use of constructed value if above-cost sales are inadequate.* If the Secretary disregards sales under paragraph (a), and concludes that the remaining sales at not less than the cost of production are inadequate for calculating foreign market value, the Secretary will calculate foreign market value based on constructed value under § 353.50.

(c) *Calculation of cost of production.* The Secretary will calculate the cost of production based on the cost of materials, fabrication, and general expenses, but excluding profit, incurred in producing such or similar merchandise.

**§ 353.52 Calculation of foreign market value of merchandise from state-controlled-economy countries.**

(a) *In general.* If the Secretary determines that the economy of the home market country is state-controlled to the extent that sales or offers for sale of such or similar merchandise in that country or to a third country do not permit calculation of foreign market value under § 353.46, § 353.49, or § 353.53, the Secretary will calculate foreign market value based on, in order of preference:

(1) The prices, calculated in accordance with § 353.46 or § 353.49, at which such or similar merchandise produced in a non-state-controlled-economy country is sold either:

(i) For consumption in that country; or

(ii) To another country, including the United States; or

(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country, calculated in accordance with § 353.50.

(b) *Comparability of economies.* For purposes of paragraph (a), the Secretary will select, in order of preference, prices or costs in:

(1) A non-state-controlled-economy country other than the United States at a stage of economic development that the Secretary concludes is comparable to that of the home market country, based on generally recognized criteria, including per capita gross national product and infrastructure development (particularly in the industry producing such or similar merchandise);

(2) A non-state-controlled-economy country other than the United States that is not at a stage of economic development comparable to that of the home market country (in which case the Secretary will adjust the foreign market value for known differences in the costs of material and fabrication); or

(3) The United States.

(c) *Use of factors of production.* If such or similar merchandise is not produced in a non-state-controlled-economy country which the Secretary concludes to be comparable in terms of economic development to the home market country, the Secretary may calculate the

foreign market value using constructed value based on factors of production incurred in the home market country in producing the merchandise, including, but not limited to, hours of labor required, quantities of raw materials employed, and amounts of energy consumed, if the Secretary obtains and verifies such information from the producer of the merchandise in the home market country. The Secretary will value the factors of production in a non-state-controlled-economy country which the Secretary considers comparable in economic development to the home market country. The Secretary will include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act, and the cost of containers, coverings, and other expenses, as required by section 773(e)(1)(C) of the Act.

**§ 353.53 Calculation of foreign market value based on sales by a multinational corporation.**

The Secretary will calculate the foreign market value of merchandise sold by certain multinational corporations described in section 773(d) of the Act in accordance with provisions of that section.

**§ 353.54 Claims for adjustment to foreign market value.**

Any interested party that claims an adjustment under §§ 353.55 through 353.58 must establish the claim to the satisfaction of the Secretary.

**§ 353.55 Differences in quantities.**

(a) *In general.* In comparing the United States price with foreign market value, the Secretary normally will use sales of comparable quantities of merchandise. The Secretary will make a reasonable allowance for any difference in quantities, to the extent that the Secretary is satisfied that the amount of any price differential is wholly or partly due to that difference in quantities. In making the allowance, the Secretary will consider, among other things, the practice of the industry in the relevant country with respect to affording quantity discounts to those which purchase in the ordinary course of trade.

(b) *Sales with quantity discount in calculating foreign market value.* The Secretary will calculate foreign market value based on sales with quantity discounts if:

(1) During the period examined or during a more representative period, the producer or reseller granted quantity discounts of at least the same magnitude on 20 percent or more of sales of such or similar merchandise for the relevant country; or

(2) The 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 foreign market value.* If the producer or reseller does not satisfy the conditions in paragraph (b), the Secretary will calculate foreign market value based on a weighted-average price or prices that include sales at a discount.

(d) In determining whether a discount has been given, the existence of a published price list reflecting such a discount will not be controlling. A price list ordinarily will be accepted only if, in the line of trade and market under consideration, the producer or reseller demonstrates that it has adhered to its price list.

**§ 353.56 Differences in circumstances of sale.**

(a) *In general.* (1) In calculating foreign market value, the Secretary will make a reasonable allowance for a *bona fide* difference in the circumstances of the sales compared if the Secretary is satisfied that the amount of any price differential is wholly or partly due to such difference. In general, the Secretary will limit allowances to those circumstances which bear a direct relationship to the sales compared.

(2) Differences in circumstances of sale for which the Secretary will make reasonable allowances normally are those involving differences in commissions, credit terms, guarantees, warranties, technical assistance, and servicing. The Secretary also will make reasonable allowances for differences in selling costs (such as advertising) incurred by the producer or reseller but normally only to the extent that such

costs are assumed by the producer or reseller on behalf of the purchaser from that producer or reseller.

(b) *Special rule.* (1) Notwithstanding paragraph (a), 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 consideration and no commission is paid in the other market under consideration, but 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.

(2) In comparisons with exporter's sales price, the Secretary will make a reasonable deduction from foreign market value for all expenses, other than those described in paragraph (a)(1) or (a)(2), incurred in selling such or similar merchandise up to the amount of the expenses, other than those described in paragraph (a)(1) or (a)(2), incurred in selling the merchandise.

(c) *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 producer or reseller but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

**§ 353.57 Differences in physical characteristics.**

(a) *In general.* In calculating foreign market value, the Secretary will make a reasonable allowance for differences in the physical characteristics of merchandise compared to the extent that the Secretary is satisfied that the amount of any price differential is wholly or partly due to such difference.

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in physical characteristics, the Secretary normally will consider differences in the cost of production but, where appropriate, 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.

**§ 353.58 Level of trade.**

The Secretary normally will calculate foreign market value and United States price based on sales at the same commercial level of trade. If sales at the same commercial level of trade are insufficient in number to permit an adequate comparison, the Secretary will calculate foreign market value based on sales of such or similar merchandise at the most comparable commercial level of trade as sales of the merchandise and make appropriate adjustments for differences affecting price comparability.

**§ 353.59 Disregarding insignificant adjustments; use of averaging and sampling.**

(a) *Insignificant adjustments.* The Secretary may disregard adjustments to foreign market value which are insignificant. Ordinarily, the Secretary will disregard individual adjustments 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 foreign market value. Groups of adjustments are differences in circumstances of sale, differences in the physical characteristics of the merchandise, and differences in the levels of trade.

(b) *Averaging or sampling.* (1) In calculating United States price or foreign market value, the Secretary may use averaging or generally recognized sampling techniques whenever a significant volume of sales or number of adjustments are involved.

(2) The Secretary will select the appropriate representative samples.

**§ 353.60 Conversion of currency.**

(a) *Rule for conversion.* The Secretary will convert, under section 522 of the Act (31 U.S.C. 5151(c)), a foreign currency into the equivalent amount of United States currency at the rates in effect on the dates described in § 353.46, § 353.49, or § 353.50, as appropriate.

(b) *Special rules for investigations.* For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is

affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any difference between United States price and foreign market value resulting solely from such exchange rate fluctuation.

**Subpart E—Effective Dates****§ 353.71 Effective dates of amendments to the Tariff Act of 1930 made by the Omnibus Trade and Competitiveness Act of 1988.**

In accordance with section 1337 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100-418) (“the 1988 Act”), the amendments to the Tariff Act of 1930 made by the 1988 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f) of this section, all amendments made by Title I, Subtitle C, Part II of the 1988 Act which affect authorities administered by the Secretary are deemed effective as of August 23, 1988.

(b) Amendments made by sections 1312, 1315, 1316, 1318, 1325, 1326, 1327, 1331, and 1332 of the 1988 Act which affect authorities administered by the Secretary are deemed to take effect immediately with respect to all investigations, section 736(c) reviews, or section 751 reviews initiated after August 23, 1988.

(c) The amendment made by section 1324 of the 1988 Act which affects authorities administered by the Secretary is deemed to apply only to investigations initiated after August 23, 1988.

(d) The amendments made by sections 1321(a) and 1334 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after August 23, 1988.

(e) The amendments made by sections 1321(b) and 1335 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after August 23, 1988.

(f) The amendment made by section 1319 is deemed effective with respect to

all section 736(c) and section 751 reviews initiated on or after August 23, 1988, as well as to all section 736(c) and section 751 reviews for which there is a request for revocation pending on August 23, 1988.

(g) Notwithstanding the provisions of paragraphs (a) through (f) of this section, the Secretary may implement the amendments of the 1988 Act at a date later than August 23, 1988, if the Secretary determines that implementation in accordance with paragraphs (a) through (f) of this section would prevent the Department from complying with other requirements of law.

[55 FR 9052, Mar. 9, 1990]

**ANNEX I—TIME LIMITS FOR SUBMISSIONS SPECIFIED IN THIS PART**

Description of time limit <sup>1</sup>	Section
Administrative protective order:	
Request for disclosure under .....	353.34(b)
Return of information released under .....	353.34(d)
Withdrawal of information subject to .....	353.34(c)
Administrative review:	
Request for changed circumstances review .....	353.22(f)
Request for review of all exporters covered by suspension agreement .....	353.22(a)
Request for review of specified producers or resellers .....	353.22(a)
Withdrawal of request for review .....	353.22(a)
Commission:	
Filing of petition with .....	353.12(c)
Request for review of revised suspension agreement .....	353.19(b)
Request for review of suspension agreement .....	353.18(i)
Critical circumstances findings:	
Request for .....	353.16(a)
Request for final finding only .....	353.16(d)
Request for preliminary and final finding .....	353.16(b)
Exclusion from order:	
Request for .....	353.14(a)
Factual information:	
Questionnaire responses in administrative reviews .....	353.31(b)
Request for disclosure of, under protective order .....	353.34(b)
Request for extension of time limits to submit .....	353.31(b)
Request for extension of time limits to submit allegations .....	353.31(c)
Submission of, regarding preliminarily accepted suspension agreements .....	353.18(q)
Submission of allegations regarding sales below the cost of production .....	353.31(c)
Submission of standing allegations .....	353.31(c)
Submissions of, in general .....	353.31(a)
Withdrawal of, subject to disclosure under protective order .....	353.34(c)
Final determination:	
Request to postpone .....	353.20(b)
Hearings:	
Requests for .....	353.38(b)
Petition:	
Amendment to .....	353.12(e)
Filing with the Commission .....	353.12(c)

Description of time limit <sup>1</sup>	Section
Postponement of determinations:	
Request to postpone final .....	353.20(b)
Petitioner's request to postpone preliminary .....	353.15(c)
Preliminary determination:	
Petitioner's request to postpone .....	353.15(c)
Waiver of verification .....	353.15(e)
Proprietary information:	
Request for treatment as .....	353.32(a)
Resubmission of, in proper form .....	353.32(d)
Submission of agreement to release under protective order .....	353.32(c)
Submission of public summary .....	353.32(b)
Revocation of order:	
Request for .....	353.25(b)
Objections to, in the absence of requests for review .....	353.25(d)
Sales below cost of production:	
Allegation of .....	353.31(c)
Service:	
Preliminarily accepted suspension agreements .....	353.18(g)
Case and rebuttal briefs .....	353.38(e)
Standing:	
Allegation of lack of .....	353.31(c)
Suspension of investigation:	
Request for Commission review of agreement .....	353.18(i)
Request for Commission review of revised agreement .....	353.19(b)
Request for termination of .....	353.25(b)
Request to continue investigation .....	353.18(i)
Service of preliminarily accepted agreement .....	353.18(g)
Submission of factual information .....	353.18(g)
Submission of proposed agreement .....	353.18(g)
Submission of written argument .....	353.18(g)
Termination of suspended investigation:	
Request for .....	353.25(b)
Objections to, in the absence of requests for review .....	353.25(d)
Verification:	
Request for in administrative reviews .....	353.36(a)
Waiver of .....	353.15(e)
Written argument:	
Submission of case brief .....	353.38(c)
Submission of rebuttal brief .....	353.38(d)
Service of case and rebuttal briefs .....	353.38(e)
Submission of, regarding preliminarily accepted suspension agreements .....	353.18(g)

<sup>1</sup> Documents are filed when stamped by the Central Records Unit of the Department of Commerce. See § 353.31(d) for hours of operation.

**PART 354—PROCEDURES FOR IMPOSING SANCTIONS FOR VIOLATION OF AN ANTIDUMPING OR COUNTERVAILING DUTY PROTECTIVE ORDER**

- Sec.
- 354.1 Scope.
- 354.2 Definitions.
- 354.3 Sanctions.
- 354.4 Suspension of rules.
- 354.5 Report of violation and investigation.
- 354.6 Initiation of proceedings.
- 354.7 Charging letter.
- 354.8 Interim sanctions.
- 354.9 Request for a hearing.
- 354.10 Discovery.

- 354.11 Prehearing conference.
- 354.12 Hearing.
- 354.13 Proceeding without a hearing.
- 354.14 Initial decision.
- 354.15 Final decision.
- 354.16 Reconsideration.
- 354.17 Confidentiality.

AUTHORITY: 5 U.S.C. 301, and sec. 777 of the Tariff Act of 1930, as amended by sec. 619 of The Trade and Tariff Act of 1984, Pub. L. 93-573, 98 Stat. 2948, 3038, and sec. 1886(a)(13) of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085.

SOURCE: 53 FR 47920, Nov. 28, 1988, unless otherwise noted.

#### § 354.1 Scope.

This part sets forth the procedures for imposing sanctions for violation of an administrative protective order issued under 19 CFR 353.30 or 355.20, or successor regulations, as authorized by 19 U.S.C. 1677f(c).

#### § 354.2 Definitions.

For purposes of this part:

- (a) *Affected party* means a party against whom sanctions have been proposed but who is not a charged party;
- (b) *APO Sanctions Board* means the Administrative Protective Order Sanctions Board;
- (c) *Charged party* means a person who is charged by the Deputy Under Secretary with violating a protective order;
- (d) *Chief Counsel* means Chief Counsel for Import Administration, or designee;
- (e) *Date of service* means the day a document is deposited in the mail or delivered in person;
- (f) *Days* means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;
- (g) *Department* means Department of Commerce;
- (h) *Deputy Under Secretary* means Deputy Under Secretary for International Trade, or designee;
- (i) *Director* means an Office Director under the Deputy Assistant Secretary for Investigations, International Trade Administration, or designee, who shall be responsible for conducting an investigation of an alleged violation of an administrative protective order if the incident is discovered during an administrative review, or an Office Director under the Deputy Assistant Secretary

for Compliance, International Trade Administration, or designee, if the incident is discovered during any other time;

(j) *Lesser included sanction* means a sanction of the same type but of more limited scope than the proposed sanction; thus a one-year bar on representations before the International Trade Administration is a lesser included sanction of a proposed seven-year bar;

(k) *Parties* means the Department and the charged party or affected party in an action under this part;

(l) *Person* means an individual, partnership, corporation, association, organization, or other entity;

(m) *Presiding official* means the person authorized to conduct hearings in administrative proceedings or to rule on any motion or make any determination under this part, who may be an Administrative Law Judge, a Hearing Commissioner, or such other person who is not under the supervision or control of the Assistant Secretary for Import Administration, the Deputy Under Secretary for International Trade, the Chief Counsel for Import Administration, or a member of the APO Sanctions Board;

(n) *Proprietary information* means information the disclosure of which the Secretary has decided is limited under 19 CFR 353.29 or 355.19, including business or trade secrets; production costs; distribution costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the gross net subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

(o) *Protective order* means an administrative protective order issued by the Secretary under 19 CFR 353.30 or 355.20; and

(p) *Under Secretary* means Under Secretary for International Trade, or designee.

#### § 354.3 Sanctions.

- (a) A person determined under this part to have violated a protective order

may be subjected to any or all of the following sanctions:

(1) Barring such person from appearing before the International Trade Administration to represent another for a designated time period from the date of publication in the FEDERAL REGISTER of a notice that a violation has been determined to exist;

(2) Denying the person access to proprietary information for a designated time period from the date of publication in the FEDERAL REGISTER of a notice that a violation has been determined to exist;

(3) Other appropriate administrative sanctions, including striking from the record any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect; and

(4) Requiring the person to return material previously provided by the Department and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order.

(b) (1) The firm of which a person determined to have violated a protective order is a partner, associate or employee; any partner, associate, employer, or employee of such person; and any person represented by such person may be barred from appearing before the International Trade Administration for a designated time period from the date of publication in the FEDERAL REGISTER of notice that a violation has been determined to exist or may be subjected to the sanctions set forth in paragraph (a) of this section, as appropriate.

(2) Each person against whom sanctions are proposed under paragraph (b)(1) of this section is entitled to all the administrative rights set forth in this part separately and apart from rights provided to a person subject to sanctions under paragraph (a) of this section, including the right to a charging letter, right to representation, and right to a hearing, but subject to joinder or consolidation by a presiding official under §354.12(b).

#### §354.4 Suspension of rules.

Upon request by the Deputy Under Secretary, a charged or affected party, or the APO Sanctions Board, a presiding official may modify or waive any rule in the part upon determining that no party will be unduly prejudiced and the ends of justice will thereby be served and upon notice to all parties.

#### §354.5 Report of violation and investigation.

(a) An employee of the Department of Commerce who has information indicating that the terms of an administrative protective order have been violated will provide the information to the appropriate Director or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of an administrative protective order, from an employee of the Department of Commerce or any other person, the appropriate Director will conduct an investigation concerning whether there was a violation of a protective order, and who was responsible for the violation, if any. For purposes of this part, the Director will be supervised by the Deputy Under Secretary for International Trade with guidance from the Chief Counsel. The Director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the Director, could have been discovered through the exercise of reasonable and ordinary care.

(c) The appropriate Director will provide a report of the investigation to the Deputy Under Secretary, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the appropriate Director's request, and if extraordinary circumstances exist, the Deputy Under Secretary may grant the appropriate Director up to an additional 180 days to conduct the investigation and submit the report.

(d) The following examples of actions that constitute violations of an administrative protective order shall serve as guidelines to each person subject to a protective order. These examples do not represent an exhaustive list. Evidence that one of the acts described in

the guidelines has been committed, however, shall be considered by the Deputy Under Secretary as reasonable cause to believe a person has violated a protective order, within the meaning of § 354.6.

(1) Disclosure of proprietary information to any person not granted access to that information by protective order, including an employee of the Department not directly concerned with carrying out the investigation in connection with which the information is submitted, an employee of any other United States Government agency, or a member of Congress.

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including maintaining a log showing when each proprietary document is used, and by whom, and requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

(3) Loss of proprietary information.

(4) Failure to return or destroy all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the administrative protective order.

(5) Failure to delete proprietary information from the public version of a brief or other correspondence filed with the Department.

(6) Disclosure of proprietary information during a public hearing.

(7) Use of proprietary information submitted for one investigation or administrative review during a different investigation or administrative review.

(8) Use of proprietary information submitted in one investigation or administrative review in a separate investigation or administrative review of a product from the same or different country.

(9) Use of proprietary information submitted for a countervailing duty investigation or administrative review during an antidumping duty investiga-

tion or administrative review, or vice versa.

#### **§ 354.6 Initiation of proceedings.**

If the Deputy Under Secretary concludes, after an investigation and report by the appropriate Director under § 354.5(c) and consultation with the Chief Counsel, that there is reasonable cause to believe that a person has violated a protective order and that sanctions are appropriate for the violation, the Deputy Under Secretary will initiate a proceeding under this part by issuing a charging letter as set forth in § 354.7. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. The Deputy Under Secretary will decide whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

#### **§ 354.7 Charging letter.**

(a) *Contents of Letter.* The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that a protective order has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before a presiding official if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and amending the charging letter.* The Deputy Under Secretary may amend, supplement, or withdraw the charging letter at any time with the approval of a presiding official if the interests of justice would thereby be served. If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint a presiding official to make this determination. If a charging letter is withdrawn after a request for a hearing, the presiding official will determine whether the withdrawal will bar the Deputy Under Secretary from seeking sanctions at a later date for the same alleged violation. If there has been no request for a hearing, or if supporting information has not been submitted under §354.13, the withdrawal will not bar future actions on the same alleged violation. The Deputy Under Secretary and a charged or affected party may settle a charge brought under this part by mutual agreement at any time after service of the charging letter; approval of the presiding official or the APO Sanctions Board is not necessary.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that satisfies the due process requirements under United States law with respect to notice in administrative proceedings.

#### §354.8 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under §354.7 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department or others, including the protection of proprietary information, the Deputy Under Secretary may petition a presiding official to impose such sanctions.

(b) The presiding official may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order and the Department is likely to prevail in obtaining sanctions under this part,

(2) The Department or others are likely to suffer irreparable harm if the interim sanctions are not imposed, and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department or others, including, but not limited to:

(1) Denying a person further access to proprietary information.

(2) Barring a person from representing another person before the International Trade Administration.

(3) Barring a person from appearing before the International Trade Administration, and

(4) Requiring the person to return material previously provided by the Department and all other materials

containing the proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the presiding official to support the request. The notice will include a reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the presiding official. The presiding official has discretion to permit oral presentations and to allow further submissions.

(f) The presiding official will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this part will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the presiding official and expires automatically upon the issuance of a final order.

(i) The presiding official may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the presiding official as necessary to prevent undue harm to the Department, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the presiding official determines otherwise.

(j) The Deputy Under Secretary may request a presiding official to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer

than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The presiding official may impose emergency interim sanctions upon determining that the Department is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The presiding official will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint a presiding official for making determinations under this section.

#### **§ 354.9 Request for a hearing.**

(a) Any party may request a hearing by submitted a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, the Under Secretary will appoint a presiding official to conduct the hearing and render an initial decision.

#### **§ 354.10 Discovery.**

(a) *Voluntary discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding.

