

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.
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- 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) with-

out 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.

(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 determination. 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.