(b) *Interrogatories and requests for admissions or production of documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and a party concerned may then apply to the presiding official for such enforcement or protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled,

unless the presiding official specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the presiding official may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the presiding official may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The presiding official may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the presiding official may make any determination or enter any order in the proceedings as he or she deems reasonable and appropriate. The presiding official may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the presiding official will consider the necessity to protect proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

(e) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint a presiding official to rule on motions under this section.

#### §354.11 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the presiding official will direct the parties to attend a prehearing conference to consider:

- (i) Simplification of issues;
- (ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;
- (iii) Settlement of the matter;
- (iv) Discovery; and
- (v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the presiding official will direct the parties to correspond with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

#### §354.12 Hearing.

(a) *Scheduling of hearing.* The presiding official will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the presiding official determines otherwise based upon good cause shown that another location would better serve the interests of justice. In setting the date, the presiding official will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or consolidation.* The presiding official may order joinder or consolidation if sanctions are proposed against more than one party or if violations of more than one protective order are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing procedures.* Hearings will be conducted in a fair and impartial manner by the presiding official, who may limit attendance at any hearing

or portion thereof if necessary or advisable in order to protect proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the presiding official determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and given appropriate weight. The presiding official may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The presiding official will ensure that a record of the hearing be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect proprietary information.

(d) *Rights of parties.* At a hearing each party shall have the right to:

- (1) Introduce and examine witnesses and submit physical evidence,
- (2) Confront and cross-examine adverse witnesses,
- (3) Present oral argument, and
- (4) Receive a transcript or recording of the proceedings, upon request, subject to the presiding official's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief Counsel will represent the Department, unless the General Counsel determines otherwise. The presiding official may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

(f) *Ex parte communications.* The parties and their representatives may not make any *ex parte* communications to the presiding official concerning the merits of the allegations or any matters at issue, except as provided in § 354.8 regarding emergency interim sanctions.

**§ 354.13 Proceeding without a hearing.**

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a

charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

**§ 354.14 Initial decision.**

(a) *Initial decision.* The presiding official, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The presiding official or Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record, and the pleadings of the parties.

(b) *Findings and conclusions.* The initial decision will state findings and conclusions as to whether a person has violated a protective order; the basis for those findings and conclusions; and whether the sanctions proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The presiding official or Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a finding of violation of a protective order and that the sanctions are warranted against the charged or affected party. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the presiding official or the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case.

(c) *Finality of decision.* If the APO Sanctions Board has not issued a decision on the matter within 60 days after

issuance of the initial decision, the initial decision becomes the final decision of the Department.

**§354.15 Final decision.**

(a) *APO Sanctions Board.* Upon request of a party, the initial decision will be reviewed by the members of the APO Sanctions Board. The Board consists of the Under Secretary for International Trade, who shall serve as Chairperson, the Under Secretary for Economic Affairs, and the General Counsel.

(b) *Comments on initial decision.* Within 30 days after issuance of the initial decision, a party may submit written comments to the APO Sanctions Board on the initial decision, which the Board will consider when reviewing the initial decision. The parties have no right to an oral presentation, although the Board may allow oral argument in its discretion.

(c) *Final decision by the APO Sanctions Board.* Within 60 days but not sooner than 30 days after issuance of an initial decision, the APO Sanctions Board may issue a final decision which adopts the initial decision in its entirety; differs in whole or in part from the initial decision, including the imposition of lesser included sanctions; or remands the matter to the presiding official or Deputy Under Secretary for further consideration. The only sanctions that the Board can impose are those sanctions proposed in the charging letter or lesser included sanctions.

(d) *Contents of final decision.* If the final decision of the APO Sanctions Board does not remand the matter and differs from the initial decision, it will state findings and conclusions which differ from the initial decision, if any, the basis for those findings and conclusions, and the sanctions which are to be imposed, to the extent they differ from the sanctions in the initial decision.

(e) *Public notice of sanctions.* If the final decision is that there has been a violation of a protective order and that sanctions are to be imposed, notice of the Department's decision will be published in the FEDERAL REGISTER. Such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has

been denied, if such a motion was filed. The Deputy Under Secretary will also provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under paragraph (a)(1) of §354.3 and to any Federal agency likely to have an interest in the matter and will cooperate in any disciplinary actions by any association or agency.

**§354.16 Reconsideration.**

Any party may file a motion for reconsideration with the APO Sanctions Board. The party must state with particularity the grounds for the motion, including any facts or points of law which the party claims the APO Sanctions Board has overlooked or misapplied. The party may file the motion within 30 days of the issuance of the final decision or the adoption of the initial decision as the final decision, except that if the motion is based on the discovery of new and material evidence which was not known, and could not reasonably have been discovered through due diligence prior to the close of the record, the party shall file the motion within 15 days of the discovery of the new and material evidence. The party shall provide a copy of the motion to all other parties. Opposing parties may file a response within 30 days of the date of service of the motion. The response shall be considered as part of the record. The parties have no right to an oral presentation on a motion for reconsideration, but the Board may permit oral argument at its discretion. If the motion to reconsider is granted, the Board will review the record and affirm, modify, or reverse the original decision or remand the matter for further consideration to a presiding official or the Deputy Under Secretary, as warranted.

**§354.17 Confidentiality.**

(a) All proceedings involving allegations of a violation of a protective order shall be kept confidential until such time as the Department makes a final decision under these regulations, no longer subject to reconsideration, imposing a sanction.

(b) The charged party or counsel for the charged party will be granted access to proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of 19 CFR 353.30 and §355.20, or their successor regulations.

## PART 355—COUNTERVAILING DUTIES

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#### ANNEX II—TIME LIMITS FOR SUBMISSIONS SPECIFIED IN THIS PART

AUTHORITY: 5 U.S.C. 301 and 19 U.S.C. 1671 *et seq.*

SOURCE: 53 FR 52344, Dec. 27, 1988, unless otherwise noted.

### Subpart A—Scope and Definitions

#### §355.1 Scope.

(a) This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671 *et seq.*) (“the Act”), relating to the imposition of countervailing duties, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 294, Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1184, and Title II of the Uruguay Round Agreements Act, Pub. L. 103-465; 108 Stat. 4809 (Dec. 8, 1994) and under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) (“Trade Agreements Act”), relating to subsidies on quota cheese. In the event of a conflict between the provisions of this part and the provisions of the Act, the Act shall be controlling.

(b) The following sections reflect amendments to the Act made by the Uruguay Round Agreements Act: §§ 355.1, 355.12(b)(2), 355.13(a), 355.15(a)(1), 355.15(a)(2)(ii), 355.15(a)(4),

355.15(b), 355.15(c), 355.20(a)(2)(ii), 355.20(a)(4), 355.20(d), 355.20(e), 355.22(a), 355.22(c), 355.22(d), 355.22(f), 355.22(i)(5)(ii), 355.22(j), 355.31(a)(1), 355.31(c), 355.38(i), 355.40. These sections shall be applicable only to proceedings that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

[60 FR 25136, May 11, 1995]

**§ 355.2 Definitions.**

(a) *Act.* *Act* means the Tariff Act of 1930, as amended.

(b) *Agreement.* *Agreement* means the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, that is, the Subsidies Code, and any amendments accepted by the United States.

(c) *Commission.* *Commission* means the United States International Trade Commission.

(d) *Country.* *Country* means a foreign country or a political subdivision, dependent territory, or possession of a foreign country, and may include an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries in a customs union outside the United States.

(e) *Customs Service.* *Customs Service* means the United States Customs Service of the United States Department of the Treasury.

(f) *Department.* *Department* means the United States Department of Commerce.

(g) *Factual information.* *Factual information* means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of facts in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

(h) *Industry.* “Industry” means the producers in the United States collectively of the like product, except those producers in the United States that the Secretary excludes under section 771(4)(B) of the Act on the grounds that they are also importers (or are related to importers, producers, or exporters) of the merchandise. Under section

771(4)(C) of the Act, an *industry* may mean producers in the United States, as defined above in this paragraph, in a particular market in the United States if such producers sell all or almost all of their production of the like product in that market and if the demand for the like product in that market is not supplied to any substantial degree by producers of the like product located elsewhere in the United States.

(i) *Interested party.* “Interested party” means:

(1) A producer, exporter, or United States importer of the merchandise, or a trade or business association a majority of the members of which are importers of the merchandise;

(2) The government of the country in which the merchandise is produced (the affected country);

(3) A producer in the United States of the like product or seller (other than a retailer) in the United States of the like product produced in the United States;

(4) A certified or recognized union or group of workers which is representative of the industry or of sellers (other than retailers) in the United States of the like product produced in the United States;

(5) A trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; or

(6) An association a majority of the members of which are interested parties, as defined in paragraph (i)(3), (i)(4), or (i)(5) of this section.

(j) *Investigation.* An “investigation” begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of (1) notice of termination of investigation, (2) notice of rescission of investigation, (3) notice of a negative determination that has the effect of terminating the proceeding, or (4) an order.

(k) *The merchandise.* “The merchandise” means the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding.

(l) *Party to the proceeding.* “Party to the proceeding” means any interested party, within the meaning of paragraph (i) of this section, which actively participates, through written submissions of factual information or written argument, in a particular decision by the Secretary subject to judicial review. Participation in a prior reviewable decision will not confer on any interested party *party to the proceeding* status in a subsequent decision by the Secretary subject to judicial review.

(m) *Person.* *Person* includes any *interested party* as well as any other individual, enterprise, or entity, as appropriate.

(n) *Proceeding.* A *proceeding* begins on the date of the filing of a petition, publication of notice of initiation under § 355.11, or publication of notice of initiation under § 355.22(i) if the review is of the merchandise subject to an understanding or other kind of agreement accepted § 355.17(b), and ends on the date of publication of the earliest of notice of (1) dismissal of petition, (2) rescission of initiation, (3) termination of investigation, (4) a negative determination that has the effect of terminating the proceeding, (5) revocation of an order, or (6) termination of a suspended investigation.

(o) *Producer; production.* “Producer” means a manufacturer or producer. “Production” means manufacture or production.

(p) *Sale; likely sale.* A “sale” includes a contract to sell and a lease that is equivalent to a sale. A “likely sale” means a person’s irrevocable offer to sell.

(q) *Secretary.* “Secretary” means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make final determinations under §§ 355.18(i), 355.20, and 355.22(i). The Deputy Assistant Secretaries for Import Administration, Investigations, and Compliance have other delegated authority relating to countervailing duties.

### § 355.3 Record of proceedings.

(a) *Official record.* The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in § 355.31(d), an official record of

each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertains to the proceeding. The record will include government memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the FEDERAL REGISTER, and transcripts of hearings. The record will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under §§ 355.31(b)(2), 355.32(d), 355.32(g), or 355.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) *Public record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides is public information within the meaning of § 355.4(a), governmental memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, plus public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (*see* § 355.31(d)). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

### § 355.4 Public, proprietary, privileged, and classified information.

(a) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated proprietary by the person submitting it;

(3) Factual information which, although designated proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated proprietary.

(b) *Proprietary information.* The Secretary normally will consider the following factual information to be proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not (i) components of prices, such as transportation, if based on published schedules, (ii) dates of sale, (iii) product descriptions except as described in paragraph (b)(1), or (iv) order numbers);

(6) The names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);

(7) The exact amounts of the gross or net subsidies received and used by a person (but not descriptions of the operations of the subsidies, or the amount if included in official public statements or published documents);

(8) The names of particular persons from whom proprietary information was obtained; and

(9) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(c) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the

Secretary decides that the information should not be released to the public or to parties to the proceeding.

(d) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 28949) or successor executive order, if applicable.

**§ 355.5 Library of foreign subsidy practices and countervailing measures.**

The Secretary will maintain in the Central Records Unit a library of public information relating to all foreign subsidy practices and countervailing measures that are known to the Secretary, whether or not the subject of a proceeding. The Secretary will make documents in the library available to the public and will charge an appropriate fee for providing copies of documents. For further information, contact the Central Records Unit at the location stated in § 355.31(d).

**§ 355.6 Trade and Tariff Act of 1984—effective date.**

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573) (for purposes of this subpart, referred to as “the 1984 Act”), the amendments to the Act made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary are effective on October 30, 1984.

(b) Amendments made by sections 602, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraphs (a)

or (b) of this section would prevent the Department from complying with other requirements of law.

**§ 355.7 De minimis net subsidies disregarded.**

For purposes of this part, the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5% *ad valorem*, or the equivalent specific rate.

**Subpart B—Countervailing Duty Procedures**

**§ 355.11 Self-initiation.**

(a) *In general.* (1) If the Secretary determines from available information that an investigation is warranted with respect to the merchandise, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of “Initiation of Countervailing Duty Investigation.” The Secretary will publish the notice only after providing the government of the affected country an opportunity for consultation to the extent required by Article 3(1) of the Agreement or by a substantially equivalent obligation.

(2) The notice will include:

(i) A description of the merchandise, after consultation as appropriate with the Commission;

(ii) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country; and

(iii) A summary of the available information that would, if accurate, support the imposition of countervailing duties.

(b) *Information provided to the commission.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

**§ 355.12 Petition requirements.**

(a) *In general.* Any interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, may file on behalf of an industry a petition under this section requesting the imposition of countervailing duties equal to the alleged subsidy, if that person has reason to believe that:

(1) A subsidy is being provided with respect to the merchandise, and

(2) If the merchandise is from a country entitled to an injury test for the merchandise, an industry is materially injured, is threatened with material injury, or its establishment is materially retarded by the merchandise.

Factual information in the petition shall be certified, as provided in § 355.31(i).

(b) *Contents of petition.* The petition shall contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry, and information relating to the degree of industry support for the petition;

(3) A statement indicating whether the petitioner has filed for import relief under sections 337 or 732 of the Act (19 U.S.C. 1337 or 1673a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) with respect to the merchandise;

(4) A detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of the merchandise, and its current U.S. tariff classification number;

(5) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;

(6) The names and addresses of each person the petitioner believes benefits from the subsidy and exports the merchandise to the United States and the proportion of total exports to the United States which each person accounted

for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(7) The alleged subsidy and factual information (particularly documentary evidence) relevant to the alleged subsidy, including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the merchandise;

(8) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(i) Domestic subsidies described in section 771(5) of the Act that the government of the affected country provides to the upstream supplier;

(ii) The competitive benefit the subsidies bestow on the merchandise; and

(iii) The significant effect the subsidies have on the cost of producing the merchandise;

(9) The volume and value of the merchandise during the most recent two-year period and any other recent period that the petitioner believes to be more representative or, if the merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

(10) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the merchandise;

(11) If the merchandise is from a country entitled to an injury test for the merchandise, factual information regarding material injury, threat of material injury, or material retardation, as described in 19 CFR §§207.11 and 207.26;

(12) If the petitioner alleges “critical circumstances” under §355.16, factual information regarding:

(i) Material injury which is difficult to repair;

(ii) Massive imports in a relatively short period; and

(iii) An export subsidy inconsistent with the Agreement; and

(13) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing with the Commission.* If the merchandise is from a country entitled to an injury test for

the merchandise, the petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(d) *Proprietary status of information.* The Secretary will not consider any factual information for which the petitioner requests proprietary treatment unless the petitioner meets the requirements of §355.32.

(e) *Amendment of petition.* The Secretary will allow timely amendment of the petition. If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. The timeliness of new allegations is controlled under §355.31.

(f) *Where to file; time of filing; format and number of copies.* The requirements of §355.31(d), (e), and (f) apply to this section.

(g) *Notification of affected country’s representative.* Upon receipt of a petition, the Secretary will deliver a public version of the petition, as described in §355.31(e)(2), to a representative in Washington, DC, of the government of the affected country.

(h) *Petition based upon derogation of an international undertaking on official export credits.* In addition to the other requirements of this section, if the sole basis of a petition is the derogation of an international undertaking on official export credits, the Secretary will immediately notify the Secretary of the Treasury of the filing. The petitioner shall file a copy of the petition with the Secretary of the Treasury and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(i) *Assistance to small businesses; additional information.* (1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of §355.13.

(2) For additional information concerning petitions, contact the Deputy

Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room B099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, DC 20230; (202) 377-5497.

(j) *Limitation on communication before initiation.* (1) Except as provided in paragraph (j)(2) of this section, before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (i)(1) or (i)(2) of §355.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

(2) The Secretary will provide the government of the affected country an opportunity for consultation to the extent required by Article 3(1) of the Agreement or by a substantially equivalent obligation.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0625-0148)

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25136, May 11, 1995]

#### **§355.13 Determination of sufficiency of petition.**

(a) *Determination of sufficiency*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, not later than 20 days after a petition is filed under §355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of §355.2, and is filed by or on behalf of the domestic industry.

(2) *Extension where polling required.* Where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry under section 702(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, apply paragraph (a)(1) of this section by substituting “a maximum of 40 days” for “20 days”.

(b) *Notice of initiation.* If the Secretary determines that the petition is sufficient under paragraph (a) of this

section, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of “Initiation of Countervailing Duty Investigation.” The notice will include the information described in §355.11(a)(2). If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Insufficiency of petition.* If the Secretary determines that a petition is insufficient under paragraph (a) of this section, the Secretary will dismiss the petition in whole or in part and, if appropriate, terminate the proceeding. The Secretary will notify the petitioner in writing of the reasons for dismissal, notify the Commission of the dismissal, if appropriate, and publish in the FEDERAL REGISTER notice of “Dismissal of Countervailing Duty Petition,” summarizing the reasons for dismissal.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25136, May 11, 1995]

#### **§355.14 Request for exclusion from countervailing duty order.**

(a) Any producer or exporter which exported the merchandise to the United States during the period described in paragraph (b)(1) of this section and which desires exclusion from a countervailing duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under §355.11 or §355.13, an irrevocable written request for exclusion.

(b) The person must submit with the request:

(1) The person’s certification that the person did not apply for or receive any net subsidy on the merchandise, during the period from the beginning of the last fiscal year for which the person has records to the date of filing of the petition, from any program listed in the Secretary’s notice of initiation (except programs that the Secretary has previously found, in a notice published

under § 355.20 or § 355.22(c)(8), not to be countervailable) and will not apply for or receive any subsidy on the merchandise in the future;

(2) The certification of the government of the affected country that the government did not provide to that person any net subsidy during the period described in paragraph (b)(1) of this section; and

(3) If the person is not the producer of the merchandise, the certification under paragraph (b)(1) of this section of the suppliers and producers of the merchandise and the certification under paragraph (b)(2) of this section of the government regarding those suppliers and producers.

(c) The Secretary will investigate requests for exclusion to the extent practicable in each investigation.

**§ 355.15 Preliminary determination.**

(a) *In general.* (1) Not later than 65 days after the date on which the Secretary initiates an investigation under § 355.11 or § 355.13, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The individual countervailing duty rate for each person investigated and an all-others rate, if any, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate; and

(iii) A preliminary finding on critical circumstances, if appropriate, under § 355.16(b)(2)(i).

(3) If affirmative, the Secretary's determination will also:

(i) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Sec-

retary's preliminary determination; and

(ii) Impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit or bond equal to the estimated net subsidy.

(4) The Secretary will publish in the FEDERAL REGISTER notice of "Affirmative (Negative) Preliminary Countervailing Duty Determination," including the estimated individual countervailing duty rates, all-others rate, or country-wide subsidy rate, if any, and an invitation for argument consistent with § 355.38.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary also will notify the Commission.

(b) *Postponement in extraordinarily complicated investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 130 days after the date on which the Secretary initiated the investigation. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of:

(i) The large number or complex nature of the alleged subsidies;

(ii) Novel issues raised;

(iii) The need to determine the extent to which particular subsidies are used by individual producers or exporters; or

(iv) Large number of producers and exporters; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the request of the petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 130 days after the date on which the Secretary initiated the investigation,

unless the Secretary finds compelling reasons to deny the request.

(d) *Postponement to investigate upstream subsidies.* (1) Any interested party shall submit in writing any allegation of upstream subsidies not later than 10 days before the scheduled date for the Secretary's preliminary determination under this part.

(2) If the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may postpone the preliminary determination to not later than 250 days after the proceeding begins (up to 310 days if also postponed under paragraph (b) or (c) of this section).

(e) *Notice of postponement.* (1) If the Secretary decides to postpone the preliminary determination under paragraph (b) or (c) of this section, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date for the Secretary's preliminary determination and will publish in the FEDERAL REGISTER notice of "Postponement of Preliminary Countervailing Duty Determination," stating the reasons for the postponement.

(2) If the Secretary decides to postpone the preliminary determination under paragraph (d)(2) of this section, the Secretary will notify all parties to the proceeding not later than the scheduled date for the Secretary's preliminary determination and will publish in the FEDERAL REGISTER notice of "Postponement of Preliminary Countervailing Duty Determination" stating the reasons for the postponement.

(f) *Expedited preliminary determination.* Not later than 55 days after the initiation of an investigation under §355.13, the Secretary will review the record of the first 50 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any interested party that has requested disclosure, all available public and proprietary information (subject to the requirements of §355.34). If, not later than three business days after disclosure, each party to whom disclosure was made furnishes an irrevocable

written waiver of verification and agrees to a preliminary determination based on information in the record on the 50th day of the investigation, the Secretary will make an expedited preliminary determination.

(g) *Commission access to information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the determination and which the Commission may consider relevant to its injury determination.

(h) *Disclosure.* Promptly after making the preliminary determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in making the determination.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25136, May 11, 1995]

#### **§355.16 Critical circumstances findings.**

(a) *In general.* If the merchandise is from a country entitled to an injury test for the merchandise and if a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, not later than 21 days before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in an investigation under §355.11, the Secretary will make a finding whether:

(1) Any alleged export subsidy that benefits the merchandise is inconsistent with the Agreement; and

(2) There have been massive imports of the merchandise over a relatively short period.

(b) *Preliminary finding.* (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the Secretary's final determination under §355.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect

that critical circumstances as described in paragraph (a) of this section exist.

(2) The Secretary will issue the preliminary finding:

(i) Not later than the Secretary's preliminary determination under §355.15, if the allegation is submitted not later than 20 days before the scheduled date for the preliminary determination; or

(ii) Not later than 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date for the Secretary's preliminary determination.

The Secretary will notify the Commission and publish in the FEDERAL REGISTER notice of the preliminary finding.

(c) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, either before or at the time of an affirmative preliminary determination under §355.15, any suspension of liquidation ordered under §355.15 will apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the order of suspension of liquidation. If the Secretary makes an affirmative preliminary finding of critical circumstances after an affirmative preliminary determination under §355.15, the Secretary will amend the order suspending liquidation to apply to all entries of the merchandise covered by the finding entered, or withdrawn from warehouse, for consumption on or after 90 days before the date suspension of liquidation was first ordered.

(d) *Final finding.* For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under §355.20, the Secretary will make a final finding on critical circumstances. If the final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension

of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

(e) *Findings in self-initiated investigations.* In investigations initiated under §355.11, the Secretary will make a preliminary and final finding on critical circumstances without regard to the time limits in paragraphs (b) and (d) of this section.

(f) *Massive imports.* (1) In determining for the purpose of paragraph (a) of this section whether imports of the merchandise have been massive, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the period identified in paragraph (g) of this section have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(g) *Relatively short period.* For the purpose of paragraph (a) of this section, the Secretary normally will consider the period beginning on the date the proceeding begins and ending approximately three months later. However, if the Secretary finds that importers or exporters had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

#### §355.17 Termination of investigation.

(a) *Withdrawal of petition.* (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an investigation upon withdrawal of the petition by the petitioner, or on the Secretary's own initiative in an investigation initiated under §355.11, after notifying all parties to the proceeding

and, if the merchandise is from a country entitled to an injury test on the merchandise, after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

(2) If the Secretary terminates an investigation, the Secretary will publish in the FEDERAL REGISTER notice of "Termination of Countervailing Duty Investigation" together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination.

(b) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the affected country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 704(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

(2) In deciding for the purpose of paragraph (b)(1) of this section whether termination is in the public interest, the Secretary, to the extent practicable, will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not parties to the proceeding.

(3) At the direction of the President of the United States or a designee, the Secretary will modify any understanding or other kind of quantitative restriction agreement accepted under paragraph (b)(1) of this section as a result of consultations entered into under section 761(a) of the Act.

(c) *Negative determination.* An investigation terminates, without further comment or action, upon publication in the FEDERAL REGISTER of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(d) *End of suspension of liquidation.* If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of ter-

mination under paragraph (a) of this section or on the date of publication of a negative determination referred to in paragraph (c) of this section, and will instruct the Customs Service to release any cash deposit or bond.

**§ 355.18 Suspension of investigation.**

(a) *Agreement to eliminate or offset completely a subsidy or to cease exports.* If the Secretary is satisfied that suspension is in the public interest, the Secretary may suspend an investigation at any time before the Secretary's final determination by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise:

(1) To eliminate or to offset completely the net subsidy with respect to the merchandise; or

(2) To cease exports of the merchandise not later than 180 days after the date of publication of the notice of suspension of investigation.

(b) *Agreement eliminating injurious effect.* (1) As provided in this paragraph and paragraph (b)(2) or (b)(3), the Secretary may suspend an investigation at any time before the Secretary's final determination if the merchandise is from a country entitled to an injury test for the merchandise and if the Secretary:

(i) Is satisfied that the proposed suspension is in the public interest;

(ii) Finds that extraordinary circumstances are present; and

(iii) Finds that the agreement will eliminate completely the injurious effect of the merchandise.

(2) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise, if the Secretary finds that:

(i) The agreement will prevent the suppression or undercutting by the merchandise of prices of like products produced in the United States; and

(ii) The agreement will eliminate or offset completely at least 85 percent of the net subsidy.

(3) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement

with the government of the affected country to restrict the volume of the merchandise. In considering for the purpose of this paragraph whether suspension is in the public interest, the Secretary will take into account, in addition to other factors the Secretary considers appropriate, the factors listed in section 704(a)(2)(B) of the Act. To the extent practicable, the Secretary will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not party to the proceeding.

(c) *Definition of “substantially all.”* For purposes of paragraphs (a) and (b)(2) of this section, exporters which account for “substantially all” of the merchandise means exporters that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring benefits in the investigation or such other period that the Secretary considers representative.

(d) *Definition of “extraordinary circumstances.”* For purposes of paragraph (b) of this section, *extraordinary circumstances* means circumstances in which (1) suspension of the investigation will be more beneficial to the industry than continuation of the investigation and (2) there are a large number of alleged subsidy practices which are complicated, the issues raised are novel, or the number of exporters is large.

(e) *Monitoring.* The Secretary will not accept an agreement unless effective monitoring of the agreement by the Secretary is practicable. In monitoring an agreement under paragraph (b) of this section, the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the merchandise or of like products produced in the United States.

(f) *Exports not to increase during interim period.* The Secretary will not accept an agreement under paragraph (a) of this section unless the agreement ensures that the quantity of the merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of

comparable duration that the Secretary considers representative.

(g) *Procedure for suspension of investigation.* (1) The government of the affected country or the exporters, as appropriate, shall:

(i) Submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary’s final determination under § 355.20; and

(ii) Serve a copy of an agreement preliminarily accepted by the Secretary on other parties to the proceeding not later than the day following the Secretary’s preliminary acceptance.

(2) The Secretary will:

(i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (the agreement shall contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of this section); and

(ii) Consult with the petitioner concerning the proposed suspension.

(3) The Secretary will provide all interested parties and United States Government agencies an opportunity to submit, not later than 10 days before the scheduled date for the Secretary’s final determination, written argument and factual information concerning the proposed suspension.

(h) *Acceptance of agreement.* (1) If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the FEDERAL REGISTER notice of “Suspension of Countervailing Duty Investigation,” including the text of the agreement. If the Secretary has not already published notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(2) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously

ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release any cash deposit or bond.

(3) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or to begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication and will instruct the Customs Service to release any cash deposit or bond.

(4) If the Commission undertakes a review of an agreement under section 704(h) of the Act and determines that the agreement will not eliminate the injurious effect, the Secretary will resume the investigation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement will eliminate the injurious effect, the Secretary will continue the suspension of investigation, order the suspension of liquidation ended on the date of publication of the Commission's determination, and instruct the Customs Service to release any cash deposit or bond.

(i) *Continuation of investigation.* (1) An interested party, as defined in paragraph (i)(2), (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, not later than 20 days after the date of publication of the notice of suspension of investigation, may request in writing that the Secretary continue the investigation. If the merchandise is from a country entitled to an injury test for the merchandise, the party shall simultaneously file a request with the Commission to continue its investigation.

(2) Upon receiving the request, the Secretary and, if appropriate, the Com-

mission will continue the investigation.

(i) If the Secretary and the Commission make affirmative final determinations, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.

(ii) If the Secretary or the Commission makes a negative final determination, the agreement shall have no force or effect.

(j) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by paragraph (f) or by an agreement under paragraph (a) or (b) of this section.

(2) Imports in excess of the quantity allowed by an agreement may be exported or destroyed under Customs Service supervision, except that if the agreement is under paragraph (b)(3) of this section, the excess merchandise may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

(k) *Modification of quantitative restriction agreements.* At the direction of the President or a designee, the Secretary will modify an agreement accepted under paragraph (b)(2) of this section as a result of consultation under section 761(a) of the Act.

#### § 355.19 Violation of agreement.

(a) *Immediate determination.* If the Secretary determines that the signatory foreign government or exporters have violated a suspension agreement, the Secretary, without right of comment, will:

(1) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (i) 90-days before the date of publication of the notice of cancellation of agreement or (ii) the date of first entry, or withdrawal from warehouse, for consumption of the merchandise

the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under §355.18(i), resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under paragraph (a)(1) of this section a cash deposit or bond equal to the estimated net subsidy determined in the affirmative preliminary determination;

(3) If the investigation was completed under §355.18(i), issue a countervailing duty order for all entries subject to suspension of liquidation under paragraph (a)(1) of this section and instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit equal to the estimated net subsidy determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission if appropriate, and if the Secretary determines that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the FEDERAL REGISTER notice of "Countervailing Duty Order (Resumption of Countervailing Duty Investigation); Cancellation of Suspension Agreement."

(b) *Determination after notice and comment.* (1) Notwithstanding paragraph (a) of this section, if the Secretary has reason to believe that the signatory government or exporters have violated an agreement or that an agreement no longer meets the requirements of section 704(d)(1) of the Act, the Secretary will publish in the FEDERAL REGISTER notice of "Invitation for Comment on Countervailing Duty Suspension Agreement."

(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:

(i) If the Secretary determines that the signatory government or exporters have violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section; or

(ii) If the Secretary determines that the agreement no longer meets the requirements of section 704(d)(1) of the Act:

(A) Take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section, except that, for paragraph (a)(1)(ii) of this section, the date shall be the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 704(d)(1) of the Act;

(B) Continue the suspension of investigation by accepting a revised suspension agreement under §355.18(a) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the FEDERAL REGISTER notice of "Revision of Agreement Suspending Countervailing Duty Investigation;" or

(C) Continue the suspension of investigation by accepting a revised suspension agreement under §355.18(b) (whether or not the Secretary accepted the original agreement under that paragraph) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the FEDERAL REGISTER notice of "Revision of Agreement Suspending Countervailing Duty Investigation." If the Secretary continues to suspend an investigation based on a revised agreement accepted under §355.18(b), the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the agreement under section 704(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) of the Act, the provisions of §355.18(h)(4) will apply.

(iii) If the Secretary decides neither to consider the order violated nor to

revise the agreement, the Secretary will publish in the FEDERAL REGISTER notice of the Secretary's decision under paragraph (b)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(c) *Additional signatories.* If the Secretary decides that the agreement no longer meets the requirements of § 355.18(b)(1)(iii) or that the signatory exporters no longer account for substantially all of the merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(d) *Definition of "violation."* For the purpose of this section, *violation* means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory foreign government or exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

#### § 355.20 Final determination.

(a) *In general.* (1) Not later than 75 days after the date of the Secretary's preliminary determination, the Secretary will make a final determination whether a net subsidy is being provided with respect to the merchandise.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated individual countervailing duty rate for each person investigated and an estimated all-others rate, if any, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate; and

(iii) If appropriate, a final finding on critical circumstances under § 355.16.

(3) If affirmative, the Secretary's determination will also:

(i) Unless previously ordered by the Secretary, order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's final determination; and

(ii) If the merchandise is from a country not entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit, as provided in § 355.21(b), for each suspended entry of the merchandise en-

tered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order under § 355.21; or

(iii) If the merchandise is from a country entitled to an injury test for the merchandise, instruct the Customs Service to require, for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the Secretary's final determination, a cash deposit or bond equal to the estimated net subsidy determined under paragraph (a) of this section.

(4) The Secretary will publish in the FEDERAL REGISTER notice of "Affirmative (Negative) Final Countervailing Duty Determination," including the estimated individual countervailing duty rates, all-others rate, or country-wide subsidy rate, if any.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will also notify the Commission.

(b) *Postponement to investigate upstream subsidies.* (1) Any interested party shall submit in writing any allegation of upstream subsidies not later than 15 days before the scheduled date for the Secretary's final determination under this part.

(2) If the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may:

(i) If the Secretary's preliminary determination was negative, postpone the final determination under this section to not later than 165 days after the preliminary determination;

(ii) If the Secretary's preliminary determination was affirmative:

(A) Postpone the final decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any; or

(B) At the written request of the petitioner:

(i) Make the decision concerning upstream subsidization in the final determination under this section;

(ii) Postpone the final determination to not later than 165 days after the preliminary determination; and

(iii) End the suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless and until the Secretary publishes a countervailing duty order.

(3) If the Secretary decides to postpone the final determination under paragraph (b)(2)(i) or (b)(2)(ii)(B) of this section, the Secretary will notify all parties to the proceeding not later than the scheduled date for the Secretary's final determination and will publish in the FEDERAL REGISTER notice of "Postponement of Final Countervailing Duty Determination" stating the reason for the postponement.

(c) *Postponement for simultaneous investigations.* (1) If the Secretary simultaneously initiated antidumping and countervailing duty investigations on the merchandise (from the same or other countries), the Secretary will:

(i) At the petitioner's request, postpone the final determination under this part to the date of the final determination under part 353, unless the Secretary's final determination under this part is due on a later date as the result of postponement under paragraph (b) of this section or § 355.15; and

(ii) If the Secretary postpones the final determination, end any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless and until the Secretary publishes a countervailing duty order.

(2) The petitioner shall submit any such request in writing not later than 10 days before the scheduled date for the Secretary's final determination under this part.

(3) If the Secretary decides to postpone the final determination under paragraph (c)(1) of this section, the Secretary will notify all parties to the proceeding not later than the scheduled date for the Secretary's final determination and will publish in the FEDERAL REGISTER notice of "Postponement of Final Countervailing Duty

Determination" stating the reason for the postponement.

(d) [Reserved]

(e) *Effect of decision not to exclude from order.* If the Secretary finds that a person requesting exclusion under § 355.14 received, during the period for which the Department measured benefits in the investigation, any net subsidy from any program that the Secretary determines countervailable in the affirmative final determination, the Secretary will state in the affirmative final determination an individual rate for that person, and that rate will be the basis for the cash deposit or bond, as appropriate, of estimated countervailing duties for that person. The individual rate will be either the individual rate calculated for that person, the all-others rate, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate.

(f) *Commission access to information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the final determination and which the Commission may consider relevant to its injury determination.

(g) *Effect of negative final determination.* An investigation terminates, without further comment or action, upon publication in the FEDERAL REGISTER of the Secretary's or the Commission's negative final determination. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of negative final determination and will instruct the Customs Service to release any cash deposit or bond.

(h) *Disclosure.* Promptly after making the final determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in making the determination.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25136, May 11, 1995]

**§ 355.21 Countervailing duty order.**

Not later than seven days after receipt of notice of the Commission's affirmative final determination under section 705 of the Act, or simultaneously with publication of the Secretary's affirmative final determination if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary will publish in the FEDERAL REGISTER a "Countervailing Duty Order" that:

(a) Instructs the Customs Service to assess countervailing duties on the merchandise, in accordance with the Secretary's instructions at the completion of each administrative review requested under § 355.22(a) or, if not requested, in accordance with the Secretary's instructions under § 355.22(g);

(b) For each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order, instructs the Customs Service to require a cash deposit of estimated countervailing duties equal to the net subsidy stated in the Secretary's final determination;

(c) Excludes from the application of the order any producer or exporter that the Secretary finds did not receive directly or indirectly, during the period for which the Department measured benefits in the investigation, any net subsidy on the merchandise from any program that the Secretary determined countervailable in the affirmative final determination; and

(d) Orders the suspension of liquidation ended for all entries of the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of liquidation ordered under § 355.15(a), it would have found material injury.

**§ 355.22 Administrative review of orders and suspension agreements.**

(a) *Request for administrative review; withdrawal of request for review.* (1) Each year during the anniversary month of the publication of an order (the calendar month in which the anniversary of the date of publication of the order occurs), an interested party, as defined in paragraph (i)(2), (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, may request in writing that the Secretary conduct an administrative review of specified individual producers or exporters covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or exporters.

(2) During the same month, a producer or exporter covered by an order may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only a producer or exporter of the merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation (the calendar month in which the anniversary of the date of publication of the suspension of investigation occurs), an interested party, as defined in § 355.2(i), may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which suspension of investigation was based.

(5) The Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. When a request for review is withdrawn, the Secretary will publish in the FEDERAL REGISTER notice of "Termination of Countervailing Duty Administrative Review" or, if appropriate, "Partial Termination of Countervailing Duty Administrative Review."

(b) *Period under review.* (1) Except as provided in paragraph (b)(2), an administrative order under paragraph (a) of this section normally will cover entries or exports of the merchandise during the most recently completed reporting year of the government of the affected country.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a) of this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the most recently completed reporting year of the government of the affected country.

(c) *Procedures.* After receipt of a timely request under paragraph (a) of this section, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Not later than 15 days after the anniversary month, publish in the FEDERAL REGISTER notice of "Initiation of Countervailing Duty Administrative Review;"

(2) Normally not later than 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 355.36;

(4) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 245 days after the last day of the anniversary month, issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The countervailing duty rate for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single country-wide subsidy rate during the period of review;

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(7) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 120 days after the date on which the preliminary results are published, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The countervailing duty rate for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single country-wide subsidy rate during the period of review;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the FEDERAL REGISTER notice of "Final Results of Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(10) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated countervailing duties on future entries. Both the assessment and the cash deposit will be at the rates found in the final results of review.

(d) [Reserved]

(e) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that the signatory foreign government or exporters have violated a suspension agreement or that the agreement no longer meets the requirements of §355.18, the Secretary will take appropriate action under §355.19. The Secretary may suspend the time limit in paragraph (c)(7) of this section while taking action under §355.19(b).

(f) [Reserved]

(g) *Automatic assessment of duty.* (1) For orders, if the Secretary does not receive a timely request under paragraph (a)(1) or (a)(2) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section at rates equal to the cash deposit of or bond for estimated countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(2) of this section and no request under paragraph (a)(1) of this section, the Secretary in accordance with paragraph (g)(1) of this section will instruct the Customs Service to assess countervailing duties, and to continue to collect the cash deposits, on the merchandise not covered by the request.

(h) *Changed circumstances review.* (1) If the Secretary concludes from available information, including information in a request under this paragraph for an administrative review, that changed circumstances sufficient to warrant a review exist, the Secretary will:

(i) Publish in the FEDERAL REGISTER notice of "Initiation of Changed Circumstances Countervailing Duty Administrative Review;"

(ii) If necessary, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a verification under §355.36;

(iv) Issue preliminary results of review based on the available information that include the factual and legal conclusions on which the preliminary results are based and any action the Secretary proposes based on the preliminary results;

(v) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review," including an invitation for argument consistent with §355.38;

(vi) Notify all parties to the proceeding of the preliminary results;

(vii) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(viii) Not later than 270 days after the date of the Secretary's initiation of the review, issue final results of review that include the factual and legal conclusions on which the final results are based and any action, including action under paragraph (c)(9) of this section and §355.25(d), that the Secretary will take based on the final results;

(ix) Publish in the FEDERAL REGISTER notice of "Final Results of Changed Circumstances Countervailing Duty Administrative Review;" and

(x) Notify all parties to the proceeding; and

(xi) Promptly after issuing the final results, provide to the parties to the proceeding which request disclosure a further explanation of the final results.

(2) Changed circumstances reviews may be requested at any time, including periods other than anniversary months.

(3) The Secretary will not initiate an administrative review under paragraph (h) of this section before the end of the second annual anniversary month (the calendar month in which the anniversary of the date of publication of the

order or suspension occurs) after the date of publication of the Secretary's affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.

(4) If the Secretary concludes that expedited action is warranted, the Secretary may combine the notices identified in paragraphs (h)(1)(i) and (h)(1)(v) of this section in a notice of "Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review." In that event, the notification required in paragraph (h)(1)(vi) of this section will be given to all interested parties included on the Department's service list described in § 355.31(h).

(i) *Review at the direction of the president.* At the direction of the President or a designee, the Secretary will conduct an administrative review to determine if a net subsidy is being provided with respect to the merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under § 355.17(b) or § 355.18(b)(3). The Secretary will:

(1) Publish in the FEDERAL REGISTER notice of "Initiation of Countervailing Duty Administrative Review at the Direction of the President," which will include a description of the merchandise, the period under review, and a summary of the available information which would, if accurate, support the imposition of countervailing duties;

(2) Notify the Commission;

(3) Send to appropriate interested parties or a sample of interested parties, normally not later than 30 days after the date of publication of the notice of initiation, questionnaires requesting factual information for the review;

(4) Conduct, if appropriate, a verification under § 355.36;

(5) Issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The countervailing duty rates, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate, if any, during the period of review; and

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the estimated net subsidy;

(6) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Countervailing Duty Administrative Review at the Direction of the President," including the countervailing duty rates or country-wide subsidy rate, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38;

(7) Notify the Commission and all parties to the proceeding;

(8) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(9) Issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The countervailing duty rates, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate, if any, during the period of review; and

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated net subsidy;

(10) Publish in the FEDERAL REGISTER notice of "Final Results of Countervailing Duty Administrative Review at the Direction of the President," including the countervailing duty rates or country-wide subsidy rate, if any, and the estimated net subsidy for cash deposit purposes; and

(11) Notify all parties to the proceeding;

(12) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the final results; and

(13) If the Secretary's final results of administrative review under paragraph (i)(9) of this section and the Commission's final results of review under section 762(a)(2) of the Act are affirmative:

(i) Publish in the FEDERAL REGISTER a "Countervailing Duty Order" under § 355.21 on or promptly after the date the agreement terminates; and

(ii) Order the suspension of liquidation of entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order.

(j) *Determination of countervailing duties for new shippers*—(1) *In general.* If the Secretary receives a request, accompanied by the information described in paragraph (j)(2) of this section, from an exporter or producer of the merchandise establishing that:

(i) Such exporter or producer did not export the merchandise that was the subject of a countervailing duty order to the United States (or, in the case of an order described in section 706(c) of the Act, did not export the merchandise for sale in the region concerned) during the period of investigation;

(ii) Such exporter or producer is not affiliated with (within the meaning of section 771(33) of the Act) any exporter or producer who exported the merchandise to the United States (or in the case of an order described in section 706(c) of the Act, who exported the merchandise for sale in the region concerned) during that period; and

(iii) The Secretary has not previously established a countervailing duty rate for such exporter or producer, the Secretary will conduct a review to establish a countervailing duty rate for such exporter or producer.

(2) *Certification of new shipper status.* A request described in paragraph (j)(1) of this section shall include, with appropriate certifications:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot certify as to the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) A list of the firms with which the exporter or producer making the request is affiliated; and

(iii) A statement from the exporter or producer making the request and from each firm with which the exporter or producer is affiliated that it did not, under its current or a former name, ex-

port the merchandise during the period of investigation.

(3) *Time for new shipper review*—(i) *In general.* The Secretary will commence a review under paragraph (j)(1) of this section in the calendar month beginning after the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the semiannual anniversary month.

(ii) *Semiannual anniversary month.* The semiannual anniversary month is:

(A) the calendar month in which the anniversary of the date of publication of the order occurs; or

(B) the calendar month which is 6 months after the calendar month in which the anniversary of the date of publication of the order occurs.

(4) *Posting bond or security.* The Secretary will, at the time a review under paragraph (j)(1) of this section is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise.

(5) *Period under review.* A review under paragraph (h)(1) of this section will cover, as appropriate, entries, exports, or sales during a period to be determined by the Secretary.

(6) *Procedures.* After receipt of a request satisfying the requirements of paragraphs (j)(1), (j)(2), and (j)(3) of this section, the Secretary will:

(i) Not later than 20 days after the semiannual anniversary month, issue a notice of “Initiation of New Shipper Countervailing Duty Review;”

(ii) Normally not later than 30 days after the date of issuance of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a certification under §355.36;

(iv) Issue preliminary results of review, based on the available information, that include:

(A) The factual and legal conclusions on which the preliminary results are based; and

(B) The countervailing duty rate, if any, for each person reviewed, or, if section 777A(e)(2)(B) of the Act applies,

a single estimated country-wide subsidy rate;

(v) Publish in the FEDERAL REGISTER notice of "Preliminary Results of New Shipper Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and an invitation for argument consistent with §355.38, and notify all parties to the proceeding;

(vi) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(vii) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based;

(B) The countervailing duty rate, if any, for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate;

(viii) Publish in the FEDERAL REGISTER notice of "Final Results of New Shipper Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and notify all parties to the proceeding;

(ix) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure of a further explanation of the calculation methodology used in reaching the final results; and

(x) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (j)(4) of this section, and to collect a cash deposit of estimated countervailing duties on future entries.

(7) *Time limits*—(i) *In general.* The Secretary will issue preliminary results in a review conducted under paragraph (j)(1) of this section within 180 days after the date on which the review is initiated, and final results within 90 days after the date the preliminary results are issued.

(ii) *Exception.* If the Secretary concludes that the case is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(8) *Results of reviews.* The results of a review under paragraph (j)(1) of this section shall be the basis for the assessment of countervailing duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(9) *Multiple reviews.* Notwithstanding any other provision of this section, if a review (or a request for a review) under paragraph (a), (f), or (g) of this section covers merchandise of an exporter or producer subject to a review (or to a request for a review) under paragraph (j)(1) of this section, the Secretary may:

(i) Terminate, in whole or in part, a review in progress under this section; or

(ii) Decline to commence, in whole or in part, a review under this section.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25137, May 11, 1995]

**§355.23 Provisional measures deposit cap.**

This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of affirmative final determination or, if the merchandise is from a country not entitled to an injury test for the merchandise, the date of the Secretary's notice of affirmative final determination. If the cash deposit or bond required under the Secretary's affirmative preliminary or affirmative final determination is different from the net subsidy the Secretary calculates under §355.22, the Secretary will instruct the Customs Service to disregard the difference to the extent that the cash deposit or bond is less than the net subsidy, and to assess countervailing duties equal to the net subsidy calculated under §355.22 if the cash deposit or bond is more than the net subsidy.

**§355.24 Interest on certain overpayments and underpayments.**

(a) *In general.* The Secretary will instruct the Customs Service to pay or collect, as appropriate, interest on the difference between the cash deposit of estimated countervailing duties and the assessed countervailing duties on entries of the merchandise entered, or

withdrawn from warehouse, for consumption on or after the date of publication of a countervailing duty order.

(b) *Rate.* The rate or rates of interest payable or collectible under paragraph (a) of this section for any period of time are the rates established under section 6621 of the Internal Revenue Code of 1954.

(c) *Period.* The Secretary will instruct the Customs Service to calculate interest for each entry from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

**§355.25 Revocation of orders; termination of suspended investigation.**

(a) *Revocation or termination based on absence of subsidy.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:

(i) The government of the affected country has eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable; and

(ii) It is not likely that the government of the affected country will in the future reinstate for the merchandise those programs or substitute other countervailable programs.

(2) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:

(i) All producers and exporters covered at the time of revocation by the order or the suspension agreement have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years; and

(ii) It is not likely that those persons will in the future apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs.

(3) The Secretary may revoke an order in part if the Secretary concludes that:

(i) One or more producers or exporters covered by the order have not applied for or received any net subsidy on

the merchandise for a period of at least five consecutive years;

(ii) It is not likely that those persons will in the future apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs; and

(iii) Except for producers or exporters that the Secretary previously has determined have not received any net subsidy on the merchandise, the producers or exporters agree in writing to their immediate reinstatement in the order, as long as any producer or exporter is subject to the order, if the Secretary concludes under §355.22(h) that the producer or exporter, subsequent to the revocation, has received any net subsidy on the merchandise.

(b) *Request for revocation or termination.* (1) During the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurs), the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(1) of this section if the government submits with the request its certification that it has satisfied, during the period described in §355.22(b)(1), the requirements of paragraph (a)(1)(i) of this section and that it shall not reinstate for the merchandise those programs or substitute other countervailable programs; or

(2) During the fifth and subsequent annual anniversary months of the publication of an order or suspended investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(2) of this section if the government submits with the request:

(i) The certifications required under §355.22(a)(2) for all producers and exporters covered by the order or suspension agreement; and

(ii) Those producers' and exporters' certifications that they shall not apply for or receive any net subsidy on the

merchandise from any program described in paragraph (a)(2)(ii) of this section.

(3) During the fifth and subsequent annual anniversary months of publication of an order or suspension of investigation, a producer or exporter may request in writing that the Secretary revoke an order with regard to that person if the person submits with the request:

(i) The certifications required under § 355.22(a)(2);

(ii) The certifications described in paragraph (b)(2)(ii) of this section for the merchandise covered by the request; and

(iii) The agreement described in paragraph (a)(3)(iii) of this section.

(c) *Procedures.* (1) After receipt of a timely request under paragraph (b) of this section, the Secretary will consider the request as including a request for an administrative review and will conduct a review under § 355.22(c).

(2) In addition to the requirements of § 355.22(c), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(c)(1), notice of “Request for Revocation of Order (in Part)” or, if appropriate, “Request for Termination of Suspended Investigation;”

(ii) Conduct a verification under § 355.36;

(iii) Include in the preliminary results of review, under § 355.22(c)(4), the Secretary’s decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary’s preliminary decision under paragraph (c)(2)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(c)(5), notice of “Intent to Revoke Order (in Part)” or, if appropriate, “Intent to Terminate Suspended Investigation;”

(v) Include in the final results of review, under § 355.22(c)(7), the Secretary’s final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary’s final decision under paragraph (c)(2)(v) of this section is affirmative, publish with the notice of final results of review, under § 355.22(c)(8), notice of “Revocation of

Order (in Part)” or, if appropriate, “Termination of Suspended Investigation.”

(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(d) *Revocation or termination based on changed circumstances.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that:

(i) The order or suspended investigation no longer is of interest to interested parties, as defined in paragraphs (i)(3), (i)(4), (i)(5), and (i)(6) of § 355.2; or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information, including an affirmative statement of no interest from the petitioner in the proceeding, that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct an administrative review under § 355.22(h).

(3) In addition to the requirements of § 355.22(h), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(h)(1)(i), notice of “Consideration of Revocation of Order (in Part)” or, if appropriate, “Consideration of Termination of Suspended Investigation;”

(ii) If the Secretary’s conclusion, as described in paragraph (d)(2) of this section, is not based on a request, the Secretary, not later than the date of publication of the notice described in paragraph (d)(3)(i) of this section, will serve written notice of the consideration of revocation or termination on each interested party listed on the Department’s service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product;

(iii) Conduct a verification, if appropriate, under § 355.36;

(iv) Include in the preliminary results of review, under § 355.22(h)(1)(iv), the Secretary’s decision whether there

is a reasonable basis to believe that the requirements for revocation or termination based on changed circumstances are met;

(v) If the Secretary's preliminary decision under paragraph (d)(3)(iv) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(h)(1)(v), notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(vi) Include in the final results of review, under § 355.22(h)(1)(viii), the Secretary's final decision whether the requirements for revocation or termination based on changed circumstances are met; and

(vii) If the Secretary's final decision under paragraph (d)(3)(vi) of this section is affirmative, publish with the notice of final results of review, under § 355.22(h)(1)(ix), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(4)(i) If for four consecutive annual anniversary months no interested party has requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the FEDERAL REGISTER notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."

(ii) Not later than the date of publication of the notice described in paragraph (d)(4)(i) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each interested party listed on the Department's service list and on any other person which the Secretary has reason to believe is a producer or seller in the United States of the like product.

(iii) If by the last day of the fifth annual anniversary month no interested party objects, or requests an administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(1)(i) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the FEDERAL REGISTER the notice described in paragraph (d)(3)(vii) of this section.

(5) If the Secretary under paragraph (d) of this section revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release any cash deposit or bond.

(e) *Revocation or termination based on injury reconsideration.* If the Commission determines in an administrative review under section 751(b) of the Act that an industry in the United States would not be materially injured, or would not be threatened with material injury, or the establishment of an industry in the United States would not be materially retarded, by reason of imports of the merchandise covered by a countervailing duty order or suspension agreement, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the FEDERAL REGISTER notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

**§ 355.27 Procedures for initiation of downstream product monitoring.**

(a) *In general.* A domestic producer of an article that is like a component part or a downstream product may file an application pursuant to this section requesting that the Secretary designate a downstream product for monitoring.

(b) *Contents of application.* The application shall contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product incorporated into such downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the home market country of both the downstream and component products and the name of any intermediate country through which these products are transshipped;

(5) The name and address of all known producers of the component part and downstream product in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21 on merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing orders issued under § 353.21 or § 355.21 on merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

(c) *Determination of sufficiency of application*—(1) *In general.* Within 14 days after an application is filed under paragraph (b) of this section the Secretary will determine the sufficiency of the application. An application is considered to be filed at the time it is received by the Secretary. In order to determine that an application is sufficient, the Secretary must find:

(i) There is a reasonable likelihood that imports of the downstream product into the United States will increase as an indirect result of any diversion with respect to the component part; and

(ii) That—

(A) The component part is already subject to monitoring with respect to the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984, or

(B) Merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21, or

(C) Merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least two antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21.

(2) In making a determination under paragraph (c)(1)(i) of this section, the Secretary will consider all factors the Secretary considers relevant and may, if appropriate, take into account such factors as:

(i) The value of the component part in relation to the value of the downstream product;

(ii) The extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and

(iii) The relationship between the producers of the component part and producers of the downstream product.

(d) *Notice of determination.* The Secretary will publish in the FEDERAL REGISTER notice of each affirmative or negative “monitoring” determination made under paragraph (c) of this section and if the determination under (c)(1)(i) and under any clause of (c)(1)(ii) are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission and to its employees directly involved in the monitoring all information upon which the Secretary based the initiation.

(e) *Action on basis of monitoring reports.* The Secretary will review the information in any monitoring reports

submitted to the Department by the Commission under Section 780 of the Act and will:

(1) Consider the information in determining whether to initiate an investigation under §355.11 regarding any downstream product; and

(2) Request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to the component part.

(f) *Definitions*—(1) *Downstream product* means any manufactured product imported into the United States into which a component part is incorporated.

(2) *Component part* means any imported article which:

(i) During the previous five-year period, ending on the date on which the application is filed under paragraph (b) of this section, has been subject to—

(A) An antidumping or countervailing duty order issued under §353.21 or §355.21 that required the deposit of estimated antidumping or countervailing duties, applicable to the particular manufacturer or exporter, at a rate of at least 15 percent *ad valorem* or,

(B) A suspension agreement entered into under §353.18 or §355.18 after a preliminary determination under §353.15 or §355.15 was made by the Secretary which included a determination that the estimated net antidumping margin or subsidy rate, applicable to the particular manufacturer or exporter, was at least 15 percent *ad valorem*; and

(ii) Due to its inherent characteristics, is routinely used as a major part, material, component, assembly, or sub-assembly in a downstream product.

(g) *Where to file; time of filing; format and number of copies.* The requirements of §355.31 (d), (e), (f), and (g) apply to this section.

[55 FR 9052, Mar. 9, 1990]

**§355.28 Procedures for the correction of ministerial errors.**

(a) *In general.* The Secretary will disclose the calculations performed in connection with a final countervailing duty determination pursuant to §355.20, or in a final results of an administrative review of a countervailing duty

order pursuant to §355.22, to any party to the proceeding making a request in accordance with this section. A party to the proceeding must file such a request in writing with the Secretary within five business days of the date of publication of the relevant final determination or final results of administrative review. A party to whom the Secretary has disclosed final calculations may submit comments concerning any ministerial errors in such calculations.

(b) *Time limits.* Comments must be filed within five business days after the date of disclosure unless the Secretary extends the time limit based upon a written request for extension that is filed within five business days after the date of disclosure and showing cause for such extension. Comments shall be submitted in writing to the Secretary and shall be served on all interested parties on the Department's service list. Interested parties may file replies to any comments submitted under paragraph (a) of this section. Any replies must be filed with the Secretary within five business days after the date the relevant comments under paragraph (a) are received by that party and shall be served on all interested parties on the Department's service list. All service of interested parties on the Department's service list pursuant to this paragraph shall be in accordance with §355.31(g). Notwithstanding the provisions of §355.34(d), the Secretary may permit representatives to retain proprietary information released under administrative protective order under §355.34 until the expiration of the time for filing for judicial review of the Secretary's correction of any ministerial errors. If the Secretary determines there are no ministerial errors, proprietary information will be returned in accordance with the provisions of §355.34(d).

(c) *Corrections.* The Secretary will analyze any comments received and will correct any ministerial errors by amending the final countervailing duty determination or final results of administrative review. Such corrections will be published in the FEDERAL REGISTER. A correction notice does not alter the anniversary month of an order or suspension of investigation for

purposes of requesting an administrative review under § 355.22.

(d) *Definition of "ministerial error"*. For purposes of this section, *ministerial error* means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.

[55 FR 9053, Mar. 9, 1990]

**§ 355.29 Scope determination.**

(a) *Self-initiation*. If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of a countervailing duty order, the Secretary will initiate an inquiry and notify all interested parties on the Department's service lists of its initiation of a scope inquiry.

(b) *By application*. Any interested party, as defined in § 355.2(i), may file an application to determine whether a particular product is within the scope of an order. The application shall contain the following, to the extent reasonably available to the interested party:

(1) A detailed description of the product, including technical characteristics and uses of the product, and its current U.S. Tariff Classification number;

(2) A statement of the interested party's position as to whether the product is within the scope of an order, including—

(i) A summary of the reasons for this conclusion,

(ii) Citations to any applicable statutory authority, and

(iii) Attachment of any factual support for this position, including applicable portions of the Secretary's or the Commission's investigation.

Where all of these conditions are met, the Secretary will evaluate the application. If the Secretary determines that no inquiry is warranted to determine whether a product is included within the scope of an order, the Secretary will issue a final ruling as to whether the merchandise which is the subject of the application is included in the existing order. The Secretary will, by mail, notify all interested parties on the Department's service lists of its de-

termination. If, however, the Secretary determines that a scope inquiry is warranted, the Secretary will, by mail, notify all interested parties on the Department's service lists of the initiation of a scope inquiry.

(c) *Notice*. Any initiation of a scope inquiry issued pursuant to paragraphs (a) or (b) of this section will include:

(1) A description of the product that is the subject of the scope inquiry; and

(2) An explanation of the reasons for the Secretary's decision to initiate a scope inquiry; and

(3) A schedule for submission of comments.

(d) *Procedures for scope inquiry*. Except as provided under paragraph (d)(6) of this section, the procedures for scope inquiries will be as follows:

(1) Interested parties shall file any comments not later than twenty days after receipt of the notification described in paragraph (c) of this section, unless the Secretary alters this time limit;

(2) Not later than the time limit stated in the notification described in paragraph (c) of this section (ordinarily five days after the time limit for filing the comments described in paragraph (d)(1) of this section), any interested party may submit rebuttal comments;

(3) Whenever the Secretary determines that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope ruling based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order. The Secretary will, by mail, notify all interested parties on the Department's service lists of its preliminary scope ruling and provide an invitation for comment. Unless otherwise specified, the Secretary will provide all interested parties thirty days from the date of receipt of the notification for comment;

(4) The Secretary may issue questionnaires or verify submissions received, where appropriate;

(5) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included in the existing order, including an explanation of the factual and legal

conclusions on which the final ruling is based. The Secretary will, by certified mail, return receipt requested, notify all interested parties on the Department's service lists of its final scope ruling;

(6) When a §355.22 review is in progress at the time the Secretary provides the notification outlined in paragraph (c) of this section, the scope investigation, in the Secretary's discretion, may be conducted in conjunction with a §355.22(c) review;

(7) With respect to countervailing duty proceedings in which the Commission made an affirmative injury determination, prior to issuing a ruling in accordance with paragraph (3) or (5) of this section or §355.22(c)(4) or §355.22(c)(8) to include products within the scope of an order pursuant to—

(i) Paragraph (e) of this section, other than operations in the United States involving minor completion or assembly,

(ii) Paragraph (f) of this section, or

(iii) Paragraph (h) of this section, with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product,

the Secretary will notify the Commission in writing of the proposed inclusion of such products in the order. Upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion and any such consultation will be completed within 15 days after the date of such request. If the Commission believes, after such consultation, that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order is based; and

(8) On a quarterly basis, the Secretary will publish in the FEDERAL REGISTER a list of scope rulings completed within the last three months. This list will include the case name, reference number and a brief description of the ruling.

(e) *Products completed or assembled in the United States—(1) In General.* If—

(i) A product sold in the United States is of the same class or kind as merchandise that is the subject of an order, and

(ii) Such product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and

(iii) The difference between the value of such product sold in the United States and the value of the imported parts and components referred to in paragraph (e)(1)(ii) is small,

the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include within the scope of such order the imported parts or components referred to in paragraph (e)(1)(ii) that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include parts or components in an order under paragraph (e)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in paragraph (e)(1) of this section applies; and

(iii) Whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order or finding.

(f) *Products completed or assembled in other foreign countries—(1) In General.* If—

(i) A product sold in the United States is of the same class or kind as the merchandise that is the subject of an order,

(ii) Before importation into the United States, such imported product is completed or assembled in another foreign country from merchandise which is subject to such order, or is produced in the foreign country with respect to which such order applies,

(iii) The difference between the value of such imported products and the value of the merchandise described in paragraph (f)(1)(ii) is small, and

(iv) The Secretary determines that action is appropriate under this paragraph to prevent evasion of such order, the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include such imported products within the scope of such order at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include a product in an order under paragraph (f)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the product described in paragraph (f)(1)(ii) is related to the person who uses the merchandise described in paragraph (f)(1)(ii) to assemble or complete in the foreign country the product that is subsequently imported into the United States; and

(iii) Whether imports into the foreign country of the product described in paragraph (f)(1)(ii) have increased after the issuance of such order.

(g) *Minor alterations of merchandise—*

(1) *In general.* The class or kind of merchandise subject to an investigation or order will include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) *Exception.* Paragraph (g)(1) of this section will not apply with respect to altered merchandise if the Secretary determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation or order.

(h) *Later-developed products—(1) In general.* For purposes of determining whether a product developed after a countervailing duty investigation is initiated (hereafter in this paragraph referred to as the “later-developed merchandise”) is within the scope of an order, the Secretary will consider whether:

(i) The later-developed product has the same general physical characteristics as the merchandise with respect to

which the order was originally issued (hereafter in this paragraph referred to as the “earlier merchandise”);

(ii) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier merchandise;

(iii) The ultimate use of the earlier merchandise and the later-developed product are the same;

(iv) The later-developed product is sold through the same channels of trade as the earlier merchandise; and

(v) The later-developed product is advertised and displayed in a manner similar to the earlier merchandise.

The Secretary will take into account any advice provided by the Commission under paragraph (d)(7) of this section before making a determination under this paragraph.

(2) *Exclusion from orders.* The Secretary may not exclude later-developed products from an order merely because the products:

(i) Are classified under the tariff classification other than that identified in the petition or the Secretary’s prior notices during the proceeding; or

(ii) Permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the products.

(i) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraphs (e) through (h) of this section, in considering whether a particular product is within the class or kind of merchandise described in an existing order, the Secretary will take into account the following:

(1) The descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product; and

(iv) The channels of trade.

(j) *Suspension of liquidation.* (1) When the Secretary initiates a scope inquiry pursuant to paragraph (c) of this section, and the subject product is already subject to suspension of liquidation, that suspension of liquidation will be continued pending a preliminary or a final scope ruling. Any suspension of liquidation will be at the cash deposit of estimated duty rate that will apply if the subject product is ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling pursuant to paragraph (d)(3) of this section to the effect that the subject product is included within the scope of the order, any suspension of liquidation described in paragraph (j)(1) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each suspended entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary scope ruling. If the Secretary issues a preliminary scope ruling to the effect that the subject product is *not* included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(3) If the Secretary issues a final scope ruling, pursuant to either paragraph (b) or (d)(5) of this section, to the effect that the subject product is included within the scope of the order, any suspension of liquidation pursuant to paragraph (j)(1) or (j)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the final scope ruling. If the Secretary's final scope ruling is to the effect that the subject product is not included within the scope of the order, the Secretary will order any suspension of liquidation

on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(k) *Where to file; time of filing; format and number of copies.* The requirements of §355.31 (d), (e), (f), and (g) apply to this section.

[55 FR 9054, Mar. 9, 1990]

### Subpart C—Information and Argument

#### §355.31 Submission of factual information.

(a) *Time limits in general.* (1) Except as provided in paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, the day before the scheduled date on which the verification is to commence;

(ii) For the Secretary's final results of an administrative review other than a review under §355.22(j), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review; or

(iii) For the Secretary's final results of an administrative review under §355.22(j), the earlier of the date of publication of notice of preliminary results of review or 120 days after the date of publication of notice of initiation of the review.

(2) Any interested party, as defined in paragraphs (i)(3), (i)(4), (i)(5), and (i)(6) of §355.2, may submit factual information to rebut, clarify, or correct factual information submitted by an interested party, as defined in paragraph (i)(1) or (i)(2) of §355.2, at any time prior to the deadline provided in this section for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party, or, if appropriate, made available under administrative protective order to the interested party.

(3) The Secretary will not consider in the final determination or the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit. The Secretary will return such information to the submitter with written notice stating the reasons for return of the information.

(b) *Questionnaire responses and other submissions on request.*

(1) Notwithstanding paragraph (a) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(2) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response. The Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any untimely or unsolicited questionnaire responses rejected by the Department.

(3) Ordinarily, the Secretary will not extend the time limit stated in the questionnaire or request for other factual information. Before the time limit expires, the recipient of the Secretary's request may request an extension. The request must be in writing and state the reasons for the request. Only the following employees of the Department may approve an extension: the Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Investigations, the Deputy Assistant Secretary for Compliance, and the office or division director responsible for the proceeding. An extension must be approved in writing.

(4) Except as provided in §355.32(b) and subject to the other provisions of paragraph (b) of this section, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

(c) *Time limits for allegations of subsidies.* (1) Except for an allegation of upstream subsidies submitted in an investigation (see §§355.15(d) and 355.20(b)), the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of §355.2, later than:

(i) In an investigation, 40 days before the scheduled date for the Secretary's preliminary determination;

(ii) In an administrative review other than a review under §355.22(j), 120 days after the date of publication of the notice of initiation of the review; or

(iii) In an administrative review under §355.22(j), 60 days after the date of publication of the notice of initiation of the review.

(2) Any interested party may request in writing not later than the time limits specified in paragraph (c)(1) of this section an extension of those time limits. If the Assistant Secretary for Import Administration concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

(d) *Where to file; time of filing.* Address and submit documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th St., NW., Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days. For all time limits in this part, the Secretary will consider documents received when stamped by the Central Records Unit with the date and time of receipt. If the time limit expires on a non-business day, the Secretary will accept documents that are filed on the next following business day.

(e) *Format and number of copies.* (1) *In general.* Unless the Secretary alters the requirements of this section, submitters shall make all submissions in the format specified in paragraph (e) of this section. The Secretary may refuse

to accept for the record of the proceeding any submission that does not conform to the requirements of paragraph (e) of this section.

(2) *Documents.* In an investigation, submit 10 copies of any document, except a computer printout, and, if a person has requested that the Secretary treat portions of the document as proprietary information, submit five copies of a public version of the document, including any public summaries required under §355.32(b) as substitutes for the portions for which the person has requested proprietary treatment; and if administrative protective order versions are required to be served pursuant to §355.31(g) (1) or (2), submit one copy of the cover page, marked as described in paragraph (e)(2)(v), together with only those pages that differ from the public or proprietary versions. In an administrative review, scope inquiry, or downstream product monitoring application, submit seven copies of any document, except a computer printout; and if a person has requested that the Secretary treat portions of the document as proprietary information, submit three copies of a public version of the document, as described above; and submit one copy of any administrative protective order versions required to be served pursuant to §355.31(g) (1) or (2), as described above. In an investigation, administrative review, scope inquiry, or downstream product monitoring application, submit documents, if prepared for that segment of the proceeding, on letter-size paper, single-sided and double-spaced. Securely bind each copy as a single document with any letter of transmittal as the first page of the document. Mark the first page of each document in the upper right-hand corner with the following information in the following format:

- (i) On the first line, except for a petition, the Department case number;
- (ii) On the second line, the total number of pages in the document including cover pages, appendices, and any unnumbered pages;
- (iii) On the third line, state whether the document is for an investigation, scope inquiry, downstream product monitoring application, or an adminis-

trative review and, if the latter, the inclusive dates of the review;

(iv) On the fourth and subsequent lines, state whether any portion of the document contains classified, privileged, or proprietary information and, if so, list the applicable page numbers and state either "Document May be Released Under APO" or "Document May Not be Released Under APO" (see §§355.32(c) and 355.34);

(v) For administrative protective order versions, described in §355.31(g) (1) or (2), complete the marking as required in paragraphs (i)-(iv) above for the proprietary document, but conspicuously mark the first page "APO Version Prepared for [Name of party entitled to receive materials]"; and

(vi) For public versions of proprietary documents, required by §355.32(b), complete the marking as required in paragraphs (e)(2) (i) through (iv) of this section for the proprietary document, but conspicuously mark the first page "Public Version."

(3) *Computer tapes and printouts.* The Secretary may require submission of factual information on computer tape unless the Secretary decides that the submitter does not maintain records in computerized form and cannot supply the requested information on computer tape without unreasonable additional burden in time and expense. In an investigation or administrative review, the tape shall be accompanied by three copies of any computer printout and three copies of the public version of the printout.

(f) *Translation to English.* Unless the Secretary waives in writing this requirement for an individual document, any document submitted which is in a foreign language must be accompanied by an English translation.

(g) *Service of copies on other parties.* With the exception of petitions, proposed suspension agreements submitted under §355.18(g)(1)(i), and factual information submitted under §355.32(a) that is not required to be served on an interested party, the submitter of a document shall, at the same time, serve a copy of the document, on all interested parties on the Department's service list by first class mail or personal service. In addition, where proprietary information is involved, the

submitter shall serve the following administrative protective order versions:

(1) With respect to parties to the proceeding that are subject to administrative protective orders under §355.34, the submitter of a document shall include that proprietary information that the interested party is entitled to receive under the terms of the administrative protective order, as well as the party's own proprietary information, but no other proprietary information;

(2) With respect to interested parties that are not subject to an administrative protective order, but when the submission contains that interested party's proprietary information, the submitter of a document shall serve the interested party with a version that contains just the interested party's own proprietary information.

The Secretary will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served, and, for each, indicating the date and method of service.

(h) *Service list.* The Central Records Unit will maintain and make available a service list for each proceeding. Each interested party which asks to be on the service list shall designate a person to receive service of documents filed in a proceeding.

(i) *Certifications.* Any interested party which submits factual information to the Secretary must submit with the factual information the certification in paragraph (i)(1) and, if the party has legal counsel or another representative, the certification in paragraph (i)(2) of this section:

(1) For the interested party's official responsible for presentation of the factual information: "I, (name and title), currently employed by (interested party), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate."

(2) For interested party's legal counsel or other representative: "I, (name), of (law or other firm), counsel or representative to (interested party), certify that (i) I have read the attached submission, and (ii) based on the information made available to me by (interested party), I have no reason to be-

lieve that this submission contains any material misrepresentation or omission of fact."

[53 FR 52344, Dec. 27, 1988, as amended at 55 FR 9056, Mar. 9, 1990; 57 FR 30903, July 13, 1992; 60 FR 25139, May 11, 1995]

**§355.32 Request for proprietary treatment of information.**

(a) *Submission and content of request.*

(1) Any person who submits factual information to the Secretary in connection with a proceeding may request that the Secretary treat that information, or any specified part, as proprietary.

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page containing such information "Proprietary Treatment Requested" and the warning "Bracketing of proprietary information not final for one business day after date of filing." The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. After the bracketing becomes final, recipients may divulge the public version of the document to anyone not subject to the administrative protective order. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information are permitted after the deadline. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

(3) The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under §355.4. The request and explanation shall be a part of or securely

bound with the document containing the information.

(b) *Public Summary.* Except as provided in paragraph (b)(3) of this section, not later than one business day after submitting information for which proprietary treatment is requested, any person who requests proprietary treatment shall provide to the Secretary:

(1) An adequate public summary of all proprietary information, incorporated in the public version of the document (generally, numeric data are adequately summarized if grouped or presented in terms of indices, or figures within 10 percent of the actual figure, and if an individual portion of the data is voluminous, at least one percent representative of that portion is individually summarized in this manner); or

(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.

(3) All requests for proprietary treatment of information contained in petitions submitted under § 355.12 and proposed suspension agreements submitted under § 355.18(g)(1)(i) shall be accompanied by a public summary and statement described in paragraphs (b)(1) and (b)(2) of this section.

(c) *Agreement to release.* All requests for proprietary treatment shall include either an agreement to permit disclosure under administrative protective order, or a statement itemizing which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion. The Secretary ordinarily will not provide the submitter further opportunity for argument on whether to grant a request for disclosure under administrative protective order.

(d) *Return of information as a result of nonconforming request.* The Secretary may return to the submitter any factual information for which the submitter requested proprietary treatment when the request does not conform to the requirements of this section and in any event will not consider the information. If the Secretary returns the information, the Secretary will provide a written explanation of the reasons why

it does not conform and will not consider it unless it is resubmitted with a new request which complies with the requirements of this section not later than two business days after receipt of the Department's explanation for rejection of the information.

(e) *Status during consideration of request.* While considering whether to grant a request for proprietary treatment, the Secretary will not disclose or make public the information. The Secretary normally will decide not later than 14 days after the Secretary receives the request.

(f) *Treatment of proprietary information.* Unless the Secretary otherwise provides, the person to whom the Secretary discloses information shall not disclose the information to any other person. The Secretary may disclose factual information which the Secretary decides is proprietary only to:

(1) A representative of an interested party who requests and is granted an administrative protective order under § 355.34;

(2) An employee of the Department directly involved in the proceeding for which the information is submitted;

(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;

(4) An employee of the Customs Service directly involved in conducting a fraud investigation relating to a countervailing duty proceeding on the merchandise;

(5) Any person to whom the submitter specifically authorizes (in writing) disclosure; and

(6) A charged party or counsel for the charged party under Part 354 of this title (19 CFR part 354).

(g) *Denial of request for proprietary treatment.* If the Secretary decides that the factual information does not warrant proprietary treatment in whole or in part, the Secretary will notify the submitter. Unless the submitter agrees that the information be considered public, the Secretary will return the information to the submitter with written notice stating the reasons for return of the information and will not consider it in the proceeding.

[53 FR 52344, Dec. 27, 1988, as amended at 57 FR 30903, July 13, 1992]

**§ 355.33 Information exempt from disclosure.**

Privileged or classified information is exempt from disclosure to the public or to representatives of interested parties.

**§ 355.34 Disclosure of proprietary information under administrative protective order.**

(a) *In general.* Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the Secretary shall require all proprietary information presented to, or obtained by it, during a segment of a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) to be disclosed to interested parties who are parties to the proceeding under a protective order described in this section, regardless of when the information is submitted during the segment of the proceeding.

(b) *Request for disclosure.* (1) A representative must file a request for disclosure under administrative protective order not later than the later of:

(i) 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation under § 355.11 or § 355.13, or the notice of initiation of administrative review under § 355.22; or

(ii) 30 days after the initiation of a scope inquiry pursuant to § 355.29 (a) or (b); or

(iii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38 are due.

(2) The representative must file the request for disclosure on the standard form provided by the Secretary (Form ITA-367). The standard form will require only such particularity in the description of the requested information as is consistent with both the criteria the Secretary uses to decide whether to disclose, and with the fact that a request may be made for factual information not yet submitted.

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized by an administrative protective order to have access to the information;

(ii) To use the information solely for the segment of the proceeding in which it was submitted;

(iii) To ensure the security of the proprietary information at all times; and

(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.

(4) The request shall contain an acknowledgment by the representative that:

(i) A representative determined to have violated a protective order may be subject to any or all of the sanctions listed in part 354 of this title; and

(ii) The firm of which a person determined to have violated a protective order is a partner, associate, or employee, and any partner, associate, employer, or employee of such person, may be subject to any or all of the sanctions listed in part 354 of this title.

(5) The Secretary will decide whether to disclose information under administrative protective order:

(i) Not later than 14 days after the date on which the information is submitted; or

(ii) If—  
(A) The person who submitted the information raises objection to its release, or

(B) The information is unusually voluminous or complex,

not later than 30 days after the date on which the information is submitted.

(6) If the Secretary decides that disclosure of information under administrative protective order is proper under paragraph (b)(5) of this section:

(i) With respect to proprietary information submitted to the Secretary on or before the date of the decision to disclose, the submitting party shall, within two business days of the date of decision, serve the party which requested such disclosure, in accordance with § 355.31(g); and

(ii) The submitting party shall serve all future submissions of proprietary information directly on the requesting party as required by § 355.31(g).

(c) *Opportunity to withdraw proprietary information.* If the Secretary decides to require disclosure of proprietary information under administrative protective order without the consent of the submitter, the Secretary will provide to the submitter written notice of the decision and the reasons therefor and will permit the submitter to withdraw the information from the official record within two business days. The Secretary will not consider withdrawn information. Furthermore, if the submitter does not withdraw the information but fails to serve the party requesting such information, in accordance with § 355.34(b)(6), the Secretary will not consider such information.

(d) *Disposition of proprietary information disclosed under administrative protective order.* (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary decides appropriate, the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information (such as notes or memoranda). The representative at that time must certify to the Secretary full compliance with the terms of the protective order and the return or destruction of all proprietary information.

(2) The representative of a party to the proceeding that files for judicial review or intervenes in the judicial review may retain the proprietary information, provided that the party applies for a court protective order for the information not later than 15 days after the Secretary files the administrative record with the court. If the court denies the party's application for a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information not later than 48 hours after the court's decision and certify to the Secretary as provided under paragraph (d)(1) of this section.

(e) *Violation of administrative protective order.* The procedures for investigating any alleged violation of an administrative protective order issued under this section and for imposing

sanctions for a violation of such order are set forth in part 354 of this title (19 CFR part 354).

[53 FR 52344, Dec. 27, 1988, as amended at 55 FR 9056, Mar. 9, 1990]

**§ 355.35 Ex parte meeting.**

The Secretary will prepare for the official record a written memorandum of any *ex parte* meeting between any person providing factual information in connection with a proceeding and the person to whom the Secretary has delegated the authority to make the decision in question or the person making a final recommendation to that person. The memorandum will include the date, time, and place of the meeting, the identity and affiliation of all persons present, and a public summary of the factual information submitted.

**§ 355.36 Verification of information.**

(a) *In general.* (1) The Secretary will verify all factual information the Secretary relies on in:

(i) A final determination under § 355.18(i) or § 355.20;

(ii) A revocation under § 355.25;

(iii) The final results of an administrative review under § 355.22(c), (h), or (i) if the Secretary decides that good cause for verification exists; and

(iv) The final results of an administrative review under § 355.22(c) if:

(A) An interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) If the Secretary decides that, because of the large number of producers and exporters included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample. The Secretary will apply the results of the verification of the sample to all producers and exporters included in the investigation or review.

(b) *Notice of verification.* In publishing a notice of final determination, revocation, or final results of administrative

review, the Secretary will report the methods and procedures used to verify under this section.

(c) *Procedures for verification.* In verifying under this section, the Secretary will notify the government of the affected country in which verification takes place that employees of the Department will visit with producers, exporters, or government agencies in order to verify the accuracy and completeness of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, exporters, or the government agencies which the Secretary considers relevant to factual information submitted by those persons.

**§ 355.37 Best information available.**

(a) *Use of best information available.* The Secretary may use the best information available whenever the Secretary:

(1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or

(2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

(b) *What is best information available.* The best information available may include the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2. If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available.

**§ 355.38 Written argument and hearings.**

(a) *Written argument.* The Secretary will consider in making the final determination under § 355.18(i) or § 355.20 or the final results under § 355.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary (and re-

ceived within the time limit specified by the Secretary), that is submitted after the time limits specified in this section. At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States Government agency. The Secretary will return to the submitter, with written notice stating the reasons for return of the document, any written argument submitted after the time limits specified in this section or by the Secretary.

(b) *Request for hearing.* Not later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters this time limit, any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs. To the extent practicable, a party requesting a hearing shall identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a "case brief":

(i) Not later than 50 days after the date of publication of the Secretary's preliminary determination in an investigation, unless the Secretary alters this time limit; or

(ii) Not later than 30 days after the date of publication of the preliminary results of administrative review.

(2) The case brief shall separately present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results.

(d) *Rebuttal brief.* Not later than the time limit stated in the notice of the Secretary's preliminary determination or preliminary results, ordinarily five days in an investigation and seven days in an administrative review after the time limit for filing the case brief, any interested party or U.S. Government

agency may submit a "rebuttal brief." The rebuttal brief shall separately present in full all rebuttal arguments, responding only to arguments raised in case briefs.

(e) *Service of briefs.* The submitter of either a case or rebuttal brief shall serve a copy of that brief on the government of the affected country, on any interested party on the Department's service list, and on any U.S. Government agency that has submitted in the segment of the proceeding a case or rebuttal brief. If the party has designated under §355.31(h) an agent in the United States, service shall be either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United States, service shall be by first class airmail. The submitter shall attach to each brief a certificate of service listing the parties (including agents) served and, for each, the date and method of service.

(f) *Hearings.* If an interested party submits a request under paragraph (b) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters the date. Ordinarily, the hearing will be held, in an investigation, two days after the scheduled date for submission of rebuttal briefs and, in an administrative review, seven days after the scheduled date for submission of rebuttal briefs.

(1) The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

(2) One of the following employees of the Department will chair the hearing: the Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Import Administration, the Deputy Assistant Secretary for Investigations, the Deputy Assistant Secretary for Compliance, or the office or division director responsible for the proceeding.

(3) The hearing is not subject to the Administrative Procedure Act. Witness

testimony, if any, shall not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any interested party or witness and may request interested parties to present additional written argument.

(g) *Where to file; time of filing.* The requirements in §355.31(d) apply to this section.

(h) *Format and number of copies.* The requirements in §355.31(e) apply to this section, except that in an administrative review submit 10 copies of each brief and five copies of the public version, including the public summary required under §355.32(b).

(i) *Public comment on information.* In any investigation or review under this part, the Secretary will specify a date on which the Secretary will cease collecting information and on which the Secretary will release to parties that have participated in the investigation or review all information on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to §355.34. Parties shall have an opportunity to file written comments on any information released to them, and the date on which such comments must be filed will be specified by the Secretary. The Secretary will disregard comments containing new factual information.

[53 FR 52344, Dec. 27, 1988, as amended at 60 FR 25139, May 11, 1995]

### **§355.39 Subsidy practice discovered during investigation or review.**

(a) *Inclusion in proceeding.* If during an investigation or an administrative review the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review.

(b) *Deferral of examination.* If the Secretary concludes that insufficient time remains, before the scheduled date for

the Secretary's final determination or final results of review, to examine the practice described in paragraph (a) of this section, the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered practice; or

(2) During an investigation or review, defer consideration of the newly discovered practice until the next review under § 355.22(c).

(c) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovered and whether or not it will be included in the then ongoing proceeding.

**§ 355.40 Likelihood of continued subsidization; revocation under section 753 of the Act.**

(a) *Notification of domestic interested parties.* (1) As soon as possible after the opportunity arises for requesting an investigation under section 753 of the Act, the Secretary will:

(i) Notify domestic interested parties on the Department's service list by first class mail or personal service of the opportunity to request an injury investigation by the Commission; and

(ii) Publish in the FEDERAL REGISTER a notice informing domestic interested parties of the opportunity to request an injury investigation by the Commission.

(2) The notification provided for in paragraph (a)(1) of this section will inform domestic interested parties of the opportunity to request that reviews of outstanding antidumping orders or findings and countervailing duty orders under section 751(c) of the Act involving the same or comparable merchandise be expedited.

(3) For purposes of paragraph (a) of this section, "domestic interested parties" means interested parties described in paragraphs (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, or in section 771(9)(G) of the Act.

(b) *Suspension of liquidation.* (1) The Secretary will instruct the Customs Service to suspend liquidation with respect to entries of subject merchandise made on or after:

(i) In the case of an order described in section 753(a)(1)(B)(i) of the Act, the

date on which the country described in section 753(a)(1)(A) of the Act becomes a Subsidies Agreement country within the meaning of section 701(b) of the Act; or

(ii) In the case of an order described in section 753(a)(1)(B)(ii) of the Act, the date on which such order is issued.

(2) Liquidation shall be suspended under paragraph (b)(1) of this section at the cash deposit rate in effect on the date described in paragraph (b)(1)(i) or (b)(1)(ii) of this section, whichever is applicable.

(c) *Net countervailable subsidy; nature of subsidy.* The Secretary will provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked. The Secretary will normally choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751 of the Act. At the same time, the Secretary also will inform the Commission of the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement, as defined in section 771(8)(A) of the Act.

(d) *Initiation and conduct of review.*—  
(1) *In general.* Where the Secretary deems it necessary in order to provide to the Commission the information described in paragraph (c) of this section, the Secretary will initiate a review of the countervailing duty order in question.

(2) *Notice of initiation of review.* Where the Secretary initiates a review under paragraph (d)(1) of this section, the Secretary will publish in the FEDERAL REGISTER a notice of "Initiation of Countervailing Duty Section 753 Review."

(3) *Conduct of review.* Following the initiation of a review under paragraph (d)(1) of this section, the Secretary will:

(i) If the Secretary considers it appropriate, send to interested parties and other persons, or a sample of interested parties and other persons, questionnaires requesting factual information for the review;

(ii) If the Secretary considers it appropriate, conduct a verification under § 355.36;

(iii) Issue, based on available information, preliminary results of review that include the factual and legal conclusions on which the preliminary results are based;

(iv) Publish in the FEDERAL REGISTER notice of "Preliminary Results of Countervailing Duty Section 753 Review," including an invitation for argument consistent with § 355.38;

(v) Promptly notify all parties to the proceeding of the preliminary results, and provide to such parties which request disclosure a future explanation of the calculation methodology used in reaching the preliminary results;

(vi) Issue final results of review that include the factual and legal conclusions on which the final results are based;

(vii) Publish in the FEDERAL REGISTER notice of "Final Results of Countervailing Duty Section 753 Review;" and

(viii) Promptly notify all parties to the proceeding and the Commission of the final results, and provide such parties which request disclosure a further explanation of the calculation methodology used in reaching the final results.

(e) *Effect of affirmative Commission determination.* Upon being notified by the Commission that it has made an affirmative determination under section 753(a)(1) of the Act:

(1) The Secretary will order the termination of the suspension of liquidation required pursuant to paragraph (b) of this section; and

(2) The countervailing duty order shall remain in effect until revoked, in whole or in part.

(f) *Effect of negative Commission determination.* Upon being notified by the Commission that it has made a negative determination under section 753(a)(1) of the Act, the Secretary will revoke the countervailing duty order and refund, with interest, any estimated countervailing duty collected during the period liquidation was suspended pursuant to paragraph (b) of this section.

[60 FR 25139, May 11, 1995]

## Subpart D—Quota Cheese Subsidy Determinations

### § 355.41 Definition of subsidy.

For purposes of this subpart, *subsidy* means both "subsidy" and "net subsidy" as defined in sections 771(5) and 771(6) of the Act.

### § 355.42 Annual list and quarterly update.

(a) *Annual list.* Not later than January 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether any foreign government is providing a subsidy, as defined in § 355.41, with respect to any article of quota cheese, as defined in section 701(c)(1) of the Trade Agreements Act, and will publish in the FEDERAL REGISTER a list of the type and amount of each subsidy. The Secretary will incorporate in each annual list any changes and additional subsidies for the preceding calendar year determined under paragraph (b) of this section or under § 355.43(b).

(b) *Quarterly update.* Not later than April 1st, July 1st, and October 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether there have been any changes in or additions to the latest annual list, and will publish in the FEDERAL REGISTER a quarterly update of those changes and additions.

### § 355.43 Determination upon request.

(a) *Request for determination.* Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list may request in writing that the Secretary determine whether there are any changes or additions. The person shall file the request at the time and place specified in § 355.31(d). The request shall allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and shall contain the following, to the extent reasonably available to the requesting person:

(1) The name and address of the person;

(2) The article of quota cheese allegedly benefitting from the changed or additional subsidy;

(3) The country of origin of the article of quota cheese; and

(4) The alleged subsidy or changed subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

The requirements of §355.31(d) and (f) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the FEDERAL REGISTER notice of any changes or additions.

**§ 355.44 Complaint of price-undercutting by subsidized imports.**

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under §355.43(b), whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update. The Department of Agriculture regulations concerning complaints of price-cutting by subsidized imports of quota cheese are published in 7 CFR part 6.

**§ 355.45 Access to information.**

Subpart C of this part applies to factual information submitted in connection with this subpart.

**Subpart E—Effective Dates**

**§ 355.51 Effective dates of amendments to the Tariff Act of 1930 made by the Omnibus Trade and Competitiveness Act of 1988.**

In accordance with section 1337 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100-418) (“the 1988 Act”), the amendments to the Tariff Act of 1930 made by the 1988 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f) of this section, all amendments made by Title I, Subtitle C, Part II of the 1988 Act which affect authorities administered by the Secretary are deemed effective as of August 23, 1988.

(b) Amendments made by sections 1312, 1315, 1316, 1318, 1325, 1327, 1331, and 1332 of the 1988 Act which affect authorities administered by the Secretary are deemed to take effect immediately with respect to all investigations, section 736(c) reviews, or section 751 reviews initiated after August 23, 1988.

(c) The amendment made by section 1324 of the 1988 Act which affects authorities administered by the Secretary is deemed to apply only to investigations initiated after August 23, 1988.

(d) The amendments made by sections 1321(a) and 1334 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after August 23, 1988.

(e) The amendments made by section 1321(b) and 1335 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to entries, and withdrawals from warehouse for consumption that are liquidated on or after August 23, 1988.

(f) The amendment made by section 1319 is deemed effective with respect to all section 736(c) and section 751 reviews initiated on or after August 23, 1988, as well as to all section 736(c) and section 751 reviews for which there is a request for revocation pending on August 23, 1988.

(g) Notwithstanding the provisions of paragraphs (a) through (f) of this section, the Secretary may implement the amendments of the 1988 Act at a date later than August 23, 1988, if the Secretary determines that implementation in accordance with paragraphs (a) through (f) of this section would prevent the Department from complying with other requirements of law.

[55 FR 9057, Mar. 9, 1990]

ANNEX I—LIST OF COUNTRIES UNDER THE AGREEMENT

1. As of the date of publication of this part, the Agreement applies between the United States and the following countries, as determined under section 2(b) of the Trade Agreements Act of 1979: Australia, Austria, Brazil, Canada, Chile, Egypt, European Economic Community (accepted for member states), Finland, United Kingdom for Hong Kong, India, Indonesia, Israel, Japan, Korea, Norway, Pakistan, Philippines, Sweden, Switzerland, Turkey, and Uruguay. See section 701(b)(1) of the Act.

2. Taiwan and Mexico have assumed obligations with respect to the United States which the President has determined are substantially equivalent to obligations under the Agreement. See section 701(b)(2) of the Act.

3. The following countries are entitled to an injury test under section 701(b)(3) of the Act: Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay, and Liberia.

For further information, contact the Office of Policy, Import Administration, at the address stated in §355.31(d).

ANNEX II—TIME LIMITS FOR SUBMISSIONS SPECIFIED IN THIS PART

Description of time limit <sup>1</sup>	Section
Administrative protective order:	
Request for disclosure under .....	355.34(b)
Return of information released under .....	355.34(d)
Withdrawal of information subject to .....	355.34(c)
Administrative review:	
Request for review of all producers or exporters .....	355.22(a)
Request for changed circumstances review .....	355.22(h)
Request for review of individual producers or exporters .....	355.22(a)
Withdrawal of request for review .....	355.22(a)
Commission:	
Filing of petition with .....	355.12(c)
Request for review of revised suspension agreement .....	355.19(b)

Description of time limit <sup>1</sup>	Section
Request for review of suspension agreement	355.18(i)
Critical circumstances findings:	
Request for .....	355.16(a)
Request for final finding only .....	355.16(d)
Request for preliminary and final finding .....	355.16(b)
Exclusion from order:	
Request for .....	355.14(a)
Factual information:	
Questionnaire responses in administrative reviews .....	355.31(b)
Request for disclosure of, under protective order .....	355.34(b)
Request for extension of time limits to submit .....	355.31(b)
Request for extension of time limits to submit allegations .....	355.31(c)
Submission of, regarding preliminarily accepted suspension agreements .....	355.18(g)
Submission of subsidy allegations .....	355.31(c)
Submission of standing allegations .....	355.31(c)
Submissions of, in general .....	355.31(a)
Withdrawal of, subject to disclosure under protective order .....	355.34(c)
Final determination:	
Petitioner's request to postpone in simultaneous investigations .....	355.20(c)
Request to investigate upstream subsidy .....	355.20(b)
Hearings:	
Requests for .....	355.38(b)
Petition:	
Amendment to .....	355.12(e)
Filing with the Commission .....	355.12(c)
Filing with the Secretary of the Treasury .....	355.12(h)
Postponement of determinations:	
Petitioner's request to postpone final—simultaneous investigations .....	355.20(c)
Petitioner's request to postpone preliminary .....	355.15(c)
Preliminary determination:	
Petitioner's request to postpone .....	355.15(c)
Request to investigate upstream subsidy .....	355.15(d)
Waiver of verification .....	355.15(f)
Proprietary information:	
Request for treatment as .....	355.32(a)
Resubmission of, in proper form .....	355.32(d)
Submission of agreement to release under protective order .....	355.32(c)
Submission of public summary .....	355.32(b)
Revocation of order:	
Request for .....	355.25(b)
Objections to, in the absence of requests for review .....	355.25(d)
Service:	
Preliminarily accepted suspension agreements .....	355.18(g)
Case and rebuttal briefs .....	355.38(e)
Standing:	
Allegation of lack of .....	355.31(c)
Suspension of investigation:	
Request for Commission review of agreement .....	355.18(i)
Request for Commission review of revised agreement .....	355.19(b)
Request for termination of .....	355.25(b)
Request to continue investigation .....	355.18(i)
Service of preliminarily accepted agreement .....	355.18(g)
Submission of factual information .....	355.18(g)
Submission of proposed agreement .....	355.18(g)
Submission of written argument .....	355.18(g)
Subsidy allegations:	
Request to investigate additional subsidy .....	355.31(c)
Request to investigate upstream subsidy .....	355.15(d)
.....	355.20(b)
Termination of suspended investigation:	
Request for .....	355.25(b)
Objections to, in the absence of requests for review .....	355.25(d)

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Description of time limit <sup>1</sup>	Section
Verification:	
Request for in administrative reviews .....	355.36(a)
Waiver of .....	355.15(f)
Written argument:	
Submission of case brief .....	355.38(c)
Submission of rebuttal brief .....	355.38(d)
Service of case and rebuttal briefs .....	355.38(e)
Submission of, regarding preliminarily accept- ed suspension agreements .....	355.18(g)

<sup>1</sup> Documents are filed when stamped by the Central Records Unit of the Department of Commerce. See § 355.31(d) for hours of operation.

**PART 356—PROCEDURES AND RULES FOR IMPLEMENTING ARTICLE 1904 OF THE NORTH AMERICAN FREE TRADE AGREEMENT**

**Subpart A—Scope and Definitions**

- Sec.
- 356.1 Scope.
- 356.2 Definitions.

**Subpart B—Procedures for Commencing Review of Final Determinations**

- 356.3 Notice of intent to commence judicial review.
- 356.4 Request for panel review.
- 356.5 [Reserved]
- 356.6 Receipt of notice of a scope determination by the Government of a FTA country.
- 356.7 Request to determine when the Government of a FTA country received notice of a scope determination.
- 356.8 Continued suspension of liquidation.

**Subpart C—Proprietary and Privileged Information**

- 356.9 Persons authorized to receive proprietary information.
- 356.10 Procedures for obtaining access to proprietary information.
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**Subpart D—Violation of a Protective Order or a Disclosure Undertaking**

- 356.12 Sanctions for violation of a protective order or disclosure undertaking.
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- 356.14 Report of violation and investigation.
- 356.15 Initiation of proceedings.
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- 356.22 Prehearing conference.
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- 356.25 Witnesses.
- 356.26 Initial decision.
- 356.27 Final decision.
- 356.28 Reconsideration.
- 356.29 Confidentiality.
- 356.30 Sanctions for violations of a protective order for privileged information.

AUTHORITY: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

SOURCE: 59 FR 229, Jan. 3, 1994, unless otherwise noted.

**Subpart A—Scope and Definitions**

**§356.1 Scope.**

This part sets forth procedures and rules for the implementation of Article 1904 of the North American Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 1516a and 1677f(f)). This part is authorized by section 402(g) of the North American Free Trade Agreement Implementation Act of 1993.

**§356.2 Definitions.**

For purposes of this part:

- (a) *Act* means the Tariff Act of 1930, as amended;
- (b) *Administrative law judge* means the person appointed under 5 U.S.C. 3105 who presides over the taking of evidence as provided by subpart D of this part;
- (c) *Affected party* means a person against whom sanctions have been proposed for alleged violation of a protective order or disclosure undertaking but who is not a charged party;
- (d) *Agreement* means the North American Free Trade Agreement between Canada, the United Mexican States and the United States, signed on December 17, 1992; or, with respect to binational panel or extraordinary challenge proceedings underway as of such date, or any binational panel or extraordinary challenge proceedings that may proceed between Canada and the United States following any withdrawal from the Agreement by Canada or the United States, the United States-Canada Free Trade Agreement between Canada and the United States, which came into force on January 1, 1989;

(e) *APO Sanctions Board* means the Administrative Protective Order Sanctions Board;

(f) *Article 1904 Panel Rules* means the NAFTA Article 1904 Panel Rules, negotiated pursuant to Article 1904 of the North American Free Trade Agreement between Canada, the United Mexican States and the United States, and any subsequent amendments; or, with respect to binational panel proceedings underway as of such date, or any binational panel proceedings that may proceed between the Canada and the United States following any withdrawal from the Agreement by Canada or the United States, the *Article 1904 Panel Rules*, as amended, which came into force on January 1, 1989;

(g) *Authorized agency of a free trade area country* means:

(1) In the case of Canada, any Canadian government agency that is authorized by Canadian law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking; and

(2) In the case of Mexico, any Mexican government agency that is authorized by Mexican law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking;

(h) *Binational panel* means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement for the purpose of reviewing a final determination;

(i) *Charged party* means a person who is charged by the Deputy Under Secretary with violating a protective order or a disclosure undertaking;

(j) *Chief Counsel* means the Chief Counsel for Import Administration, U.S. Department of Commerce, or designee;

(k) *Days* means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

(l) *Department* means the U.S. Department of Commerce;

(m) *Deputy Under Secretary* means the Deputy Under Secretary for International Trade, U.S. Department of Commerce;

(n) *Director* means an Office Director under the Deputy Assistant Secretary for Investigations, U.S. Department of

Commerce, or designee, if the panel review is of a final determination by the Department under section 751 of the Act, or an Office Director under the Deputy Assistant Secretary for Compliance, or designee, if the panel review is of a final determination by the Department under section 705(a) or 735(a) of the Act;

(o) *Disclosure undertaking* means:

(1) In the case of Canada, the Canadian mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 1904 of the Agreement, as prescribed by subsection 77.21(2) of the Special Import Measures Act, as amended; and

(2) In the case of Mexico, the Mexican mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 1904 of the Agreement, as prescribed by the Ley de Comercio Exterior and its regulations;

(p) *Extraordinary challenge committee* means the committee established pursuant to Annex 1904.13 to Chapter Nineteen of the Agreement to review decisions of a panel or conduct of a panelist;

(q) *Final determination* means “final determination” as defined by Article 1911 of the Agreement;

(r) *Free trade area country* or *FTA country* means “free trade area country” as defined by section 516A(f)(10) of the Act (19 U.S.C. 1516a(f)(10));

(s) *Investigating authority* means the competent investigating authority that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a protective order or disclosure undertaking, any person authorized by the investigating authority;

(t) *Lesser-included sanction* means a sanction of the same type but of more limited scope than the proposed sanction for violation of a protective order or disclosure undertaking; thus, a one-year bar on representation before the Department is a lesser-included sanction of a proposed seven-year bar;

(u) *Letter of transmittal* means a document marked according to the requirements of 19 CFR 353.31(e)(2)(i)-(v) or 355.31(e)(2)(i)-(v);

(v) *Official publication* means:

(1) In the case of Canada, the *Canada Gazette*;

(2) In the case of Mexico, the *Diario Oficial de la Federacion*; and

(3) In the case of the United States, the FEDERAL REGISTER;

(w) *Panel review* means review of a final determination pursuant to Chapter Nineteen of the Agreement;

(x) *Party to the proceeding* means a person that would be entitled, under section 516A of the Act (19 U.S.C. 1516a), to commence proceedings for judicial review of a final determination;

(y) *Participant* means a party to the proceeding that files a Complaint or a Notice of Appearance in a panel review, and the Department;

(z) *Parties* means, in an action under subpart D of this part, the Department and the charged party or affected party;

(aa) *Person* means, an individual, partnership, corporation, association, organization, or other entity;

(bb) *Privileged information* means:

(1) With respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to the solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived;

(2) With respect to a panel review of a final determination made in Mexico:

(i) Information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico; or

(ii) Internal communications between officials of the Secretaria de Comercio y Fomento Industrial in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination; and

(3) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the

United States and with respect to which the privilege has not been waived;

(cc) *Proprietary information* means:

(1) With respect to a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the Special Import Measures Act, as amended, or subsection 45(3) of the Canadian International Trade Tribunal Act, as amended, with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

(2) With respect to a panel review of a final determination made in Mexico, *informacion confidencial*, as defined under article 80 of the Ley de Comercio Exterior and its regulations; and

(3) With respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the Act (19 U.S.C. 1677f(f)) and information the disclosure of which the Department has decided is limited under the procedures adopted pursuant to Article 1904.14 of the Agreement, including business or trade secrets; production costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

(dd) *Protective order* means a protective order issued by the Department under 19 CFR 356.10(c) or 356.11(c);

(ee) *Scope determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act (19 U.S.C. 1516a(a)(2)(B)(vi)), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering free trade area country merchandise;

(ff) *Secretariat* means the Secretariat established pursuant to Article 2002 of

the Agreement and includes the Secretariat sections located in Canada, Mexico and the United States;

(gg) *Secretary* means the Secretary of the Canadian section of the Secretariat, the Secretary of the Mexican section of the Secretariat, or the Secretary of the United States section of the Secretariat and includes any person authorized to act on behalf of the Secretary;

(hh) *Service address* means the address of the counsel of record for a person, including any facsimile number submitted with that address, or, where a person is not represented by counsel, the address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, including any facsimile number submitted with that address, or where a Change of Service Address has been filed by a person, the new service address set out as the service address in that form, including any facsimile number submitted with that address;

(ii) *Service list* means, with respect to a panel review of a final determination made in the United States, the list maintained by the investigating authority of persons who have been served in the proceeding leading to the final determination;

(jj) *Under Secretary* means the Under Secretary for International Trade, U.S. Department of Commerce, or designee;

(kk) *United States section of the Secretariat* means, for the purposes of filing, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

## Subpart B—Procedures for Commencing Review of Final Determinations

### § 356.3 Notice of intent to commence judicial review.

A party to a proceeding who intends to commence judicial review of a final determination made in the United States shall file a Notice of Intent to Commence Judicial Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as pre-

scribed by the Article 1904 Panel Rules, within 20 days after:

(a) The date of publication in the FEDERAL REGISTER of the final determination; or

(b) The date on which the notice of the final determination was received by the Government of the FTA country if the final determination was not published in the FEDERAL REGISTER.

### § 356.4 Request for panel review.

A party to a proceeding who seeks panel review of a final determination shall file a Request for Panel Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Article 1904 Panel Rules, within 30 days after:

(a) The date of publication in the official publication of the final determination; or

(b) The date on which the notice of the final determination was received by the United States Government or the Government of the FTA country if the final determination was not published in the official publication.

### § 356.5 [Reserved]

### § 356.6 Receipt of notice of a scope determination by the Government of a FTA country.

(a) Where the Department has made a scope determination, notice of such determination shall be deemed received by the Government of a FTA country when a certified copy of the determination is delivered to the chancery of the Embassy of the FTA country during its normal business hours.

(b) Where feasible, the Department, or an agent therefor, will obtain a certificate of receipt signed by a person authorized to accept delivery of documents to the Embassy of the FTA country acknowledging receipt of the scope determination. The certificate will describe briefly the document being delivered to the Embassy of the FTA country, state the date and time of receipt, and include the name and title of the person who signs the certificate. The certificate will be retained by the Department in its public files pertaining to the scope determination at issue.

**§ 356.7 Request to determine when the Government of a FTA country received notice of a scope determination.**

(a) Pursuant to section 516A(g)(10) of the Act (19 U.S.C. 1516a(g)(10)), any party to the proceeding may request in writing from the Department the date on which the Government of a FTA country received notice of a scope determination made by the Department.

(b) A request shall be made by filing a written request and the correct number of copies in accordance with the requirements set forth in 19 CFR 353.31(d) and (e)(2) or 355.31(d) and (e)(2) with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. A letter of transmittal must be bound to the original and each copy as the first page of the request.

(c) The requesting party shall serve a copy of the Request to Determine When the Government of [insert name of applicable FTA country] Received Notice of a Scope Determination by first class mail or personal service on any interested party on the Department's service list in accordance with the service requirements listed in 19 CFR 353.31(g) or 355.31(g).

(d) The Department will respond to the request referred to in paragraph (b) of this section within five business days of receipt.

**§ 356.8 Continued suspension of liquidation.**

(a) *In general.* In the case of an administrative determination specified in clause (iii) or (vi) of section 516A(a)(2)(B) of the Act (19 U.S.C. 1516a(a)(2)(B)(iii) and (vi)) and involving free trade area country merchandise, the Department shall not order liquidation of entries of merchandise covered by such a determination until the forty-first day after the date of publication of the notice described in clause (iii) or receipt of the determination described in clause (vi), as appropriate. If requested, the Department will order the continued suspension of liquidation of such entries in accordance with the terms of paragraphs (b), (c), and (d) of this section.

(b) *Eligibility to request continued suspension of liquidation.* (1) A participant in a binational panel review that was a domestic party to the proceeding, as described in section 771(9)(C), (D), (E), (F), or (G) of the Act (19 U.S.C. 1677(9)(C), (D), (E), (F) and (G)), may request continued suspension of liquidation of entries of merchandise covered by the administrative determination under review by the panel and that would be affected by the panel review.

(2) A participant in a binational panel review that was a party to the proceeding, as described in section 771(9)(A) of the Act (19 U.S.C. 1677(9)(A)), may request continued suspension of liquidation of the merchandise which it manufactured, produced, exported, or imported and which is covered by the administrative determination under review by the panel.

(c) *Request for continued suspension of liquidation.* A request for continued suspension of liquidation must include:

(1) The name of the final determination subject to binational panel review and the case number assigned by the Department;

(2) The caption of the binational panel proceeding;

(3) The name of the requesting participant;

(4) The requestor's status as a party to the proceeding and as a participant in the binational panel review; and

(5) The specific entries to be suspended by name of manufacturer, producer, exporter, or U.S. importer.

(d) *Filing and service.* (1) A request for Continued Suspension of Liquidation must be filed with the Assistant Secretary for Import Administration, room B-099, 14th and Constitution Avenue, NW., Washington, DC 20230, in accordance with the requirements set forth in 19 CFR 353.31(d) and (e)(2) or 355.31(d) and (e)(2). A letter of transmittal must be bound to the original and each copy as the first page of the request. The envelope and the first page of the request must be marked: Panel Review—Request for Continued Suspension of Liquidation. The request may be made no earlier than the date on which the first request for binational panel review is filed.

(2) The requesting party shall serve a copy of the Request for Continued Suspension of Liquidation on the United States Secretary and all parties to the proceeding in accordance with the requirements of 19 CFR 353.31(g) or 19 CFR 355.31(g).

(e) *Termination of Continued Suspension.* Upon completion of the panel review, including any panel review of remand determinations and any review by an extraordinary challenge committee, the Department will order liquidation of entries, the suspension of which was continued pursuant to this section.

### Subpart C—Proprietary and Privileged Information

#### §356.9 Persons authorized to receive proprietary information.

Persons described in paragraphs (a), (d), (e), (f) and (g) of this section shall, and persons described in paragraphs (b) and (c) of this section may, be authorized by the Department to receive access to proprietary information if they comply with this subpart and such other conditions imposed upon them by the Department:

(a) The members of, and appropriate staff of, a binational panel or extraordinary challenge committee;

(b) Counsel to participants in panel reviews and professionals retained by, or under the direction or control of such counsel, provided that the counsel or professional does not participate in competitive decision-making activity (such as advice on production, sales, operations, or investments, but not legal advice) for the participant represented or for any person who would gain competitive advantage through knowledge of the proprietary information sought;

(c) Other persons who are retained or employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as paralegals, law clerks, and secretaries, if such other persons are:

(1) Not involved in the competitive decision-making of a participant to the panel review or for any person who would gain competitive advantage through knowledge of the proprietary information sought; and

(2) Have agreed to be bound by the terms set forth on the application for protective order of the counsel or professional, panelist, or committee member;

(d) Each Secretary and every member of the staff of the Secretariat;

(e) Such officials of the United States Government (other than an officer or employee of the investigating authority that issued the final determination subject to review) as the United States Trade Representative informs the Department require access to proprietary information for the purpose of evaluating whether the United States should seek an extraordinary challenge committee review of a panel determination;

(f) Such officials of the Government of a FTA country as an authorized agency of the FTA country informs the Department require access to proprietary information for the purpose of evaluating whether the FTA country should seek an extraordinary challenge committee review of a panel determination; and

(g) Every court reporter, interpreter and translator employed in a panel or extraordinary challenge committee review.

#### §356.10 Procedures for obtaining access to proprietary information.

(a) *Persons who must file an application for disclosure under protective order.* In order to be permitted access to proprietary information in the administrative record of a final determination under review by a panel, all persons described in §§356.9 (a), (b), (d), (e), (f) and (g) shall file an application for a protective order. The procedures for applying for a protective order described in paragraph (b) of this section apply as well to amendments or modifications filed by persons described in §356.9.

(b) *Procedures for applying for a protective order—(1) Contents of applications.*

(i) The Department has adopted application forms for disclosure of proprietary information which are available from the United States section of the Secretariat or the Central Records Unit, room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. The

application forms may be amended from time to time.

(ii) Such forms require the applicant to submit a personal sworn statement stating, in addition to such other terms as the Department may require, that the applicant shall:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to the applicant, to any person other than:

(1) An official of the Department involved in the particular panel review in which the proprietary information is part of the administrative record;

(2) The person from whom the information was obtained;

(3) A person who has been granted access to the proprietary information at issue under § 356.9; and

(4) A person employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as a paralegal, law clerk, or secretary if such person:

(i) Is not involved in competitive decision-making for a participant in the panel review or for any person that would gain competitive advantage through knowledge of the proprietary information sought; and

(ii) Has agreed to be bound by the terms set forth in the application for protective order by the counsel, professional, panelist, or committee member;

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 1904 of the Agreement;

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the protective order and all other documents containing the proprietary information (such as briefs, notes, or charts based on any such information received under the protective order); and

(D) Acknowledge that breach thereof may subject the signatory to sanctions under § 356.12.

(2) *Timing of application for disclosure under protective order*—(i) *Persons described in § 356.9(a) (panelists, etc.)*. A

person described in § 356.9(a) may file an application after a Notice of Request for Panel Review has been filed with the Secretariat.

(ii) *Persons described in § 356.9(b) (counsel, etc.)*. A person described in § 356.9(b) may file an application at any time but not before that person files a Complaint or a Notice of Appearance.

(iii) *Persons described in § 356.9(d) (Secretaries, etc.)*. A person described in § 356.9(d) shall file an application immediately upon assuming official responsibilities in the Secretariat.

(iv) *Persons described in § 356.9 (e), (f) or (g) (designated Government officials or court reporters, etc.)*. A person described in § 356.9 (e), (f) or (g) shall file an application before seeking or obtaining access to proprietary information.

(3) *Filing of applications*. A person described in § 356.9 (a), (b), (d), (e), (f) or (g) shall file the completed original and five copies of an application with the United States section of the Secretariat which, in turn, shall submit the original and one copy of the application to the Department. A letter of transmittal must be bound to the original and each copy as the first page of the document.

(4) *Service of applications*—(i) *Persons described in §§ 356.9(b) (counsel, etc.)*. A person described in § 356.9(b) who files an application before the expiration of the time period fixed under the Article 1904 Panel Rules for filing a Notice of Appearance in the panel review shall serve one copy of the application on each person listed on the service list in accordance with paragraphs (b)(4) (ii) and (iii) of this section. In any other case, such person shall serve one copy of the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(ii) *Method of service*. A document may be served by:

(A) Delivering a copy of the document to the service address of the participant;

(B) Sending a copy of the document to the service address of the participant by facsimile transmission or by expedited delivery courier or expedited mail service; or

(C) Personal service on the participant.

(iii) *Proof and date of service.* A proof of service shall appear on, or be affixed to, the document. Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier service or expedited mail service.

(5) *Release to employees of panelists, committee members, and counsel or professionals.* A person described in §356.9(c), including a paralegal, law clerk, or secretary, may be permitted access to proprietary information disclosed under protective order by the counsel, professional, panelist, or extraordinary challenge committee member who retains or employs such person, if such person has agreed to the terms of the protective order issued to the counsel, professional, panelist, or extraordinary challenge committee member, by signing and dating a completed copy of the application for protective order of the representative counsel, professional, panelist or extraordinary challenge committee member in the location indicated in that application.

(6) *Counsel or professional who retains access to proprietary information under a protective order issued during the administrative proceeding.* A person described in §356.9(b) who has been granted access to proprietary information under protective order during an administrative proceeding that resulted in a final determination that becomes the subject of panel review may, if permitted by the terms of the protective order previously issued by the Department, retain such information until the applicant receives a protective order under this part.

(c) *Issuance and service of protective orders—(1) Persons described in §356.9(a) (panelists, etc.).* (i) Upon receipt by the Department of an application from a person described in §356.9(a), the Department will issue a protective order authorizing disclosure of proprietary information included in the administrative record of the final determination that is the subject of the panel review at issue. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat

which, in turn, shall transmit the original to the applicant and serve one copy of the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(ii) A member of a binational panel or extraordinary challenge committee proceeding initiated under the United States-Canada Free Trade Agreement to whom the Department issues a protective order must countersign the protective order and return one copy of the countersigned protective order to the United States section of the Secretariat.

(2) *Persons described in §§356.9 (b) or (c) (counsel, etc., or paralegals, etc.)—(i) Opportunity to object to disclosure.* The Department will not rule on an application filed by a person described in §356.9(b) until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously. Unless the Department has indicated otherwise, any person may file an objection to the application within seven days of filing of the application. Any such objection shall state the specific reasons in the view of such person why the application should not be granted. One copy of the objection shall be served on the applicant and on all persons who were served with the application. Service shall be made in accordance with paragraphs (b)(4) (ii) and (iii) of this section. Any reply to an objection will be considered if it is filed before the Department renders a decision.

(ii) *Timing of decisions on applications.* Normally, the Department will render a decision to approve or deny an application within 14 days. If any person files an objection, the Department will normally render the decision within 30 days.

(iii) *Approval of applications.* If appropriate, the Department will issue a protective order permitting the release of proprietary information to the applicant.

(iv) *Denial of applications.* If the Department denies an application, it shall issue a letter notifying the applicant of its decision and the reasons therefor.

(v) *Issuance of protective orders.* If the Department issues a protective order to a person described in §356.9(b), that

person shall immediately file four copies of the protective order with the United States section of the Secretariat and shall serve one copy of the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(3) *Persons described in § 356.9 (d) or (g) (Secretaries, etc., or court reporters, etc.).* Upon receipt by the Department of an application from a person described in § 356.9 (d) or (g), the Department will issue a protective order authorizing disclosure of proprietary information to the applicant. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat.

(4) *Persons described in § 356.9 (e) or (f) (designated Government officials).* (i) Upon receipt by the Department of an application from a person described in § 356.9 (e) or (f), the Department will issue a protective order authorizing disclosure of proprietary information included in the record of the panel review at issue. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat which, in turn, shall transmit the original to the applicant and serve one copy of the document on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(d) *Modification or revocation of protective orders—(1) Notification.* If any person believes that changed conditions of fact or law, or the public interest, may require that a protective order issued pursuant to paragraph (c) of this section be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the protective order was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action on its own initiative.

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a protective order pursuant to paragraph (d) of this section, the Department shall transmit the original and four copies of the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the original to the person to whom the protective order was issued and serve one copy on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

**§ 356.11 Procedures for obtaining access to privileged information.**

(a) *Persons who may apply for access to privileged information under protective order and filing of applications—(1) Panelists.* (i) If a panel decides that *in camera* examination of a document containing privileged information in an administrative record is necessary in order for the panel to determine whether the document, or portions thereof, should be disclosed under a Protective Order for Privileged Information, each panelist who is to conduct the *in camera* review, pursuant to the rules of procedure adopted by the United States and the free trade area countries to implement Article 1904 of the Agreement, shall submit an application for disclosure of the privileged information under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department; and

(ii) If a panel orders disclosure of a document containing privileged information, any panelist who has not filed an application pursuant to paragraph (a)(1)(i) of this section shall submit an application for disclosure of the privileged information under a Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(2) *Designated officials of the United States Government.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States should request an extraordinary

challenge committee, each official of the United States Government (other than an officer or employee of the investigating authority that issued the final determination subject to review) whom the United States Trade Representative informs the Department requires access for the purpose of such evaluation shall file the completed original and five copies of an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the original and one copy of the application to the Department.

(3) *Designated officials of the government of a FTA country.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the Government of an involved FTA country should request an extraordinary challenge committee, each official of the Government of the involved FTA country whom an authorized agency of the involved FTA country informs the Department requires access for the purpose of such evaluation shall file the completed original and five copies of an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the original and one copy of the application to the Department.

(4) *Members of an extraordinary challenge committee.* Where an extraordinary challenge record contains privileged information and a Protective Order for Privileged Information was issued to counsel or professionals representing participants in the panel review at issue, each member of the extraordinary challenge committee shall submit an application for a Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(5) *Counsel or a professional under the direction or control of counsel.* If the panel decides, in accordance with the Article 1904 Rules, that disclosure of a document containing privileged information is appropriate, a counsel or a professional under the direction or con-

trol of counsel identified in such a decision as entitled to release of information under a Protective Order for Privileged Information shall submit an application for a Protective Order for Privileged Information. Any such person shall:

(i) File the completed original and five copies of an application with the United States section of the Secretariat which, in turn, shall submit the original and one copy of the application to the Department; and

(ii) As soon as the deadline fixed under the Article 1904 Panel Rules for filing a Notice of Appearance in the panel review has passed, shall serve a copy of the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (i) and (iii) of this section.

(6) *Other designated persons.* If the panel decides, in accordance with the Article 1904 Panel Rules, that disclosure of a document containing privileged information is appropriate, any person identified in such a decision as entitled to release of information under a Protective Order for Privileged Information, e.g., a Secretary, Secretariat staff, court reporters, interpreters and translators, or a member of the staff of a panelist or extraordinary challenge committee member, shall submit an application for release under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(b) *Contents of applications for release under protective order for privileged information.* (1) The Department has adopted application forms for disclosure of privileged information which are available from the United States section of the Secretariat and the Central Records Unit, room B-099, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. These forms may be amended from time to time.

(2) Such forms require the applicant for release of privileged information under Protective Order for Privileged Information to submit a personal sworn statement stating, in addition to such other conditions as the Department may require, that the applicant shall:

(i) Not disclose any privileged information obtained under protective order to any person other than:

(A) An official of the Department involved in the particular panel review in which the privileged information is part of the record;

(B) A person who has furnished a similar application and who has been issued a Protective Order for Privileged Information concerning the privileged information at issue; and

(C) A person retained or employed by counsel, a professional, a panelist or extraordinary challenge committee member who has been issued a Protective Order for Privileged Information, such as a paralegal, law clerk, or secretary, if such person has agreed to be bound by the terms set forth in the application for Protective Order for Privileged Information of the counsel, professional, panelist or extraordinary challenge committee member by signing and dating the completed application at the location indicated in such application;

(ii) Use such information solely for purposes of the proceedings under Article 1904 of the Agreement;

(iii) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the Protective Order for Privileged Information and all other documents containing the privileged information (such as briefs, notes, or charts based on any such information received under the Protective Order for Privileged Information); and

(iv) Acknowledge that breach thereof may subject the signatory to sanctions under §§ 356.12 and 356.30.

(c) *Issuance of protective orders for privileged information*—(1) *Panelists, designated government officials and members of an extraordinary challenge committee.*

(i) Upon receipt of an application for protective order under this section from a panelist, designated government official or member of an extraordinary challenge committee, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the original and four copies of the protective order

to the United States section of the Secretariat which, in turn, shall transmit the original to the applicant and serve one copy of the order on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4) (ii) and (iii).

(ii) If the Department issues a Protective Order for Privileged Information to a member of a binational panel or extraordinary challenge proceeding initiated under the United States-Canada Free Trade Agreement, that person must countersign the protective order and return one copy of the countersigned protective order to the United States section of the Secretariat.

(2) *Counsel or a professional under the direction or control of counsel.* Upon receipt of an application for protective order under this section from a counsel or a professional under the direction or control of counsel, the Department shall issue a Protective Order for Privileged Information. If the Department issues a protective order to such person, that person shall immediately file four copies of the protective order with the United States section of the Secretariat and shall serve one copy of the order on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4) (ii) and (iii).

(3) *Other designated persons described paragraph (a)(6) of this section.* Upon receipt of an application for protective order under this section from a designated person described in paragraph (a)(6) of this section, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat.

(d) *Modification or revocation of protective order for privileged information*—(1) *Notification.* If any person believes that changed conditions of fact or law, or the public interest, may require that a Protective Order for Privileged Information be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances

warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the Protective Order for Privileged Information was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action on its own initiative.

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a Protective Order for Privileged Information pursuant to paragraph (d) of this section, the Department shall transmit the original and four copies of the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the original to the person to whom the protective order was issued and serve one copy on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4) (ii) and (iii).

#### Subpart D—Violation of a Protective Order or a Disclosure Undertaking

##### § 356.12 Sanctions for violation of a protective order or disclosure undertaking.

(a) A person, other than a person exempted from this part by the provisions of section 777f(f)(4) of the Act (19 U.S.C. 1677f(f)(4)), determined under this part to have violated a protective order or a disclosure undertaking may be subjected to any or all of the following sanctions:

(1) Liable to the United States for a civil penalty not to exceed \$100,000 for each violation;

(2) Barred from appearing before the Department to represent another for a designated time period from the date of publication in an official publication of a notice that a violation has been determined to exist;

(3) Denied access to proprietary information for a designated time period from the date of publication in an official publication of a notice that a violation has been determined to exist;

(4) Other appropriate administrative sanctions, including striking from the record of the panel review any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect; and

(5) Required to return material previously provided by the investigating authority, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or a disclosure undertaking.

(b) (1) The firm of which a person determined to have violated a protective order or a disclosure undertaking is a partner, associate, or employee; any partner, associate, employer, or employee of such person; and any person represented by such person may be barred from appearing before the Department for a designated time period from the date of publication in an official publication of notice that a violation has been determined to exist or may be subjected to the sanctions set forth in paragraph (a) of this section, as appropriate.

(2) Each person against whom sanctions are proposed under paragraph (b)(1) of this section is entitled to all the administrative rights set forth in this subpart separately and apart from rights provided to a person subject to sanctions under paragraph (a) of this section, including the right to a charging letter, right to representation, and right to a hearing, but subject to joinder or consolidation by the administrative law judge under § 356.23(b).

##### § 356.13 Suspension of rules.

Upon request by the Deputy Under Secretary, a charged or affected party, or the APO Sanctions Board, the administrative law judge may modify or waive any rule in this subpart upon determining that no party will be unduly prejudiced and the ends of justice will thereby be served and upon notice to all parties.

**§ 356.14 Report of violation and investigation.**

(a) An employee of the Department or any other person who has information indicating that the terms of a protective order or a disclosure undertaking have been violated will provide the information to a Director or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of a protective order or an undertaking, the Director will conduct an investigation concerning whether there was a violation of a protective order or a disclosure undertaking, and who was responsible for the violation, if any. For purposes of this subpart, the Director will be supervised by the Deputy Under Secretary with guidance from the Chief Counsel. The Director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the Director, could have been discovered through the exercise of reasonable and ordinary care.

(c) The Director will provide a report of the investigation to the Deputy Under Secretary, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the Director's request, and if extraordinary circumstances exist, the Deputy Under Secretary may grant the Director up to an additional 180 days to conduct the investigation and submit the report.

(d) The following examples of actions that constitute violations of an administrative protective order shall serve as guidelines to each person subject to a protective order. These examples do not represent an exhaustive list. Evidence that one of the acts described in the guidelines has been committed, however, shall be considered by the Director as reasonable cause to believe a person has violated a protective order within the meaning of § 356.15.

(1) Disclosure of proprietary information to any person not granted access to that information by protective order, including an official of the Department or member of the Secretariat staff not directly involved with the panel review pursuant to which the proprietary information was released,

an employee of any other United States, foreign government or international agency, or a member of the United States Congress, the Canadian Parliament, or the Mexican Congress.

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including maintaining a log showing when each proprietary document is used, and by whom, and requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

(3) Loss of proprietary information.

(4) Failure to return or destroy all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the protective order.

(5) Failure to delete proprietary information from the public version of a brief or other correspondence filed with the Secretariat.

(6) Disclosure of proprietary information during a public hearing.

(e) Each day of a continuing violation shall constitute a separate violation.

**§ 356.15 Initiation of proceedings.**

(a) If the Deputy Under Secretary concludes, after an investigation and report by the Director under § 356.14(c) and consultation with the Chief Counsel, that there is reasonable cause to believe that a person has violated a protective order or a disclosure undertaking and that sanctions are appropriate for the violation, the Deputy Under Secretary will, at the Deputy Under Secretary's discretion, either initiate a proceeding under this subpart by issuing a charging letter as set forth in § 356.16 or request that the authorized agency of the involved FTA country initiate a proceeding by issuing a request to charge as set forth in § 356.17. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the Deputy Under Secretary will consider the nature of

the violation, the resulting harm, and other relevant circumstances of the case. The Deputy Under Secretary will decide whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(b) If the Department receives a request to charge from an authorized agency of a FTA country, the Deputy Under Secretary will promptly initiate proceedings under this part by issuing a charging letter as set forth in § 356.16.

**§ 356.16 Charging letter.**

(a) *Contents of letter.* The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before an administrative law judge if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and amendment of the charging letter.* The Deputy Under Secretary may amend, supplement, or withdraw the charging letter at any time with the approval of an administrative law judge if the interests of justice would thereby be served. If a hearing has not been requested, the Deputy

Under Secretary will ask the Under Secretary to appoint an administrative law judge to make this determination. If a charging letter is withdrawn after a request for a hearing, the administrative law judge will determine whether the withdrawal will bar the Deputy Under Secretary from seeking sanctions at a later date for the same alleged violation. If there has been no request for a hearing, or if supporting information has not been submitted under § 356.28, the withdrawal will not bar future actions on the same alleged violation. The Deputy Under Secretary and a charged or affected party may settle a charge brought under this subpart by mutual agreement at any time after service of the charging letter; approval of the administrative law judge or the APO Sanctions Board is not necessary.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c)(1) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that, in the opinion

of the Deputy Under Secretary, satisfies due process requirements under United States law with respect to notice in administrative proceedings.

**§ 356.17 Request to charge.**

Upon deciding to initiate a proceeding pursuant to § 356.15, the Deputy Under Secretary will request the authorized agency of the involved FTA country to initiate a proceeding for imposing sanctions for violation of a protective order or a disclosure undertaking by issuing a letter of request to charge that includes a statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof.

**§ 356.18 Interim sanctions.**

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 356.16 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department, an authorized agency of the involved FTA country, or others, including the protection of proprietary information, the Deputy Under Secretary may petition an administrative law judge to impose such sanctions.

(b) The administrative law judge may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order or a disclosure undertaking and the Department is likely to prevail in obtaining sanctions under this subpart;

(2) The Department, authorized agency of the involved FTA country, or others are likely to suffer irreparable harm if the interim sanctions are not imposed; and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department, authorized agency of the involved FTA country, or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department, authorized agency of the

involved FTA country, or others, including, but not limited to:

(1) Denying a person further access to proprietary information;

(2) Barring a person from representing another person before the Department;

(3) Barring a person from appearing before the Department; and

(4) Requiring the person to return material previously provided by the Department or the investigating authority of the involved FTA country, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the administrative law judge to support the request. The notice will include a reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the administrative law judge. The administrative law judge has discretion to permit oral presentations and to allow further submissions.

(f) The administrative law judge will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this subpart will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the administrative law judge and expires automatically upon the issuance of a final order.

(i) The administrative law judge may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is

certified by the administrative law judge as necessary to prevent undue harm to the Department or authorized agency of the involved FTA country, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the administrative law judge determines otherwise.

(j) The Deputy Under Secretary may request an administrative law judge to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The administrative law judge may impose emergency interim sanctions upon determining that the Department or authorized agency of the involved FTA country is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The administrative law judge will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will request that the Under Secretary appoint an administrative law judge for making determinations under this section.

(l) The Deputy Under Secretary will notify the Secretariat concerning the imposition or revocation of interim sanctions or emergency interim sanctions.

**§ 356.19 Request for a hearing.**

(a) Any party may request a hearing by submitting a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, the Under Secretary will appoint an administrative law judge to

conduct the hearing and render an initial decision.

**§ 356.20 Discovery.**

(a) *Voluntary discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending sanctions proceeding.

(b) *Limitations on discovery.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in this Part.

(c) *Interrogatories and requests for admissions or production of documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and the party may then apply to the administrative law judge for such enforcement or protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(d) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents

or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement the party's response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which the party:

(i) Knows the response was incorrect when made; or

(ii) Knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(f) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make any determination or enter any order in the proceedings as the administrative law judge deems reasonable and appropriate. The administrative law judge may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established

for purpose of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the administrative law judge will consider the necessity to protect proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

#### § 356.21 Subpoenas.

(a) *Application for issuance of a subpoena.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) *Use of subpoena for discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

(c) *Application for subpoenas for nonparty department records or personnel or for records or personnel of other Government agencies.* (1) An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Department, or requiring the appearance of an official or employee of the Department, or requiring the production of

records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship by alternative means.

(2) Such applications shall be ruled upon by the administrative law judge. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) *Motion to limit or quash.* Any motion to limit or quash a subpoena shall be filed within 10 days after service thereof, or within such other time as the administrative law judge may allow.

(e) *Ex parte rulings on applications for subpoenas.* Applications for the issuance of subpoenas pursuant to this section may be made *ex parte*, and, if so made, such applications and rulings thereon shall remain *ex parte* unless otherwise ordered by the administrative law judge.

(f) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint an administrative law judge to rule on applications for issuance of a subpoena under this section.

#### § 356.22 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the administrative law judge will direct the parties to attend a prehearing conference to consider:

- (i) Simplification of issues;
- (ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;
- (iii) Settlement of the matter;
- (iv) Discovery; and
- (v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the administrative law judge will direct the parties to correspond with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

#### § 356.23 Hearing.

(a) *Scheduling of hearing.* The administrative law judge will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the administrative law judge determines otherwise based upon good cause shown, that another location would better serve the interests of justice. In setting the date, the administrative law judge will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or consolidation.* The administrative law judge may order joinder or consolidation if sanctions are proposed against more than one party or if violations of more than one protective order or disclosure undertaking are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing procedures.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof if necessary or advisable in order to protect proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the administrative law judge determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and

given appropriate weight. The administrative law judge may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The administrative law judge will ensure that a record of the hearing will be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect proprietary information.

(d) *Rights of parties.* At a hearing each party shall have the right to:

(1) Introduce and examine witnesses and submit physical evidence;

(2) Confront and cross-examine adverse witnesses;

(3) Present oral argument; and

(4) Receive a transcript or recording of the proceedings, upon request, subject to the administrative law judge's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief Counsel will represent the Department, unless the General Counsel of the Department determines otherwise. The administrative law judge may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

(f) *Ex parte communications.* The parties and their representatives may not make any *ex parte* communications to the administrative law judge concerning the merits of the allegations or any matters at issue, except as provided in § 356.18(j) regarding emergency interim sanctions.

**§ 356.24 Proceeding without a hearing.**

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information

and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

**§ 356.25 Witnesses.**

Witnesses summoned before the Department shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

**§ 356.26 Initial decision.**

(a) *Initial decision.* The administrative law judge, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The administrative law judge or the Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record and the pleadings of the parties.

(b) *Findings and conclusions.* The initial decision will state findings and conclusions as to whether a person has violated a protective order or a disclosure undertaking; the basis for those findings and conclusions; and whether the sanctions proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The administrative law judge or the Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a finding of violation of a protective order or a disclosure undertaking and that the sanctions are warranted against the charged or affected party.

(c) *Finality of decision.* If the APO Sanctions Board has not issued a decision on the matter within 60 days after issuance of the initial decision, the initial decision becomes the final decision of the Department.

**§ 356.27 Final decision.**

(a) *AP0 Sanctions Board.* Upon request of a party, the initial decision

will be reviewed by the members of the APO Sanctions Board. The Board consists of the Under Secretary for International Trade, who shall serve as Chairperson, the Under Secretary for Economic Affairs, and the General Counsel.

(b) *Comments on initial decision.* Within 30 days after issuance of the initial decision, a party may submit written comments to the APO Sanctions Board on the initial decision, which the Board will consider when reviewing the initial decision. The parties have no right to an oral presentation, although the Board may allow oral argument in its discretion.

(c) *Final decision by the APO Sanctions Board.* Within 60 days but not sooner than 30 days after issuance of an initial decision, the APO Sanctions Board may issue a final decision which adopts the initial decision in its entirety; differs in whole or in part from the initial decision, including the imposition of lesser included sanctions; or remands the matter to the administrative law judge or the Deputy Under Secretary for further consideration. The only sanctions that the Board can impose are those sanctions proposed in the charging letter or lesser included sanctions.

(d) *Content's of final decision.* If the final decision of the APO Sanctions Board does not remand the matter and differs from the initial decision, it will state findings and conclusions which differ from the initial decision, if any, the basis for those findings and conclusions, and the sanctions which are to be imposed, to the extent they differ from the sanctions in the initial decision.

(e) *Public notice of sanctions.* If the final decision is that there has been a violation of a protective order or a disclosure undertaking and that sanctions are to be imposed, notice of the decision will be published in the FEDERAL REGISTER and forwarded to the United States section of the Secretariat. Such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. If the final decision is made in a proceeding based upon a request to charge by an authorized agency of an FTA

country, the decision will be forwarded to the Secretariat of the involved FTA country for transmittal to the authorized agency of the FTA country for publication in the official publication or other appropriate action. The Deputy Under Secretary will also provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under §356.12(a)(2) and to any Federal agency likely to have an interest in the matter and will cooperate in any disciplinary actions by any association or agency.

#### **§356.28 Reconsideration.**

Any party may file a motion for reconsideration with the APO Sanctions Board. The party must state with particularity the grounds for the motion, including any facts or points of law which the party claims the APO Sanctions Board has overlooked or misapplied. The party may file the motion within 30 days of the issuance of the final decision or the adoption of the initial decision as the final decision, except that if the motion is based on the discovery of new and material evidence which was not known, and could not reasonably have been discovered through due diligence prior to the close of the record, the party shall file the motion within 15 days of the discovery of the new and material evidence. The party shall provide a copy of the motion to all other parties. Opposing parties may file a response within 30 days of the date of service of the motion. The response shall be considered as part of the record. The parties have no right to an oral presentation on a motion for reconsideration, but the Board may permit oral argument at its discretion. If the motion to reconsider is granted, the Board will review the record and affirm, modify, or reverse the original decision or remand the matter for further consideration to an administrative law judge or the Deputy Under Secretary, as warranted.

#### **§356.29 Confidentiality.**

(a) All proceedings involving allegations of a violation of a protective order or a disclosure undertaking shall

be kept confidential until such time as the Department makes a final decision under these regulations, which is no longer subject to reconsideration, imposing a sanction.

(b) The charged party or counsel for the charged party will be, to the extent possible, granted access to proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of § 356.10.

**§ 356.30 Sanctions for violations of a protective order for privileged information.**

The provisions of this subpart shall apply to persons who are alleged to have violated a Protective Order for Privileged Information.

**PART 357—SHORT SUPPLY PROCEDURES**

Sec.

- 357.101 Definitions.
- 357.102 Short supply allowances.
- 357.103 Petitions for short supply allowances.
- 357.104 Determination of adequacy of petition, notice of review, and opportunity for comment.
- 357.105 Questionnaires.
- 357.106 Time limits.
- 357.107 Publication of determinations and notification of foreign governments.
- 357.108 Disclosure of information.
- 357.109 Request for reconsideration.
- 357.110 Record of review.
- 357.111 Public and proprietary information.

AUTHORITY: Sec. 4(b) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101-221, 103 Stat. 1886 (1989).

SOURCE: 55 FR 1349, Jan. 12, 1990, unless otherwise noted:

**§ 357.101 Definitions.**

(a) *Arrangement* means an arrangement between the United States Government and a foreign government whereby the foreign government agrees to restrain voluntarily certain steel exports to, or destined for consumption in, the United States for the period of October 1, 1989, through March 31, 1992.

(b) *Aberration* means a domestic price which is out of the ordinary and present course of normal pricing trends.

(c) *Interested party* means (1) A U.S. producer or consumer of the product;

(2) a U.S. importer/distributor of the product; or (3) a foreign producer of the product (through its government, if such government is a party to the arrangement under which a short supply allowance is requested).

(d) *Prevailing domestic market prices* means current prices in the United States market for domestically produced and imported product, as reflected in actual purchases and sales (but does not include import prices which the Secretary decides are likely to be significantly affected by dumping or subsidy practices).

(e) The *product* means the steel product for which a short supply allowance is requested or material that possesses the same physical and mechanical characteristics, and which can be used for the same applications without imposing any significant retooling costs on the consumer.

(f) *The Secretary* means the Secretary of Commerce and the person to whom the authority to make the short supply determination has been delegated (the Assistant Secretary for Import Administration) or the person making a final recommendation for decision to that person (the Deputy Assistant Secretary for Compliance.)

(g) *Short supply* exists for a product when there is not a sufficient supply of that product available to meet market demand in the United States. In determining whether short supply exists, the Secretary will not consider one factor alone to be dispositive, but will consider all relevant factors, including:

(1) To the extent information is available, the recent levels of capacity utilization for domestic facilities producing the product or product sector;

(2) The quantity of additional imports of the product requested by the petitioner and the ability of domestic producers to supply the product in such quantity;

(3) The willingness of the producers of the product to supply the product at a price that is not an aberration from prevailing domestic market prices;

(4) Reasonable specifications requested by the purchaser or any end user, such as metallurgical, dimensional, quality, service requirements, and supply only by a *qualified supplier*

if such qualification is required by the purchaser's customers, and

(5) Delivery times to the purchaser and to end users of the product.

(h) A *short supply allowance* means an authorization to import into the United States a quantity of the product in excess of the aggregate quantitative import limitation under an arrangement.

**§ 357.102 Short supply allowances.**

(a) The Secretary will authorize a short supply allowance if:

(1) The product is covered by an arrangement that provides for the authorization of a short supply allowance;

(2) An adequate petition is filed with the Secretary requesting a short supply allowance with respect to the product; and

(3) The Secretary determines that short supply exists with respect to the product.

The Secretary's short supply determination will be based only on information included in the official record. Any determination by the Secretary that is found to be based on inaccurate information will be reconsidered immediately.

(b) Address and submit petitions and all other documents concerning a short supply review (accompanied by four copies) to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted must reference the name or number of the particular short supply review.

(c) The Secretary generally will consider petitions for short supply allowances for up to one calendar year. For annual requests for products that are produced domestically, but for which the domestic industry has minimal available production capacity, the Secretary may grant a short supply allowance for less than a full year, if the Secretary believes that the situation may be significantly altered prior to the end of one year.

(d) If the Secretary grants only a portion of the short supply request, or grants a short supply allowance for less than a full year, the petitioner must

file a new petition to receive an allowance for any subsequent period in the same year. The petitioner must file a new petition if it subsequently modifies its request to the extent that the modification represents a substantial change in its request.

**§ 357.103 Petitions for short supply allowances.**

An interested party may file a petition with the Secretary requesting a short supply allowance.

(a) All short supply petitions shall contain, at a minimum, the following information:

(1) The exact specifications of the product for which the request is made, including dimensions, metallurgical specifications, and unique characteristics;

(2) A detailed explanation of how the product will be used;

(3) An explanation of why the petitioner believes the product is in short supply;

(4) The exact quantity of the short supply allowance requested and justification for the tonnage level. If the request is for more than one type and size of a product, specific quantity information for each type and size. If petitioner's request would represent an increase over previous consumption levels, a full explanation for the increase;

(5) The period of time for which a short supply allowance is requested; and

(6) A certification that the factual information contained in the petition is accurate and complete to the best of the petitioner's knowledge.

(b) If the petitioner is a U.S. company that processes the product in some manner, the petition shall contain, in addition to the information required under paragraph (a), the following information:

(1) A list of all U.S. and foreign producers of the product that have refused to sell the product to the petitioner during the past three years, indicating when they were contacted and the reason for their refusal;

(2) A list of all offers to sell the product to the petitioner by U.S. and foreign producers in the past three years

that have been rejected by the petitioner, indicating the reasons for the rejection;

(3) A list of all domestic and foreign suppliers from whom the petitioner has purchased the product during the past three years, including the quantity purchased from each mill during this period;

(4) A list of potential foreign suppliers of the product; and

(5) Documentation indicating that petitioner has made efforts to purchase the product domestically.

(c) If the petitioner is a U.S. importer/distributor, the petition shall contain, in addition to the information required under paragraph (a), the following information:

(1) A list of all U.S. customers which have purchased the product from the petitioner during the past three years, along with documentation from these customers demonstrating that they support the request and have been unable to buy the product domestically;

(2) A list of all of petitioner's sales (by quantity) to U.S. customers of the product in each of the last three years;

(3) A list of all domestic and foreign firms that have supplied the product to the petitioner during the past three years, with the total quantity purchased from each supplier annually.

(4) A list of potential foreign suppliers of the product;

(d) If the petitioner is a foreign producer of the product applying through its government, the petition shall contain, in addition to the information required under paragraph (a), the following information:

(1) A list of all U.S. customers that have purchased the product from the foreign company during the past three years, along with documentation from these customers demonstrating that they support the petition and have been unable to purchase the product domestically;

(2) A list of all the foreign company's sales (by quantity) to U.S. customers of the product in each of the last three years.

**§ 357.104 Determination of adequacy of petition, notice of review and opportunity for comment.**

(a) Within 24 hours after a petition is filed, excluding weekends and holidays, the Secretary will determine whether the petition is adequate.

(b) If the Secretary determines that the petition is adequate, the Secretary promptly will cause to be published in the FEDERAL REGISTER a notice that a petition with respect to the product is under review and provide interested parties with the opportunity to submit written comments on the petition. Comments will be accepted for a period of seven days from the date notice of the review of the petition is published in the FEDERAL REGISTER. Interested parties may file replies to any comments submitted under this section. Any replies must be filed with the Secretary within five days after the closing date of the comment period. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

(c) If the Secretary determines that the petition is inadequate, the Secretary immediately will return the petition to the petitioner along with an explanation of why it is inadequate.

**§ 357.105 Questionnaires.**

For reviews conducted under section 106(b)(2), the Secretary normally will send questionnaires to potential producers/suppliers of the product to determine whether it is in short supply. Questionnaires shall be completed and delivered to the Secretary within 8 days after being sent by the Secretary. Questionnaire responses not received within this period will be deemed favorable to the petition.

**§ 357.106 Time limits.**

(a) The Secretary will determine, no later than the day specified in paragraph (b) of this section—

(1) Whether short supply exists with respect to the product; and

(2) If short supply is determined to exist, the quantity of the short supply allowance.

(b) The Secretary will make a short supply determination not later than—

(1) The 15th day after the day on which an adequate petition is received if—

(i) A twelve week moving average of raw steel making capacity utilization in the United States, as published by the American Iron and Steel Institute, equals or exceeds 90 percent, or

(ii) The Secretary has granted short supply allowances for the product during each of the two immediately preceding years. This requirement will be satisfied by a full or partial grant of a short supply allowance for the product for a one-year period during each of the two immediately preceding years, or for a six-month period during each of the two immediately preceding years, provided that there was not within the two immediately preceding years a formal negative determination by the Secretary as to the existence of short supply for the product; or

(iii) The Secretary, on the basis of available information (and whether or not in the context of a determination under section 102 of this part), finds that the product is not produced in the United States.

In making a determination with respect to which section 106(b)(1) of this part applies, the Secretary will apply a rebuttable presumption that the product is in short supply. The burden of proof will lie on a domestic steel producer to prove that it can and will produce and supply the product within the requested period of time provided it represents a normal order to delivery period. Unless such proof is provided, the Secretary will issue a short supply allowance within 15 days of receipt of an adequate petition.

(2) In all other circumstances, the Secretary will make a determination within 30 days after the day on which an adequate petition is received.

**§ 357.107 Publication of determinations and notification of foreign governments.**

The Secretary will publish in the FEDERAL REGISTER a notice of each short supply determination setting forth the basis for that determination. If the determination authorizes a short supply allowance, the Secretary will

notify a representative of the appropriate foreign government and issue to the petitioner the necessary documentation to permit the importation.

**§ 357.108 Disclosure of information.**

Promptly after making a short supply determination, the Secretary will disclose to each interested party which requests such disclosure the rationale for the determination, along with all non-proprietary information forming the basis of the determination.

**§ 357.109 Request for reconsideration.**

Interested parties may file a request for reconsideration with the Secretary. The interested party must state with particularity the grounds for the request, including any alleged inaccurate information upon which the short supply determination was based, or facts or points of law which the interested party claims the Secretary has overlooked or misapplied. The interested party shall file the request for reconsideration within 5 days after the publication of the short supply determination in the FEDERAL REGISTER. If the request for reconsideration is granted, the Secretary will review and affirm, modify, or reverse the original determination and publish such decision in the FEDERAL REGISTER.

**§ 357.110 Record of review.**

(a) The Secretary will maintain in the Import Administration Central Records Unit an official record of each short supply review. The Secretary will include in the record all relevant factual information, written argument, or other material developed or obtained by the Secretary during the course of the proceeding. The record will include governmental memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the FEDERAL REGISTER. The official record will include both public and proprietary information.

(b) *Examination and copying of information.* In general, all public information in the official record will be available for inspection or copying at the Import Administration Central Records Unit, Room B-099, by any person during business hours. With respect to documents prepared by an officer or

employee of the United States Government, facts (as distinguished from advice, recommendations, opinions and evaluations) contained in any such documents will be made available by summary or otherwise on the same basis as information contained in documents submitted by other persons.

(c) *Ex Parte meetings.* Written memoranda will be prepared as expeditiously as possible of any *ex parte* meeting between the Secretary and any interested party or other person providing factual information relating to the short supply determination. A memorandum of an *ex parte* meeting will include the date, time, and place of the meeting, the identity of all the persons present, and a non-proprietary summary of the matters discussed and/or facts submitted.

**§ 357.111 Public and proprietary information.**

(a) Any person who submits information in connection with a short supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. The Secretary normally will not treat as proprietary any information not designated as proprietary by the submitter. The submitter must file four copies of a public version of the proprietary information, including any public summaries as substitutes for the portions for which the person has requested proprietary treatment. The submitter must conspicuously mark in the upper right corner of both versions, the words "proprietary document" or "public version of proprietary document", as appropriate. Each separate designation of information as proprietary shall be accompanied by:

(1) A full statement of the reason or reasons why the submitter believes that the information is entitled to proprietary treatment; and

(2) Either (i) A full public summary or approximated presentation of all proprietary information, incorporated in the public version of the document (generally data in numerical form relating to prices and costs, operating rates, and deliveries of individual firms shall be presented in figures ranged

within 10 percent of the actual figure); or,

(ii) A statement that the information is not susceptible to such a summary or presentation, accompanied by a full statement of the reasons supporting this conclusion.

(b) *Proprietary treatment.* The Secretary normally will consider the following factual information to be business proprietary, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process, if unique or not known to the industry;

(2) Price information;

(3) Operating rates;

(4) The names or identifiers of particular customers, distributors, or suppliers;

(5) Normal and current order-to-delivery periods; and

(6) Any other specific business information which the submitter can reasonably demonstrate would be likely to cause substantial harm to the submitter's competitive position if released.

(c) *Confidentiality maintained.* Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction.

(d) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information and written argument that is not designated business proprietary by the submitter;

(2) Exact tonnages sought or offered for each product included in a request, if applicable;

(3) Physical and mechanical properties of products offered as substitutes;

(4) Product specifications;

(5) End use(s) to which the product(s) will be put;

(6) Suppliers contacted, when they were contacted, and the reasons they cannot supply the product, and

(7) Offers by U.S. and foreign producers for the product that have been rejected.

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(e) *Treatment of information where request for proprietary treatment is denied.* If the Secretary denies a request for proprietary treatment of information submitted in connection with a request for a short supply allowance, or determines that information claimed not susceptible to a non-proprietary summary is in fact capable of such summary, the Secretary promptly will notify the submitter of that determina-

tion. Unless the submitter thereafter agrees that the information (including any summarized or approximated presented thereof) may be treated as public information, or provides a summary of matters found to be capable of such summary, such information (including any summarized approximated presentation thereof) will be returned to the submitter and not considered in the short supply determination.